

Title: Transforming Legal Aid: Reforming fees in civil legal aid and Expert Fees in Civil, Family and Criminal Proceedings IA No: MoJ198 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)	
	Date: 5/09/2013	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Secondary Legislation	
Contact for enquiries: Kevin Westall Kevin.westall@justice.gsi.gov.uk		
Summary: Intervention and Options		RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	No
			NA

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

In a drive to reduce public spending to aid reduction of the fiscal deficit, the Government took steps in 2010 to reform the legal aid system in England and Wales to achieve savings. Since then, Government has continued to review expenditure in this area to ensure value for money is achieved in delivering the service required. However, against a backdrop of continuing pressure on public finances, there is a need to continue to bear down on the cost of legal aid, to ensure that we are getting the best deal for the taxpayer, and that the system commands the confidence of the public. To make such changes, Government intervention is necessary as it is responsible for the terms of access to legal services funded by the legal aid budget and setting remuneration rates.

What are the policy objectives and the intended effects?

In reviewing every area of expenditure to achieve savings to reduce the fiscal deficit, the Government strives to ensure that expenditure attributed to legal aid represents value for money, that fees paid are fair and consistent with those paid for similar work, and that they reflect efficiencies generated by reforms to the justice system.

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

Option 0: Do nothing.

Option 1: Reduce the fixed representation fee paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme

Option 2: Harmonise fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings.

Option 3: Removal of the uplift in the rate paid for immigration and asylum upper tribunal cases.

Option 4: Reduce experts fees in civil, family and criminal proceedings

Will the policy be reviewed? We will monitor the impacts of the policy. **If applicable, set review date:** /Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister



Date: 05/09/2013

Summary: Analysis & Evidence

Policy Option 1

Description: Reduce the fixed representation fees paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme

FULL ECONOMIC ASSESSMENT

Price Base Year 11/12	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: -	High: -	Best Estimate: -

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	Negligible	£20m	-

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

Legal Aid Providers: Legal aid providers (solicitors) are estimated to experience a decrease of approximately £20m per annum in their civil legal aid income.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	-	£20m	-

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

Legal Aid Fund: The proposal is estimated to reduce civil legal aid expenditure by approximately £20m per annum in steady state.

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

Key assumptions/sensitivities/risks

- The supply of solicitors will be sufficient to meet demand for legal aid work
- The same quality of services to legal aid clients will be supplied by solicitors.

Discount rate (%)

N/A

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: Harmonise fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings

FULL ECONOMIC ASSESSMENT

Price Base Year 11/12	PV Base Year NA	Time Period Years NA	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	-	-	-
High	-	-	-
Best Estimate	Negligible	£3m	-

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

Legal Aid Providers: Legal aid providers (barristers) are estimated to experience a decrease of approximately £3m per annum in their civil (non-family) legal aid income.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	-	£3m	-

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

Legal Aid Fund: The proposal is estimated to reduce civil legal aid expenditure by approximately £3m per annum in steady state.

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

Key assumptions/sensitivities/risks

- The supply of advocates will be sufficient to meet demand for legal aid work.
- The same quality of services to legal aid will be supplied by advocates.

Discount rate (%)

N/A

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Remove the uplift in the rate paid for immigration and asylum Upper Tribunal appeal cases

FULL ECONOMIC ASSESSMENT

Price Base Year 11/12	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: -	High: -	Best Estimate: -

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-		-	-
High	-		-	-
Best Estimate	-		£1m	-

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

Legal Aid Providers: Legal aid providers are estimated to experience a decrease of approximately £1m per annum in their civil legal aid income from immigration and asylum Upper Tribunal appeal cases as a result of the removal of the uplift.

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

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-		-	-
High	-		-	-
Best Estimate	-		£1m	-

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

Legal Aid Fund: The proposal is estimated to reduce civil legal aid expenditure by approximately £1m per annum in steady state.

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

Key assumptions/sensitivities/risks

Discount rate (%)

- The supply of solicitors will be sufficient to meet demand for legal aid work.
- We are unable to identify in the Legal Aid Agency (LAA) data whether the uplift has been paid for all immigration and asylum Upper Tribunal appeal cases. The savings estimated assume it has been paid in all cases.

BUSINESS ASSESSMENT (Option 3)

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

Summary: Analysis & Evidence

Policy Option 4

Description: Reduce experts fees in civil, family and criminal proceedings

FULL ECONOMIC ASSESSMENT

Price Base Year 11/12	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Negligible

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	Negligible	£20m	-

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

Legal Aid Providers: Experts who provide evidence in legal aid funded cases are estimated to experience a decrease of approximately £20m per annum in their legal aid income. This applies to experts in civil, family and criminal proceedings.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	-	-
High	-	-	-
Best Estimate	-	£20m	-

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

Legal Aid Fund: The proposal is estimated to reduce legal aid expenditure by approximately £20m per annum in steady state.

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

Key assumptions/sensitivities/risks

- The supply of experts will be sufficient to meet demand for legal aid work.
- The same quality of services to legal aid will be supplied by experts.

Discount rate (%)

N/A

BUSINESS ASSESSMENT (Option 4)

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

Evidence Base (for summary sheets)

Introduction

Background

1. This Impact Assessment (IA) accompanies the Ministry of Justice's (MoJ's) consultation on "*Transforming Legal Aid: next steps*". The associated consultation document was published on 5 September 2013 and can be found at: www.justice.gov.uk
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services. Legal aid fund expenditure was almost £2bn in 2012/13, with around £975m spent on criminal legal aid and £940m spent on civil legal aid¹. The Legal Aid Agency (LAA) is responsible for administering the legal aid scheme in England and Wales.
3. Following its 2010 consultation *Proposals for the Reform of Legal Aid in England and Wales*, the Government implemented a programme of reform comprising reductions in fees paid to criminal and civil legal aid service providers, to experts in civil, family and criminal proceedings, and changes to civil legal aid scope and eligibility through the Legal Aid, Sentencing and Punishment of Offenders Act 2010 (LASPO). These reforms were estimated to deliver savings of around £320m by 2014/15.
4. The LASPO reforms have done much to ensure that taxpayer funding is targeted at those who need it most and ensuring it is available for the most serious cases where this is justified. However, with continuing pressure on public finances, there is a need to continue to reduce public spending in order to alleviate the burden of debt and engender sustainable economic growth. The further reforms considered by the Legal Aid Transformation (LAT) consultation seek to reduce the cost of the scheme in ways which drive greater efficiency, support our wider efforts to transform the justice system and ensure public confidence, while ensuring that clients can continue to receive the services they require at the time that they need them. The fee reforms in this IA relate to the final decisions taken by Government, as set out in the Response paper, as a result of consultation. They are summarised below.
5. Existing rates for solicitors working on public family law cases do not necessarily reflect the amount of work involved, or reflect the likely reduction in work as a result of the Family Justice Reforms, which aim to reduce the duration of care cases and reduce the use of experts. Remuneration rates are currently fixed and do not automatically decrease as a result of any decrease in workload. The fixed representation fee paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme will therefore be reduced by 10%.
6. Currently solicitor advocates and barristers in civil (non-family) cases receive different fees for carrying out similar services in the same types of case. Paying providers on a different basis for undertaking the same type of work is not considered equitable or efficient and so the fees paid to self-employed barristers will be harmonised with those paid to other advocates in civil (non-family) proceedings.
7. Solicitors currently receive an uplift in legal aid rates of payment for immigration and asylum upper tribunal cases. The higher rate was put in place under an old scheme of retrospective funding where work on the whole appeal was 'at risk' and was intended to compensate providers for carrying the risk of non-payment throughout a case. Under existing arrangements, only work on the permission application is 'at risk'. Given the different arrangements in place since the higher rate was introduced, we do not consider continued payment of the higher rate to be justified and so the uplift will be removed.

¹ Rounded to the nearest £5m. Source: www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf

8. A comparison of the fee rates for experts in criminal proceedings set by the prosecution suggests that the codified hourly rates paid to experts under legal aid are higher and therefore further savings could be accrued in this area. The aim is to ensure that similar rates are paid for similar services.

Policy objectives

9. The key objective is to bear down on the cost of legal aid by ensuring that expenditure on civil legal aid remuneration represents value for money. We wish to address the differential in payment rates which have no basis in the type or level of service provided, ensure that fees are fair and consistent and that providers are remunerated at broadly similar rates.

Policy

10. This IA considers, as a result of the response to consultation, the cumulative effect of the reforms that will now be taken forward on civil fee remuneration (as well as reducing fees paid to experts in criminal proceedings). This is done on the basis of three of the reforms being implemented at the same time (harmonising fees paid to self-employed barristers, removing the uplift in the rate paid for immigration and asylum Upper Tribunal cases and reducing the fees to experts). The remaining proposal, reducing the fixed representation fees paid to solicitors in public law family cases, will be taken forward at the time of the implementation of the Single Family Court in April next year. The individual reforms are summarised below:

(i) **Reduce the fixed representation fees paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme**

This will mean the implementation of a 10% reduction in the current representation fees paid to solicitors in public law family cases². The 10% reduction will also apply to the hourly rates applicable where the case reaches the escape threshold of the fixed fee regime³.

(ii) **Harmonise fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings**

This will involve the harmonisation of remuneration to self-employed barristers⁴ in civil (non-family) proceedings in the County Court, Upper Tribunal and High Court on the same basis as other advocates. Self-employed barristers would, as other advocates, be eligible to receive a discretionary enhancement of that base fee subject to specific criteria being complied with.

(iii) **Remove the uplift in the rate paid for immigration and asylum Upper Tribunal cases**

This will see the removal of the 35% uplift in the rate paid for immigration and asylum Upper Tribunal appeal cases (where permission to appeal is granted).

(iv) **Reduce experts fees in civil, family and criminal proceedings**

This involves the reduction in fees across most expert types in civil, family and criminal cases by 20%⁵ with the exception of:

- Neurologists, Neuroradiologists and Neonatologists in clinical negligence (cerebral palsy) cases where the higher rates recently set out in guidance to the LAA will be codified;
- Surveyors in housing disrepair cases where the higher rates codified in the Civil Legal Aid Remuneration Regulations 2013 will be retained; and
- Interpreters, where the:

(a) current rates payable to interpreters inside London will be retained; and

² The Civil Legal Aid (Remuneration) Regulations 2013 (Schedule 1, Part 1, Table 2(c))

³ The Civil Legal Aid (Remuneration) Regulations 2013, Schedule 1, Part 3, Table 9(a)

⁴ A self-employed barrister here means an individual under the rank of Queen's Counsel.

⁵ The Civil Legal Aid (Remuneration) Regulations 2013, Schedule 5 (for civil and family expert fee rates) and The Criminal Legal Aid (Remuneration) Regulations 2013, Schedule 5 (Regulation 16)

- (b) the rates payable to interpreters outside London will be reduced by 12.5%.

Main affected groups

11. The following key groups are likely to be affected by the proposals:
- Civil legal aid service providers - legal firms contracted with the LAA for publicly funded work, advocates conducting legal representation for clients, and expert witness services; and
 - the LAA – which is responsible for administering legal aid.

Costs and benefits

12. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales, with the aim of understanding the overall impact on society from implementing these proposed fee reforms. The costs and benefits of each reform have been compared with the “*do nothing*” option. The IA places 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 some aspects that cannot always be monetised.
13. This IA considers the impact of the fee reforms proposed when implemented either as a package or in isolation.
14. The civil legal aid remuneration reforms have been modelled against a flat baseline of 2011/12 closed cases and costs, adjusted for reforms announced in the past but yet to be fully reflected in the data and take account of impacts identified as a result of consultation.
15. All savings figures have been rounded to the nearest £1m for estimates below £10m and to the nearest £5m for estimates above £10m. All volume changes have been rounded to the nearest 100 cases below 10,000 volumes and to the nearest 1,000 above 10,000.

Methodology and Assumptions

16. The following assumptions have been made in the estimation of the costs and benefits:
- (i) The supply of services from providers (solicitors, barristers and experts) is sufficient to meet demand at new fee rates. The evidence for this assumption is considered in more detail in the ‘risks and assumptions’ section at the end.
 - (ii) Providers (solicitors, barristers and experts) are assumed to supply the same quality of service to clients for legal aid work.
 - (iii) VAT is included in the overall costings. In practice, VAT would be cost to HM Treasury rather than to providers.

Option 0: Do Nothing

Description

17. The “*do nothing*” option is the base case. This in effect would mean that the current fee remuneration rates would continue to operate as now. The current rates are set out in the Civil Legal Aid (Remuneration) Regulations 2013⁶, with the exception of the rates payable to experts in

⁶ www.legislation.gov.uk/uksi/2013/422/contents/made

criminal proceedings which are set out in the Criminal Legal Aid (Remuneration) Regulations 2013.⁷

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

Option 1: Reduce the fixed representation fee paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme

Description

19. Solicitors in public family law proceedings are paid a fixed fee for legal representation. The current rates applicable are set out in Part 1 (Table 2(c)) and Part 3 (Table 9(a)) of the Civil Legal Aid (Remuneration) Regulations 2013. The representation fees paid to solicitors, including the hourly rates applicable where the case reaches the escape threshold of the fixed fee regime, i.e. the fees in the stated tables, will be reduced by 10%. The new rates are set out in Tables 1 and 2 of Annex E to the Response paper.

Costs

Legal aid service providers

20. In 2011/12, public family law solicitor expenditure (excluding disbursements) was approximately £220m for cases closed during the period. A 10% reduction in the current fees payable to solicitors undertaking public family law cases will result in a £20m per annum reduction in legal aid fee income.

LAA Administrative Costs

21. The one-off cost from the change in rates is expected to be negligible. The one-off cost relates primarily to amending IT systems to take account of the new fee arrangements. However, this proposal will form part of the implementation package that will be taken forward to introduce the Single Family Court which will be the subject of a separate consultation exercise being launched later this year.

Benefits

Legal Aid Fund

22. The benefit to the Legal Aid Fund is the reduction in income to legal service providers set out in the rates payable as a result of a 10% reduction. This should equate to £20m per annum in steady state.

LAA Administrative Benefits

23. There might be small ongoing benefits. The LAA might contract with fewer providers if some providers choose to withdraw from delivering legal aid.

Wider economic benefits

24. A reduction in Government spending associated with a reduction in legal aid will contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

⁷ www.legislation.gov.uk/uksi/2013/435/contents/made

Enforcement and implementation

25. It is currently anticipated that this proposal will be implemented through secondary legislation to be laid in early 2014.

Option 2: Harmonise fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings

Description

26. This option proposes that self-employed barristers appearing in civil (non-family) cases should be paid on the same basis as advocates appearing in these cases, with lower guaranteed rates that can be enhanced (increased) subject to specific criteria. The new rates are set out in Table 3 of Annex E of the Response paper.

Costs

Legal aid service providers

27. Self-employed barristers undertaking civil non-family work will experience a fall in legal aid income as a result of this proposal. The closed case income of civil non-family barristers in 2011/12 was approximately £20m. Civil non-family barristers will, from the implementation of this proposal, experience a reduction in income of approximately £3m per annum in steady state.

LAA Administrative Costs

28. The one-off costs from the change are expected to be negligible and will relate primarily to amending IT systems to take account of the new fee arrangements and the cost of administering the new scheme.

Benefits

Legal Aid Fund

29. There will be a financial saving to the Legal Aid Fund. This equates to the reduced income payable to self-employed barristers and should reduce legal aid expenditure by approximately £3m per annum in steady state.

Wider economic benefits

30. A reduction in Government spending associated with the reduction in legal aid will contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Enforcement and implementation

31. Subject to the outcome of the consultation, it is currently anticipated that this proposal will be implemented through secondary legislation to be laid at the end of 2013.

Option 3: Remove the uplift in the rate paid for immigration and asylum Upper Tribunal cases

Description

32. This policy removes the 35% uplift paid in immigration and asylum cases at the Upper Tribunal (where permission to appeal is granted).

Costs

Legal Aid Providers

33. Legal aid providers will experience a fall in income from the removal of the 35% uplift in immigration and asylum Upper Tribunal appeal cases. LAA data covering closed cases shows that there were around 1,300 Immigration and Asylum Upper Tribunal Judicial Review Cases in 2011/12 with a positive amount of legal aid paid to a Solicitor in 1,200 cases.
34. It is not possible to tell from the data whether the uplift was paid in all of the 2011/12 cases, although there is no evidence to suggest that the uplift would not have been claimed and we have assumed that providers have claimed the uplift in all cases. Removal of the uplift would therefore result in a saving of £1m per annum in steady state. There is a risk that savings could be lower if there are some cases where the uplift was not claimed,.

LAA Administration Costs

35. Removing the payment uplift in immigration and asylum Upper Tribunal appeal cases may lead to a small increase in LAA administration costs. The LAA may need to amend financial systems. In addition some additional training may be required.

Benefits

Legal Aid Fund

36. Based on 2011/12 LAA closed case data, the removal of the 35% uplift is expected to save the Legal Aid Fund £1m per annum in steady state.

Enforcement and implementation

37. Subject to the outcome of the consultation, it is currently anticipated that this proposal will be implemented through secondary legislation to be laid at the end of 2013.

Option 4: Reduce Experts fees in civil, family and criminal proceedings

Description

38. The rates currently payable from legal aid for the most frequently used expert types are set out in Schedule 5 of the Civil Legal Aid (Remuneration) Regulations 2013 and Schedule 5 of the Criminal Legal Aid (Remuneration) Regulations 2013. This change will implement a 20% reduction in the fees paid to most experts, other than the exemptions already set out, funded through legal aid (civil, family and crime) set out in the stated tables in Annex E of the Response paper.

Legal aid service providers – Experts

39. The costs to experts would equate to the difference in income they receive now and income they would receive as a result of a 20% reduction in fees for the same work for civil, family and criminal experts. This would reduce experts' income from legal aid by £20m per annum in steady state.

40. LAA 2011/12 administrative data suggests that around £30m per annum is currently spent on experts in criminal Litigators Graduated Fee Scheme (LGFS) cases. This is likely to be an underestimate of total expert expenditure in criminal legal aid as it excludes data from other LAA criminal legal aid schemes. On this basis, a 20% cut to expert fees in criminal legal aid is estimated to reduce criminal experts' income from legal aid by £6m per annum in steady state.
41. The LAA do not centrally record data on civil legal aid expert expenditure. However, expert expenditure is part of recorded disbursements. After adjusting 2011/12 civil disbursement expenditure for the impacts of the previous legal aid reforms, disbursements were estimated to be approximately £90m per annum. A review of LAA case files by MoJ on public law family experts suggests around 90% of disbursements in these cases relate to expert fees. In other areas of civil law the proportion of experts is lower and therefore, in line with previous assumptions in this area, we have assumed that two thirds of disbursements relate to expert expenditure. On this basis, expert expenditure in civil legal aid is estimated to be approximately £70m per annum, with a 20% cut reducing civil experts' income from legal aid by approximately £14m per annum in steady state.

LAA Administrative Costs

42. The one-off costs from the change in rates have not been estimated. However we expect them to be negligible. These costs relate primarily to amending IT systems to take account of the new fee arrangements.

Benefits

Legal Aid Fund

43. The benefit to the Legal Aid Fund would equate to the reduction in income to experts set out in the rates payable as a result of a 20% reduction. This will be in the region of £20m per annum in steady state.

Wider economic benefits

44. A reduction in Government spending associated with a reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Enforcement and implementation

45. It is currently anticipated that this proposal will be implemented through secondary legislation to be laid at the end of 2013.

Risks and uncertainties

Sustainability

46. All of the proposals assume that the market will be able to sustain the impact of the cuts to solicitor's fees, advocates' fees and expert's fees.
47. Although the results from the recently published survey "*A Time of Change: Solicitors' Firms in England and Wales*"⁸ suggests that approximately 31% of those firms involved in legal aid were planning to remove themselves from the market in the next 3 years, this conflicts with the results from the latest legal aid tender process for contracts (post the most recent legal aid changes) which

⁸ www.lawsociety.org.uk/representation/research-trends/research-publications/baseline-survey-of-solicitor-firms-2012/

suggests that more firms are willing to undertake legal aid work than previous tenders. The outcome of the 2013 civil tender process that invited tenders for contracts that reflected the LASPO scope reforms in the Family, Housing and Debt and Immigration categories of law, showed that overall there were over three times as many bids as available civil cases, with new entrants in each category – despite significant reductions in the amount of work available compared to the previous tender process. This suggests that there is currently competition for work within the family and immigration civil categories and therefore scope in the short term for at least some providers to withdraw from the market while still potentially maintaining a sustainable market supply.

48. Other factors, such as future demand and supply, also impact upon the number of providers willing to undertake legally aided work. It is possible that rising volumes of public family law cases are likely to increase the risk that there will be an insufficient number of providers to meet the demand for work. However, the reduction in the scope of legal aid funded work implemented through the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 is likely to decrease that risk.
49. The impact of harmonising the remuneration rates paid to barristers with those of other advocates, does present a risk to the supply of self-employed barristers carrying out legal-aid work. However, the impact of the scope changes introduced by LASPO is likely to reduce the demand for legal aid work, potentially having the opposite effect and leading to an over supply. While it is possible that some self-employed barristers may leave the market, this is dependent on a number of unknown factors including their cost base, reservation wage, private client work and ability to adapt/diversify to the reforms. In addition, even if a shortfall did occur it is expected that this could be made up through a combination of contracted legal aid solicitors using in-house barristers, solicitors who already have higher rights of audience undertaking extra work themselves or other solicitors seeking to qualify to exercise higher rights of audience in order to mitigate the loss of income from the wide reductions in civil work generally under LASPO.
50. In addition, while barristers will receive a lower minimum standard fee, this can be enhanced (increased) at the discretion of the assessing authority. This should mean that for self-employed barristers focusing on complex cases in specialised areas of law where they add real value to the resolution of the case, there should be no reason why they should not satisfy the criteria for substantive enhancements to be paid in those cases in which they appear.
51. There is a risk that a number of experts may elect to leave the market as a result of the fee reductions, potentially also impacting on provider choice. However, reforms following from the Family Justice Review are seeking to significantly reduce the number of, and therefore the demand for, experts involved in public law family cases. This should mean providers are less likely to face a shortfall of experts going forward.
52. The rising volume of public family law cases also puts pressure on the demand for experts, as well as on solicitors (as mentioned above). However, the planned reforms to reduce the number of experts as well as the reduction in the scope of legal aid funded work implemented through LASPO should mitigate the risk that there will be an insufficient number of experts to meet the demand for work.

Interaction with other policies

53. As noted in paragraph 5, the Family Justice Review aim to reduce the use of experts. As the savings estimate for experts is based on 2011/12 data, this does not account for any potential future reduction. However, as the impact of the Family Justice Reforms on experts is uncertain, currently the LAA's expenditure forecasts do not account for any reduction. So whilst a reduction in the use of experts would result in a smaller saving from this policy, the loss in savings would be offset by lower spend overall on experts compared to the forecast.

Quality of advice

54. All of the proposals assume that the quality of advice provided to legal aid clients remains unchanged. In the case of solicitors in public family and immigration law, we believe more junior professionals are able to provide a sufficiently high quality service to enable individuals to be

adequately represented should more senior solicitors take on less of this type of work. In addition, providers will continue to be required to meet the LAA minimum quality standards.

55. With regard to advocacy, we believe other advocates could provide a sufficiently high quality service to enable individuals to be represented in court and that they will continue to meet the LAA minimum standards should some self-employed barristers decide to withdraw from the market.
56. The proposed new quality standards for experts appearing in the family courts should ensure that appropriate standards are maintained. We will continue to monitor whether any change materialises.