

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Ministry of Justice</b>	<b>Title:</b> <b>Impact Assessment of Section 57 of the Criminal Justice and Immigration Act 2008</b>	
<b>Stage:</b>	<b>Version:</b>	<b>Date: 1 August 2008</b>
<b>Related Publications:</b>		

**Available to view or download at:**

<http://www.Justice.gsi.gov.uk>

**Contact for enquiries:** Brenda Keys

**Telephone:** 020 7210 2092

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

The Legal Services Commission (LSC) has an obligation to verify the accuracy of information provided by magistrates' courts defendants in order to determine their financial eligibility for criminal legal aid. Checks are currently undertaken by Department for Works and Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC), on the basis of written consent provided by the defendant on the application form. The Government believes the 'gateway' arrangements should be placed on a proper statutory footing so as to facilitate and enhance the verification process.

**What are the policy objectives and the intended effects?**

- To ensure criminal legal aid is only granted to those applicants who are financially eligible;
- To ensure operational effectiveness of the means test and so support the Government's wider policy objective of Simple, Speedy Summary Justice;
- To guard against potential fraud;
- To provide better value for money to the tax-payer; and
- To promote greater public confidence in the administration of criminal legal aid.

**What policy options have been considered? Please justify any preferred option.**

To do nothing would mean a potential additional cost to the legal aid fund if representation is granted to financially ineligible applicants;

Introducing primary legislation is the preferred option as it provides formal authority for the detailed sharing of information between the LSC and DWP and HMRC.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The policy will be reviewed one year after implementation of the full statutory framework, including secondary legislation.

**Ministerial Sign-off** For SELECT STAGE Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description: Introducing Primary and Secondary Legislation</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' £134K annual LSC staff resource cost £10K annual payment by LSC to DWP and HMRC for verification of financial information provided by legal aid applicants
	<b>One-off</b> (Transition) <span style="float: right;">Yrs</span>	
	£	
	<b>Average Annual Cost</b> (excluding one-off)	
	£ 144K	<b>Total Cost (PV)</b> £
Other <b>key non-monetised costs</b> by 'main affected groups'		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' £134K annual LSC staff re source cost £10K annual payment by LSC to DWP and HMRC for verification of financial information provided by legal aid applicants.
	<b>One-off</b> <span style="float: right;">Yrs</span>	
	£	
	<b>Average Annual Benefit</b> (excluding one-off)	
	£ 144K	<b>Total Benefit (PV)</b> £
Other <b>key non-monetised benefits</b> by 'main affected groups' financially eligible applicants will be granted legal aid; fraud will be reduced; savings will be delivered; Greater confidence for the tax payer that criminal legal aid is administered fairly and that it provides value for money.		

**Key Assumptions/Sensitivities/Risks**

raud will be reduced  
 Better use of taxpayers money

Price Base Year 0	Time Period Years 0	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	England and Wales				
On what date will the policy be implemented?	Dec'08/Jan'09				
Which organisation(s) will enforce the policy?	N/A				
What is the total annual cost of enforcement for these organisations?	£ N/A				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	N/A				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Micro</td> <td style="width: 25%;">Small</td> <td style="width: 25%;">Medium</td> <td style="width: 25%;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">No</td> <td style="width: 25%;">No</td> <td style="width: 25%;">N/A</td> <td style="width: 25%;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase	£ N/A	Decrease	£ N/A	<b>Net</b> £ N/A

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

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### **Criminal Defence Service amendments**

### **Access to Justice Act 1999, as amended by section 57 of the Criminal Justice & Immigration Act 2008**

#### **What are the policy objectives and intended effects**

The aim of the policy is to help ensure that criminal legal aid is accurately and properly granted to those applicants who meet the appropriate financial eligibility criteria. This will be achieved by providing a statutory basis upon which the LSC can verify the financial information submitted on the application form with DWP and HMRC.

#### **Options**

The Department considered achieving its objectives by means of the following options:

- Option 1 – Existing voluntary arrangements
- Option 2 – Introducing primary and secondary legislation

**Option 1** – This option would have been reliant on the defendant giving their written consent so that financial information provided on the application form could be verified with HMRC and DWP. This process recognised the importance of protecting an individual's personal information and maintaining confidentiality. However, as this option restricts the ability to verify an applicant's financial status and so ensure that legal aid is correctly granted, a voluntary scheme was not seen as an appropriate way forward.

**Benefits:** Legislation not necessary

**Costs:** Legal aid could be incorrectly allocated  
Fraud could go undetected

**Option 2** – Primary/Secondary Legislation. This will provide the Government with a comprehensive mechanism through which to verify with DWP and HMRC the accuracy of information provided by individuals applying for publicly funded representation. This process recognises the importance of protecting an individual's personal information and maintaining confidentiality. This arrangement will allow the government to fulfil its wider policy obligation to ensure that legal aid resources are focused on those vulnerable individuals who most need them.

**Benefits:** Verification of an applicant's financial status can be carried out without their written consent.  
Legal aid will be more accurately granted  
Fraud should be quickly detected

**Costs:** Staff resource and time required to implement legislative framework.

### **Purpose and Intended Effect of statutory 'gateway' with DWP & HMRC**

Some legal aid applicants can be automatically 'passported' through the means test if they are in receipt of Income Support, Income based Jobseeker's Allowance or guaranteed State Pension Credit. Equally, all youths under 18 are exempt from the means test.

Prior to section 57 of the Criminal Justice and Immigration Act 2008, LSC had a formal agreement with DWP to confirm whether an applicant was in receipt of a 'passported' benefit and an informal agreement with DWP and HMRC whereby they could access data about an applicant and confirm other forms of income in order to check their financial status. Access to an applicant or applicant's partner's records required written authorisation by the defendant.

The new legislative provision gives a statutory basis through which much more comprehensive information about an applicant's financial status can be disclosed to the LSC by DWP and HMRC.

### **Background**

The Access to Justice Act 1999, as amended by the Criminal Defence Service Act 2006, provided for the reintroduction of a new means testing scheme for criminal legal aid. The regulatory framework for the new means testing scheme was set out in secondary legislation and was implemented in magistrates' courts on 2 October 2006. The means test now sits alongside the existing 'Interests of Justice' test in determining an applicant's eligibility for criminal legal aid representation in magistrates' courts.

### **Rationale for Government Intervention**

The Government believes that legal aid is a fundamental underpinning of the criminal justice system, enabling access to justice for those who cannot afford to pay for legal advice and representation.

The establishment of the new gateways with DWP and HMRC will ensure that:

- Data can be verified quickly and accurately;
- That legal aid is granted correctly to those who are financially eligible;
- That adequate measures are put in place to protect against fraud or incorrect allocation of grant;
- The new CJSSS system is supported by the swift turnaround of legal aid applications.
- Legal aid provides value for money and inspires wider public confidence.

### **Data Protection Act 1998:**

The Data Protection Act 1998 (DPA) puts in place a framework for the protection of personal data, balancing the privacy rights of individuals with the legitimate needs of organisations to make use of such data. It requires data controllers to comply with eight data protection principles when they process personal data unless they are able to claim an exemption from one or all of them. The principles provide a framework for respecting individuals' rights to privacy and keeps their personal information secure from abuse. It does not prevent lawful data sharing. Data sharing is essential to delivering efficient public services and has an important role to play in tackling potential criminal activities.

Of particular importance to this policy are the second and third data protection principles; the second provides that personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes. The third principle states that personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

Transformational Government aims to improve services to the citizen by driving more efficient and joined-up service delivery. This includes minimising the collection of new data by encouraging a move to a shared services culture, where data can be better safeguarded through the existence of fewer datasets with better data protection and less duplication, rather than creating whole new data sets every time a new service is required.

## **Devolution**

This change applies to England and Wales only. Scotland and Northern Ireland have legal aid separate schemes.

## **DWP Gateway**

A **formal** agreement existed between DWP and HMCS, which allowed HMCS to confirm whether the applicant was on a passported benefit. There was an **informal** agreement between HMCS and DWP, which allowed them to confirm other forms of income. By putting the gateway arrangement with DWP on a statutory footing it would allow access to an applicant's or, if relevant, their partners records, to confirm whether either of them was on a passported or other benefit. An applicant would still need to sign the application form but court staff would not require the consent of the applicant to obtain access to their records and it would mean that the information currently used can also be more varied to identify the applicant/applicant's partner.

Prior to the implementation of the Act, if a client provided incorrect or inaccurate details, or was unable to recall exactly the type of benefit s/he received, court staff may have been unable to access and verify data on the relevant database. This could lead to :

- delay or
- legal aid incorrectly awarded or
- legal aid not being awarded when the client should be entitled.

In the longer term it was felt that a statutory gateway with DWP was necessary. It would ensure that applications made by defendants in receipt of 'passport benefits would be processed accurately by using not just the applicant's name, address and date of birth but by using other suitable appropriate information. It would provide a clear legal basis on which relevant information can be shared, and would ensure that the system works as effectively as possible with minimal burden on defendants, solicitors, court staff and DWP staff.

## **HMRC Gateway**

By putting the agreement with HMRC on a statutory footing, it will allow access to an applicant or, where appropriate, applicant's partner's records in order to identify their full financial position. The gateway will provide access to a much wider range of financial information, which will enable a speedy decision on whether a defendant is financially eligible.

## **Conclusion**

The statutory gateways with DWP and HMRC will only allow the sharing of relevant information for the specific purpose of administering the grant of legal aid (a function of the Legal Services Commission under schedule 3 to the Access to Justice Act 1999). The draft regulations setting out the detail of the new gateway arrangements will be the subject of a consultation exercise starting on 26 August 2008.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	Yes
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

### **Small Business Impact Test**

There is not expected to be any additional work for small businesses as a result of this change. CDS application forms will continue to be completed by solicitors and signed by defendants, as was the case prior to the gateway arrangements between DWP, HMRC and LSC being placed on a statutory footing in the Criminal Justice and Immigration Act 2008. The gateway facility will ensure that a more accurate decision can be reached on an applicant's financial eligibility status, and this should help to build confidence among legal aid practitioners and reduce the need for reviews arising from the financial determination.

**15.08.08**