

Equality Impact Assessment (EIA) Initial Screening - Relevance to Equality Duties

This EIA analyses the likely impact of the proposed abolition of the Legal Services Commission (LSC) (an Executive NDPB) and the establishment of a new Executive Agency within the MoJ in accordance with the single public sector equality duty (under section 149 of the Equality Act 2010). That duty requires the Government to have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and other conduct that is prohibited by or under the Equality Act 2010;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

Section 4 of the Equality Act 2010 Act provides that the protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In accordance with s 149(7), marriage and civil partnership are not relevant for sub sections 149(b) and (c).

Therefore this EIA considers those areas in which there may be a potential risk that the proposed changes will have an adverse impact upon particular groups protected under equality legislation

The scope of this EIA only relates to provisions included in the Legal Aid, Sentencing and Punishment of Offenders Act to abolish the Legal Services Commission (LSC) and transfer LSC functions to the Lord Chancellor. It focuses on the potential equalities impacts on persons who are LSC employees at the point of transfer, and any potential equalities impacts resulting from the necessary changes to the administration of legal aid brought about by the transfer of responsibility. It is planned that the new Executive Agency will be established on 1st April 2013. Any further policy developments between the date of this EIA and abolition will be subject to impact assessment and equality impact assessments as appropriate; for example, we know that there will be reductions in staff numbers, but we are unable to assess the impact of this at the current time.

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

The abolition of the Legal Services Commission and the establishment of a new Executive Agency within the Ministry of Justice. (The abolition of the LSC forms part of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which also includes, for example, the vesting of powers and functions to the Lord Chancellor for the administration of legal aid). This is EIA updates the EIA that was published by the Ministry of Justice in June 2011. It has been updated to reflect the position at Royal Assent of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

2. Individual Officer(s) & unit responsible for completing the Equality Impact Assessment.

MoJ/LSC Executive Agency Transition Programme Team

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
<p>One of the aims of the Legal Aid, Sentencing and Punishment of Offenders Act is to abolish the LSC and transfer powers and functions to the Lord Chancellor.</p> <p>As stated in Chapter 10 of the Proposals for the Reform of Legal Aid in England and Wales (CP12/10; Cm 7967; November 2010), the Government is committed to tightening its stewardship of the legal aid fund, establishing clear lines of ministerial accountability and ensuring that the MoJ has strict controls in place to manage the cost of the scheme.</p> <p>It is the intention that a new Executive Agency will be established (within the MoJ) and will work alongside and in partnership with a family of agencies and other bodies responsible for the administration and delivery of criminal and civil legal aid. This will allow a more holistic approach to the Government's development of policy across the justice system and is consistent with the Government's wider programme of reform of public bodies.</p> <p>The transfer of LSC employees to the MoJ will (a) be conducted on their existing terms and conditions (save as to pensions and severance) with their continuity of employment preserved (as set out in Schedule 4 to the Legal Aid, Sentencing and Punishment of Offenders Act) and (b) be carried out in accordance with The Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP) (January 2000, revised November 2007). This includes Annex A "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" (hereafter referred to as "Fair Deal").</p>	<p>The desired outcomes (for the purpose of the issues relevant to this EIA) are to (a) abolish the LSC; (b) transfer LSC employees to the Legal Aid Agency (LAA) or MoJ, or in areas of LSC-MoJ duplication, potentially make redundancies, and (c) vest relevant functions in the Lord Chancellor.</p> <p>It is assumed that there will be the following outcomes:</p> <p><u>1. LSC employees</u></p> <p>(i) LSC employees will transfer to the Ministry of Justice (as to which part of MoJ the employees transfer to (for example the Legal Aid Agency or MoJ headquarters) will depend in part on work-type);</p> <p>(ii) LSC employees will become civil servants on transfer;</p> <p>(iii) LSC employees will transfer on existing terms and conditions, save insofar as they affect pensions and severance terms, and with continuity of employment preserved;</p> <p>(iv) co-working, which may include co-location arrangements have been implemented in advance of a transfer where it is beneficial for the business and employees to do so.</p> <p><u>2. Transfer of pensions</u></p> <p>Since LSC employees are not civil servants, they are ineligible (whilst they remain LSC employees) to be part of the Principal Civil Service Pension Scheme (PCSPS). The LSC operates two pension schemes (the No.3 and No.4 Schemes), each set up under Trust and each administered by their own Board of Trustees. A power has been taken in the LASPO Act to enable the two schemes to be merged.</p> <p><u>No 3 Scheme</u></p> <p>The No 3 Scheme is closed and contains only preserved members (members who have a right to pension at normal retirement age) and pensioner members (members who are currently drawing a pension from the scheme).</p>

No 4 Scheme

The No 4 Scheme is open to active members and also contains both preserved and pensioner members. Active members of the No.4 Scheme will have the option to transfer their pension from the No.4 scheme to the PCSPS. All LSC employees will be offered a broadly comparable pension under PCSPS arrangements. Broad comparability assessments will be undertaken by the Government Actuary's Department in accordance with Fair Deal. The preserved and pensioner members will not be able to transfer to the PCSPS.

It is anticipated that the No.3 scheme will be merged into the No.4 scheme when the LSC is abolished. The merger of the schemes would be with the intention of realising savings in the administrative costs of running two closed schemes, and would not result in a loss of rights under the schemes prior to the merger for members or other beneficiaries. Following the LSC's abolition, the MoJ will become responsible for the funding of the residual schemes. To enable the MoJ to manage the funding over a longer term a Crown Guarantee has been secured removing the requirement to fully fund the schemes at the transfer. This also provides the Trustees with greater assurances that the scheme will be able to meet its liabilities going forward.

3. Transfer of property, assets and liabilities (including contractual obligations)etc.

(i) Interests in land will transfer to the Secretary of State for Communities and Local Government (who holds freeholds and leaseholds on behalf of other government departments) or the Lord Chancellor, as appropriate depending on the nature of the interest in land.

(ii) Other property, rights, powers, duties and liabilities of the LSC will transfer to the Lord Chancellor on transfer.

4. Information provisions - Information provisions in the Legal Aid, Sentencing and Punishment of Offenders Act and information handling in the new agency need to allow appropriate collection and use of information to ensure effective running of the legal aid system and to facilitate ministerial accountability. At the same time, they must

	<p>safeguard personal data and legally privileged material as well as prevent inappropriate use of information to maintain fairness. A separate privacy impact assessment has been produced and can be viewed on the MoJ website at http://www.justice.gov.uk.</p> <p>5. Decision making - The Lord Chancellor will have ultimate responsibility for the legal aid scheme. Decisions on funding individual cases will be made by a statutory office holder (the Director of Legal Aid Casework) rather than the Lord Chancellor, in order to ensure independence from Ministers. Suitable processes and procedures are being put in place to ensure this.</p>
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4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings, submissions or business reports, comparative policies from external sources and other Government Departments)

The main group that will initially be impacted by the changes are LSC employees. We are using a wide variety of sources of information to help make our equality impact assessment. Information sources that will help analyse impacts on this group are outlined below:

Legal Services Commission information

Employee diversity

The LSC monitors the diversity of its workforce and reports on a number of indicators annually. LSC Annual Equality Reports http://www.legalservices.gov.uk/aboutus/how/equality_and_diversity.asp

Assessments are based on 2010/11 data, as this was the position at the time of original publication. Data for the financial year 2010/11 shows that:

- 182 staff employed by the LSC were from black, Asian, mixed and minority ethnic backgrounds (BAME), making up 11% of the LSC workforce. 75% of the workforce record themselves as white, 3% 'Preferred Not to Say' and 11% were recorded as 'Unknown'.
- 59% were women and 41% were men.
- 3% of employees considered that they had a disability.
- 1.8% of employees recorded themselves as Lesbian, Gay or Bisexual, and 79% as heterosexual. One percent described themselves as 'Other', 9% preferred not to say, and in the case of 9% of employees, we held no data.
- 55% of employees were aged under 40 compared to 52% in 2007/08. Employees aged 30 to 39 comprised the single largest group at 32%.

- Approximately 47% of employees described themselves as Christian and 2% each described themselves as Muslim, Hindu and Other respectively. Sikh, Jewish, and Buddhist employees accounted for 1% or less of the rest of the employees who described themselves as having a religion. 31% (510) of employees stated that they had no religion.

The LSC is committed to ongoing equalities and diversity monitoring of its employees, in accordance with the public sector equality duty.

Human Resources Policies and Guidance

We are considering existing policies and guidance in relation to Human Resources matters within the Legal Services Commission, MoJ and the wider Civil Service.

Legal Services Commission Pension Schemes (No.3 and No.4):

As of June 2010:

No.3 Scheme: Pensioners 35; Deferred members 59. As it is a closed scheme there are no active members.

No.4 Scheme: Active members 1,078; Deferred pensioners 701; Pensioners 1,009. Since the numbers of No.4 Scheme members (active, deferred and pensioner members) will be affected by the outcomes of current LSC organisational restructure and any resulting voluntary redundancy agreements, we will compile a set of diversity data, as is reasonably available, following the conclusion of agreements.

Guidance on transfers in the public sector

Cabinet Office Staff Transfers in the Public Sector Statement of Practice (Jan 2000, revised Nov 2007) (COSOP) <http://www.civilservice.gov.uk/about/resources/employment/codes.aspx>

The Government has set out in COSOP, as explained in para 1 of COSOP, that in order to meet guiding principles (set out in COSOP) the Government believes that there must be a clear and consistent policy for the treatment of staff, founded upon the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). TUPE implements the 2001 European Council Acquired Rights Directive. In broad terms TUPE protects employees' terms and conditions of employment (except certain occupational pension arrangements) when the business or service in which they work is transferred from one employer to another. Employment with the new employer is treated as continuous from the date of the employee's start with the first employer. Terms and conditions cannot be changed where the operative reason for the change is the transfer, although changes for other reasons can be negotiated, subject to certain conditions.

COSOP (paras 7 and 17-20) provides a policy framework for the treatment of staff involved in transfers, including a transfer from one part of the public sector to another. COSOP (para 8) does not offer policy advice or guidance on assessing policy options for a particular service or function; project appraisal or procurement (except on the application of TUPE); managing a contracting exercise; how to discharge the obligations when TUPE applies or not; or how to secure appropriate pension provision, redundancy or severance terms.

It is considered that the replacement of the LSC by an Executive Agency is an administrative reorganisation of public administrative authorities which involves a transfer of administrative functions. Consequently, the provisions of TUPE do not apply. However, the Legal Aid, Sentencing and Punishment of Offenders Act provides that the transfer of LSC staff to the Civil Service will be on their

existing terms and conditions (save as to pensions and severance), with continuity of employment preserved.

COSOP Annex A "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" (hereafter referred to as "Fair Deal")

Under Fair Deal para 8 the Government has stated that the following principles should apply in relation to the pensions of transferring staff where COSOP applies: treat staff fairly; do so openly and transparently; involve staff and their representatives fully in consultation about the process and its results; and have clear accountability within Government for the results.

Fair Deal para 9 also provides that (1) staff should continue to have access after the transfer to a good quality occupational pension scheme under which they can continue to earn pension benefits through their future service, (2) staff should be given options for the handling of the accrued benefits which they have already earned.

In application of the Fair Deal guidance, it would be a requirement that the Government Actuary's Department would certify the broad comparability of specified alternative pension arrangements.

It is ultimately the decision of the employees whether to elect to preserve their accrued benefits or transfer them in accordance with agreed terms of transfer.

Wider legal aid reforms

Review of Legal Aid Delivery and Governance; Sir Ian Magee Report, 3 March 2010

<http://webarchive.nationalarchives.gov.uk/20110201125714/http://www.justice.gov.uk/publications/docs/legal-aid-delivery.pdf>

The MoJ separately consulted on Proposals for the Reform of Legal Aid in England and Wales (Cm 7967). <http://www.justice.gov.uk/consultations.htm>

In addition to a wide range of proposals for reforming legal aid in England and Wales, the consultation made clear the Government's intention to introduce legislation when Parliamentary time allowed to give effect to the changes necessary in order to abolish the LSC, provide for the transfer of LSC staff to the MoJ and vest all relevant functions and responsibilities for the administration of legal aid in the Lord Chancellor. This was included in the LASPO Act. The day-to-day operational and case management functions, as currently undertaken by the LSC, will continue under Agency arrangements. The intention to abolish the LSC was not subject to consultation. A separate set of equality impact assessments supported the areas subject to consultation. These can be viewed on the MoJ website www.justice.gov.uk.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.

In relation to the following areas it is too early to make an assessment:

Co-working

The Executive Agency Transition Programme Board has agreed a set of Co-Working Principles to support situations where staff may work more closely with their MoJ counterparts in advance of transfer. The Co-Working Principles have been assessed for equality impact and in drafting them they incorporate guidance on meeting the diverse needs of individuals affected. Once Co-Working arrangements are approved, they are monitored and reviewed to ensure they continue to provide benefit to the LSC and the employee.

Pensions

We are unable to fully assess the equality impact of the transfer of the LSC Pension Schemes at the present time for reasons given above. For those LSC pension scheme members that may transfer to a Civil Service pension scheme, the Fair Deal principles should help minimise potential adverse impact as a consequence of the transfer. This includes adequate and appropriate communication to all LSC pension scheme members in accordance with legal requirements by the pension trustees and the employer under Fair Deal. We expect that applying this process will minimise any potential adverse impact for those pension members.

Severance

Schedule 4 to The Legal Aid, Sentencing and Punishment of Offenders Act has the effect that variations can be made to transferring employees' severance terms. The current LSC severance scheme is linked to its pension scheme, and so some elements of it would not be able to operate in the same manner once LSC employees transfer to the civil service, and only a residual No 4 Scheme remains. Transitional arrangements between the LSC's severance terms and those of the civil service have been agreed between MoJ, the LSC, and the Cabinet Office. At the time of publication these are subject to agreement with the LSC's trade unions. A separate EIA has been produced to support the proposals for replacement severance arrangements. The LASPO Act provides the framework for the changes to transferring employee's terms and conditions, but does not contain the details of the changes; these will be contained within a transfer scheme.

Other areas of work

The Legal Aid, Sentencing and Punishment of Offenders Act will enable the transfers necessary at the LSC's abolition, but does not specify how these transfers will be done. As mentioned above, where policy to enable the transfer is being developed, the LSC and MoJ are committed to conduct equality impact assessments as appropriate and pay due regard to their duties under the Equality Act 2010. Further areas where policies are being developed are in relation to LSC Reward, Terms and Conditions, HR Policies and a separate programme of working on organisational design. Plans for these areas of work are described below.

Reward, Terms and Conditions, and HR Policies

We recognise that the proposals will have an impact on LSC employees.

LSC employees are currently public servants and not civil servants, when LSC employees transfer to the MoJ they will transfer on their existing terms and conditions of employment (save in relation to pensions and severance). We are working through our due diligence in this area to compare existing LSC and MoJ terms and conditions of employment. It is not intended to change terms and conditions (save in relation to pensions and transfers) as a result of the abolition of the LSC and transfer of employees to the MoJ. However, where practical, the LSC will look to align HR policies with those used

by MoJ, prior to the abolition; these will be consulted on with employees as per LSC and MoJ practice.

Where relevant, work on reward, terms and conditions, and HR policies will be subject to separate EIAs. We will have due regard to impacts in relation to the protected characteristics (under the Equalities Act 2010) listed on page 1 of this EIA.

Organisational restructure

In addition to the abolition of the LSC and transfer of employees to the Ministry of Justice, the LSC is undertaking a separate programme of work to develop a new, fit for purpose organisational structure that rises to public sector funding challenges. The programme is having due regard to the equality duty as proposals are developed.

At the current time an equality impact assessment has been carried out on the initial reform to the LSC's senior staff organisational structure. This affected nineteen staff.

Work to have due regard to the equality duty was carried out in Autumn 2011 to support proposals for organisation restructure, and an EIA published. This will be reviewed over Summer 2012 to ensure it reflects current developments in the restructure.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

The intention is that the abolition will not put LSC employees in a worse position than if they were to remain LSC employees. As such, transfer on existing terms and conditions of employment (save in relation to severance), and ensuring that there is access to a broadly comparable equivalent pension scheme for all LSC employees, will ensure that current benefits of employment is continued.

In addition transferring employees may have the potential for greater opportunity for career development in the civil service.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

We have not identified any opportunities to promote or advance equality of opportunity in the course of the transfer in itself.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

Who the proposals affect- The EIA assesses any potential equalities impacts on all current LSC employees. No adverse equality impacts have been identified on the basis of information currently available. We shall continue to review information as it becomes available and consider potential adverse equality impact if it is identified.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

Executive Agency

Individual workstreams of the MoJ/LSC executive agency programme are having due regard to their need to assess their programmes of work against the equality duties.

As a result we have found that following changes consequent to transfer of status are likely to have no equality impacts:

Pensions

LSC employees (as at date of transfer) will have the option to transfer their accrued pension from the No.4 Scheme to the PCSPS. All LSC employees will be offered a broadly comparable pension under PCSPS arrangements. The Fair Deal principles should ensure that there are no adverse equality impact as a consequence of the transfer. This includes adequate and appropriate communication to all LSC pension scheme members in accordance with legal requirements by the pension trustees and the employer under Fair Deal.

Some LSC pension members may not transfer their pensions to a Civil Service pension scheme. The assets and liabilities of the No.3 Scheme and the residual No.4 Scheme will continue to be held under the Trust, most likely in a merged scheme. The MoJ will be responsible for funding the residual Schemes and a Crown Guarantee has been secured to support this. In this scenario, there is likely to be neither a positive nor adverse effect for the members or on their benefits because the trusts will remain protected. On that basis we assume that there will be no equality impact for this group of people.

Other transfer issues

Transfer of contractual obligations, including the transfer of assets, liabilities, and interests in land etc.

LSC contracts will be novated on abolition. It is not anticipated that the process of doing so will have an equality impact. Both LSC and MoJ contracts contain clear equality and diversity clauses and the standard clauses for procurement contracts adopted by both organisations are compliant with the Equality Act 2010. Following abolition, the relevant contracts will retain the same standard of

compliance. Transfer of interests in land from LSC to the Secretary of State for Communities and Local Government or the Lord Chancellor as appropriate will take place by operation of law and have been assessed as having no equality impact.

The transfer of the ownership of assets such as office furniture and equipment, computer systems and miscellaneous related contracts have been assessed as likely to have no equality impact.

Information provisions (including FOI management, DPA and information sharing/disclosure)

The Act makes provision for the transfer of responsibility under the Freedom of Information Act. As the LSC will be abolished when the Legal Aid, Sentencing and Punishment of Offenders Act is enacted, the LSC will cease to be listed under the Data Protection Act as a Data Controller and will be removed from the list of Public Bodies and Offices named in Schedule 1 of the Freedom of Information Act.

Subsequent obligations in these areas, related to the provision of legal aid functions, will be under the auspices of the MoJ. We do not foresee that there will be any equality impacts from the changes proposed.

10. Is a full Equality Impact Assessment Required? Yes ☐ No ☒

If you answered 'No', please explain below why not?

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

If your proposed new or changed legislation, policy, strategy, project or service involves an Information and Communication Technology (ICT) system and you have identified equality impacts of that system, a focused full EIA for ICT specific impacts should be completed. The ICT Specific Impacts template is available from MoJ ICT or can be downloaded from the Intranet at: <http://intranet.justice.gsi.gov.uk/justice/equdiv/equal-impact.htm>, and should be referenced here.

An ICT EIA is not required as no new IT systems will be created as a result of the transfer. Where the agency adopts MoJ systems, we note that MoJ systems have already been subject to a MoJ assessment process.

We have assessed the relevant issues based on the information currently available and have concluded that the abolition of the Legal Services Commission and transfer of legal aid functions to the Lord Chancellor/Ministry of Justice in itself is not likely to result in any adverse equality issues.

We will continue to assess new evidence as it becomes available and pay due regard to the duties under the Equality Act 2010 as further aspects of the abolition and establishment of the EA are developed.

We are assessing the equality impact of proposals relating to aspects of the transfer and are reviewing these at the regular Programme Board meetings. We plan to carry out further equality impact assessments as necessary, when more information is available. As noted at Question 5, the LSC is also committed to undertaking a separate impact assessment and equality impact assessment on the

programme of work to design a new organisational structure.

11. Even if a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

We intend to monitor the implementation of these proposals and to review whether they result in any unforeseen equality impact on different groups. We will consider what reasonable steps could be taken to ensure that these are mitigated.

12. Name of Senior Manager and date approved

Name (must be grade 5 or above):

Department: Ministry of Justice

Date: 13 July 2012.

