

Title: Enabling Digital by Default IA No: MOJ 211 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	Date: 12/07/2013
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries:

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option
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Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	Yes	Zero net cost

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

Whilst the current processes within the OPG deliver a service to the customers that is line with the requirements of the Mental Capacity Act 2005 (MCA), this consultation looks to improve this service still further for our customers and support the Government's 'digital by default' agenda. The forms are seen as unduly complex and liable to cause errors to be made, deputies have said that they wish for more upfront interaction with the OPG to ensure they get things right from day one and the OPG needs to ensure that its fees always reflect the cost of the service that is offered. Without government intervention, the OPG would still be performing to the required standard but the customer would not be receiving the best possible service.

What are the policy objectives and the intended effects?

This consultation looks to improve the service that the OPG offers its customers. The new forms are intended to cut down on errors and hence reduce the number of people having to pay a resubmission fee. In the area of supervision the OPG is looking to ensure that Deputies are provided with the right level of support from day one and the intended effect is that that will lead to fewer investigations and issues with Deputies later on. The proposed changes to fees are to ensure they accurately reflect the cost of each service offered to customers and the changes to the register mean that the OPG will allow access to urgent requests for information from trusted 3rd parties, whilst maintaining safeguarding levels.

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

Option 1: Forms. We have considered not changing the forms, but that would mean the forms were not optimal for our customers, based on current error rates and in depth user testing that has taken place.

Option 2: Fees. The two policy options considered are to do nothing or to ensure that the fees for the OPG accurately match the cost of that service to the OPG. We also wish to ensure that all people have access to to current available fees and hence are proposing changes to the criteria under which a resubmission fee can be charged .

Option 3: Digital Access to the Register. Currently the register can only be accessed by a paper based request system. The policy option here is to allow electronic access to first tier searches of the database and electronic access to a greater level of data for accredited third parties.

Option 4: Supervision of Deputies. We need to ensure that we continue to have a supervision regime that meets the needs of our deputies, ensures that adequate protections are in place for the person lacking capacity and is scalable to deal with supervising increasing numbers of deputies in the future. Any new regime also needs to be consistent with the requirements of Article 12.4 of the UN Convention on Disabilities. As a result, the option in relation to supervision that we wish to take forward is to introduce a new supervisory regime and online system, based on a proportionate assessment of risk. The do nothing option

is not viable as it will not fulfill these key drivers.

Option 5: Digital Lasting Power of Attorney (LPA): The two policy options here are to continue with implementing a partially digital LPA process, or to consult on a fully digital LPA as the future plan for the OPG. This is, however, dependent on primary legislation.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date: 2018**

Does implementation go beyond minimum EU requirements?

No

Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.

Micro
Yes

< 20
Yes

Small
Yes

Medium
Yes

Large
No

What is the CO₂ equivalent change in greenhouse gas emissions?
(Million tonnes CO₂ equivalent)

Traded:
n/a

Non-traded:
n/a

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

Policy Option 1

Description: Revised LPA Forms and new LPA combined form

FULL ECONOMIC ASSESSMENT

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

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

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

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

There will be some minimal transition cost to the OPG in relation to new guidance but the costs are such that they can be absorbed within its current income level and hence the proposal will remain financially neutral. In relation to fee changes these will remain cost neutral for the OPG as fees are set at a level to cover costs.

There will be a loss of income for those that currently charge to be a certificate provider if these certificates are no longer required.

There will be no costs to customers from implementing revised / new forms.

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

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

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

For the customer, the new forms should save both time and money. They should reduce the number of errors currently made and in so doing, reduce the numbers of customers who currently have to pay a resubmission fee. In relation to the combined form a person who makes both LPAs using the new form would have a reduction of around 60% in the information to be entered. A reduction in the number of certificate providers required would result in a saving of time and cost for donors who may previously have needed two.

OPG should benefit from a reduced processing time if fewer individuals make errors. However, this will be a small saving compared with the overall number of LPAs that the OPG processes. Any savings to the OPG in processing of combined forms will be reflected in the fee set for these and hence the proposal will be overall cost and benefit neutral to the OPG.

Key assumptions/sensitivities/risks

Discount rate (%)

One of the key assumptions is that the customer will find the new forms easier to fill in and, as a result, that this will cut the error rate in LPAs submitted for registration to the OPG.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: New OPG Fees

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
Other key non-monetised costs by 'main affected groups'					
Costs of individual fee reforms are captured in the assessment of other options and are not double counted here. The OPG operates on a cost recovery basis, therefore the overall financial impact if fee reforms on OPG should be neutral.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
Benefits to Donors of fee reforms are captured in the assessment of other options and are not double counted here. In particular improvements in the efficiency of OPG services e.g. through use of combined forms ultimately accrue to donors in the form of lower fees.					
Other key non-monetised benefits by 'main affected groups'					
Key assumptions/sensitivities/risks					Discount rate (%)

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Access to the Registers

FULL ECONOMIC ASSESSMENT

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

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

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

There will be some one off costs for developing the electronic register but as this is taken forward as part of a wider IT replacement programme these will be minimal – around £100K and this spend is included in current budgets which are funded by current fee income.

There is currently no cost to customers of carrying out a search and no additional costs are anticipated.

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

There may be a rise in the number of searches – but as Tier 1 searches are automatic this increase will not impact on the OPG. Any increase in Tier 2 searches could use resource freed up by the automation of Tier 1 searches and hence this should remain cost neutral

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

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

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

The key benefit to the customer will be a reduction in the time taken to deal with their requests to search the register at tier 1 and the fact that immediate information could be available in the event of an urgent out of office situation. Trusted 3rd parties should also be able to conduct Tier 2 searches more quickly.

There will be a reduction in administration costs for the OPG in meeting the tier 1 responses, as these should be fully automated.

There could be benefits to those who have made an LPA if banks choose to use the facility to check that the LPA is authentic. However, it will be down to banks to decide if they wish to use this facility.

Key assumptions/sensitivities/risks	Discount rate (%)	
Key assumption is that a majority of those who currently apply for a search for the register will choose to do so by electronic means in the future, as the speed of the service will be significantly increased for them.		

BUSINESS ASSESSMENT (Option 3)

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

Summary: Analysis & Evidence

Policy Option 4

Description: Supervision of Deputies

FULL ECONOMIC ASSESSMENT

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

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

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

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

There may be some additional requirements to deputies but as we are consulting on the principles involved rather than the specifics these cannot be determined at this time.

The new supervision regime is likely to mean more supervision for deputies in their first year of deputyship, but this is likely to be offset in subsequent years as getting the level of support right should lead to less issues arising in the medium / longer term.

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

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

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

The new supervision regime will ensure that deputies are much more aware upfront of their responsibilities and the reporting requirements. As a result, they are more likely to get off to a better start and issues are less likely to arise. It is hoped that this will lead to a reduction in intervention work by the OPG but it is not possible to quantify this at this time.

The introduction of a more preventative and/or risk based supervision regime should have the outcome that the quality of deputies improves – providing a benefit to P.

Key assumptions/sensitivities/risks

Discount rate (%)

That the new supervision regime will ensure that deputies get off to a better start, and that this reduces the later need for intervention by the OPG in some cases.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	Zero net cost

Summary: Analysis & Evidence

Policy Option 5

Description: Fully Digital LPAs

FULL ECONOMIC ASSESSMENT

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

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

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

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

The costs to the OPG of implementing a fully digital LPA are minimal, as the majority of the work will have already been done for the current LPA digital interface (which requires a copy to be sent to the OPG with wet signatures). Any final costs to the OPG cannot be quantified at this time as the proposal is at the early stage of development. There may be some impact on solicitors if people choose to do a digital LPA themselves, rather than go to solicitors but it is not possible to quantify this.

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

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

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

The digital LPA is likely to save a considerable amount of time for the user, as the digital tool can input data into multiple fields – hence providing a time saving. There should also be quicker turn around time from registration to receipt of the LPA by the OPG for the customer. The savings to the OPG will be in relation to quicker processing time for fully digital LPAs, a reduction in scanning and a reduction in error rate. Solicitors will also benefit by being able to transmit data directly to the OPG and also benefit from error reduction. As the tool has been developed using open source, it can be adapted to fit with their existing systems.

Key assumptions/sensitivities/risks

Discount rate (%)

The key assumption is that a significant number of applicants choose to make an LPA via the digital service (either directly themselves or through a third party). The digital tool has only been live for a short period of time, so it is not yet possible to identify any trends / data.

BUSINESS ASSESSMENT (Option 5)

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

Evidence Base (for summary sheets):

Background

The Mental Capacity Act 2005 (“MCA 2005”) provides a statutory framework to empower and protect people who may lack capacity to make some decisions for themselves. The Act created the Public Guardian to ensure that those appointed to take decisions on behalf of those who lack capacity discharge their duties properly, without abuse, and act in the best interests of the person without capacity. The Public Guardian does this through the Office of the Public Guardian (OPG), by registering Lasting Powers of Attorneys (LPA) and Enduring Powers of Attorneys (EPA) supervising Deputies appointed by the Court of Protection (the Court), and investigating the ways Attorneys and Deputies exercise their powers.

The Court of Protection and the Office of the Public Guardian started their new roles on 1 October 2007, bringing into practice the additional safeguards and protection afforded to vulnerable people by the Act.

There are a whole range of people who are impacted by the OPG and the services it provides. These are:

- Donor – the person who makes the LPA and who gives powers to others to act on their behalf either immediately (which is an option with a Property and Affairs LPA) or only when they lose capacity.
- Attorneys – those who are given powers to act on behalf of another either via an LPA (or an EPA).
- Certificate Providers – someone who certifies on the LPA that the person making it has the capacity to do so and, as far as they are able to say, does not appear to be being pressured into making the LPA
- Named person – this is a person who the Donor names on the LPA and who has to be contacted to say that an LPA is being made for that person.
- P – a person who has had a deputy appointed by the Court of Protection in order to make decisions on their behalf.
- Deputy – someone appointed by the Court of Protection to make decisions on behalf of P. These people can be members of the public (often friends or family members who are known as ‘lay deputies’), the local authority (local authority deputies), professionals such as solicitors (professional deputies) or appointed from a panel of deputies maintained by the OPG (panel deputies). The last is normally used when there is no one else available willing or able to act as a deputy.

Our consultation paper ‘Transforming the Services of the Office of the Public Guardian’, published on 27 July 2012, invited comments on a range of issues related to the Office of the Public Guardian’s (OPG) aspiration to deliver its services digitally by default. In our response, published in January 2013, we set out the changes that we would complete by April 2013. This included reducing the statutory waiting period for registering a Lasting Power of Attorney (LPA) form from six weeks to four weeks and amending the regulations to allow court appointed deputies to change bond provider without the need to apply to the Court of Protection. However, other changes required further policy development or were dependant on the OPG replacement IT system being in place in 2014.

On 1 July 2013, the OPG, working with the Government Digital Service (GDS), launched a new digital tool (<https://www.gov.uk/lasting-power-of-attorney>) enabling customers to complete the majority of the LPA process online. This is a significant milestone, clearly setting out how the OPG is reconfiguring its business, which will enable it to deliver a more responsive and efficient service for its customers.

This consultation paper considers the next phase of the OPG transformation programme, as well as exploring some of the future changes that the Office of the Public Guardian may seek to make within the next few years:

- Part 1 considers those changes we wish to make by April 2014. This includes how we might improve the design of the paper forms for creating an LPA, fees for a new combined form, access to the OPG Registers and changes to the supervision of Court appointed deputies.
- Part 2 considers the bigger picture and our proposals for future changes, in line with the Ministry of Justice's "Transforming Justice" agenda and the Government's commitment for more public services to be "Digital by Default". This section sets out initial proposals for the delivery of a fully digital method of creating and registering Lasting Powers of Attorney (digital LPAs). This will require primary legislation in the future.

These proposals are designed to ensure that the OPG is able to deal effectively with future volumes across all areas of its business and deliver services that are more effective, less costly and more responsive for its users.

However, we recognise that not all OPG customers have access to digital services. Indeed, the overarching Government strategy for Assisted Digital¹ sets out that when digital services are introduced, no customer should be left behind. Latest figures from Go-On UK² indicate that around 16 million adults in the UK do not have basic online skills. Elderly people, along with those on a low income and those affected by disability, are the most likely to lack these skills. This is highly relevant to the OPG, given the current demographic for people making LPAs.

Therefore, the OPG strategy for Assisted Digital seeks to ensure that customers have access to OPG digital services through alternate routes. To facilitate this, the OPG is talking with the legal sector, as well as working with several prospective partners - including community groups and local authorities - to examine other potential opportunities that exist to support customers. As an exemplar for the digital agenda, OPG is also working in partnership with other Government departments to establish shared assisted digital solutions.

In the majority of the policy areas that the OPG is consulting on in this paper, views are being sought on the principles behind the policy suggestions, rather than the specifics of how each policy would be implemented. As a result, there is limited discussion of the impact of the policies, as they are not currently at that stage of development.

LPA forms

The LPA forms can be filled in by a variety of people – the donor, the attorneys or an intermediate. However, they must be signed by the Donor, Attorneys, Certificate Providers and witnesses. The LPA can be registered by either the Donor or the Attorney or an intermediate acting on their behalf such as a solicitor. All LPAs have to be registered with the OPG before they can be used, while existing EPAs only have to be registered when the Donor has lost capacity.

Supervision of deputies

In 2012/13, the OPG registered 239,191 lasting powers of attorney and currently has 2,700 professional deputies, 186 local authority deputies and approximately 20,000 lay deputies. Professional deputies are, on average, responsible for 4 deputyship cases, whereas for local authority deputies it is 76. In April 2010 there were 29,600 deputies by April 2013 this had increased to nearly 44,600.

Set out below is a brief outline of the current supervision regime broken down by the 4 supervision types:

Type 1: This is where there are grounds for either an investigation into the Deputy or sufficient casework has already been done to permit an immediate application to the court. Where a full investigation is required, the relevant parties, including the Deputy, are contacted to gather evidence and establish the facts. There are also type 1 supportive cases, where an investigation has led to the discharge of the former deputy/attorney and the appointment of a new deputy – and where the new deputy has been allocated to Type 1 because it has been identified that it will be difficult for him/her to bring P's property and affairs into order.

¹ <http://digital.cabinetoffice.gov.uk/category/assisted-digital/>

² <http://www.go-on.co.uk/challenge/uk-snapshot>

Type 2A: This encapsulates all cases that are newly appointed lay deputies where the client has funds of over £19,500 and the deputy is not the parent, spouse, civil partner or a professional such as a solicitor or local authority where we may have some concern (for example - missing financial information). The aim of type 2A is to be a short term, intermediate level of supervision which handles a case for a short period, ideally the first year of deputyship, before the case is lowered to either type 2 or 3 depending on funds. Under Type 2A supervision, the OPG commits to contacting all newly appointed deputies within eight weeks of allocation to update OPG records and advise the deputy of the support available and the requirements of their order and in some cases there will be a visit. All annual reports in 2A are lodged and checked for accuracy.

Type 2: This is a light level of supervision where assets are above £19,500 and there are no concerns that would warrant a higher level of supervision. All new lay deputies will receive telephone contact at the early stages of their deputyship in order to provide support. Visits will be commissioned to the deputy and/or the client when deemed appropriate and the resulting visit report will be reviewed. All annual reports are lodged and checked for accuracy which may then lead to a full review and further investigation.

Type 3: Supervision in these cases is the lightest touch supervision that the Office of the Public Guardian provides to its clients for those with assets less than £19,500. Customers that fall within this Supervision level can call the Customer Contact Centre for advice and will be passed through to the Type 2 Supervision team when queries are more complex. All new lay deputies that fall into Type 3 will receive a first contact call in line with 2a.

Currently, there is limited if any differentiation between lay, local authority and professional deputies within these supervision categories.

Searches of the registers

The OPG maintains a register of all cases where either an EPA or an LPA has been registered and all cases where the Court has appointed a deputy. An application to request a search of the register can be submitted by anyone who is either a lay person, a professional or a Public Authority. All searches are undertaken to see whether there is an EPA, LPA or deputyship in place for a certain person. The register is maintained on a two tier basis. A first tier search will reveal basic information about whether a deputy or an attorney has been appointed. Any information requested on a tier two search is at the discretion of the Public Guardian.

For the period May 2012 to April 2013, the OPG received a total of 8,778 tier 1 search requests. These are not recorded by source so it is not possible to say if they are from members of the public, professionals or others. In the 3 months from February 2013, the OPG received 15 tier 2 searches, 3 from professionals and 12 from lay persons.³

³ Data is only available for the period February to April 2013.

Problem under consideration

There are a number of problems that are under consideration and these are outlined below.

Forms/Certificate Provider

Since their inception, the design of the LPA forms has been subject to ongoing debate in terms of style, substance and length. A key aspect of the debate on the forms has been to try to balance the need to keep them short, whilst providing sufficient, clear information and guidance to make their completion as straightforward as possible. Suggestions have also been made about developing a 'combined' application form, in addition to the separate forms. As evidence suggests that individuals who make both property and financial affairs and health and welfare LPAs tend to appoint the same person(s) in the majority of applications, this would seem to be a reasonable proposal.

In the consultation paper 'Transforming the Services of the Office of the Public Guardian', we sought views on whether to replace the two current separate forms for Property and Financial Affairs and Health and Welfare with one combined 'hybrid LPA form' which would cover both types of decisions. Many respondents were broadly in favour of this proposal, but wanted to see a prototype of the 'hybrid' form in order to give a more informed view. Other respondents thought that the MCA creates two different kinds of LPAs, which are, in effect, very different, with different benefits and risks for the people making them. In the Government response, therefore, we said we would develop a proposed 'hybrid' form, as well as seek to reduce the content of the LPA 002 - Application to Register - with the intention of introducing new forms in April 2014.

The current LPA forms are viewed by some as being over complex and not intuitive for those customers who fill them in and can cause people to make errors when completing them. Two example issues are given:

- a) It has been discovered during customer insight work and in the user testing of new forms that Donors making a Property and Affairs LPA do not always realise that they have a choice about when it comes into force. This can lead to people making and registering a Property and Affairs LPA without realising that it can then be used immediately.
- b) With the Health and Welfare LPA, where the donor clearly ticks the life sustaining treatment authorisation but fails to get it signed and witnessed, the OPG cannot bring their wishes into force.

The OPG has some evidence from customer feedback that some people, particularly the elderly, struggle to find the additional certificate provider when they have no one to act as named person. The certificate provider's role is to state that the Donor has the necessary mental capacity to make an LPA and is not under any undue pressure to do so. It is the view of the OPG that if the first certificate provider is carrying out their role appropriately, as set out in the Mental Capacity Act 2005, the need for the second certificate provider can be dispensed with without reducing the safeguarding requirements.

There is also a view that this requirement actually creates perverse behaviours: for example, some donors seek to name as their notifiable person an individual who is not that well known to them, thereby undermining the safeguarding aspect of this role, simply to overcome the requirement to have a second certificate provider.

Fees

Currently, fees are charged to recover the cost of providing a service, as the OPG is a full cost recovery regime. If a digital approach means that there is a lower cost to the OPG of processing those cases, then the fees should be reduced to reflect that reduction in cost.

The OPG has introduced a resubmission fee for LPAs that are found to be invalid when they are submitted for registration. In 2012/13, the OPG received 239,191 LPA registrations. Of these applications, 3000 cases were resubmitted and therefore had access to the reduced resubmission fee.

However, there are a small number of cases where the LPA application is not rejected as invalid but due to a technicality, needs a significant amount of work to make it valid. In most cases that means applying to the court to sever inoperable causes. Should the donor not agree to the severance, they will need to submit another LPA for registration. Due to the way the regulations are currently worded, they will need to pay a full fee as the initial LPA has not been rejected by the OPG as invalid and hence they are not able to access the reduced resubmission fee. This means that there is an inconsistency where some errors made on the initial LPA mean it is invalid and can be resubmitted at a reduced fee, but other errors mean that that reduced fee is not available.

Digital access to registers

The OPG would like to enable digital searches of its registers to increase access to public information. There is a government wide agenda in relation to transparency of information and providing access to that information, and the OPG has to ensure that it has methods in place to meet this commitment. There is also a need for interested parties to know whether an LPA, EPA or deputyship is in place. Current searching can only be done via a paper based route (other than in emergencies) and can lead to delays in parties knowing whether an LPA exists. This can also be an issue for emergency cases outside of office hours.

Supervision of Deputies

In those instances where a person has not made either an Enduring Power of Attorney or a Lasting Power of Attorney and now lacks the capacity to make decisions for themselves, an application must be made to the Court of Protection for the appointment of a deputy. Once appointed, the deputy is supervised by the OPG.

The number of cases that the OPG is required to supervise has been rising year on year and, as a result, the OPG is undertaking a fundamental review of supervision. This is both to ensure that the OPG continues to be compliant with its responsibilities under the UN Convention on Disabilities and to ensure that the right deputies are getting the right level of supervision at the right time, thereby ensuring that P - the person lacking capacity - is protected. Customer feedback suggests that new lay deputies would like and would welcome a greater degree of interaction with the OPG in the first year or so of their being appointed as a deputy.

The OPG currently has 2,700 professional, 186 local authority and approximately 20,000 lay deputies.

Digital LPA

There is a clear commitment from Government to offer services 'digitally by default'. A fully digital LPA will enable the OPG to help meet this commitment and will offer a variety of channels for our customers to interact with the OPG.

Rationale for intervention

The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases, the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

The rationale for intervention here is to offer an improved service to the range of OPG customers and to ensure that the fee charged for a service reflects the cost of that service to the OPG. As the majority of these changes require secondary or primary legislation, there is no alternative to intervention by Government.

Policy objective

The overarching policy objective is to ensure that making an LPA is as simple and easy as possible, without reducing the safeguards that are currently in place to ensure that the donor has the capacity to make the LPA and is not under any undue pressure to do so. It also needs to be very clear to them what their choices are when making an LPA, especially in relation to when a Property and Affairs LPA comes into force.

In relation to the redrafted and redesigned forms, the policy objective is to reduce errors and offer a service to customers that is quick and efficient and provides value for money. It is also hoped that reduced complexity may encourage more people to make an LPA who may currently be put off by the forms.

The OPG has previously consulted on the number of certificate providers required. The options available are to retain the current requirement for two (if there are no named persons) or to reduce this down to one (which is the same as the requirement as when there are named persons). The objective is to ensure that people are not barred from making an LPA by the inability to find two certificate providers.

The resubmission fee was introduced in 2011 to reduce the fees charged for those people who submit an LPA but which is found to be invalid and needs to be resubmitted. They then only pay half the current LPA fee when they resubmit (whereas previously it had been the full fee again). The policy objective is to remove an inconsistency around which cases are, or are not, eligible and ensure that all those who have to resubmit an LPA application in order for their desired outcomes to be achieved, have the chance to do so at the reduced fee. Currently, there is a class of cases who do not benefit from this, as their LPA in its current form cannot be registered but it is not invalid as potentially Court action could make it valid, albeit by severing clauses from the instrument that the donor may wish to redraft in such a way as to make a fresh instrument valid.

The policy objective in relation to the electronic register is to give people quicker access to necessary information to determine whether an LPA, EPA or deputyship order is in place whilst retaining enough safeguards to ensure that this does not increase the safeguarding risk.

In relation to supervision, the policy objective is to ensure that all deputies get the required level of support and guidance and that this is provided at the right time to ensure that they are in the best position possible to discharge their duties in relation to the person for whom they have been appointed to be a deputy for. The proposals included in this consultation are at an early stage, and detailed proposals are not available. They will be developed in the light of responses to this consultation.

The ultimate aim of the OPG is to deliver a fully digital process for making and registering an LPA, where the whole process is completed online, removing the need for paper forms. A fully online process would encourage greater numbers of the population to plan ahead for a time in the future when they may lack capacity to make decisions for themselves by making an LPA. Using an online system can also put in place a level of data verification that is not possible with a paper form which will have the objective of trying to reduce the number of errors made (in the same way that the redrafted and redesigned paper forms will). The objective will be to provide a service that is efficient and effective, which will allow the OPG to have less processing for each LPA, meaning a quicker turnaround time for the customer and a reduction in work for the OPG. The direct feed of information to the case management system with limited intervention by OPG staff may also raise the level of data integrity for the current where much of the data is manually input.

Safeguarding and security will be at the heart of any fully digital LPA process, and the aim is for such a process to be as safe as, or safer than, the existing paper process. In addition, the paper-based service will not be removed, but will continue to be offered in parallel to the digital service.

Affected stakeholder groups:

- Donors
- Attorneys
- Deputies
- Legal professionals
- OPG

Description of options considered (including do nothing);

Do Nothing

If the OPG continues with the 'do nothing' option, then the forms will not be changed and will not take into account all the user testing carried out to ensure that the new forms reduce the number of errors that are currently being made. The failure to introduce a combined form will mean that people will still need to fill in multiple forms if they wish to make both LPAs with the same attorneys. In relation to fees, the OPG will risk charging more or less than the cost of delivery of the specific services on offer and a small group of cases will be unfairly excluded from having access to the resubmission fee if they make a specific type of error on their LPA. The supervision regime will continue as it is, but that means it will not take account of the type of deputy and offer a tailored service to each type. If the fully digital LPA is not bought in, the LPA will always remain a paper based service because although people can use the current digital tool to fill in the LPA forms online they still have to print them off in hardcopy, sign them and send them to the OPG.

As this option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: Forms/Certificate Providers

The new forms that the OPG wish to bring in are attached to the consultation paper. The main changes are the proposal to introduce a combined form which allows customers to make both a health and welfare LPA and a Property and Affairs LPA at the same time using the same form (if they use the same attorneys for both). This will save money for those who wish to take advantage of this option, as the cost of a combined form is very likely to be less than the cost of registering two individual LPAs. It will also mean a significant reduction in data entry.

There have also been changes made to the language of the forms and the guidance provided. This is all to ensure that they are clearer and easier to follow.

The OPG would also like to change the form to make it clearer to those making a property and affairs LPA that they have a choice about when this should come into force either immediately on registration or only once the donor loses capacity. In addition, the OPG wishes to amend the health and welfare LPA to remove the signature and witness provision from the life sustaining treatment authority – to ensure that the OPG can fully bring into force the wishes of the donor making the LPA.

The OPG is also looking to remove the need for a second certificate provider from the LPA forms. This can prove a barrier to some if they wish to make an LPA. The option outlined would remove that need for the second certificate provider if there are no named persons and it is the OPG's view that if the first provider is doing their job properly there is no reduction in the safeguarding function.

In summary, this option comprises of a reduction in administrative burden through simplified forms, the combination of multiple existing forms and the reduction in certification requirements.

Option 2: Fees

The OPG operates on a full cost recovery basis, so that its fees are set at a level to recover its costs. The proposals here are to ensure that the OPG continues to meet its costs for the services that it provides.

There are a number of changes the OPG wish to make to the current fees regime. The key proposal is to have a new fee to cover the cost of the combined form (outlined above). This fee will be set at a level to cover the costs of processing that application. As approximately 25% of people who currently register an LPA register both types at the same time, they would have the option of using the combined form and, paying a lower fee.

The OPG wishes to make changes to the current resubmission fee regime. This fee was introduced in 2011 to reduce the fees charged for those people who submit an LPA but which is found to be invalid and needs to be resubmitted. They then only pay half the current LPA fee when they resubmit (where as previously it has been the full fee again). However, there is currently a set of cases where the LPA application is not rejected as invalid but which needs a significant amount of work to make it valid. In most cases that means applying to the court to sever inoperable causes. However, should the donor not agree to this they will need to submit another LPA for registration. Due to the way the regulations are currently worded they will need to pay a new full fee as the initial LPA has not been rejected by the OPG as invalid. The policy objective is to remove this inconsistency and ensure that all those who have to resubmit an LPA application have the chance to do so at the reduced fee.

The OPG wishes to ensure that the fee in relation to LPAs that are submitted digital reflects the cost of providing that service to the customer. If the OPG were to charge a lower fee (reflecting the lower costs of the service), it would be a consistent approach with that taken in other areas of MoJ, such as the civil courts who charge a lower fee for some services accessed online – such as Money Claims Online.

Option 3: Electronic Register

The OPG holds registers of Enduring Powers of Attorney (EPA), Lasting Powers of Attorney (LPA) and Court of Protection appointed deputies. Any member of the public can request a 'first tier' search of the register and receive basic limited information about whether a deputy or attorney exists for a given person and what type of power is in place.

If a 'match' is found at this first tier search, a 'second tier' search can then be requested, asking for further information. The OPG may provide this on a discretionary basis, taking into account the reasons given for the need to access the information and the role of the individual or organisation seeking it.

The first proposal in relation to the Register is to look again at the quantity of information that is currently given out at the initial Tier 1 search. As well as looking again at the amount of information provided, the OPG is also considering providing this information electronically - including for second tier searches (if approved by the Public Guardian).

The final proposal in this area is to provide an intermediate tier of searches through a digital tool for certain 'accredited third parties', including medical/healthcare/social care staff, banking and financial institutions and local authorities. The proposal would allow them secure access to online search results and this would be limited to use within their workplace. This search would provide more information than the first tier search and less than the second tier.

Option 4: Supervision

The OPG proposes moving towards an approach which tailors guidance, support and monitoring to the type of deputy, rather than adopting a single standard approach. It is envisaged that information about deputyships should be more widely available and accessible prior to someone making an application to the Court of Protection, so they are more aware of the role that they are taking on up front.

The OPG would wish to make use of the expertise held by professional deputies (which includes local authorities) and apply an oversight monitoring approach, assessing the deputy's capability against an agreed set of standards. Lay deputies (i.e. all those who are not profession or local authority deputies) would be provided with support and guidance to assist them in understanding the role, and be subject to closer monitoring where necessary.

The level of support and monitoring needs to be proportionate to the individual case. It is, therefore, proposed that the OPG should provide a greater degree of guidance, support and monitoring in the first year of a deputyship, with the aim of resolving any potential problems at an early stage and ensuring deputies get off to a good start. Such supervision may include, for example, asking finance and property deputies to submit an inventory of P's assets and a forward plan outlining their proposals for spending in the first year of the deputyship.

These proposals are currently in the early stages of development and, as a result, specific proposals are not included in the consultation paper. Instead, the focus of the consultation is high level. More detail will be included in the response to consultation about the model and likely impacts.

Option 5: Digital LPA

The ultimate ambition of the OPG is to deliver a fully digital method for making an LPA, where the whole process is completed online using identity assurance, alleviating the need for signatures, witnessing and paper forms. The OPG hopes that a fully online process will encourage greater numbers of the population to make an LPA and plan ahead for a time in the future when they may lack capacity to make decisions for themselves. However, in order to deliver this the OPG would need primary legislation so is currently consulting on some of the principles behind a digital LPA as opposed to the specific policies and means of delivery of that digital LPA as they would be worked up as part of the legislative process.

The OPG proposes that, in a fully digital service for making an LPA, the information required by the donor and the other individuals in the process will remain the same as for the current paper system. The sole exception is the role of the witness, who would no longer be needed. This is because there will no longer be any process of physical signature to witness.

ID assurance through a third party provider is one method of verifying identities online. In this process, an individual enters information online, which is checked against public records in order to verify their identity and a "trust relationship" is established between the individual, the business and the provider of ID assurance. Once this relationship has been established, the individual's digital identity is linked to a secure user name and password.

In developing its method of online ID assurance, the OPG will align with wider Government strategy, which is intended to deliver a trust framework enabling individuals to interact with Government services securely online. This framework will create the necessary technical, commercial and regulatory infrastructure to allow users to prove their identity or other information about themselves using services from private sector organisations.

As outlined earlier, policy proposals for fully digital LPAs are currently in the early stages of development. As a result, the focus of the consultation is to explore principles and options at a very high level. More detail will be included in the Government response to consultation on the proposed approach and the likely impacts.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

This Impact Assessment 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 options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments 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 proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

Option 1: Forms/Certificate Providers

In the last financial year, the OPG registered 239,191 LPA applications at a fee of £130 for each LPA registered. Of these, in 2012-13 2,931 cases were resubmitted and had to pay a follow on fee of £65 on resubmission.

It is not possible to tell how many certificate providers were used in registering those LPAs as the OPG does not collect data on whether an LPA has one or two certificate providers per LPA.

Costs

OPG

(i) Transitional costs

There will be some costs for the OPG and these will be one off costs to cover the production of new forms and guidance (including for the combined forms and digital forms). As the new guidance is still being developed, the additional costs of this to OPG cannot be quantified at this time. There will be ongoing printing costs for the new forms guidance but we expect these to be the same as the current forms and guidance. The OPG is also currently running down its old stocks, so any transition costs should be minimal as old stocks will have been used up and new stocks ordered in time for the change to the new forms. However, the costs are such that they will be absorbed within its current income level and hence the proposal will remain financially neutral.

(ii) Resubmission of forms

The OPG will see a reduction in income from those individuals no longer making errors and needing to pay the resubmission fees. For example, 100 cases per year would only result in a reduction in fees of £6,500, against a total fee income in 2012/13 of £30.5m from LPA registrations. The OPG does not know how many resubmissions may be avoided in future. This is being explored over the consultation period. In terms of orders of magnitude, the OPG expects this to be less than 1000 cases per year out of the current 3,000 resubmissions per year. As OPG fees are set to cover OPG costs any reduction in total fee income would mirror a reduction in total operating costs and the overall impact would be cost neutral to the OPG.

(iii) Combined LPA forms

The total number of new combined forms used in future is being explored further over the consultation period. If 5% of the current total number of Health and Welfare LPAs and Property and Affairs LPAs registered in 2012/13, used the new combined form in future, this would equate to around 11,959 new combined forms.

If all those who currently make a Health and Welfare LPA (current fee is £130 and 48,000 such LPAs are currently made per year) were to also make a Property and Affairs LPA (current fee is £130, and 204,000 such LPAs are currently made per year) and they make both instruments via the new combined form, the OPG estimates that this would lead to a reduction in income of £6.5m if the fee for the new combined form was the same as the fee for a single form. 50,000 people submitted both of these LPA forms in 2012-13. However, the combined fee may be set at a higher level than the current single fee in order to reflect its increased processing costs. As OPG fees are set to cover OPG costs any reduction in total fee income would mirror a reduction in total operating costs and the overall impact would be cost neutral to the OPG.

The OPG is currently carrying out the work to determine these processing costs and a fee level will be determined in time for the publication of the Government response to this consultation.

Current Certificate providers

There may be an income loss to certificate providers who previously charged a fee for providing a certificate e.g. GPs. As it is not clear how many certificates are currently paid for it is not possible to quantify this cost.

Benefits

Donors

(i) Resubmission of forms

The new forms could save both time and money for a group of customers who would have previously made errors and had to pay the current resubmission fee (£65). For the year 2012-2013, 2,931 people were charged the resubmission fee. The redesigned form targets the most common errors in the redesign and, therefore, it is hoped a significant proportion will no longer make errors and have to pay the resubmission fee. This will save both time and money as there will not be a requirement to fill in the LPA forms again and resubmit if the donor gets it right first time.

The total benefit from reduced resubmission fees will match the cost to the OPG from reduced resubmission fee income.

(ii) Combined LPA forms

For the current LPA forms, 24 separate pieces of data need to be entered to complete an LPA. In the new forms, 18 separate pieces of information need to be entered. This equates to a data entry reduction of 25% for the new single LPA form. For the new combined form used to create both types of LPAs at the same time, 18 separate pieces of data need to be entered compared with the 48 pieces in the old forms (24 x2 as each type of LPA needed a separate form). This comprises a data entry saving of around 60% compared with the old forms. As a result, it can be seen that the new forms provide a significant reduction in burden, but as the people involved in making an LPA are so varied it has not been possible to provide a monetised figure for these benefits.

(iii) Simplified LPA forms

As many people also have to pay a fee for certificate providers – such as for the GP to sign - this change in policy would also reduce costs. Information gained from unpublished customer feedback shows that GPs can charge up to £180 for this service. The OPG does not have information on how many LPAs currently have to have two certificate providers, but the benefit of this change in process is likely to be a saving both of time and cost for donors and there may be cases where the need for two certificate providers has prevented the making of an LPA. With this change, these people may now feel able to make an LPA.

Solicitors

Donors often use solicitors to complete and submit the forms on their behalf, therefore any changes to forms will have an indirect impact on solicitor firms. This should represent a benefit to the solicitors from simplified forms. It is not anticipated that Donors will alter their decision to use a solicitor as a result of these changes as it is understood that Donors chose to use solicitors due to the legal nature of the form rather than the form itself.

OPG

(i) Resubmission of forms

OPG will benefit from reduced processing time where individuals make fewer errors when submitting an LPA. This will reduce the amount of time spent on correspondence between the OPG and the person registering the LPA. It is not possible to quantify this saving, as the time spent on this will vary with the type of error and the person registering the LPA, i.e. is the donor or attorney or is it a professional such as a solicitor.

The OPG operates on a cost recovery basis. The reduction in total resubmission fee income should therefore equate to the operational cost savings to the OPG from processing fewer resubmitted reforms. Overall the financial impact on the OPG should be neutral.

(ii) Combined LPA forms

The OPG will benefit from reduced processing time where people use the combined form, removing the current duplication of processing two forms. Although precise processing savings are not currently known, it currently costs OPG £130 to process a single form and in the last year approximately 50,000 individuals submitted both LPAs, making them potential users of the combined form (though this is based on the assumption that almost all people who make a health and welfare LPA currently also make a Property and Affairs LPA). Any benefits in processing a combined form, rather than two single forms, will be reflected in the future fee set for the combined form and hence will overall be cost and benefit neutral to the OPG.

The OPG operates on a cost recovery basis. The reduction in total fee income should therefore equate to the operational cost savings to the OPG from processing fewer combined forms than single forms. Overall the financial impact on the OPG should be neutral.

Option 2: Fees

Costs

OPG

Costs of individual fee reforms are captured in the assessment of other Options and are not double counted here. The OPG operates on a cost recovery basis. Costs to the OPG from reduced total fee income should therefore equate to reductions in OPG operating costs. The overall financial impact of fee reforms on the OPG should therefore be neutral.

Benefits

Donors

Benefits to donors from individual fee reforms are captured in the assessment of other Options and are not double counted here. In particular improvements in the efficiency of OPG services (e.g. associated with the use of combined forms, or fewer resubmitted forms) ultimately accrue to donors in the form of lower fees paid.

OPG

Benefits of individual fee reforms are captured in the assessment of other Options and are not double counted here. The OPG operates on a cost recovery basis. Benefits to the OPG from reduced total operating costs should therefore equate to costs to the OPG from reduced total fee income. The overall financial impact of fee reforms on the OPG should therefore be neutral.

Option 3: Electronic Register

For the period May 2012 to April 2013, the OPG received a total of 8778 tier 1 search requests. These are not recorded by source so it is not possible to say if they are from members of the public, professionals or others. In the three months from February 2013, the OPG received 15 tier 2 searches, 3 from professionals and 12 from lay persons.

Costs

OPG

There is currently no charge for a search, and the cost of providing these searches is currently absorbed by the OPG in overarching running costs and hence covered by current fee income. The number of these searches is an extremely small part of the work of the OPG

There will be some additional one off costs to the OPG for developing electronic access to the register. However, as this is will be taken forward as part of a much wider IT replacement programme the additional costs will be minimal as the majority of the work will need to be undertaken for that, and the small additional cost will be for an interface into the case management system. It is likely that this cost will be a maximum of £100K and this spend is included in current OPG budgets and covered by current fee income.

It is possible that the number of searches will increase with the introduction of the an electronic register but, as the vast majority of the searches received are Tier 1 searches the cost of providing these should reduce to practically zero as it will be an automated service. Any increase in Tier 2 searches should be able to be dealt with using the resource freed up from the current Tier 1 searches so the cost of provision of service is likely to remain cost neutral for the OPG as the existing numbers are low and use minimal current resource.

Customers

Customers (who range from the general public, through solicitors to banks and health professionals amongst others) are not currently charged for a search and there are no plans to charge them in the future. The system will be secure to ensure that vulnerable people and data are protected and the means to access the system are still to be determined. The full details of how the system will be accessed are still to be determined

There should be no additional fee charges to the customer as searches are not currently paid for directly but absorbed within the current fee as the current number of searches per year (8778) for such a small part of the work of the organisation. In the same way, when searches are automated, the cost savings made are likely to be small and hence will not directly lead to a reduction in any of the OPGs existing fees.

The OPG is still developing specific proposals about how Tier 2 searches will take place, so it is not currently possible to say if there will be any cost for customers. The OPG is investigating these and more detail will be available for the Government response to this consultation, but the assumption is that there will be no additional cost to customers.

Benefits

OPG

A digital solution for tier 1 searches would reduce the amount of staff involvement in processing these requests.

A digital solution for an intermediate tier or tier 2 searches would have limited impact on the OPG, as there would still need to be involvement of OPG staff as these searches, even if conducted electronically, would still be at the discretion of the Public Guardian to answer. There will be minimal administrative time savings and hence the proposal is likely to be cost neutral.

Customers

There is an efficiency gain from new technology, which enables more searches to be provided, and more quickly, for the same overall cost. Currently, as the registers can only be searched by OPG staff this means that those searches can only take place during office hours. Having online access to 'tier one'

information would mean that immediate information could be available in the event of an urgent out of hour's situation, such as a serious accident or emergency situation, where time may be of the essence.

The range of possible customers has been given above and ranges from the general public through to banks, solicitors, health workers and other professionals. The impact of the proposal in relation to the Register is around the speed at which an interested party can gain an answer to their query – and if they are working within a health environment speed this may well be of the essence. This will provide benefits to the customer as 3rd parties will quickly be able to check whether an LPA, EPA or deputyship is in place and act accordingly.

The OPG will ensure that there is no reduction in safeguarding through this proposal and may actually increase the level of safeguarding by reducing the amount of information given out. These benefits will accrue from all 3 proposals in the consultation. Benefits will be gained from the automatic search (tier 1) in purely knowing that an LPA is in place. If a trusted 3rd party then needs further details, these can be done through further searches which will also be quicker and hence of benefit both to them and donors and attorneys

There may also be benefits to those who have made an LPA if banks choose to use the facility to check that the LPA that is being presented to the bank is authentic and listed as having been registered with the OPG. However, it will be down to individual banks as to whether they wish to undertake this activity.

Option 4: Supervision Regime

This Option is at an early stage of development and is not yet a firm proposal. As such a full assessment of costs and benefits has not been provided, but should be available once a fully developed proposal is put to consultation.

The OPG is currently consulting on proposed high level principles in relation to the new model of supervision. As a result, it is not possible at this stage to quantify what the impact will be on customers. The current model of supervision is outlined in the introduction to this impact assessment.

The OPG is planning to run a number of pathfinders in the coming months to look at possible new supervision models and these will take into account the responses to this consultation. These pathfinders will also be used to, where possible, gain information on the impacts of the proposed new supervision regimes in time for the Government response to this consultation.

Costs

Deputies

The new supervision regime is likely to mean more initial involvement with new deputies and this might entail an additional 2 hours of supervision in the first year, however, it is anticipated that this will be offset by lower requirements in subsequent years.

As of May 2013, there were around 20,000 individual lay deputies, 2700 professional and 186 local authority deputies. Professional deputies have an average of 4 deputyships, whilst local authority deputies have an average of 76. This is the key reason for the differing approach to be taken between these two groups and these groups and lay deputies. It is likely that for lay deputies this might mean more contact in the first year, up to an hour or so, but it may also mean just making available more information and guidance for them to look at should they wish to do so. However, as we are consulting on the principles involved, rather than the specifics of any future approach, we cannot at this moment quantify what the specific impacts will be on each of the groups of deputies. The changes will be for both new and existing deputies.

OPG

There may be some resource costs for the OPG but it is likely that there will just be a reallocation of the current resource within the supervision and investigation teams. The new supervision regime is a more

preventive and/or risk based supervision regime, with the expected outcome that the quality of deputies and deputy services will improve.

Benefits

Deputies

The benefits of the new supervision regime will be that the new Deputies will be much more aware up front of their responsibilities and the reporting requirements that they need to undertake with the OPG. In this way they will be likely to get off to a better start in relation to their duties, and that should lead to less investigations and issues further down the line. It should also help to reassure Deputies that what they are doing is right and to give them more confidence and ability to discharge their responsibilities. This will, hopefully, lead to better safeguarding of P and their interests. P is the person who the Court has appointed a deputy to look after their interests.

The OPG has done some work around possible changes and unpublished customer feedback in relation to having more up front support for new deputies has proved positive. As a result, guidance will be available early in the process, which will have the benefit of ensuring that when someone agrees to become a deputy they will be aware of and understand the requirements of the role, what their responsibilities are under the MCA and the supervision requirement that will be involved. The OPG will also have greater initial contact with lay deputies. This should have the benefit of ensuring the Deputy is far more confident and understanding of the role that they have taken on, thereby having a positive impact on both the Deputy and P in the following years.

However, as outlined above, the detail of these proposals are still being worked up by the OPG. Therefore, it is not possible to quantify these benefits in detail at this time.

P

The introduction of a more preventive and/or risk based supervision regime should have the outcome that the quality of deputies and deputy services will improve. This will be of benefit to P as it should improve the quality of the service they receive from their deputy and, over time, reduce the number of investigations that the OPG need to undertake proportional to the caseload. However, it will not be possible to quantify these benefits until any new supervision regime has been in place for a period of time that is long enough to show any changes in behaviour.

OPG

It is intended that there could be a reduction in the number of investigations that the OPG has to undertake if Deputies are helped to understand their role fully from the outset. However, it is also possible that more tailored intervention may highlight more issues to be resolved. At this point it is not possible to tell what the impact will be on the OPG.

Option 5: Digital LPA

This Option is at an early stage of development and is not yet a firm proposal. As such a full assessment of costs and benefits has not been provided.

The proposals in relation to implementing a fully digital LPA are currently exploring high level concepts and principles. Further detailed policy development is required. Therefore, the costs and benefits cannot be determined in detail at this stage and the OPG is seeking views on how it should continue to work up proposals in this area.

Costs

OPG

The costs to OPG of a fully digital LPA are minimal, as the current LPA digital interface would just need changing to allow for the extra stages involved in a fully digital LPA. The links to the case management system would already be in place. The consultation is on the concept of a fully digital LPA rather than the specifics of how it would be delivered. Any final costs to the OPG can not be quantified further at this time.

Solicitors

There is the possibility that some people who currently use a solicitor to make an LPA would choose to do it themselves using the digital tool and, therefore, solicitors may see a reduction in business. However, as many of the people who currently use a solicitor do so because of their view of the importance of the document, rather than the forms per se (unpublished customer feedback), there is no evidence to suggest that this number would be large. There is, however, the possibility that there may be some impact on solicitors.

Customers

In this case, customers are defined as donors and attorneys – as solicitors are covered separately above. As we are consulting on principles, rather than specifics in relation to a Digital LPA, we cannot quantify possible costs to those making an LPA. However, the guiding principle will be that the system will be accessible to anyone with standard IT equipment and hence there will be very minimal if any additional costs. Should there be additional costs that the customer view's as significant or which they do not wish to pay, the paper version of the forms will still be available for them to fill in. As a result, a cost neutral service will continue to be provided.

Benefits

Customers

The electronic LPA is likely to save a considerable amount of time for those users who choose to make their LPA in this way, as data will only need to be entered once and can be used in multiple fields within the form. So there will be a time saving for these people but the OPG is not able to quantify this at this time until more detail on the method of making an electronic LPA has been determined.

The saving associated with not having to use a physical witness arises from the reduction in the number of different people who need to be involved in making the LPA, thereby making it easier for those with a limited number of family and friends who they can turn to.

Solicitors

Where individuals use solicitors to act on their behalf there will be an indirect benefit to solicitors who will be able to transmit data directly to the OPG and also benefit from the error reduction advantage of filling in forms online. As the tool has been developed using open standards, solicitors can adapt it to fit with their existing systems.

OPG

In a fully digital process there would be a saving in processing time within the OPG, which will, in turn, lead to a reduction in the fees for registering an LPA. However, as this process has not yet been fully designed and the intention of this consultation is to gain feedback and views on a proposed process, it is not at this time possible to cost up the benefits associated with these proposals.

One in Two out

Option 1 is out of scope of OITO as there is only an indirect impact on businesses where Donors chose to use the services of solicitors to complete the forms on their behalf.

Option 2 is out of scope of OITO as there is only an indirect impact on businesses where Donors chose to use the services of solicitors to submit forms and pay fees on their behalf.

Option 3 is out of scope of OITO as there is only an indirect impact on businesses where they are acting on behalf of their clients.

Option 4 is in scope of OITO as deputies include professional deputies that may include solicitor firms. The proposals for this option are at an early stage and therefore quantification is not possible, it is anticipated that this will be a zero net cost option but this should be reviewed once the proposals are more developed.

Option 5 is out of scope of OITO as there is only an indirect impact on businesses where Donors chose to use the services of solicitors to complete the forms on their behalf.

Small and Micro Business Assessment (SMBA)

A full exemption from the proposed measures for small micro businesses has been considered. Many deputies who are classed as businesses, for example because they are self-employed, would be small and micro businesses. As such an exemption for small and micro businesses would not enable the reforms to be implemented and would not be viable and may also create a distortion of competition between those who are subject to the reforms and those who are not. This would also apply if implementation was delayed, but only for SMBAs, for example in relation to the introduction of the new statutory Lasting Power of Attorney (LPA) forms, the changes to fees or access to the registers of deputies or attorneys. However with particular reference to the LPA forms, it is usual to allow a transitional period for the phasing out of the old forms. This transitional period will apply to all users of the forms, not just to SMBAs, but will be set in order to minimise SMBA compliance costs.

In relation to the work of the OPG, SMBAs can consist of small firms of solicitors who assist clients with the completion of the Lasting Power of Attorney (LPA) forms, or who act as Court appointed deputies for people who lack capacity. Many of these firms are members of The Society of Trust and Estate Practitioners (STEP) or Solicitors for the Elderly (SFE), both of which groups are members of the OPG's stakeholder groups. They will therefore have some knowledge of the intended reforms prior to consultation, and the OPG expects to engage with them over the consultation period to determine how best to apply the reforms to SMBAs. This may include considering whether guidance and other support would be helpful. If the proposals result in additional costs for SMBAs it is expected that these will be passed on to their clients.

Overall, we do not consider that the proposals will place a disproportionate burden on SMBAs compared to other deputies affected by the reforms. We are engaging with the relevant SMBA stakeholder groups. A transition period will be set so as to minimise SMBA costs. Other measures may also be considered over the consultation period.

Preferred Option

The OPG's preferred option would be to take forward all the recommendations outlined in the consultation paper. However, they have been designed in such a way that they can be taken forward as independent initiatives.

Risks and assumptions

The risks in relation to the analysis in this impact assessment relates the fact that the consultation is asking for, in many cases, feedback and views on what the detailed policy should be. As a result, there is limited information available on which to quantify the possible impact on customers, 3rd sector, businesses and others. The current OPG case management system does not hold data on LPAs in the detail required, or in a form that can be extracted, to allow more detail on costs and benefits to be provided. Where we have estimated a cost or benefit, we have assumed that the volume of LPA's and deputies remain at current levels.

The key assumptions behind the IA are that all fees that are set are set at a level that covers the cost of the provision of services by the OPG. As a result, they will be set at a level (still to be determined) that will enable the OPG to continue to meet its costs.

There is a risk that the number of Tier 1 searches goes up significantly when an electronic register is in place. However, as this search will be provided electronically, this should not impact on the ability of the OPG to deliver its services within its current cost envelope.

There is a risk that deputies may find the new regime onerous and invasive and hence may be less willing to act as deputies. However, customer feedback has shown that lay deputies would value a higher level of input at the start of their deputyship. Other changes will be based on the OPG ensuring that deputies are undertaking the functions that they are required to do so as part of their work as a deputy

Equalities

In relation to the Electronic LPA, the OPG acknowledge the concern that a fully digital LPA may mean that those without access to the internet or who do not wish to use it will be disadvantaged. Survey work carried out by Mori showed that approximately 70% of the OPG current user base had used the internet for such things as banking and so were not as averse to using a computer as some have feared. In addition, 80% of current OPG work comes through intermediaries such as solicitors – who use computers as part of their standard working practices. The OPG will also put in place assisted digital services to ensure that those who wish to use the digital service are in a position to do so.

Implementation plan

Forms

The LPA forms are statutory documents and so will need a statutory instrument to bring them into force. If agreed, the intention would be bring these into force on the 1st April 2014.

Fees

As above, this will require a statutory instrument to bring them into force. The intention would be to bring the combined LPA fee in at the same time as the combined LPA form. Other fee changes could be made at the same time or later in 2014/15.

Electronic Register

Electronic access to the register does not require any legislative changes (though if we were to reduce the amount of information given out at tier 1 that would require an SI). The access is dependent on the OPG having its new case management system in place and a secure interface developed. It is therefore likely that the electronic register would come online in 2014/15.

Supervision

The changes to supervision do not require any SIs and would therefore be brought into force incrementally after the publication of the Government response to the consultation. The changes would be completed in 2014/15.

Fully Digital LPA

In order to enact a fully digital LPA, the OPG would need primary legislation. The earliest this would be is 4th session (2014/2015) and it is possible that it would take longer than that to get a bill slot. As a result, the intention of bringing in a fully digital LPA is not likely to be met before 2016/2017.