

# Annex A: Scope

## 2. Costs and Benefits

1. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing these proposals. The costs and benefits of each proposal are compared to the do nothing option. IAs place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
2. The Government has consulted on the removal of each category from scope individually and final savings are based on the outcome of the consultation. This analysis presents the expected impact of our preferred combination of scope cuts. The impact of removing each category individually is shown in the breakdown of costs and benefits by category.
3. This Annex assesses the cumulative impact of the scope changes. The overarching IA summarises the cumulative impact of the Government's overall package of legal aid reforms.
4. All estimates are relative to the 2009-10 baseline. In so doing an implicit assumption has been made that there will be no inflationary uprating of provider fees during the current Spending Review period.

### Option 0: Do nothing

#### Description

5. The categories of case and proceeding currently funded by legal aid are set out in Annex 2. If the 'do nothing' option was pursued then all the categories of cases and proceedings currently entitled to funding through legal aid would continue to be funded by legal aid.
6. The 'do nothing' option is also the base case. Under this option legal aid fees and volumes are assumed to remain at current nominal levels.
7. Because the 'do nothing' option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

### Option 1: Remove all stated cases and proceedings from scope

#### Description

8. Annex 2 explains which matters will be removed from the scope of legal aid funding. The Government intends to replace the current exceptional funding scheme with a new scheme to provide legal aid for excluded cases where, in the particular circumstances of the case, the failure to do so would be likely to result in a breach of the individual's rights to legal aid under the Human Rights Act 1998 or European Union law, or where there is a significant wider public interest in funding legal representation for inquest cases. It is not intended that this funding will generally be available except where it can be demonstrated that it is necessary to avoid a breach of these rights, or where we are satisfied that the relevant test for legal representation has been met in inquest cases. Legal aid will also continue to be available for victims of domestic violence in private family law cases and for the protective party in private law children cases involving child abuse, where evidence is provided.
9. These reforms would apply to both Legal Help and Legal Representation, unless stated. The 2009/10 baseline figures include both legal help telephone and face to face volume and spend.

## Option 1: Costs

### Net costs related to legal aid clients

10. Client-related costs may take the following broad forms:

- (i) Clients would receive a reduction in resource transfers equivalent to the reduction in legal aid spending. In total it is estimated that around 600,000<sup>1</sup> clients would be impacted and would receive around £280m worth less of legal aid services. Table 1 outlines the impact on the number of clients that receive legal aid. Table 2 outlines the impact on the value of the legal aid services a client received.

**Table 1: Reduction in legal aid for customers (by volume of cases) 2009/10<sup>2</sup>**

LSC Statistical Category	Legal Help		Legal Representation	
	Reduction in case volumes	Proportion of existing cases	Reduction in case volumes	Proportion of existing cases
Combined Family	n/a	n/a	10	21%
Domestic Violence	n/a	n/a	0	0%
Financial Provision	n/a	n/a	10,400	83%
Help with Mediation	n/a	n/a	0	0%
Other Family Matters	n/a	n/a	850	84%
Priv. Law Children Act	n/a	n/a	34,000	75%
Private Family Mixed Domestic Violence	n/a	n/a	0	0%
<i>Total Family Private<sup>3</sup></i>	<i>210,000</i>	<i>84%</i>	<i>45,000</i>	<i>56%</i>
<i>Total Family Public</i>	<i>0</i>	<i>0%</i>	<i>0</i>	<i>0%</i>
<b>Total Family (private + public)</b>	<b>210,000</b>	<b>79%</b>	<b>45,000</b>	<b>40%</b>
Actions Against Police	1,900	48%	320	70%
Community Care	90	1%	0	0%
Consumer	3,100	100%	470	99%
Debt	105,000	74%	50	13%
Education	2,800	58%	70	29%
Employment	24,000	78%	70	95%
Housing	52,000	40%	1,200	11%
Asylum	0	0%	0	0%
Immigration	53,000	92%	290	20%
Clinical Negligence	2,500	75%	1,500	65%
Mental Health	0	0%	0	0%
Miscellaneous	3,300	85%	580	60%
Personal Injury	1,700	91%	760	81%
Public Law	240	14%	10	1%

<sup>1</sup> For the purposes of the IAs we assume all Legal Representation cases also received Legal Help therefore the impact of clients is assumed to relate to the volume of legal help clients impacted.

<sup>2</sup> All figures have been rounded to the rounding convention stated in the 'Baseline Assumptions' section of the Cumulative IA, therefore the totals may not sum to the individual components.

<sup>3</sup> Legal Help is recorded differently to Legal Representation therefore the appropriate breakdowns are not available.

Welfare Benefits	135,000	100%	0	0%
<b>Total Civil</b>	<b>385,000</b>	<b>60%</b>	<b>5,000</b>	<b>29%</b>
<b>Grand Total</b>	<b>595,000</b>	<b>66%</b>	<b>50,000</b>	<b>38%</b>

**Table 2: Reduction in legal aid for customers (by spending) 2009/10<sup>4</sup>**

LSC Statistical Category	Legal Help		Legal Representation	
	Reduction in spend (£m)	Proportion of spend	Reduction in spend (£m)	Proportion of existing spend
Combined Family	n/a	n/a	0	2%
Domestic Violence	n/a	n/a	0	0%
Financial Provision	n/a	n/a	10	72%
Help with Mediation	n/a	n/a	0	0%
Other Family Matters	n/a	n/a	2	83%
Priv. Law Children Act	n/a	n/a	110	70%
Private Family Mixed Domestic Violence	n/a	n/a	0	0%
<i>Total Family Private<sup>5</sup></i>	<i>50</i>	<i>84%</i>	<i>120</i>	<i>52%</i>
<i>Total Family Public</i>	<i>0</i>	<i>0%</i>	<i>0</i>	<i>0%</i>
<b>Total Family (private + public)</b>	<b>50</b>	<b>78%</b>	<b>120</b>	<b>22%</b>
Actions Against Police	0.5	44%	1	59%
Community Care	0	1%	0	0%
Consumer	0.5	100%	3	99%
Debt	20	75%	0	13%
Education	0.5	32%	0.5	50%
Employment	5	76%	0.5	95%
Housing	10	38%	3	12%
Asylum	0	0%	0	0%
Immigration	20	90%	1	24%
Clinical Negligence	0.5	75%	10	64%
Mental Health	0	0%	0	0%
Miscellaneous	0.5	82%	3	63%
Personal Injury	0.5	91%	3	80%
Public Law	0	16%	0	1%
Welfare Benefits	25	100%	0	0%
<b>Total Civil</b>	<b>80</b>	<b>42%</b>	<b>25</b>	<b>37%</b>
<b>Grand Total</b>	<b>130</b>	<b>50%</b>	<b>150</b>	<b>24%</b>

<sup>4</sup> All figures have been rounded to the rounding convention stated in the 'Baseline Assumptions' section of the Cumulative IA, therefore the totals may not sum to the individual components.

<sup>5</sup> Legal Help is recorded differently to Legal Representation therefore the appropriate breakdowns are not available.

- (ii) Clients in private family law cases who previously would have received Legal Representation for court-based support, but whose case would be out of scope in future and are not funded under the new scheme for excluded cases, would in future still have access to government-funded mediation. In the absence of legal aid except for mediation, it is possible that some clients would undertake mediation in future where they may not have done under the current legal aid scheme. Initial analysis suggests that between 4,000 and 10,000 more mediations might be provided, at a total additional cost of between £6m and £10m. As a result the £280m reduction in legal aid would fall to around £270m.
- (iii) Under each category, the percentage of excluded cases that we estimate may receive funding under the exceptional funding scheme is outlined in Table 3. It is difficult to say with any certainty how many cases will receive exceptional funding as each case will be assessed on its merits, therefore these figures are based on initial estimates. We have assumed that all those that receive funding for Legal Representation through this mechanism will also receive funding for Legal Help.

**Table 3: Proportion of cases initially out of scope which are then expected to secure funding under the new scheme for excluded cases**

Category	Recommended scope status	% Legal Representation cases readmitted as a proportion of total applicants
Other less serious types of claims, whether against public authorities or private individuals	Remove all simple negligence and other less serious claims	Up to 5% for some proceedings
Consumer	Remove all	Negligible
Clinical Negligence	Remove all	Up to 100% for some proceedings
Debt	Remove all except where clients home is at immediate risk from rent/mortgage arrears, involuntary bankruptcy, orders for sale	Negligible
Employment	Remove all	Up to 5% for some proceedings
Education	Remove all except SEN	Up to 5% for some proceedings
Housing	Remove all except risk of homelessness, homelessness assistance repossession, eviction and serious disrepair cases	Up to 25% for some proceedings
Immigration (non-detention)	Remove all except for immigration detention matters	Negligible
Miscellaneous	Remove all except a small number of targeted proceedings <sup>6</sup>	Up to 5% for some proceedings
Welfare Benefits	Remove all except for applications for accommodation for destitute asylum seekers	Negligible
Financial Provision (non-domestic violence cases)	Remove all except domestic violence mixed cases	Up to 5% for some proceedings
Private Law Children (non-domestic violence cases)	Remove all except domestic violence and child abuse mixed cases and child parties	Up to 5% for some proceedings

<sup>6</sup> To retain: Confiscation proceedings under the Proceeds of Crime Act 2002; Injunctions concerning gang-related violence; Independent Safeguarding Authority Appeals; Legal Help at Inquests; Protection from Harassment Act 1997; Quasi-criminal proceedings

Category	Recommended scope status	% Legal Representation cases readmitted as a proportion of total applicants
Other Private Law Family	Remove all except domestic violence and child abuse mixed cases and child parties	Up to 5% for most proceedings

- (iv) Tables 1 and 2 take into account the potential volumes of private family law cases which will qualify for legal aid as a result of domestic violence or child abuse. Victims of domestic violence will have access to legal aid in private family law cases where a required form of evidence is provided, as will the protective party in private law children cases involving child abuse. We have assumed that around a quarter of cases which currently receive funding for private family law cases will continue to receive funding as a result of domestic violence or child abuse. Initial estimates suggest that around 17,000 cases may be funded in this way. We have assumed that all those that receive funding for Legal Representation through this mechanism will also receive funding for Legal Help. These estimates have been factored into the volume and spending reductions in Table 1 and Table 2.
- (v) As a result of this reduction in resource transfers, clients who no longer receive legal aid may choose address their disputes in different ways. They may seek alternative resolution services, may represent themselves in court, may seek to resolve issues by themselves without reference to the courts, may pay for services which support self-resolution, or may decide not to tackle the issue at all.
- (vi) There is evidence that all these different approaches are sometimes undertaken currently by people facing disputes<sup>7 8</sup>. Although the evidence is inconclusive, there is a risk that outcomes may be worse for some people who no longer receive legal aid as a result of these proposals.
- (vii) This may have implications for the economic efficiency of dispute resolution. For example:
- in some instances, case outcomes may remain the same and the same overall resource may be used to resolve the dispute (although this would no longer be provided by the legal aid fund, so the client may be worse off in this regard) with efficiency remaining the same;
  - in some instances, case outcomes may remain the same but cases which were previously resolved via the courts might in future be resolved using less resource via alternative means. This would improve efficiency; and
  - in some instances, efficiency would be lower where more overall resources are used to achieve the same outcome.
- (viii) These proposals aim to minimise any adverse impact on the economic efficiency of dispute resolution, for example by still providing legal aid cases where alternative sources of funding or other resolution routes are less open.
- (ix) The overall implications will depend on the behavioural responses of clients who no longer receive legal aid and upon the nature and effectiveness of different ways of addressing disputes aside from using legally-aided service providers. The evidence on outcomes for individuals who benefit from legal aid compared with those who do not is limited. The CSJS<sup>9</sup> (Civil and Social Justice Survey) shows that a variety of methods are currently used to resolve disputes with less than 1 in 10 being resolved through the court/tribunal system.

7 Pleasence, P., Balmer, N., Patel, A and Denvir, C. (2010), Civil Justice in England and Wales: Report of the 2006-9 English and Welsh Civil and Social Justice Survey, LSRC, London.

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

9 Pleasence, P., Balmer, N., Patel, A and Denvir, C. (2010), Civil Justice in England and Wales: Report of the 2006-9 English and Welsh Civil and Social Justice Survey, LSRC, London.

- (x) We also reviewed the literature on outcomes for “litigants in person”<sup>10</sup> (individuals in court and tribunal cases who are not legally represented) and found that, in general, being unrepresented is likely to impact on the outcome of the case. The extent to which this general finding applies to these particular reforms is less clear.
- (xi) A range of evidence shows that social, health and justice problems tend to “cluster”. For example, the LSRC’s CSJS indicated that at least one adverse issue (social, economic or health) also arose in approximately 50 per cent of civil justice disputes. These included physical or stress related illness, relationship breakdown and loss of employment or income. The survey also showed that individuals who were involved in crime had experienced one or more difficult to solve civil problems in the past three years.
- (xii) There is very limited evidence on the impact of providing early legally aided advice on the escalation of problems. Very few studies have systematically used robust methods to compare outcomes for those who do and do not receive early legal or other advice.
- (xiii) Any significant change in case outcomes may be associated with social and economic costs if this leads to wider economic and social issues arising (for example, relating to health, housing, employment or offending). There may then be associated costs to the Ministry of Justice, other government departments or public bodies or to society as a whole.
- (xiv) The lack of a robust evidence base means that we are unable to draw conclusions as to whether wider economic and social costs are likely to result from the programme of reform or to estimate their size. Nevertheless, the proposals attempt to minimise any such adverse as the Government recognises that Not for Profit advice centres play an integral role in many communities. Many are becoming increasingly innovative and developing new ways in which significant local demand can be met. We recognise the important contribution they make and we will therefore be reviewing the impact of recent Government proposals on the sector. This will include identifying the scale of the issue both in terms of funding and effectiveness of advice; developing a plan for future central government funding arrangements for advice services to simplify, streamline and consolidate the current complex funding mechanisms and to recommend sustainable alternative funding models.

#### *Costs for legal services providers*

11. The impacts on legal services providers relate to the impacts on legal aid clients. In total it is estimated they would provide £280m worth less of legally aided services. This will impact upon not-for-profit providers, solicitors, advocates and experts.
12. In addition, it is estimated mediation providers would provide approximately £2m worth less of services by removal of the willingness test in legal aided mediation cases. This figure relates to around 60,000 willingness tests. The impact of this has been taken into account in the costing of providing additional mediation.

#### *LSC administration costs*

13. One-off LSC implementation costs are estimated to be around £1m. These relate primarily to amending IT systems and training as well as other costs, such as those relating to temporary staff and contractors. They also relate to the volume of additional applications for funding made under the new scheme for excluded cases. There are also likely to be additional ongoing costs. However it is likely that these costs will be more than outweighed by LSC administration savings stemming from the reduction in total case volumes.

#### *HMCTS Costs*

14. The proposed reforms might lead to a reduction in the total volume of court and tribunal cases and the amount of fee income collected. A reduction in total case volumes might also be associated with some types of one-off court and tribunal capacity adjustment costs and with other types of one-off court and tribunal capacity adjustment savings. However, we lack evidence on how people will

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<sup>10</sup> Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

change their behaviours and in what way, and therefore on how many will continue to take cases to court and tribunals after the changes to legal aid funding.

15. The proposed reforms are likely to lead to an increase in the volume of cases where clients choose to represent themselves in court or at a tribunal (litigants in person), however the extent of the increase is uncertain. There is also no firm evidence that unrepresented cases on average impose additional operational cost burdens on courts and tribunals<sup>11</sup>.
16. A rise in unrepresented cases or represented cases brought to court by previously legally aided clients is likely to lead to a rise in court fee remissions. Court fees would previously have been paid for by the legal aid fund for these clients. Therefore if there is an increase in previously legally aided clients going to court an additional cost burden could be imposed on HMCTS. It is estimated this might be in the region of £8m based on a number of assumptions.

#### *Distributional costs*

17. Legal aid recipients are amongst the most disadvantaged in society, reflecting both the nature of the problems they face as well as the eligibility rules for legal aid.
18. Reliable administrative data is not captured on the income of legal aid recipients. Estimates have been made by applying data on family characteristics and income levels from the Family Resources Survey to the civil legal aid population according to the eligibility rules, and scaling the figures down to the legal aid claimant population. Whilst this analysis cannot provide a perfectly accurate picture of recipients, the results are indicative of their likely income distribution.
19. This analysis shows that the vast majority (95%) of civil and family Legal Help recipients in 2009-10 were in the bottom two income quintiles, with just over 80% in the bottom quintile and almost 15% in the second bottom quintile for Legal Help. Around 1% are in the top two quintiles (including just 0.1% in the top quintile). The distribution is broadly similar for Legal Representation.
20. The proposals outlined in this IA would reduce the overall total number number of 2009/10 Legal Representation closed cases by 38% and Legal Help cases by 66%. Of the Legal Representation cases removed, it is estimated that nearly 80% relate to individuals within the bottom income quintile.

#### *Wider economic costs*

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

### **Option 1: Benefits**

#### *Legal aid fund*

22. Savings to the legal aid fund equate to the reduced amounts of legal aid set out in Table 1 and mirror the reduction in resource transfers to clients. The total sum is estimated to be around £270m.

#### *Wider economic benefits*

23. A reduction in government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular reducing the size of the Government's fiscal deficit.
24. The reduced subsidisation of particular goods and services may be associated with increased economic efficiency. For example subsidisation of a service in general may lead people to consume this service when better and cheaper alternatives might be available. The proposals in this IA would involve reducing the provision of subsidised services.

#### *LSC administration savings*

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<sup>11</sup> Williams, K (2011) Litigants in person: a literature review. Ministry of Justice Research Summary.

25. There may be reductions in LSC administration costs stemming from the reduction in case volumes. The ongoing savings are estimated to be around £1m.

#### *Benefits for legal services providers*

26. Providers may secure increased funding from other sources, in particular from people who previously received legal aid. Given the uncertainty surrounding the possible client response to these proposals, the impact on providers is subject to much uncertainty. There might be an increase in business for alternative resolution service providers or services which support self-resolution. Separately, there would be an increase in business for mediation service providers funded by legal aid. This has been estimated to be around £10m.

27. Overall it is likely that in aggregate, the total value of the increase in business for all types of provider (relating to the increase in client-funded business) will be lower than the total value of the reduction in business for providers (relating to the reduction in legal aid business).

#### *HMCTS savings*

28. As explained in the cost section, a reduction in total case volumes might be associated with some one-off capacity adjustment savings, but also with other one-off capacity adjustment costs. Any reduction in total case volumes might also be associated with a reduction in ongoing court and tribunal operating costs although this would be accompanied by a reduction in court fee income. The extent of any net savings would depend upon the behavioural response of previously legally aided clients (which is unknown).

### **Risks and uncertainties**

29. The following key risks and uncertainties apply:

- All estimates are relative to the 2009-10 baseline. In so doing an implicit assumption has been made that there will be no inflationary uprating of provider fees during the current Spending Review period.
- Statistical uncertainties apply to baseline volumes especially where scope is being only partly removed from a legal aid subcategory.
- The actual number of successful applicants to the exceptional funding scheme may differ from that assumed.
- Cases which have many dimensions and which previously presented themselves under areas of law which are now being removed from scope might in future present themselves under categories of law which remain in scope, e.g. domestic violence cases.
- There is limited information on the legal service market in England and Wales. Our assessment of the available evidence<sup>12</sup> has highlighted that between 1995 and 2008 there has been significant growth in the UK legal services market, with increases of 34% in the number of legal service enterprises and nearly 300% in terms of turnover. At least one in four of all solicitors firms in the UK undertook some legal aid work in 2008/9, with English and Welsh legal aid expenditure representing around 10% of the total turnover for solicitors in the UK. Additionally, the ratio of lawyers per head of population has increased from around 1:1000 to 1:400 in the last 20 years. However, there has been a downward trend in the overall number of providers dealing with civil and family legal aid work, a decrease of around 23% between 2006/07 and 2009/10. This is attributed to the continuing process of providers that do small amounts of legal aid work leaving the market or merging with other firms, in addition to the LSC terminating dormant accounts where no work was being done.
- There is a risk that the legal aid services market may not be able to sustain the cuts to scope now proposed, especially when combined with the proposed fee cuts. There are two potential adverse impacts on the market: the number and type of suppliers; and the quality of advice received. The most recent survey of law firms was commissioned by the Law Society during the

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<sup>12</sup> Office for National Statistics and Legal Services Reforms: Catalyst, Cataclysm or Catastrophe? Professor Stephen Myerson, Legal Services Policy Institute speech, 21 March 2007.

consultation period<sup>13</sup>. This suggested that while the proposed fee cuts are likely to be broadly sustainable, the market may not in addition be able to sustain the proposed scope cuts, with particular risks for smaller criminal concerns in London and civil/family firms more generally. However, the quantitative results are based on a small and possibly unrepresentative sample. In addition, there are issues with self-reporting and it is unclear whether the assumptions used to drive the financial calculations are robust, so the extent to which the results are reliable and representative of the wider market cannot be validated. Evidence from the Scottish Legal Aid Board suggests that there was a confirmed increase in solicitors' firms registered to provide legal aid services, despite cuts in legal aid fees paid to suppliers in Scotland<sup>14</sup>. However, we cannot assume that the market in England and Wales will behave in the same way.

- To mitigate any potential risk that clients may not be able to access legally aided services the Government intends to work with the LSC to ensure that they have robust mechanisms in place to identify any developing market shortfall and that they are able to respond promptly, effectively and appropriately, should this materialise in any form. This will be accompanied by the development of a client and provider strategy covering civil, family and criminal legal aid work, which will include consideration of the best way that services remaining in scope can be bundled in future procurement rounds to ensure that clients are able to access the services they need. In the longer term, the move to competition is designed to ensure that legal aid services are procured at a rate the market is able to sustain.
- The average cost of funding cases under the new scheme for excluded cases might be higher than current case cost averages.
- The additional expenditure on mediation might be higher than expected if mediation volumes and average costs are higher than expected. Increased costs might also arise if more cases than expected which previously received Legal Help receive mediation in future.
- The expenditure on private family law cases that qualify for legal aid as a result of domestic violence or child abuse might be higher than expected if these volumes and the average cost of these cases are higher than expected.
- The additional LSC administration costs might be higher than expected depending upon the costs of operating the new funding scheme for excluded cases.

### **3. Enforcement and Implementation**

30. The assumption for all the proposals in this IA is that they would be implemented in October 2012.

### **4. Specific Impact Tests**

#### *Equality Impact Assessment*

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

#### *Competition Assessment*

32. The proposal to reduce the scope of legal aid could directly limit the number, and possibly the range, of civil and family legal aid providers. However, this is very much dependent on the size of the overall cuts to the scope of legal aid and the reaction of the legal aid service providers. The scope proposals will lead to a reduction in the range of cases entitled to receive legal aid funding. This may lead to a reduction in demand for providers of civil and family legal aid services which may negatively impact upon competition if the proposed reforms cause some civil and family providers to cease trading.

33. The impact on the incentive to compete vigorously is dependent upon provider reaction to the proposed reform. Competition for legal aid contracts could be positively impacted if the same numbers of providers are competing for fewer legal aid clients. On the other hand the level of competition may remain the same or decrease slightly if the number of legal aid providers fell in line with, or more than, the reduction in legal aid clients.

<sup>13</sup> Otterburn (2011) Law Society: Impacts of the MOJ Green Paper proposals on legal aid firms

<sup>14</sup> Scottish Legal Aid Board (2011) Press release, February 17 2011. <http://www.slabb.org.uk/news/index.html> Accessed 23 May 2011.

### *Small Firms Impact Test*

34. Small firms will be affected by the proposal to reduce the scope of legal aid. The proposed reform is likely to reduce the number of cases entitled to receive legal aid and negatively affect a large proportion of legal aid service providers. The majority of legal aid providers are small firms therefore, when comparing to the legal services population as whole, small legal aid providers are likely to be disproportionately affected by the proposed reforms. However, if the impact of the proposal on small legal aid providers is compared to the legal aid service provider population only, then small firms are unlikely to be disproportionately affected.
35. Overall, due to the dominance of small legal services providers in the legal aid market, a large number of small legal aid service providers are likely to be negatively impacted by this proposal.

### *Carbon Assessment*

36. We do not consider that there will be any significant change in Greenhouse Gas emissions as a consequence of this proposal. The proposals may lead to clients having to travel further for legal assistance, although this is dependent upon the impact on the number and range of providers which is subject to uncertainty.

### *Other Environment*

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

### *Health Impact Assessment*

38. Clients who no longer receive legal aid might potentially experience a negative impact on their health. This may stem from the outcomes of disputes being different and this having an adverse impact on health due to the subject matter of the dispute, e.g. housing, employment or education. More broadly there may be health implications for clients from the financial implications of these proposals, and also from other implications e.g. of people representing themselves in court.

### *Human Rights*

39. The proposals in this IA have been subjected to a Human Rights screening to ensure they are compliant with the Human Rights Act.

### *Justice Impact Test*

40. The overall impact on the justice system is outlined in the evidence base of this Impact Assessment.

### *Rural Proofing*

41. Approximately 10% of legal aid clients with location data are from rural areas and 90% are from urban areas. It is not possible to determine precisely which cases might not be funded in future as we do not have all the appropriate data. As such, it is not possible to determine whether the cases assumed to no longer be funded would impact on clients in either rural or urban areas. However, there is a risk that the proposals will negatively impact upon clients living in rural areas.
42. From the providers which could be matched against their geographical location, LSC data indicates that around 94% are based in urban areas and around 6% in rural areas. An initial assessment suggests that the proposals could lead to around a 39% decrease in income from legal aid for providers in rural areas and to around a 37% decrease in income urban areas.
43. This impact on the rural providers might result in providers either leaving the market if they are not able to find alternative sources of revenue or moving their businesses out of rural communities. This might have implications for the ease with which people in rural areas might access legal services in future.

### *Sustainable Development*

44. The proposed scope reforms set out in this Impact Assessment are consistent with the principles of sustainable development. In particular, the proposals on scope lead to a sustainable economy and a just society. They are designed to ensure only the highest priority cases are provided with public funds, therefore discouraging excessive litigation.

## Annex 1: Post Implementation Review (PIR) Plan

**Basis of the review:**

It is intended to review each policy between three and five years after the implementation date. The review will form part of a wider review of the entire package of Legal Aid Reform policies implemented following the June 2011 Consultation Response on the Legal Aid Reforms.

**Review objective:**

To ascertain whether the categories removed from the scope of legal aid produce the savings estimated in this IA.

**Review approach and rationale:**

The intention is to monitor and review the impact of the proposals on all affected groups outlined in the Impact Assessment, and Equalities Impact Assessment. This is likely to involve the collation of existing administrative data from a variety of sources, including the LSC, HMCTS and providers. We have identified a number of areas where there are limitations in the administrative data and we will explore the feasibility improving data coverage and quality in the medium and longer term. We will complement use of administrative data with bespoke research exercises where appropriate. For example, the MoJ is planning to conduct a new study of legal aid clients to provide additional information on a range of client characteristics, including protected characteristics and income and capital to inform our review of the implementation of these reforms. We are also working with the Legal Services Board (LSB) with a view to possible further research on providers.

**Baseline:**

All scope policies will be assessed against a 2009/10 baseline for LSC expenditure and volumes data. All scope costs and savings figures in this IA are based upon this baseline.

**Success criteria:**

Whether the objectives of the reforms outlined in the IAs and in the Consultation Response document have been met.

**Monitoring information arrangements:**

It is intended to make use of the data LSC systems routinely collect in addition to existing administrative data sources, including HMCTS and providers. As set out above we will explore the feasibility of addressing some of the known limitations of the existing data.

**Reasons for not planning a PIR:**

N/A

## Annex 2: Summary of Current and Proposed Positions

*All decisions are subject to the effects of other areas of law/proceedings, including those on eligibility. They are also subject to Parliamentary debate under the Legal Aid and Sentencing Bill.*

*All the types of case and proceeding which are currently excluded from the scope of the current legal aid scheme will remain out of scope.*

45. *The Government also intends to replace the current exceptional funding scheme with a new scheme to provide legal aid for excluded cases where the Government is satisfied that the provision of some level of legal aid is necessary for the United Kingdom to meet its domestic and international legal obligations, including those under the European Convention on Human Rights (and, in particular, article 2 and article 6), or where there is a significant wider public interest in funding legal representation for inquest cases. It is not intended that this funding will generally be available except where it can be demonstrated that it is necessary to discharge those obligations, or where we are satisfied that the relevant test for legal representation has been met in inquest cases.*

### **Table 1: Summary of cases and proceedings remaining in scope, and to be removed from scope.**

1. The following cases and proceedings remain in the scope of legal aid:

- i) asylum;
- ii) asylum support where accommodation is claimed;
- iii) claims against public authorities (other than judicial review and other similar remedies), concerning a significant breach of human rights, or an abuse of position or power;
- iv) claims arising from allegations of abuse and sexual assault;
- v) community care;
- vi) debt (where the client's home is at immediate risk), including involuntary bankruptcy and orders for sale of the home;
- vii) domestic violence and forced marriage proceedings;
- viii) family mediation;
- ix) housing matters where the home is at immediate risk (excluding those who are "squatting"), homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the county court;
- x) immigration detention;
- xi) appeals to the Special Immigration Appeals Commission
- xii) international child abduction (including orders both to recover a child and those to prevent international abduction);
- xiii) international family maintenance;

- xiv)** mental health, including mental capacity issues currently in scope;
- xv)** Special Educational Needs cases (currently within scope)
- xvi)** private family law cases involving domestic violence and private law children cases involving child abuse;
- xvii)** public law cases (judicial review and other similar remedies) other than representative actions and certain immigration and asylum judicial reviews);
- xviii)** public law children cases;
- xix)** registration and enforcement of judgments under European Union legislation;
- xx)** representation of children in rule 16.2 (and 16.6) private law children cases;
- xxi)** miscellaneous proceedings: confiscation proceedings, injunctions concerning gang related violence, Independent Safeguarding Authority Appeals (care standards), Legal Help at Inquests, proceedings under the Protection from Harassment Act 1997, and quasi criminal proceedings;
- xxii)** discrimination cases that are currently within scope (claims relating to a contravention of the Equality Act 2010);
- xxiii)** environmental cases;
- xxiv)** European Union cross border cases; and
- xxv)** appeals to the Court of Appeal and Supreme Court, and references to the European Court of Justice, where the area of law to which the appeal relates remains in scope).

2. The following cases and proceedings will be removed from the scope of legal aid:

- i)** asylum support (except where accommodation is claimed);
- ii)** clinical negligence;
- iii)** consumer and general contract;
- iv)** criminal Injuries Compensation Authority cases;
- v)** debt, except in cases where there is an immediate risk to the home;
- vi)** employment cases;

- vii)** education cases, except for cases of Special Educational Needs;
- viii)** housing matters, except those where the home is at immediate risk (excluding those who are “squatting”), homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the county court;
- ix)** immigration cases (non-detention);
- x)** miscellaneous (specified matters): appeals to the Upper Tribunal from the General Regulatory Chamber of the First- tier Tribunal, cash forfeiture actions under the Proceeds of Crime Act 2002, legal advice in relation to a change of name, actions relating to contentious probate or land law, court actions concerning personal data, action under section 14 of the Trusts of Land and Appointment of Trustees Act 1996, and legal advice on will-making for (i) those over 70 (ii) disabled people (ii) the parent of a disabled person and (iv) the parent of a minor who is living with the client, but not with the other parent, and the client wishes to appoint a guardian for the minor in a will;
- xi)** private family law (other than cases where domestic violence or child abuse is present);
- xii)** tort and other general claims, and
- xiii)** welfare benefits.

In addition:

- o the rule bringing back into scope any case of wider public interest will be abolished.

