

Title: Removing obligation to consider relevant factors at the point of Removal Decision IA No: HO0061 Lead department or agency: UK Border Agency Other departments or agencies:	Impact Assessment (IA)				
	Date: 04/01/2012				
	Stage: Final				
	Source of intervention: Domestic				
	Type of measure: Secondary legislation				
Contact for enquiries: Asylum, Criminality & Enforcement Policy, Immigration & Border Policy Directorate					
Summary: Intervention and Options					RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£19.1m	£m	£m	No	NA

What is the problem under consideration? Why is government intervention necessary?

Currently the UK Border Agency expects migrants refused further leave to remain to return home voluntarily and a removal decision only follows later if they refuse to do so. To achieve simpler administrative practice, as well as comply with recent findings in the Court of Appeal, the UK Border Agency needs to move to a position where removal decisions are served in every case where an "in-time" application for leave to remain is refused with the result that the person has no leave to enter or remain.

What are the policy objectives and the intended effects?

- To serve joint refusals of leave to remain and removal decisions;
- To encourage voluntary return;
- To simplify the removal process for illegal migrants;
- To ensure that applications can be processed through the new electronic Immigration Casework (ICW) system;
- To maintain a way of considering compassionate factors that illegal migrants may wish to put forward.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Make no changes and continue serving refusals of leave to remain without removal decisions (do nothing);
- To serve joint refusals of leave to remain and removal decisions under the existing policy and legal framework;
- To serve joint refusals of leave to remain and removal decisions under an amended policy and legal framework to lessen the administrative impact. This is the preferred option; it is cost effective and compatible with ICW.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 12/2013

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a		Non-traded: n/a

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible: Minister

_____ **Damian Green** _____ **Date:** 17/01/2012

Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 5	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There will be no additional costs of doing nothing, but the court judgement will lead to higher baseline casework costs (£1million per annum) due to the need to consider other factors in removal decisions; and due to higher expected appeal costs (£2.7million per annum).

Other key non-monetised costs by 'main affected groups'

There will be no additional non-monetised costs of doing nothing, but the court judgement will lead to wider negative impacts on UK Border Agency resources.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

No additional benefits

Other key non-monetised benefits by 'main affected groups'

Wider benefits to UK Border Agency

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

See page 7 for a full list of assumptions. Key assumptions include:

1. Refusals of in-country leave to remain will fall to around 14,000 in 2011 and then fall by 10% from 2012;
2. Migrants refused without a removal decision who appeal will have their case remitted back to the UK Border Agency for reconsideration
3. Risk: UK Border Agency decisions unlawful; insufficient casework resource to deal with additional casework resulting in backlogs and lost revenue

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: Option 2: To serve joint refusals of leave to remain and removal decisions under the existing policy and legal framework

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 5	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 13.9

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		1.1	5.1

Description and scale of key monetised costs by 'main affected groups'

Additional casework costs from consideration of additional factors in refusal decisions (£1.1million per annum).

Other key non-monetised costs by 'main affected groups'

Wider costs to UK Border Agency

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		4.1	19.1

Description and scale of key monetised benefits by 'main affected groups'

Key benefits include: reduced appeal costs (£3.1 million per annum) associated with making a joint refusal and removal decision and there only being one appeal against the joint decision; and reduced removal decision casework costs (£1m per annum).

Other key non-monetised benefits by 'main affected groups'

Key non-monetised benefits include: wider benefits to UK Border Agency; legislative compliance

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

1. See page 7 for a full list of assumptions
2. Risk: Insufficient casework resource to deal with additional casework resulting in backlogs and lost revenue

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Summary: Analysis & Evidence

Policy Option 3

Description: Option 3: To serve joint refusals of leave to remain and removal decisions under an amended policy and legal framework

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 5	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 19.1

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

No additional monetised costs associated with option 3

Other key non-monetised costs by 'main affected groups'

No significant additional non-monetised impacts - the removal decision will be automated using the UK Border Agency ICW system so additional casework costs will be minimal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	0	4.1	19.1

Description and scale of key monetised benefits by 'main affected groups'

Key benefits include: reduced appeal costs (£3million per annum) associated with making a joint refusal and removal decision; and reduced removal decision costs (£1million per annum).

Other key non-monetised benefits by 'main affected groups'

Key non-monetised benefits include: wider benefits to UK Border Agency; legislative compliance

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

1. No additional unit costs of making joint refusal and removal decisions
2. Proposed changes to paragraph 353 of the Immigration Rules will not create additional cost or savings
3. See page 7 for a full list of assumptions

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

Historically the UK Border Agency expected migrants whose in-country applications had been refused to return home voluntarily. For those that refused to do so, a removal decision was taken after they had exhausted their right of appeal against the refusal decision.

Before a removal decision is made, consideration must be given to all relevant factors known to the UK Border Agency. A non-exhaustive list of compassionate factors which must be considered is given in paragraph 395C of the Immigration Rules.

The process required to consider these factors under paragraph 395C is labour intensive and requires the exercise of discretion when weighing up the various factors. It therefore requires a higher grade and better trained caseworker than used for Points Based System (PBS) decision making. The majority of non-asylum refusals of leave to remain are under PBS routes, in particular Tier 4 (students). As such it has not previously been affordable to take removal decisions at the same time as refusing the application for leave in all non-asylum cases.

It is preferable to make a removal decision in every “in-time” case refused leave to remain. This means that should a migrant be subsequently arrested, this administrative hurdle has already been passed. It was intended that we would reform the process for making removal decisions by decoupling removal decisions from the consideration of compassionate factors. This would make removal decisions considerably simpler. It is considered that if there are reasons to remain in the UK other than the route they have applied on migrants should make an application on that basis rather than there being a burden on the Secretary of State to consider these factors when making removal decisions.

It had been the UK Border Agency’s intention to make refusal and removal decision at the same time in all “in-time” cases later in 2012. It would compliment the roll-out of electronic casework and planned reform of the family route. However, in light of recent case law we need to make these changes earlier than planned.

A.2 Groups Affected

The key groups affected are:

- Migrants (and their dependents) seeking leave to remain who make an application from 31 January 2012 onwards, or whose pending application has not been decided by 31 January February 2012;
- Migrants who previously made an asylum or human rights claim that was refused and who subsequently present further submissions, where those submissions are made on or after 31 January 2012, or where those submissions have not been accepted or rejected by 31 January 2012;
- Legal advisors assisting these migrants;
- UKBA caseworkers processing applications/further submissions;

A.3 Consultation

Consultation with operational staff within the UK Border Agency has been conducted.

B. Rationale

Better administration and performance can be achieved by serving refusals of leave to remain and removal decisions together:

1. Informing migrants who have been refused leave to remain that they must leave the UK may increase the number who choose to voluntarily depart;

2. There is a clear need to do more to remove overstayers – the National Audit Office and others recently highlighted this issue – for which making a removal decision is an essential precursor to further enforcement action;
3. Local Immigration Teams will no longer have to make removal decisions (unless new issues are raised) as it will already have been taken in these cases, resulting in casework savings and presenting removal teams with barrier-free cases;
4. The electronic casework programme (ICW) gives us the opportunity to streamline the link between refusal of leave to remain and the service of the removal decisions with minimal casework overhead;
5. Currently some migrants may have two separate and consecutive rights of appeal, firstly against their refusal of leave to remain and secondly against the removal decision. If these decisions are made simultaneously then any appeal can consider both matters at the same time.

In February 2011, in Mirza & Others ([2011] EWCA Civ 159), the Court of Appeal held that a removal decision should be served within a reasonable time following a refusal of an “in time” application. In November 2011, in Sapkota ([2011] EWCA Civ 1320), the Court of Appeal went further and found that failure to make a removal decision when an “in time” application is refused rendered the refusal unlawful, and as such would need to be remitted back to the UK Border Agency to be considered afresh. The UK Border Agency therefore has to decide how best to organise casework resources in order to respond to the court’s findings.

C. Objectives

The key policy objectives are:

- To simplify the removals process
- To encourage voluntary return by informing migrants that they are liable to enforced removal;
- To clear administrative steps earlier so that Local Immigration Teams (LITs) can enforce removal where necessary more quickly;
- To serve joint refusal and removal decisions in compliance with the judgments of the Court of Appeal in Mirza & Others and Sapkota;
- To reduce the litigation cost (through Judicial Review and statutory appeals) of those migrants challenging non-service of a joint refusal and removal decision;
- To ensure that PBS cases can be processed effectively through the new ICW electronic casework systems.

D. Options

The key policy options considered are:

- Option 1 – to make no changes and continue serving refusals of leave to remain without removal decisions (do nothing);
- Option 2 – to serve joint refusals of leave to remain and removal decisions under the existing policy and legal framework;
- Option 3 – to serve joint refusals of leave to remain and removal decisions under an amended policy and legal framework to lessen the administrative impact on the UK Border Agency.

E. Appraisal (Costs and Benefits)

RATIONALE AND PROPORTIONALITY

This impact assessment covers the impact associated with proposals following a court judgement (as set out on page 6). Given the changes arise from a court judgement a proportionate approach has been taken for this impact assessment. The key costs and benefits associated with policy options have been

identified, but only some of the key costs and benefits have been quantified and monetised. Wider costs and benefits have been described where relevant but have not been quantified.

GENERAL ASSUMPTIONS & DATA

General Assumptions

- The baseline figures for volume of refused cases and casework costs are based on data extracted from CID of decisions made to refuse a Points Based System (PBS) application in the calendar year 2010, and the first 9 months of 2011 where the outcome is a refusal with the right of appeal. Note – refusals in non-PBS routes have not been included in the assessment as they make up a smaller amount of total refusals and in many cases have a grade mix of case work staff that would be less affected by a consideration requirement to make a removal decision;
- In 2010, there were around 21,000 “in time” in country PBS refusals with the right of appeal based on UK Border Agency Management Information. More recent Management Information up to 30 September 2011 suggests there may be a decrease in the number of “in time” PBS refusals compared to 2010 volumes by around 35% to around 14,000 per annum. In addition, recent changes to migration rules for PBS routes should continue to reduce the volume of applications, grants and refusals. The central estimates in the model assume refusal volumes will fall by a further 10% from the baseline levels (to around 12,000 per annum). A high and low range scenario have also been modelled to reflect the uncertainty in future volumes given ongoing policy changes; the low scenario assumes refusal volumes will fall by 20% from the baseline (to around 11,000 per annum) and the high scenario assumes refusal volumes will increase by 10% from the baseline (to around 15,000 per annum);
- The income generation/unit cost of case work is based on published fees for in-country Tier 4 main applicant postal applications (£386 in 2011) and the associated unit costs (£316 in April 2011) as this represents the vast majority of PBS applications and refusals. The net profit is therefore £70 per case;
- The additional cost of considering of making removal decisions under the existing legal framework is based on estimated costs per case of additional casework by an Executive Officer grade case worker based outside London;
- The baseline volumes of removal decisions is based on the number of refused cases in 2010 who were subsequently served a removal decision;
- In estimating appeal costs we have taken account of applicants that do not appeal the refusal to vary leave decision, based on data extracted from CID of “in-time” PBS applications refused 1 January 2011 to 30 September 2011, who did not appeal. This was estimated at around 22% of refusals. It is assumed that this rate will continue going forwards;
- In light of the Court of Appeal’s findings in the Sapkota judgement, we assume that all those that appeal under the current system will have their case remitted back to the UK Border Agency for the making of a removal decision. We assume that most of those that are reconsidered are refused again and pursue a new appeal against the joint refusal and removal decision. The options do not take into account cases currently in the appeal system that may require reconsideration;
- Appeal costs are based on estimated costs to the UK Border Agency for a non-asylum appeal from receipt to Upper Tribunal conclusion. Although some appeals may be more straightforward or complex, we have maintained a standard value throughout. Option 1 does not take into account potential costs relating to the UK Border Agency being ordered to pay costs where an appeal is remitted. Note – there may be costs to the Ministry of Justice associated with any change in appeals which have not been considered here;
- The cost of Judicial Reviews have not been included because not serving removal decision in “in-time” cases can be dealt with by statutory appeal regardless of changes made to the Rules; and we therefore do not expect a change in Judicial Reviews;
- No additional costs of enforcement (voluntary or enforced return) have been estimated as it is assumed any changes to enforcement will come from existing capacity and will be based on UKBA enforcement priorities;
- As this is based on deploying UK Border Agency casework resources effectively, no additional costs to Other Government Departments or public services and the private sector have been estimated.

- We have not included potential wider impacts on UK Border Agency (for example the potential for growth in backlogs or changes to UK Border Agency revenue generation).

Option 2 assumptions

- Option 2 assumes the additional casework resources required to meet the new legal demands are not available and that the new process is incompatible with the ICW decision process (because it will require additional discretionary consideration of 395C compassionate factors in all cases). If current casework resources are diverted, there would be the potential for backlogs to build up and result in a loss of revenue on undecided applications on multiple application routes;
- Option 2 assumes that the increased cost of making removal decisions under the existing legal framework would not be made up by any change in UK Border Agency fee income.

Option 3 assumptions

- Option 3 assumes there will be no additional costs or savings to asylum case decision-making (where removal decisions are already made) because given the comprehensive nature of the refusal the impact is considered to be negligible;
- Option 3 assumes there will be no additional unit cost to joint removal decisions as these will be generated through new template decision letters that will be produced automatically;
- Option 3 assumes the proposed changes to paragraph 353 of the Immigration Rules will not create additional costs or savings on this consideration process

COSTS AND BENEFITS

OPTION 1 – Do Nothing

The do nothing option in an impact assessment usually assumes there will be no additional costs or benefits of no change. In this case, the court judgement means that costs to the UK Border Agency will change in the baseline. The analysis below sets out the total costs and benefits associated with the do nothing, hence showing an increase in costs in the baseline. Nevertheless, in line with usual Impact Assessments, the summary tables present just the additional impacts of options 2 and 3 over and above the impacts set out under option 1.

KEY COSTS

- **Casework costs:** In the do nothing scenario, refusal and removal decisions will be made on some cases twice, but a fee is only collected for the first consideration and decision. Making an additional removal decisions will therefore increase case work costs. Assuming refusal volumes are 12,000 per annum, and each additional decision resulted in a net cost of £70, removal case work costs would increase by about £0.9 million per annum.
- **Appeal costs:** In the do nothing scenario, there may be two appeals associated with each case – one against the refusal decision and another against the joint removal decision. Assuming 78% of those refused will appeal, and the unit cost of an appeal to the UK Border Agency is £374, this is estimated to cost around £3.4 million per annum.
- **Wider impacts on UK Border Agency:** There may also be a wider additional cost to the UK Border Agency of diverting caseworkers from more important and income generating casework to making reconsideration decisions. This impact has not been quantified or monetised as the impacts are difficult to accurately estimate.

KEY BENEFITS

- **Wider impacts:** no changes to the Immigration Rules would be required under option 1.

Option 1: Summary Annual Costs of Do Nothing (compared to 2011 estimated costs)

Cost Categories	Option 1 - Do Nothing (Central Estimate)
Casework costs	£0.1m
Removal decision costs	£0.9m
Appeal costs	£2.7m
Total Estimated Costs	£3.7m

OPTION 2 – Serve joint refusals of leave to remain and removal decisions under the existing policy and legal framework

COSTS

- **Additional casework costs:** there will be additional casework costs associated with this option as 395C will be considered at the same time as making removal decisions. Assuming there are around 12,000 refusals; and each decision costs around £90 in staff time costs, the additional costs are estimated at around £1.1 million a year compared to the do nothing scenario.
- **Wider impacts:** additional staff required or taken from another work stream to complete removal decisions will create backlogs, additional loss of income and/or increased costs. These impacts are difficult to accurately estimate and have not therefore been quantified or monetised. In addition, option 2 would not be compatible with current plans for electronic caseworking under the ICW programme which may have negative implications for UK Border Agency casework over the longer run.

BENEFITS

- **Reduced appeal costs:** under option 2, there will be just one appeal against the combined refusal and removal decisions compared to the potential for two appeals in the do nothing scenario. This is estimated to reduce appeal costs to the UK Border Agency by around £3.1 million per annum.
- **Wider benefits to the UK Border Agency:** as removal decisions will be made at the same time as refusal decisions – and this may help to encourage voluntary return. In addition, Local Immigration Teams (LITs) will be able to enforce removal where necessary more quickly. It is not possible to accurately estimate these impacts and they have therefore not been quantified or monetised.
- **Legislative compliance:** option 2 would be compliant with the Court of Appeal judgment in Sapkota.

Option 2: Summary Costs to UKBA (compared to Option 1)

Cost Categories	Option 1 - Do Nothing (Central Estimate)	Option 2 - Consider 395C (Central Estimate)	Additional costs of option 2 over option 1
Casework costs	£0.1m	£1.2m	£1.1m
Removal decision costs	£0.9m	-£0.1m	-£1.0m
Appeal costs	£2.7m	-£0.4m	-£3.1m
Total Estimated Costs	£3.7m	£0.7m	-£3.0m
Saving on Option 1	£0m	£3.0m	

The total estimated **savings** on option 1 are estimated at around £3 million per annum.

OPTION 3 – Serve joint refusals of leave to remain and removal decisions under an amended policy and legal framework

COSTS

- **Additional casework costs:** No additional costs identified, the caseworker (or ICW) will only be required to identify that a refused applicant has 395C leave at the point of refusal, and then issue the removal decision with the refusal decision.

BENEFITS

- **Reduced casework costs:** under option 3, removal decisions will be made at the same time as the initial decision case work without additional consideration. This will reduce the cost of making the removal decision. Assuming there are 12,000 removal decisions per annum, at a cost of £90 per case, the reduction in casework costs is estimated to be around £1 million per annum compared to option 1.
- **Reduced appeal costs:** under option 3, as under option 2, there will be only be one appeal against the combined refusal and removal decisions compared to the potential for two appeals in the do nothing scenario. This is estimated to reduce appeal costs to the UK Border Agency by around £3.1 million per annum.
- **Wider benefits to the UK Border Agency:** as removal decisions will be made at the same time as refusal decisions – and this may help to encourage voluntary return. In addition, Local Immigration Teams will be able to enforce removal where necessary more quickly. Furthermore, there is a reduced risk of building up backlogs or affecting fee income. Option 3 has an additional wider benefit in that it will be compatible with current plans for electronic caseworking under the ICW programme which will have important benefits to both applicants and the UK Border Agency casework over the longer-run. It is not possible to accurately estimate these impacts and they have therefore not been quantified or monetised.
- **Legislative compliance:** option 2 would be compliant with the Court of Appeal judgment in Sapkota.

Option 3: Summary Costs to UKBA (compared to Option 1)

Cost Categories	Option 1 - Do Nothing (Central Estimate)	Option 3 – Delete 395 (Central Estimate)	Additional costs of option 3 over option 1
Casework costs	£0.1m	£0.1m	£0m
Removal decision costs	£0.9m	-£0.1m	-£1.0m
Appeal costs	£2.7m	-£0.4m	-£3.1m
Total Estimated Costs	£3.7m	-£0.4m	-£4.1m
Saving on Option 1	£0	£4.1m	

The total **savings** on doing nothing are estimated at around £4.1 million per annum.

SUMMARY COSTS AND BENEFITS OF OPTIONS

The table below sets out the summary 5 year total costs and benefits across options:

5 year costs and benefits	Option 1	Option 2	Option 3
Costs (discounted) (m)	£17.3	£5.6	-£1.8
Benefits (discounted) (m)	£0	£2.2	-£0.0
Net Impacts (m)	-£17.3	-£3.4	£1.8

We can see that option 1 will have a negative net present value after 5 years of around £17.3 million, option 2 has a negative net present value of around £3.4m after 5 years, and option 3 has a positive net present value of around £1.8m after 5 years.

The table below sets out the additional costs and benefits of options 2 and 3 over and above the option 1 do nothing impacts:

5 year costs and benefits	Option 1	Option 2	Option 3
Costs (discounted) (m)	£0	-£5.1	-£19.1

Benefits (discounted) (m)	£0	£2.2	-£15.9
Net Impacts (m)	£0	£13.9	£19.1

We can see that there are significant savings from both option 2 and 3 over option 1. Option 3 has the highest additional net benefits at around £19m over 5 years above the do nothing.

Sensitivity Analysis

A number of the assumptions are subject to uncertainty. The modelling therefore uses a range where appropriate (as set out in the assumptions section), most importantly to reflect the fact that refusal volumes could be 10% higher or 10% lower than the levels assumed in the baseline scenario.

The results of the sensitivity analysis for the total net present value across options in the low and high scenarios are set out in the table below:

NPV (m)	Option 1	Option 2	Option 3
CENTRAL	-£17.3	-£3.4	£1.8
LOW	-£13.4	-£1.4	£3.1
HIGH	-£24.1	-£7.2	-£0.9

The sensitivity analysis shows that the overall net present values across options will vary depending on the volume of refusals that arises over time. Nevertheless, under each of the scenarios, both option 2 and 3 remain relatively more attractive than option 1 as they have a higher 5 year net present value. Option 3 remains the preferred option in all of the scenarios.

F. Risks

Option 1 – Do Nothing

- Failing to remedy the current process leaves UK Border Agency decisions unlawful as a result of recent case law which is unacceptable.
- There may be significant financial damage to the UK Border Agency under option 1, and this option would hinder the Agency's ability to take enforcement action on those refused leave to remain in the UK.

Option 2 – Serve joint refusals of leave to remain and removal decisions under the existing policy and legal framework

- There may be risks associated with option 2 as there are limited resources available to provide the additional case work required under this option. Significant caseworker recruitment and training would be required. In the interim, potential backlogs would cause reputational damage and additional loss of revenue across multiple application routes
- Furthermore, there is the potential for backlogs to build up as the system is not fully automated or compliant with current plans for electronic casework under the ICW programme ICW, causing reputation damage and potential loss of revenue to the UK Border Agency.

Option 3 – Serve joint refusals of leave to remain and removal decisions under an amended policy and legal framework

- There are limited risks associated with option 3.

G. Enforcement

The policy will be enforced by the UK Border Agency.

H. Summary and Recommendations

The table below outlines the additional 5 year net present values of the proposed changes over and above the do nothing scenario costs:

<u>5 year costs and benefits</u>	Option 1	Option 2	Option 3
Net Impacts (m)	£0	£13.9	£19.1

Option 3 is the preferred option as it will lead to significant savings to the UK Border Agency over and above the do nothing option, and has a number of wider non-monetised benefits to UKBA that also make it preferable to option 2.

I. Implementation

A Statement of Changes to the Immigration Rules change will be made in January 2012.

J. Monitoring and Evaluation

The effectiveness of the new regime would be monitored by current methods of data collection on decision making, outcomes and appeals. In addition, UKBA will continue to monitor litigation in this area.

K. Feedback

Results from the monitoring will be fed back to inform future policy decisions.