

Annex B: Eligibility

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 to 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. 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.
3. This Annex assesses the cumulative steady-state impact of the eligibility policies, confirmed in the June 2011 consultation response. These will be implemented by regulations made under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. The policies remained unchanged during the passage of the Act. This IA, which was first published alongside the Government's response to the consultation on legal aid reforms, is therefore being republished now in its original form for completeness set out in the LASPO Act 2012. The overarching IA summarises the cumulative steady-state impact of the Government's proposed overall package of legal aid reforms (including those not in the LASPO Act 2012).

Option 0: Do nothing

Description

4. Currently those in receipt of particular state benefits are 'passported' for legal aid, meaning they are eligible for legal aid without needing to be subject to a detailed assessment of their means by the LSC. This 'passporting' takes place because those in receipt of the state benefits in question have already had their financial means assessed by the Department of Work and Pensions (DWP).
5. The DWP's Welfare Reform Bill recently received Royal Assent. It proposes combining existing welfare benefits into a single, Universal Credit to support working-age households and removing a number of the 'passporting' benefits used to assess legally-aided clients' means by proxy. This policy means consequent changes may need to be introduced to the LSC eligibility rules and their application, and the base case will differ. In this IA, however, the base case relates to current DWP 'passporting' arrangements.
6. If the 'do nothing' option was pursued then the current eligibility rules would continue to apply. In summary the criteria in those civil cases where representation is means tested are:
 - clients on 'passported' benefits (Income Support, Income-based Job Seekers Allowance, Income-related Employment and Support Allowance, State Pension Credit Guarantee) are deemed eligible and are not means tested for income or capital (as this would have been undertaken by DWP);
 - all other clients are means tested by the LSC for income and capital;
 - clients with up to £3,000 of disposable capital (and less than £316 in monthly disposable income) currently make no contribution towards their case;
 - clients who have £316 to £733 disposable monthly income and £8,000 disposable capital or less pay contributions as follows:

Band	Monthly disposable income	Monthly contribution
A	£316 to £465	Quarter of income in excess of £311

B	£466 to £616	£38.50 + third of income in excess of £465
C	£617 to £733	£88.85 + half of income in excess of £616

7. Under the current rules, clients are required to make a lump sum contribution towards their legal costs from their capital if their disposable capital exceeds £3,000. Contributions are payable where clients receive 'certificated' levels of service such as Legal Representation, but not for Legal Help (initial advice and assistance) nor for mediation. The level of the contribution varies with the anticipated costs of the case, but clients can be asked to contribute all disposable capital in excess of £3,000 (up to the disposable capital eligibility limit of £8,000, above which they no longer qualify for legal aid).
8. The 'do nothing' option is also the base case.
9. 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: Applicants for legal aid who are in receipt of 'passported' benefits should be subject to the same capital eligibility rules as other applicants

Description

10. The LSC means assessment covers both income and capital. The criteria applied by the DWP for these state benefits are not identical to those applied by the LSC for legal aid. Under current DWP eligibility criteria, individuals can hold up to £16,000 in disposable capital and still receive the state benefits in question. The LSC currently allows individuals to hold up to £8,000 of disposable capital and still receive legal aid. As such the capital limits for legal aid for those receiving 'passporting' benefits are therefore more generous.
11. Under Option 1 those in receipt of the DWP benefits outlined above would only be 'passported' in relation to their income. In relation to their capital they would be subject to a separate capital means assessment by the LSC which applies the applicant's disposable capital criteria. 'Disposable capital' includes savings, equity held in the client's home and valuable items. This would mean that:
 - applicants receiving the particular state benefits identified who have more than £8,000 in disposable capital would no longer be financially eligible for civil legal aid;
 - applicants receiving the particular state benefits identified who have more than £3,000 but not more than £8,000 in disposable capital would be liable to pay a capital contribution towards their legal aid costs. This contribution could be all of their capital above £3,000, but may be less depending on the likely cost of the case.
12. These reforms would apply to both Legal Help and to Legal Representation.

Option 1: Costs

Net costs related to legal aid clients

13. 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 clients would receive around £10m worth less of legal aid services. This is a cumulative long term steady state figure. In terms of derivation, the Family Resources Survey (FRS) was used to estimate the legal aid eligibility of the population as whole and the amount of disposable capital that legally aided clients possess. There is a risk that the FRS may not accurately represent the distribution of capital for the legally aided client base. The average case was assumed to cost between £1,000 and £10,000 for Legal Representation and between £100 and £800 for Legal Help. The savings relate to around 4,000 previously passported clients who have disposable capital of more than £8,000 but less than £16,000 and who would not receive legal aid in future. In addition another around 2,000 previously passported clients with disposable capital of £3,000 to £8,000 would pay capital contributions for legal aid.

- (ii) 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.
- (iii) There is evidence that all these different approaches are sometimes undertaken currently by people facing disputes^{1 2}. 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.
- (iv) 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.
- (v) 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.
- (vi) 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 CSJS³ (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.
- (vii) We also reviewed the literature on outcomes for “litigants in person”⁴ (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.
- (viii) 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.
- (ix) 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.
- (x) 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.
- (xi) 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

¹ 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.

² Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

³ 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.

⁴ Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

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.

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 around £5m worth less of legally aided services. This is a cumulative long term steady state figure. This relates to previously passported clients with more than £8,000 but less than £16,000 of disposable capital who no longer receive legal aid.

LSC administration costs

15. One-off costs from this policy are likely to be negligible. These relate to amending IT systems and training. The ongoing costs are likely to be around £1m as a result of an increase in the number of capital assessments.

HMCTS costs

16. The 'Scope 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.
17. 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.
18. 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.
19. 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 litigants⁵ 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.
20. 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

21. 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.
22. Reliable administrative data is not captured on the income of legal aid recipients. Estimates have been made applying data on family characteristics and income levels from the Family Resources Survey to the civil legal aid population according to the eligibility rules (e.g. passported benefits or eligible for free or contributory aid) 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.
23. This analysis shows that the vast majority (95%) of civil & family legal aid 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). This distribution for those in the bottom two quintiles is very similar for Legal Representation.
24. Approximately 72% of legal aid clients affected by introducing the capital eligibility rules to passported clients are from within the bottom income quintile, whereas approximately 2% are from the top two quintiles. The policy is based upon a client's disposable capital not the amount of income they possess. Therefore, due to the characteristics of the legally aided population, the policy is still likely to disproportionately impact upon those at the bottom of the income distribution.

Wider economic costs

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

Option 1: Benefits

Legal aid fund

26. Savings to the legal aid fund equate to the reduced amounts of legal aid set out above and mirror the reduction in resource transfers to clients. The total sum is estimated to be around £10m. This is a stand alone long term steady state figure.

Wider economic benefits

⁵ <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/self-represented-litigants>

27. 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.
28. 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.

HMCTS savings

29. 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
30. 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.
31. The Ministry of Justice are taking actions to help mitigate the impacts on HMCTS (outlined in the 'HMCTS Costs' section).
32. 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.

Option 2: Retaining the 'subject matter of the dispute' disregard for contested property cases, capped at £100,000 for all levels of service.

Description

33. Presently, in assessing an individual's financial eligibility for a contested property case, the LSC usually treats the contested property (where the title is in joint names) as equally divided between the parties. In assessing eligibility for 'controlled work' such as Legal Help, Family Mediation and Controlled Legal Representation in Immigration and Asylum cases, the LSC entirely disregards any assets that are in dispute.
34. Currently, in assessing eligibility for Family Help (higher) and Legal Representation, the LSC similarly disregards up to £100,000 of capital which is the 'subject matter of the dispute'.
35. Option 2 means that the 'subject matter of the dispute' disregard will be retained for Legal Help, Help at court, Family Help (lower), Family Mediation and Controlled Legal Representation in Immigration and Asylum cases, but that this will be capped at the £100,000 of disputed assets (which is currently uncapped). It also means that the existing £100,000 'subject matter of the dispute' disregard for Family Help (higher) and Legal Representation will be retained.
36. This disregard would, as now, be applied first to the client's main dwelling if in dispute and then, if any of the allowance remains, it can be applied to other disputed property or capital. This disregard is applied in addition to the mortgage, equity and capital disregards that apply when the property is not the subject matter of the dispute.

Option 2: Costs

Net costs related to legal aid clients

37. 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. However, the data to accurately estimate the impact on clients is not available.
- (ii) As a result of this reduction in resource transfers, clients who no longer receive legal aid may choose 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.
- (iii) There is evidence that all these different approaches are sometimes undertaken currently by people facing disputes^{6 7}. 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.
- (iv) 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.
- (v) 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.
- (vi) 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 CSJS⁸ (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.
- (vii) We also reviewed the literature on outcomes for “litigants in person”⁹ (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.
- (viii) 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.

6 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.

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

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.

- (ix) 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.
- (x) 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.
- (xi) 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.

Costs for legal services providers

38. The impacts on legal services providers relate to the impacts on legal aid clients. It is not possible to estimate the impact on clients, therefore we cannot estimate the impact on legal services providers.

LSC administration costs

39. The one-off costs from this policy are likely to be negligible. These relate to amending IT systems and training. The ongoing costs are also likely to be negligible.

HMCTS costs

40. The 'Scope 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.
41. 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.
42. 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.

43. 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 litigants¹⁰ 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.

44. 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.

Wider economic costs

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

Option 2: Benefits

Legal aid fund

46. Savings to the legal aid fund equate to the reduced amounts of legal aid set out above and mirror the reduction in resource transfers to clients. As discussed previously, an estimate is not available for this policy.

Wider economic benefits

47. 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.

48. 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.

HMCTS savings

49. 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

¹⁰ <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/self-represented-litigants>

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

50. 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.

51. The Ministry of Justice are taking actions to help mitigate the impacts on HMCTS (outlined in the 'HMCTS Costs' section).

52. 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.

Option 3: Increase income contributions for all legally aided contributory clients

Description

53. Legal aid clients who are assessed as having a disposable monthly income of £316 or more are currently required to make a monthly payment to contribute towards their legal costs over the length of the case. Under the current scheme contributions vary from 0.25% to 20% of the client's disposable income, with clients with greater disposable incomes required to contribute a larger proportion of their income. The policy would introduce an increase in contributions, would limit the increase to no more than 30% of a client's disposable income, and would apply a smaller increase to those who are less well off.

54. The new scheme will be structured in the same way as the current scheme, in that it requires a larger proportion of disposable income from those who earn above a certain threshold. Under this policy, the proportion of disposable income required ranges from 0.6% to 27.8%. See the following table for more details.

Band	Contribution rate	Monthly disposable income above:	New monthly contribution	Contribution as % of disposable income	Current monthly contribution in this band
A (£316-£465)	Increased from 25% to 35% of income over £311	£316	£1.75	0.6%	£1.25
		£390.50	£27.82	7.1%	£19.88
		£465	£53.90	11.6%	£38.50
B (£466-£616)	£54 [highest contribution from band A] + increased from 33% to 45% of income over £465	£466	£54.45	11.7%	£38.83
		£541	£88.20	16.3%	£63.83
		£616	£121.95	19.8%	£88.83
C	£122 [highest contribution]	£617	£122.70	19.9%	£89.35

(£617-£733)	from band B] + increased from 50% to 70% of income over £616	£675	£163.30	24.2%	£118.35
		£733	£203.90	27.8%	£147.35

Option 3: Costs

Net costs related to legal aid clients

55. 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 clients would receive around £1m worth less of legal aid services (i.e. through being required to pay contributions). This is a cumulative long term steady state figure. In terms of derivation, the Family Resources Survey (FRS) was used to estimate the legal aid eligibility of the population as whole and the amount of disposable income that legally aided clients possess. There is a risk that the FRS may not accurately represent the distribution of income for the legally aided client base. An estimated 10,000 clients might be subject to the higher contribution rate. There is a risk that the client may decide not to pay the higher contribution therefore not take up the offer of legal aid. If this occurs the savings are likely to be higher, however the behavioural response of the client is uncertain.
- (ii) As a result of this reduction in resource transfers, clients who no longer receive legal aid may choose 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.
- (iii) There is evidence that all these different approaches are sometimes undertaken currently by people facing disputes^{11 12}. 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.
- (iv) 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.
- (v) 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.
- (vi) 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 CSJS¹³ (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.

¹¹ 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.

¹² Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

¹³ 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.

- (vii) We also reviewed the literature on outcomes for “litigants in person”¹⁴ (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.
- (viii) 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.
- (ix) 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.
- (x) 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.
- (xi) 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.

Costs for legal services providers

56. There likely to be no impacts on legal services providers as the policy relates to legal aid clients. However, there is a risk that legal service providers might be impacted through the client choosing not to pay the higher contribution and therefore not taking up the offer of legal aid. However, the behavioural response of the client is uncertain and therefore the size of the impact on legal service providers is unknown.

LSC administration costs

57. The one-off costs from the reduction in rates is likely to be negligible. These relate to one-off costs such as IT and training.

HMCTS costs

58. The ‘Scope 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.
59. The Legal Aid Reforms are likely to have two key potential impacts on court/judicial resources and on HMCTS revenue.

¹⁴ Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

- 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.
60. 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. .
61. 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 litigants¹⁵ 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.
62. 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

63. See Option 1 for methodology explanation.
64. Around 3 out of 4 legal aid clients affected by the increase in income contributions are within the lowest income quintile. Greater usage of legal aid amongst individuals at the bottom of the income distribution means that, in general, the impact of policy policy is also concentrated amongst these individuals. However, the policy has less of an impact on individuals in the bottom income quintile than other policies, such as scope and other eligibility policies. Individuals that pay income contributions are likely to possess higher incomes than the overall population of legal aid clients, therefore the policy has less of an impact on the bottom of the income distribution.

Wider economic costs

¹⁵ <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/self-represented-litigants>

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

Option 3: Benefits

Legal aid fund

66. Savings to the legal aid fund equate to the reduced amounts of legal aid set out above and mirror the reduction in resource transfers to clients. The total sum is estimated to be around £1m. This is cumulative long term steady state figure.

Wider economic benefits

67. 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.

68. 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

69. Any savings from LSC administrative cost reductions would stem from a reduction in case volumes and are likely to be marginal as the majority of clients are expected to continue receiving legal aid.

HMCTS savings

70. 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

71. 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.

72. The Ministry of Justice are taking actions to help mitigate the impacts on HMCTS (outlined in the 'HMCTS Costs' section).

73. 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.

3. Enforcement and Implementation

74. The assumption for all the policies on eligibility is that they will be implemented in April 2013 through secondary legislation under the LASPO Act 2012.

4. Specific Impact Tests

Equality Impact Assessment

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

Competition Assessment

76. The reforms to the eligibility for legal aid may directly affect the number, and possibly the range, of civil and family legal aid providers. The net impact of eligibility policies is likely to reduce eligibility for legal aid and therefore lead to a reduction in demand for legal aid services. This may negatively impact upon competition if the reforms cause some civil and family legal aid providers to cease trading.

77. 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 civil and family legal aid providers fell in line, or more than, the reduction in legal aid clients.

Small Firms Impact Test

78. Small firms will be affected by the policies to restrict the eligibility of legal aid. The reforms are 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 reforms on small legal aid providers is compared to the legal aid service provider population only, then small firms are unlikely to be disproportionately affected.

79. Overall, due to the dominance of small legal services providers in the legal aid market, the majority of providers impacted by this policy are likely to be small providers.

Carbon Assessment

80. We do not consider that there will be any significant change in Greenhouse Gas emissions as a consequence of this policy. The policies 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

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

Health Impact Assessment

82. 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

83. The policies in this IA have been subjected to a Human Rights screening to ensure it is compliant with the Human Rights Act.

Justice Impact Test

84. The overall impact on the Justice System is outlined in the evidence base of this IA.

Rural Proofing

85. 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 cannot link geographical client data with their capital and income. 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 eligibility policies will negatively impact upon clients living in rural areas.
86. Approximately 6% of civil providers with location data are based in rural areas, and 94% of civil legal aid providers are based in urban areas. It is not possible to determine precisely which cases might not be funded in future as we cannot link geographical client data with their capital and income and therefore cannot identify precisely which providers would be affected. As such, it is not possible to determine whether the cases assumed to no longer be funded would impact on providers in either rural or urban areas. However, there is a risk that the eligibility policies will negatively impact upon providers in rural areas.

Sustainable development

87. The proposed eligibility reforms set out in this IA are consistent with the principles of sustainable development. In particular, the policies on eligibility lead to a more sustainable economy and a just society. They are designed to ensure clients that have the appropriate means make appropriate contributions or fund their own legal cases, therefore ensuring the Government provide legal aid only for those most vulnerable in society.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

It is intended to review each policy in 2016. 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.

Review objective:

To ascertain whether the suite of eligibility policies have had the expected impact on the affected groups outlined 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 eligibility policies will be assessed against a 2009/10 baseline for LSC expenditure and volumes data which all eligibility costs and savings figures in this IA are based upon.

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.