

Annex A: Scope

2. Costs and Benefits

1. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing these policies. The costs and benefits of each policy are compared to the do nothing option. IAs place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the policy impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
2. The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill obtained Royal Assent in May 2012. The assessment relates to the removal of each category from scope individually. This analysis presents the expected impact of the combination of scope cuts. The impact of removing each category individually is shown in the breakdown of costs and benefits by category.
3. This Annex assesses the cumulative impact of the scope changes. The overarching IA summarises the cumulative impact of the Government's overall package of legal aid reforms (including those not enacted in the LASPO Act 2012).
4. All estimates are relative to the 2009-10 baseline. In so doing an implicit assumption has been made that there will be no inflationary uprating of provider fees during the current Spending Review period. In addition, as was made clear in the consultation response, it has been assumed that the majority of fees paid under the current contracts will be replicated under the new legal aid contracts which will be introduced when the LASPO Act 2012 is implemented.

Option 0: Do nothing

Description

5. The categories of case and proceeding currently funded by legal aid are set out in Annex 2. If the 'do nothing' option was pursued then all the categories of cases and proceedings currently entitled to funding through legal aid would continue to be funded by legal aid.
6. The 'do nothing' option is also the base case. Under this option legal aid fees and volumes are assumed to remain at current nominal levels.
7. Because the 'do nothing' option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Remove all stated cases and proceedings from scope

Description

8. Annex 2 explains which matters will be removed from the scope of legal aid funding. Section 10 of the LASPO 2012 Act replaces the current exceptional funding scheme with a new scheme to provide legal aid for cases that do not fall within the scope of civil legal aid where, in the particular circumstances of the case, the failure to do so would be a breach of the individual's rights to legal aid under the Human Rights Act 1998 or European Union law, or where there is a significant wider public interest in funding legal representation for inquest cases. It is not intended that this funding will generally be available except where it can be demonstrated that it is necessary to avoid a breach of these rights, or where we are satisfied that the relevant test for legal representation has been met in inquest cases. Legal aid will also continue to be available for victims of domestic violence in private family law cases who possess the required evidence of domestic violence and for the protective party in private law children cases involving child abuse, where evidence is provided.
9. These reforms would apply to both Legal Help and Legal Representation, unless stated. The 2009/10 baseline figures include both legal help telephone and face to face volume and spend.

Option 1: Costs

Net costs related to legal aid clients

10. Client-related costs may take the following broad forms:

- (i) Clients would receive a reduction in resource transfers equivalent to the reduction in legal aid spending. In total it is estimated that around 585,000¹ clients would be impacted and would receive around £240m worth less of legal aid services. Table 1 outlines the impact on the number of clients that receive legal aid. Table 2 outlines the impact on the value of the legal aid services a client received.

Table 1: Reduction in legal aid for customers (by volume of cases) 2009/10²

LSC Statistical Category	Legal Help		Legal Representation	
	Reduction in case volumes	Proportion of existing cases	Reduction in case volumes	Proportion of existing cases
Combined Family	n/a	n/a	0	2%
Domestic Violence	n/a	n/a	0	0%
Financial Provision	n/a	n/a	8,000	64%
Help with Mediation	n/a	n/a	0	0%
Other Family Matters	n/a	n/a	660	65%
Priv. Law Children Act	n/a	n/a	23,800	53%
Private Family Mixed Domestic Violence	n/a	n/a	0	0%
<i>Total Family Private³</i>	<i>200,000</i>	<i>80%</i>	<i>32,500</i>	<i>41%</i>
<i>Total Family Public</i>	<i>0</i>	<i>0%</i>	<i>0</i>	<i>0%</i>
Total Family (private + public)	200,000	75%	32,500	28%
Actions Against Police	1,900	48%	320	70%
Community Care	90	1%	0	0%
Consumer	3,100	100%	470	99%
Debt	105,000	74%	50	13%
Education	2,800	58%	70	29%
Employment	24,000	78%	70	95%
Housing	52,000	40%	1,200	11%
Asylum	0	0%	0	0%
Immigration	53,000	92%	290	20%
Clinical Negligence	2,500	75%	1,500	65%
Mental Health	0	0%	0	0%
Miscellaneous	3,300	85%	580	60%
Personal Injury	1,700	91%	760	81%
Public Law	240	14%	10	1%

¹ For the purposes of the IAs we assume all Legal Representation cases also received Legal Help therefore the impact of clients is assumed to relate to the volume of legal help clients impacted.

² All figures have been rounded to the rounding convention stated in the 'Baseline Assumptions' section of the Cumulative IA, therefore the totals may not sum to the individual components.

³ Legal Help is recorded differently to Legal Representation therefore the appropriate breakdowns are not available.

Welfare Benefits	135,000	98%	0	0%
Total Civil	385,000	60%	5,000	29%
Grand Total	585,000	65%	38,000	38%

Table 2: Reduction in legal aid for customers (by spending) 2009/10⁴

LSC Statistical Category	Legal Help		Legal Representation	
	Reduction in spend (£m)	Proportion of spend	Reduction in spend (£m)	Proportion of existing spend
Combined Family	n/a	n/a	0	2%
Domestic Violence	n/a	n/a	0	0%
Financial Provision	n/a	n/a	7	72%
Help with Mediation	n/a	n/a	0	0%
Other Family Matters	n/a	n/a	2	83%
Priv. Law Children Act	n/a	n/a	70	70%
Private Family Mixed Domestic Violence	n/a	n/a	0	0%
<i>Total Family Private⁵</i>	<i>50</i>	<i>80%</i>	<i>80</i>	<i>38%</i>
<i>Total Family Public</i>	<i>0</i>	<i>0%</i>	<i>0</i>	<i>0%</i>
Total Family (private + public)	50	73%	80	16%
Actions Against Police	0.5	44%	1	59%
Community Care	0	1%	0	0%
Consumer	0.5	100%	3	99%
Debt	20	75%	0	13%
Education	0.5	32%	0.5	50%
Employment	5	76%	0.5	95%
Housing	10	38%	3	12%
Asylum	0	0%	0	0%
Immigration	20	89%	1	24%
Clinical Negligence	0.5	75%	10	64%
Mental Health	0	0%	0	0%
Miscellaneous	0.5	82%	3	63%
Personal Injury	0.5	91%	3	80%
Public Law	0	16%	0	1%
Welfare Benefits	25	97%	0	0%
Total Civil	80	41%	25	37%
Grand Total	130	50%	110	24%

⁴ All figures have been rounded to the rounding convention stated in the 'Baseline Assumptions' section of the Cumulative IA, therefore the totals may not sum to the individual components.

⁵ Legal Help is recorded differently to Legal Representation therefore the appropriate breakdowns are not available.

- (ii) Clients in private family law cases who previously would have received Legal Representation for court-based support, but whose case would be out of scope in future and are not funded under the new exceptional funding scheme, would in future still have access to government-funded mediation. In the absence of legal aid except for mediation, it is possible that some clients would undertake mediation in future where they may not have done under the current legal aid scheme. Initial analysis suggests an estimated 10,000 more mediations might be provided, at a total additional cost of around £10m⁶. As a result the £240m reduction in legal aid would fall to around £230m.
- (iii) Under each category, the percentage cases outside the scope of legal aid that we estimate may receive funding under the exceptional funding scheme is outlined in Table 3. It is difficult to say with any certainty how many cases will receive exceptional funding as each case will be assessed on its merits, therefore these figures are based on estimates. We have assumed that all those that receive funding for Legal Representation through this mechanism will also receive funding for Legal Help. The impact of funding these cases has been included under each category in Tables 1 and 2.

Table 3: Proportion of cases initially out of scope which are then expected to secure funding under the new scheme for excluded cases

Category	Recommended scope status	% Legal Representation cases readmitted as a proportion of total applicants
Other less serious types of claims, whether against public authorities or private individuals	Remove all simple negligence and other less serious claims	Up to 5% for some proceedings
Consumer	Remove all	Negligible
Clinical Negligence	Remove all, except those where negligent treatment or care taking place during pregnancy or shortly after birth has resulted in serious neurological injury to the child	Up to 5% for some proceedings
Debt	Remove all except where clients home is at immediate risk from rent/mortgage arrears, involuntary bankruptcy, orders for sale	Negligible
Employment	Remove all, except for claims in relation to a contravention of the Equality Act 2010.	Up to 5% for some proceedings
Education	Remove all except SEN, including 16-24 year olds	Up to 5% for some proceedings involving damages claims
Housing	Remove all except risk of homelessness, homelessness assistance repossession, eviction and serious disrepair cases	Up to 25% for some Rent Act 1977 proceedings; otherwise up to 5%
Immigration (non-detention)	Remove all except for immigration detention matters	Negligible
Miscellaneous	Remove all except a small number of targeted proceedings ⁷	Up to 5% for some proceedings
Welfare Benefits	Remove all except for applications for accommodation for destitute	Negligible

⁶ See Annex 3 for further detail

⁷ To retain: Confiscation proceedings under the Proceeds of Crime Act 2002; Injunctions concerning gang-related violence; Independent Safeguarding Authority Appeals; Legal Help at Inquests; Protection from Harassment Act 1997; Quasi-criminal proceedings

Category	Recommended scope status	% Legal Representation cases readmitted as a proportion of total applicants
	asylum seekers and advice and assistance on points of law for Upper Tribunals and higher courts and legal representation for the higher courts.	
Financial Provision (non-domestic violence cases)	Remove all except domestic violence mixed cases	Up to 5% for some proceedings
Private Law Children (non-domestic violence cases)	Remove all except domestic violence and child abuse mixed cases and child parties	Up to 5% for some proceedings
Other Private Law Family	Remove all except domestic violence and child abuse mixed cases and child parties	Up to 5% for most proceedings

- (iv) Tables 1 and 2 take into account the potential volumes of private family law cases which will qualify for legal aid as a result of domestic violence or child abuse. Victims of domestic violence will have access to legal aid in private family law cases where a required form of evidence is provided, as will the protective party in private law children cases involving child abuse. We have assumed that up to 40 per cent of cases which currently receive funding for private family law cases will continue to receive funding as a result of domestic violence or child abuse. This would suggest that up to 28,000 cases may be funded in this way. We have assumed that all those that receive funding for Legal Representation through this mechanism will also receive funding for Legal Help. These estimates have been factored into the volume and spending reductions in Table 1 and Table 2.
- (v) As a result of this reduction in resource transfers, clients who no longer receive legal aid may choose to address their disputes in different ways. They may seek alternative resolution services, may represent themselves in court, may seek to resolve issues by themselves without reference to the courts, may pay for services which support self-resolution, or may decide not to tackle the issue at all.
- (vi) There is evidence that all these different approaches are sometimes undertaken currently by people facing disputes^{8 9}. Although the evidence is inconclusive, there is a risk that outcomes may be worse for some people who no longer receive legal aid as a result of these policies.
- (vii) This may have implications for the economic efficiency of dispute resolution. For example:
- in some instances, case outcomes may remain the same and the same overall resource may be used to resolve the dispute (although this would no longer be provided by the legal aid fund, so the client may be worse off in this regard) with efficiency remaining the same;
 - in some instances, case outcomes may remain the same but cases which were previously resolved via the courts might in future be resolved using less resource via alternative means. This would improve efficiency; and
 - in some instances, efficiency would be lower where more overall resources are used to achieve the same outcome.

⁸ Pleasence, P., Balmer, N., Patel, A and Denvir, C. (2010), Civil Justice in England and Wales: Report of the 2006-9 English and Welsh Civil and Social Justice Survey, LSRC, London.

⁹ Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

- (viii) These policies aim to minimise any adverse impact on the economic efficiency of dispute resolution, for example by still providing legal aid to cases where alternative sources of funding or other resolution routes are less open.
- (ix) The overall implications will depend on the behavioural responses of clients who no longer receive legal aid and upon the nature and effectiveness of different ways of addressing disputes aside from using legally-aided service providers. The evidence on outcomes for individuals who benefit from legal aid compared with those who do not is limited. The CSJS¹⁰ (Civil and Social Justice Survey) shows that a variety of methods are currently used to resolve disputes with less than 1 in 10 being resolved through the court/tribunal system.
- (x) We also reviewed the literature on outcomes for “litigants in person”¹¹ (individuals in court and tribunal cases who are not legally represented) and found that, in general, being unrepresented is likely to impact on the outcome of the case. The extent to which this general finding applies to these particular reforms is less clear.
- (xi) A range of evidence shows that social, health and justice problems tend to “cluster”. For example, the LSRC’s CSJS indicated that at least one adverse issue (social, economic or health) also arose in approximately 50 per cent of civil justice disputes. These included physical or stress related illness, relationship breakdown and loss of employment or income. The survey also showed that individuals who were involved in crime had experienced one or more difficult to solve civil problems in the past three years.
- (xii) There is very limited evidence on the impact of providing early legally aided advice on the escalation of problems. Very few studies have systematically used robust methods to compare outcomes for those who do and do not receive early legal or other advice.
- (xiii) Any significant change in case outcomes may be associated with social and economic costs if this leads to wider economic and social issues arising (for example, relating to health, housing, employment or offending). There may then be associated costs to the Ministry of Justice, other government departments or public bodies or to society as a whole.
- (xiv) The lack of a robust evidence base means that we are unable to draw conclusions as to whether wider economic and social costs are likely to result from the programme of reform or to estimate their size. The reforms to the legal aid system will reduce the income of those Not-for-Profit (NfP) organisations that hold legal aid contracts, although as legal aid is only one of several funding streams that NfP organisations receive, it is difficult to assess the impact that the legal aid reforms will have on the overall sustainability of the NfP sector. However, the Government recognises the important role that NfP organisations play in delivering advice services at a local level, and that the funding framework for this sector is changing. The Government made £16.8million available in November 2011 to support the NfP advice sector in England and Wales in 2012/2013, as it adapts to changes in the way it is funded. This support was administered by the Cabinet Office. Further funding of £16.8 million for 2013/2014 and £16.8 million for 2014/2015 was additionally announced in the Budget in March 2012 to support the outcome of the Cabinet Office review of the long term sustainability of the NfP sector which is due to be published later this year.

Legal Aid Fund

11. In addition to the mediation, exceptional funding and domestic violence gateway costs outlined above, there are likely to be additional calls to the Community Legal Advice (CLA) telephone gateway triage service from people who are ineligible for legal aid.
12. The legal aid CLA triage service might experience an increase in call volumes from ineligible clients following the implementation of the scope policy changes. Initially the volume of calls might increase whilst previously legally aided clients take time to understand the implications reforms. However, in the long-run this initial increase in call volumes might tail off. The behavioural response of the

¹⁰ Pleasence, P., Balmer, N., Patel, A and Denvir, C. (2010), *Civil Justice in England and Wales: Report of the 2006-9 English and Welsh Civil and Social Justice Survey*, LSRC, London.

¹¹ Williams, K (2011) *Litigants in person: a literature review*. Ministry of Justice Research Summary.

ineligible clients is uncertain therefore accurately estimating the impact is difficult. However, if all 585,000 current Legal Help cases that will not longer be eligible to claim Legal Help following the reforms were to ring then CLA triage service once, the cost to the legal aid fund has been estimated at around £4m.

13. The communications strategy for the legal aid reform programme is being developed in accordance with the Government's 'Digital First' Agenda, and as such, a key element will be to encourage people to make greater use of digital, online services, where possible and appropriate rather than using the CLA telephone gateway triage service. As part of this MoJ will be reviewing and improving the content and form of its online offering in order to ensure that people are directed to alternative sources of assistance where appropriate and necessary.

Costs for legal services providers

14. The impacts on legal services providers relate to the impacts on legal aid clients. In total it is estimated they would provide £240m worth less of legally aided services. This will impact upon not-for-profit providers, solicitors, advocates and experts.
15. In addition, it is estimated mediation providers would provide approximately £2m worth less of services by removal of the willingness test in legal aided mediation cases. This figure relates to around 60,000 willingness tests. The impact of this has been taken into account in the costing of providing additional mediation.

LSC administration costs

16. One-off LSC implementation costs are estimated to be around £1m. These relate primarily to amending IT systems and training as well as other costs, such as those relating to temporary staff and contractors. They also relate to the volume of additional applications for funding made under the new scheme for excluded cases. There are also likely to be additional ongoing costs. However it is likely that these costs will be more than outweighed by LSC administration savings stemming from the reduction in total case volumes.

HMCTS Costs

17. This annex suggests approximately 38,000 cases of Legal Representation and 585,000 Legal Help cases will be withdrawn from the scope of legal aid following the legal aid reforms. The volumes of cases that continue to progress to court compared to resolving their problems in other ways is uncertain. However, we estimate approximately 10,000 cases might make use of publicly funded family mediation which will divert some cases away from the courts and tribunals.
18. The Legal Aid Reforms are likely to have two key potential impacts on court/judicial resources and on HMCTS revenue.
 - Court/Judicial resources: The volume of cases coming to court might remain the same or fall, however cases might be more complex and are more likely to involve active self represented parties (SRPs). These cases might take longer to resolve, with more hearings and require more Judicial time. A rise in active self represented parties is also likely to put additional pressure on court counter staff.
 - HMCTS revenue: At present court fees for legally aided clients are paid for from the legal aid fund. However, legal aid clients are on low income and are likely to qualify for a court fee remission assuming some of these cases continue to take their issues to court. It is estimated this loss in court fee income might be in the region of £10m based on a number of assumptions.
19. It is difficult to accurately estimate the aggregate direction and the magnitude of these impacts due to limited available evidence on the behavioural response of the individuals impacted by the reforms. The maximum number of individuals that would continue to take their issue to court could be estimated but there is little evidence on the additional resources SRPs might consume.
20. The Ministry of Justice plan to take the following actions to help understand and mitigate the impacts on HMCTS:

- Improve our ability to monitor the volumes and case durations of SRPs. This information will be published in the Court Statistics Quarterly publication from June 2012. There are also plans to improve our evidence base on the characteristics, drivers and support needs of SRPs which will help us better understand the impacts on HMCTS cost base.
- Offer publicly funded mediation which is likely to divert more people away from court and help dampen the impact on HMCTS.
- Improve signposting to alternative sources of advice. In response to the Civil Justice Council's recommendations in their report on self-represented litigants¹² the MoJ have confirmed funding to a number of advice providers to help mitigate the potential impact of SRPs. This includes funding to the Royal Courts of Justice Citizens Advice Bureau for the development of an online diagnostic tool which gives support to SRPs and Advicenow for improving the suitability of their guidance for SRPs. This is likely to help more people get the right sort of advice and mitigate potential impacts on the courts and tribunals.
- Work with the judiciary to improve guidelines for private law cases to ensure SRP are clear on the procedures they must follow and how they must conduct themselves in the courts and tribunals. This should help reduce the risk of SRPs taking up excessive amounts of courts and tribunals time.

21. The legal services market might also innovate in response to the additional needs of individuals for legal advice. This could include offering low cost advice services which may help prevent an increase in the volume of cases going to court, and providing advice and support services for particular stages or aspects of going to court.

Distributional costs

22. Legal aid recipients are amongst the most disadvantaged in society, reflecting both the nature of the problems they face as well as the eligibility rules for legal aid.

23. Reliable administrative data is not captured on the income of legal aid recipients. Estimates have been made by applying data on family characteristics and income levels from the Family Resources Survey to the civil legal aid population according to the eligibility rules, and scaling the figures down to the legal aid claimant population. Whilst this analysis cannot provide a perfectly accurate picture of recipients, the results are indicative of their likely income distribution.

24. This analysis shows that the vast majority (95%) of civil and family Legal Help recipients in 2009-10 were in the bottom two income quintiles, with just over 80% in the bottom quintile and almost 15% in the second bottom quintile for Legal Help. Around 1% are in the top two quintiles (including just 0.1% in the top quintile). The distribution is broadly similar for Legal Representation.

25. The policies outlined in this IA would reduce the overall total number of 2009/10 Legal Representation closed cases by 38% and Legal Help cases by 65%. Of the Legal Representation cases removed, it is estimated that nearly 80% relate to individuals within the bottom income quintile.

Wider economic costs

26. The section on client related costs incorporates consideration of wider social and economic costs, both tangible and intangible.

Option 1: Benefits

Legal aid fund

27. Savings to the legal aid fund equate to the reduced amounts of legal aid set out in Table 1 and mirror the reduction in resource transfers to clients. The total sum is estimated to be around £240m.

Wider economic benefits

¹² <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/self-represented-litigants>

28. A reduction in government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular reducing the size of the Government's fiscal deficit.
29. The reduced subsidisation of particular goods and services may be associated with increased economic efficiency. For example subsidisation of a service in general may lead people to consume this service when better and cheaper alternatives might be available. The policies in this IA would involve reducing the provision of subsidised services.

LSC administration savings

30. There may be reductions in LSC administration costs stemming from the reduction in case volumes. The ongoing savings are estimated to be around £1m.

Benefits for legal services providers

31. Providers may secure increased funding from other sources, in particular from people who previously received legal aid. Given the uncertainty surrounding the possible client response to these policies, the impact on providers is subject to much uncertainty. There might be an increase in business for alternative resolution service providers or services which support self-resolution. Separately, there would be an increase in business for mediation service providers funded by legal aid. This has been estimated to be around £10m.
32. Overall it is likely that in aggregate, the total value of the increase in business for all types of provider (relating to the increase in client-funded business) will be lower than the total value of the reduction in business for providers (relating to the reduction in legal aid business).

HMCTS savings

33. As explained in the HMCTS Costs section, there will be an increase in the volumes of individuals with legal problems not receiving legal aid. The impact on the volumes and durations of the cases going to court is uncertain. There is a risk that court and tribunal costs might increase in response to the reforms. Equally, courts and tribunals costs might decrease as a result of the reforms for the following reasons:
- More people might decide not to take their legal problem forward or might resolve their issues without the use of the courts.
 - The offer of publicly funded mediation might divert more people away from the courts.
 - New innovations by the legal services market, for example low cost advice services or services targeted at particular stages or aspects of going to court, may help minimise an increase in the volume of cases going to court or in the costs to HMCTS associated with SRPs
34. The aggregate direction and magnitude of the drivers outlined above is difficult to estimate due to a lack of thorough available evidence on the behavioural response of the clients that would have previously received legal aid. The response of the legal services market is also difficult to anticipate.
35. The Ministry of Justice are taking actions to help mitigate the impacts on HMCTS (outlined in the 'HMCTS Costs' section).
36. As explained in the 'HMCTS Costs' section the Ministry of Justice will improve the monitoring of volumes and case durations of SRPs and this information will be published in the Court Statistics Quarterly publication from June 2012.

Risks and uncertainties

37. The following key risks and uncertainties apply:
- All estimates are relative to the 2009-10 baseline. In so doing an implicit assumption has been made that there will be no inflationary uprating of provider fees during the current Spending Review period.

- Statistical uncertainties apply to baseline volumes especially where scope is being only partly removed from a legal aid subcategory.
- The actual number of successful applicants to the exceptional funding scheme may differ from that assumed.
- Cases which have many dimensions and which previously presented themselves under areas of law which are now being removed from scope might in future present themselves under categories of law which remain in scope, e.g. domestic violence cases.
- There is limited information on the legal service market in England and Wales. Our assessment of the available evidence¹³ has highlighted that between 1995 and 2008 there has been significant growth in the UK legal services market, with increases of 34% in the number of legal service enterprises and nearly 300% in terms of turnover. At least one in four of all solicitors firms in the UK undertook some legal aid work in 2008/9, with English and Welsh legal aid expenditure representing around 10% of the total turnover for solicitors in the UK. Additionally, the ratio of lawyers per head of population has increased from around 1:1000 to 1:400 in the last 20 years. However, there has been a downward trend in the overall number of providers dealing with civil and family legal aid work, a decrease of around 23% between 2006/07 and 2009/10. This is attributed to the continuing process of providers that do small amounts of legal aid work leaving the market or merging with other firms, in addition to the LSC terminating dormant accounts where no work was being done.
- There is a risk that the legal aid services market may not be able to sustain the cuts to scope now proposed, especially when combined with the fee cuts. There are two potential adverse impacts on the market: the number and type of suppliers; and the quality of advice received. The most recent survey of law firms was commissioned by the Law Society during the consultation period¹⁴. This suggested that while the fee cuts are likely to be broadly sustainable, the market may not in addition be able to sustain the proposed scope cuts, with particular risks for smaller criminal concerns in London and civil/family firms more generally. However, the quantitative results are based on a small and possibly unrepresentative sample. In addition, there are issues with self-reporting and it is unclear whether the assumptions used to drive the financial calculations are robust, so the extent to which the results are reliable and representative of the wider market cannot be validated. Evidence from the Scottish Legal Aid Board suggests that there was a confirmed increase in solicitors' firms registered to provide legal aid services, despite cuts in legal aid fees paid to suppliers in Scotland¹⁵. However, we cannot assume that the market in England and Wales will behave in the same way.
- To mitigate any potential risk that clients may not be able to access legally aided services the Government is working with the LSC to ensure that they have appropriate mechanisms in place to identify any developing market shortfall and that they are able to respond promptly, effectively and appropriately, should this materialise in any form. This is being accompanied by the development of an appropriate client and provider strategy which includes consideration of the best way that services remaining in scope can be bundled in future procurement rounds to ensure that clients are able to access the services they need. In the longer term, the move to price competition is designed to ensure that legal aid services are procured at a rate the market is able to sustain.
- The average cost of funding cases under the new scheme for excluded cases might be higher than current case cost averages.
- The additional expenditure on mediation might be higher than expected if mediation volumes and average costs are higher than expected. Increased costs might also arise if more cases than expected which previously received Legal Help receive mediation in future.
- The expenditure on private family law cases that qualify for legal aid as a result of domestic violence or child abuse might be higher than expected if these volumes and the average cost of these cases are higher than expected.

¹³ Office for National Statistics and Legal Services Reforms: Catalyst, Cataclysm or Catastrophe? Professor Stephen Myerson, Legal Services Policy Institute speech, 21 March 2007.

¹⁴ Otterburn (2011) Law Society: Impacts of the MOJ Green Paper proposals on legal aid firms

¹⁵ Scottish Legal Aid Board (2011) Press release, February 17 2011. <http://www.slaborg.uk/news/index.html> Accessed 23 May 2011.

- The additional LSC administration costs might be higher than expected depending upon the costs of operating the new funding scheme for excluded cases.
- The volume of cases where the client has the option of a Conditional Fee Agreement (CFA) available to them and therefore do not receive legal aid is unknown and has not been factored into the costs. However, the volumes of cases are likely to be small.

3. Enforcement and Implementation

38. The assumption for all the policies in this IA is that they would be implemented in April 2013.

4. Specific Impact Tests

Equality Impact Assessment

39. The published accompanying Equality Impact Assessment (EIA) details the equality impacts.

Competition Assessment

40. The policy to reduce the scope of legal aid could directly limit the number, and possibly the range, of civil and family legal aid providers. However, this is very much dependent on the size of the overall cuts to the scope of legal aid and the reaction of the legal aid service providers. The scope policy will lead to a reduction in the range of cases entitled to receive legal aid funding. This may lead to a reduction in demand for providers of civil and family legal aid services which may negatively impact upon competition if the proposed reforms cause some civil and family providers to cease trading.
41. The impact on the incentive to compete vigorously is dependent upon provider reaction to the proposed reform. Competition for legal aid contracts could be positively impacted if the same numbers of providers are competing for fewer legal aid clients. On the other hand the level of competition may remain the same or decrease slightly if the number of legal aid providers fell in line with, or more than, the reduction in legal aid clients.

Small Firms Impact Test

42. Small firms will be affected by the policy to reduce the scope of legal aid. The proposed reform is likely to reduce the number of cases entitled to receive legal aid and negatively affect a large proportion of legal aid service providers. The majority of legal aid providers are small firms therefore, when comparing to the legal services population as whole, small legal aid providers are likely to be disproportionately affected by the proposed reforms. However, if the impact of the policy on small legal aid providers is compared to the legal aid service provider population only, then small firms are unlikely to be disproportionately affected.
43. Overall, due to the dominance of small legal services providers in the legal aid market, a large number of small legal aid service providers are likely to be negatively impacted by this policy.

Carbon Assessment

44. We do not consider that there will be any significant change in Greenhouse Gas emissions as a consequence of this policy. The policy may lead to clients having to travel further for legal assistance, although this is dependent upon the impact on the number and range of providers which is subject to uncertainty.

Other Environment

45. We do not anticipate any significant impact on the environment as a consequence of this policy.

Health Impact Assessment

46. Clients who no longer receive legal aid might potentially experience a negative impact on their health. This may stem from the outcomes of disputes being different and this having an adverse

impact on health due to the subject matter of the dispute, e.g. housing, employment or education. More broadly there may be health implications for clients from the financial implications of these policies, and also from other implications e.g. of people representing themselves in court.

Human Rights

47. The policies in this IA have been subjected to a Human Rights screening to ensure they are compliant with the Human Rights Act.

Justice Impact Test

48. The overall impact on the justice system is outlined in the evidence base of this Impact Assessment.

Rural Proofing

49. Approximately 10% of legal aid clients with location data are from rural areas and 90% are from urban areas. It is not possible to determine precisely which cases might not be funded in future as we do not have all the appropriate data. As such, it is not possible to determine whether the cases assumed to no longer be funded would impact on clients in either rural or urban areas. However, there is a risk that the policies will negatively impact upon clients living in rural areas.
50. From the providers which could be matched against their geographical location, LSC data indicates that around 94% are based in urban areas and around 6% in rural areas. An initial assessment suggests that the policies could lead to around a 39% decrease in income from legal aid for providers in rural areas and to around a 37% decrease in income urban areas.
51. This impact on the rural providers might result in providers either leaving the market if they are not able to find alternative sources of revenue or moving their businesses out of rural communities. This might have implications for the ease with which people in rural areas might access legal services in future.

Sustainable Development

52. The proposed scope reforms set out in this Impact Assessment are consistent with the principles of sustainable development. In particular, the policy on scope lead to a sustainable economy and a just society. They are designed to ensure only the highest priority cases are provided with public funds, therefore discouraging excessive litigation.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

It is intended to review each policy between three and five years after the implementation date. The review will form part of a wider review of the entire package of Legal Aid Reform policies implemented following the June 2011 Consultation Response on the Legal Aid Reforms and Legal Aid Sentencing and Punishment of Offenders Act 2012.

Review objective:

To ascertain whether the categories removed from the scope of legal aid produce the savings estimated in this IA.

Review approach and rationale:

The intention is to monitor and review the impact of the policies on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, HMCTS and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility improving data coverage and quality in the medium and longer term. We will complement use of administrative data with bespoke research exercises where appropriate. For example, the MoJ is planning to conduct a new study of legal aid clients to provide additional information on a range of client characteristics, including protected characteristics and income and capital to inform our review of the implementation of these reforms. We are also working with the Legal Services Board (LSB) and the Law Society to produce further research on providers.

Baseline:

All scope policies will be assessed against a 2009/10 baseline for LSC expenditure and volumes data. All scope costs and savings figures in this IA are based upon this baseline.

Success criteria:

Whether the objectives of the reforms outlined in the IAs and in the Consultation Response document have been met.

Monitoring information arrangements:

It is intended to make use of the data LSC systems routinely collect in addition to existing administrative data sources, including HMCTS and providers. As set out above we will explore the feasibility of addressing some of the known limitations of the existing data.

Reasons for not planning a PIR:

N/A

Annex 2: Summary of Current and Proposed Positions

All decisions are subject to the effects of other areas of law/proceedings, including those on eligibility. They are also subject to the Parliamentary process in terms of secondary legislation under the LASPO Act 2012.

All the types of case and proceeding which are currently excluded from the scope of the current legal aid scheme will remain out of scope.

Section 10 of LASPO 2012 replaces the current exceptional funding scheme with a new scheme to provide legal aid for cases that do not fall within the scope of civil legal aid where, in the particular circumstances of the case, the failure to do so would be a breach of the individual's rights to legal aid under the Human Rights Act 1998 or European Union law, or where there is a significant wider public interest in funding legal representation for inquest cases. It is not intended that this funding will generally be available except where it can be demonstrated that it is necessary to avoid a breach of these rights, or where we are satisfied that the relevant test for legal representation has been met in inquest cases.

Table 1: Summary of cases and proceedings remaining in scope, and to be removed from scope.

1. The following cases and proceedings remain in the scope of legal aid:

- i) asylum;
- ii) asylum support where accommodation is claimed;
- iii) claims against public authorities (other than judicial review and other similar remedies), concerning a significant breach of human rights, or an abuse of position or power;
- iv) Immigration applications under the UKBA domestic violence rule
- v) claims arising from allegations of abuse and sexual assault;
- vi) clinical negligence cases involving negligent treatment or care taking place during pregnancy or shortly after birth that has resulted in serious neurological injury to the child
- vii) community care;
- viii) debt (where the client's home is at immediate risk), including involuntary bankruptcy and orders for sale of the home;
- ix) domestic violence and forced marriage proceedings;
- x) family mediation;
- xi) housing matters where the home is at immediate risk (excluding those who are "squatting"), homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the county court;
- xii) immigration detention;
- xiii) appeals to the Special Immigration Appeals Commission

- xiv)** international child abduction (including orders both to recover a child and those to prevent international abduction); domestic child abduction (orders to recover a child)
- xv)** international family maintenance;
- xvi)** mental health, including mental capacity issues currently in scope;
- xvii)** Special Educational Needs cases, including for 16-24 year olds
- xviii)** private family law cases involving domestic violence and private law children cases involving child abuse;
- xix)** public law cases (judicial review and other similar remedies) other than representative actions and certain immigration and asylum judicial reviews);
- xx)** public law children cases;
- xxi)** registration and enforcement of judgments under European Union legislation;
- xxii)** representation of children in rule 16.2 (and 16.6) private law children cases;
- xxiii)** miscellaneous proceedings: confiscation proceedings, injunctions concerning gang related violence, Independent Safeguarding Authority Appeals (care standards), Legal Help at Inquests, proceedings under the Protection from Harassment Act 1997, and quasi criminal proceedings;
- xxiv)** discrimination cases that are currently within scope (claims relating to a contravention of the Equality Act 2010);
- xxv)** environmental cases in relation to injunctions in respect of nuisance arising from pollution ;
- xxvi)** European Union cross border cases; and
- xxvii)** appeals to the Court of Appeal and Supreme Court, and references to the European Court of Justice, where the area of law to which the appeal relates remains in scope).
- xxviii)** Legal aid advice and assistance for welfare benefits appeals on a point of law in the Upper Tribunal and higher courts, and representation for welfare benefits appeals in the higher courts.
- xxix)** Immigration and employment claims (in relation to their experience of trafficking) for victims of human trafficking
- xxx)** Terrorism prevention and immigration measures

2. The following cases and proceedings will be removed from the scope of legal aid:

- i)** asylum support (except where accommodation is claimed);
- ii)** clinical negligence (except as above);
- iii)** consumer and general contract;
- iv)** criminal Injuries Compensation Authority cases;
- v)** debt, except in cases where there is an immediate risk to the home;
- vi)** employment cases except for victims of human trafficking;
- vii)** education cases, except for cases of Special Educational Needs;
- viii)** housing matters, except those where the home is at immediate risk (excluding those who are “squatting”), homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the county court;
- ix)** immigration cases (non-detention); except for victims of human trafficking
- x)** miscellaneous (specified matters): appeals to the Upper Tribunal from the General Regulatory Chamber of the First- tier Tribunal, cash forfeiture actions under the Proceeds of Crime Act 2002, legal advice in relation to a change of name, actions relating to contentious probate or land law, court actions concerning personal data, action under section 14 of the Trusts of Land and Appointment of Trustees Act 1996, and legal advice on will-making for (i) those over 70 (ii) disabled people (ii) the parent of a disabled person and (iv) the parent of a minor who is living with the client, but not with the other parent, and the client wishes to appoint a guardian for the minor in a will;
- xi)** private family law (other than cases where domestic violence or child abuse is present);
- xii)** tort and other general claims, and
- xiii)** welfare benefits (except as above).

In addition:

- the rule bringing back into scope any case of significant wider public interest will be abolished except for inquests.
- Legal representation will be refused where the Director is satisfied that the case is suitable for a conditional fee agreement. This applies to all types of case other than mental health proceedings under paragraphs 5(1)(a) or (b) of Part 1 of Schedule 1 to the Act and family proceedings. In the case of legal help and help at court the Director will take into account alternative sources of funding (other than legal aid) which may be available to the individual.

Annex 3: Mediation Costs Detail

1. Following the reforms to the scope of family legal aid we expect an increase in the number of cases referred to mediation to increase. Despite 210,000 cases being removed from the scope of family legal help we expect an increase of 20,000 being referred to mediation. The reason behind this is that we expect that many of these cases will not require or not be suitable for mediation as they involve the following:
 - a. DV claims – considered as unsuitable for mediation.
 - b. Stand-alone divorces, judicial separation and nullity claims – in the majority of cases no negotiation is involved.
 - c. Family wills and change of names – considered as unsuitable for mediation.
 - d. Legal Help claims where the client reconciled and nothing else was required – actual mediation is unlikely to be required in these cases.

Expected future Volumes	2009/10 Volumes / Conversion Rates ¹⁶	Estimated New Volumes following implementation of the LASPO Act	Increase	Cost (£m)
Cases referred to mediation	59,000	79,000	+20,000	
Conversion rate to assessment	45%	45% ¹⁷	+0%	
Cases referred to Assessment Meeting	26,500	35,500	+9,000	1
Conversion rate to Mediation	55%	70% (estimate) ¹⁸	+15%	
Number of Mediations started	15,000	25,000	+10,000	6
Sub-Total				7

2. Mediation is still likely to require legal advice to support the mediation process and would be available to each publicly funded client. There would also be an additional £200 finance fee claimable in finance cases which reach an agreement and the agreement requires a legal contract or court order to take effect. LSC data suggests this is likely to occur in an estimated 31% of cases.

New Legal Advice Fee	Estimated New Volumes following	Unit Price (£)	Cost (£m)
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¹⁶ LSC 2009/10 Administrative Data

¹⁷ The 45% conversion rate remains unchanged as these proposals would not have a direct impact on the other client's willingness to initially engage in the process, many of which are not legally aided.

¹⁸ The conversion rate from an assessment meeting to mediation is assumed to increase from 55% to approximately 70%. It is believed legally aided client who find out about mediation at an assessment meeting will be more inclined to engage and participate in mediation if this is the only available public funded to support them in resolving their dispute. The dynamics of the parties will play a part in this decision making process.

	the implementation of the LASPO Act		
Number of Mediation Starts	25,000		
Volume of legally aided clients that attend mediation (80%)*	40,000		
Clients claiming legal advice fee	40,000	150	6
% of mediations with finance fee	31%		
Cases with additional finance fee	7,500	200	2
Sub Total			8

3. There is a risk that some providers wrongly report matters. Analysis by the LSC suggests that this could lead to an estimated additional 3,000 claims for the legal aid advice fee at a potential cost of around £1m. This impact has not been included in the calculations above.
4. The total cost of continuing to offer government-funded mediation would be around £13m in addition to the current £14m already spent in 2009/10.

Total Cost	Cost/Saving (£m)
Saving from removal of Willingness Test	2 ¹⁹
Cost of Additional Mediation	15
Total Cost	13

¹⁹ The consultation response outlined the proposal to remove the willingness test. In 2009/10 this cost approximately £2m.