

EXPLANATORY MEMORANDUM TO

Legal Aid (General) (Amendment) Regulations (Northern Ireland) 2012

SR 2012 No. 391

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 12(5), 22 and 27 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and is subject to the negative resolution procedure.
- 1.3 The Regulations narrow the exemptions from Statutory Charges and make miscellaneous changes to the Legal Aid Regulations. The Explanatory Memorandum deals with these separately.

Statutory Charges

2. Purpose

The Regulations narrow the exemptions from Statutory Charge to recover costs from those receiving legal aid. This applies mainly to ancillary relief proceedings which deal with financial provision and property linked to matrimonial and divorce proceedings. The changes extend the Statutory Charge to cases where the court has: awarded the legally aided applicant lump sums of cash or property; or where the applicant retains and continues to live in the family home.

The Regulations provide for a £3,000 threshold below which the Statutory Charge will not apply in certain family and matrimonial proceedings.

3. Background

The Statutory Charge is a long standing principle of legal aid arising in proceedings where a legally aided person has kept or gained money, property or damages, and where their legal costs are not fully met by the assisted party's own contribution and/or by the opponent. In cases where the statutory charge applies, legal aid acts as a loan to fund access to legal advice and representation and subsequently recovering these costs from property or damages secured or preserved as a result of the proceedings.

The application of the Statutory Charge provides the Legal Services Commission, which funds legal aid, with a revenue stream which the

Commission is allowed to keep and use for funding future cases. It also enforces the ability to pay principle thereby targeting limited resources on those in greatest need. The Statutory Charge also encourages the legally assisted person to view their case in the same way a private paying client would view funding as if they were paying their own costs.

4. Consultation

The Legal Services Commission ran a consultation on the proposed changes to the Statutory Charge from the 16 March 2010 to the 30 June 2010¹. The Commission received 13 responses of which 7 were substantive responses from the Bar Council, Condicto Solicitors for Children, Law Society of Northern Ireland, Legal Services Commission England and Wales, Women's Aid, Belfast Solicitors Association and the Lord Chief Justice's Office.

Most respondents were concerned that deleting the lump sum exemption in maintenance cases, while retaining an exemption for periodical payments, will act as a disincentive for a "clean break" in divorce settlements. The Legal Services Commission considered the responses and in order to mitigate against such circumstances proposed to introduce a £3000 threshold below which the statutory charge will not apply.

5. Equality Impact

The Legal Service Commission completed an Equality Impact Assessment (EQIA) which was published on the Commission's website at the same time. The EQIA identified a number of groups as being potentially differentially impacted by the proposed reforms based on the likelihood that more people from these groups will be required to repay their legal aid costs as a result of the proposals than is presently the case. These are people aged between 35-59 years, divorced/divorcing and separating people, women, and those with dependents and lone parents. The potential differential impacts of reform will depend partly on the patterns of expenditure of funds recovered by the Statutory Charge.

A number of actions to mitigate potential adverse impacts arising from the proposals are also outlined in the EQIA.

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6. Regulatory Impact

An initial Regulatory Impact Assessment has also been completed and is on the Commission's website for consultation along with the other documents.

The economic benefit is that public money which is required to provide access to justice for those who need it most, and which would otherwise be lost to the legal aid fund, can be recycled and re-directed towards other areas of unmet legal need, and other priority areas of funding.

The Legal Services Commission has also obtained an economic appraisal of the effect of the proposed reforms which indicates that savings and income for the legal aid fund will exceed the cost to the Commission of administering the proposed reforms to the Statutory Charge.

7. Financial Implications

It is expected that there will be modest savings based on higher recovery of costs by the Commission.

8. Section 24 of the Northern Ireland Act 1998

The proposal is considered to be compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

There are no EU implications.

10. Parity or Replicatory Measure

A statutory charge system exists within the legal aid schemes for England and Wales, Scotland and the Republic of Ireland.

11. Additional Information

Not applicable.

Miscellaneous Changes to the Legal Aid Regulations

12. Purpose

Regulations 7 and 8 remove two obsolete references to the former procedure whereby costs in equity cases in the County Court could be taxed.

13. Operational Date

It is proposed that the Regulations will come into operation on 10 December 2010.



NORTHERN IRELAND
**Legal Services
Commission**

**EQUALITY IMPACT ASSESSMENT
Consultation Document
Statutory Charge Reform Proposals
March 2010**

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1. INTRODUCTION

This document presents the findings of a draft Equality Impact Assessment (EQIA) on the Northern Ireland Legal Services Commission (NILSC) proposal to amend the statutory charge provisions contained in Regulation 17(9) of the Legal Aid (General) (Northern Ireland) Regulations 1965.

This draft EQIA should be read in conjunction with the consultation paper on the proposed reforms which is also available on the NILSC website.

1.1 Background

Section 75 of the Northern Ireland Act 1998 aims to ensure that equality considerations and practice are mainstreamed into the work of public authorities by ensuring “*the integration of equal opportunities principles, strategies and practices into the everyday work of Government and other public bodies from the outset*”.

The purpose of this EQIA is to determine whether there is likely to be any differential impact arising from the policy between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependants and persons without. The EQIA also considers mitigating measures or alternative policies to better achieve the promotion of equality of opportunity.

This draft EQIA includes the following stages as required by the Equality Commissions “*Practical Guidance on Equality Impact Assessment*”:

- definition of policy aims and objectives;
- consideration of available data and research;
- assessment of impacts including details of the outcome of the assessment highlighting if an adverse impact has been identified; and
- details of any consideration given to mitigate any adverse impact of the policy on the promotion of equality of opportunity or to alternative policies which might better achieve the promotion of equality of opportunity.

1.2 Equality Impact Assessment Methodology

The methodology for this stage of the EQIA included:

- desk research and interviews with key internal stakeholders;
- pre-consultation meetings held in May and June 2008;
- review of relevant qualitative and quantitative data to inform an assessment of the impact of the statutory charge amendments on different Section 75 groups; and
- development of this draft EQIA to provide an opportunity for formal consultation with interested individuals, groups and organisations.

1.3 Formal Consultation

This document has been developed to provide a platform for consultation with interested parties in line with the requirements under Section 75 of the Northern Ireland Act. Further details of the consultation can be found at Section 8 below.

1.4 Report Structure

The remainder of this document is set out as follows:

- Section 2** Background and Context;
- Section 3** Definition of Policy Aims and Objectives;
- Section 4** Pre – Consultation;
- Section 5** Consideration of Available Data and Research;
- Section 6** Assessment of Impacts;
- Section 7** Mitigation of Impacts; and
- Section 8** Formal Consultation.

2. BACKGROUND AND CONTEXT

This section seeks to briefly provide the context for this EQIA. It should be noted that the statutory charge amendment consultation document, which this EQIA accompanies, contains fuller details on the proposed policy and context. The EQIA should be read in conjunction with the consultation document.

2.1 Northern Ireland Legal Services Commission Background

The mission of NILSC is to promote fair and equal access to justice and to help promote social inclusion in the provision of publicly funded legal services in Northern Ireland. NILSC aims to provide high quality, customer focused services that target those in greatest need and demonstrate value for money. In pursuit of this aim, the 2004-07 Corporate Plan identified two main objectives:

- to improve the delivery of existing legal aid services; and
- to reform publicly funded legal services.

NILSC is taking forward a reform agenda to fully implement the Access to Justice Order 2003. Key elements include the development of a Northern Ireland Funding Code for making decisions about grants of civil legal aid, provision for standard fees and the revision of financial eligibility criteria. The reforms are intended to enable civil legal services to operate within a controlled budget and to ensure that the limited available resources can be directed to cases where need is greatest.

2.2 Existing Delivery of Legal Aid in Northern Ireland

Legal Aid in Northern Ireland is awarded for either civil or criminal proceedings. NILSC is responsible for the award of civil legal aid. The Northern Ireland Court Service retains responsibility for the award of criminal legal aid. Under the existing arrangements, there are three main types of civil legal aid. These are:

- **Legal Advice and Assistance** - The Legal Advice and Assistance Scheme, also known as the “*green form scheme*” provides for a solicitor to give advice and assistance for general legal problems up to a prescribed financial limit;

- **Assistance by way of Representation** - Assistance by way of representation (ABWOR) provides for a solicitor to give advice and assistance for legal problems and to provide representation for most civil matters in Magistrates' courts; and
- **Civil Legal Aid** – A civil aid certificate provides for representation by a solicitor (or a barrister) in most proceedings in the civil courts for those who have reasonable grounds for taking, defending or being a party to proceedings.

2.3 Background to the Statutory Charge

Where someone keeps or gains property or money as a result of legal aid funding, NILSC has a legal obligation to recoup its expenditure, subject to certain specified exemptions. Therefore, if costs are not recovered from the other side or wholly met by the legally assisted person, through any contributions, the assisted person may be required to pay their legal costs out of money or property recovered or preserved with the help of legal aid. The procedure for recouping legal aid funds in this way is called the statutory charge. The statutory charge can apply in cases where a settlement is reached, whether before, during or as a result of any proceedings.

2.4 Purpose of Statutory Charge

There are three main elements to the rationale for the statutory charge in civil legal aid. These are:

- to ensure that legally-aided clients contribute towards the cost of funding their cases so far as they are able;
- to place the person whose case is being funded by legal aid in the same position as a person who is paying their solicitor privately ('private client realism'); and
- to help in deterring people from running up unnecessary legal costs.

At the conclusion of a case, if a person keeps or gains property or money with the help of legal aid funding, they may then be in a position to meet, or contribute towards, the costs of the legal services required to vindicate their claim, where these have not been recovered from opponents or already paid by the assisted person by way of contributions.

2.5 Changes to the Operation of the Statutory Charge

As part of the ongoing reform in the delivery of public legal services under the Access to Justice (Northern Ireland) Order 2003, NILSC is currently developing new regulations to replace the existing Legal Aid (General) (Northern Ireland) Regulations 1965.

2.6 Proposed Amendments to Regulation 17(9)

Under Regulation 17(9)(a) of the 1965 Regulations, there are exemptions from the statutory charge which extend to the recovery or preservation of monies under a number of legislative provisions. This EQIA relates to a range of amendments that NILSC intends to introduce to the 1965 Regulations which, overall, will have the effect of narrowing the scope of the exemptions from the statutory charge.

The aim of these amendments is to help to bring the existing statutory charge regulations into line with the proposed reformed regulations under the Access to Justice (Northern Ireland) Order 2003 (Phase 3); and to bring greater focus on the cost of litigation, and deliver savings and revenue streams to the legal aid fund. The proposals will also help to bring consistency in policy, and standardise the application of the charge in Northern Ireland with the way it is applied in England and Wales, and in Scotland.

The overall effect of these amendments will be to allow money to be recouped in a wider range of cases; in particular matrimonial cases as the operation of statutory charge will be extended to include lump sum payments of money recovered in ancillary relief proceedings. The recouped money will be re-directed towards other areas of priority spending, with the aim of improving access to justice and the extent to which social need is targeted in the delivery of civil legal aid.

The statutory charge is a long standing principle of legal aid, arising in proceedings where a legally aided person has kept or gained money, property, damages or compensation, and where their legal costs are not fully met by the assisted party's own contribution and/or by the other side. In cases where the statutory charge applies, legal aid can act as a loan rather than a gift, by funding access to legal advice and representation and subsequently recouping these costs from property, damages or compensation secured or preserved as a result of the proceedings.

As previously outlined, monies recovered in certain types of proceedings are exempt from the statutory charge under existing regulations.

Compared with England, Wales and Scotland, the range of exemptions from the statutory charge are currently much wider in scope in Northern Ireland. This is particularly the case in relation to matrimonial proceedings where more legally aided persons who have kept or gained money or property, benefit from a statutory charge exemption in Northern Ireland.

The proposed changes to the statutory charge will particularly affect legally aided parties in matrimonial settlements which include a financial settlement, often with no order as to costs.

2.7 New Amendments to the Exemptions from the Statutory Charge

The overall effect of the proposed amendments will be that the statutory charge is applied more often, particularly in cases relating to financial provision on divorce. There are, however, some further amendments that will extend the scope of the statutory exemptions to include some items which are currently subject to the charge. These are detailed in full in the accompanying consultation document

The Commission intend to introduce an exemption threshold to mitigate the potential impact of the proposals. It is proposed that the first £3000 of property money or compensation recovered in a case would be exempt from the statutory charge.

2.8 Interpretation and Accessibility Costs

The Commission proposes that accessibility costs such as language and disability interpreters will be exempt from the statutory charge under future reform

2.9 Recovery of Legal Aid Assistance in Cases Involving Property

If the situation arises where a home is recovered in situations where the statutory Charge applies, the assisted person is given the option to pay the amount of the statutory charge by means of a monthly payment plan. If this is not possible the assisted person is asked if they will consent to a charge being recorded on their property with the land registry. If the assisted person does not agree to such a charge the Commission may pursue an “Order Charging Land” being placed on the property and enforced via the Enforcement of Judgements Office.

2.10 Information for Legally Aided Persons

NILSC intend to provide much more comprehensive information on the statutory charge, than has previously been the case. Civil application forms will be amended to include an information leaflet “*Paying for your legal aid – the statutory charge*”. The leaflet explains in plain language the principles behind the charge and how the Commission seeks to enforce it.

It will remain the duty of the legal adviser to warn a client of the potential impact of the statutory charge as their case develops, and to warn them that legal aid may need to be repaid from any money or property which they gain or keep. This is in line with regulation 4(2)(c) of the Law Society’s “*Solicitors (Client Communication) Practice Regulations 2008*” which state: “*If the client is being provided with advice and assistance or assistance under legal aid or civil legal services the solicitor shall provide: (c) details of any payment which may be required from damages or property recovered or preserved*”.

2.11 Scope of Equality Impact Assessment

This EQIA considers the equality impacts on the nine Section 75 groups of the proposed reforms with a particular focus on the proposal to end the practice of treating lump sum payments of money recovered in matrimonial proceedings as exempt from the statutory charge.

3. POLICY AIMS AND OBJECTIVES

The purpose of this section is to summarise the policy aims of the proposed statutory charge arrangements in line with the format detailed in the Equality Commission's guidance.

3.1 Aim

The proposals aim to improve control and predictability in respect of civil legal services expenditure in Northern Ireland. The intended effects of the policy include encouraging clients to consider private funding options which should ensure that clients behave reasonably and do not incur excessive legal costs. The statutory charge is consistent with the principle of ensuring that people pay what they can reasonably afford towards the cost of their case and seek to achieve the most economical way of resolving their dispute.

The statutory charge will allow money that is recouped to be directed towards priority areas and thus improve access to justice and the extent to which social need is targeted in the delivery of civil legal aid.

3.2 Summary of Policy

Table 3A

Summary of Aims and Objectives – statutory charge Reform

<i>What is the policy?</i>	Reform of the statutory charge
<i>What are the aims, and objectives of the policy?</i>	<p>The proposals aim to improve control and predictability in respect of civil legal services expenditure in Northern Ireland and will allow money that is recouped to be directed towards priority areas and thus improve access to justice and the extent to which social need is targeted in the delivery of civil legal aid.</p> <p>The statutory charge rationale has three elements. These are:</p> <ul style="list-style-type: none"> ▪ to ensure that legally-aided clients contribute towards the cost of funding their cases so far as they are able; ▪ to place the person whose case is being funded by legal aid in the same position as a person who is paying their solicitor privately ('private client realism'); and ▪ to help in deterring people from running up unnecessary legal costs.
<i>What outcomes do NILSC want to achieve with the policy? For whom?</i>	To ensure that clients funded by legal aid approach decisions about proceedings with "private client realism" and that limited legal aid resources provide best value for money and are targeted towards those most in need.
<i>How do the policy aims meet or hinder other policies, values or objectives of NILSC or of Government?</i>	These outcomes are consistent with the mission of NILSC to promote fair and equal access to justice in Northern Ireland and the aim of NILSC to promote high quality, customer focused services that target those in greatest need and

	<p>demonstrate value for money. The policy is consistent with the concept of best value as it aims to ensure that public funds are spent effectively.</p>
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Table 3A Contd.

Summary of Aims and Objectives Contd. – Statutory Charge Reform

<p><i>Who implements the policy and does the public authority interface with other bodies in relation to the implementation of this policy?</i></p>	<p>NILSC implements the policy. There are also a number of connected stakeholders, detailed below. Key stakeholders in relation to this policy area include the general public, people who are eligible for and receive legal aid, people involved in proceedings where either party is funded by civil legal aid, members of the legal professions, and community and voluntary sector organisations.</p>
<p><i>What factors/forces could contribute/ detract from the policy aims?</i></p>	<p>Any factor which negatively influences the promotion of fair and equal access to justice would detract from the proposed outcomes</p>
<p><i>Are there any associated policies?</i></p>	<p>NILSC are also taking forward reforms in other areas including the development of a Funding Code for civil legal services; revised financial eligibility criteria and the development of a registration scheme for legal professionals</p>
<p><i>Are there any groups that might be expected to benefit from the intended outcomes but do not?</i></p>	<p>It is not expected that there will be any groups expected to benefit that do not. However, it is envisaged that any post implementation monitoring would seek to monitor and evaluate this.</p>

4. PRE – CONSULTATION

4.1 Introduction

Pre-consultation meetings were held with representatives of a number of organisations in May and June 2008 regarding reform of the statutory charge. This section summarises the findings a number of issues raised through these meetings.

4.2 Purpose of Pre-Consultation

The pre-consultation sought to provide an initial opportunity for discussion with a small number of stakeholders, identify any issues and potential differential impacts arising from the proposals and identify any further sources of available data.

The pre-consultation feedback has been used to inform the remainder of the draft EQIA and the assessment of impacts in particular. The views expressed through the pre-consultation will also be used in reaching decisions on future policy, in developing monitoring arrangements and will also be reflected in the final EQIA document. They are also reflected in this section to stimulate discussion and consultation feedback about the issues raised.

4.3 Summary of Pre - Consultation Issues

This section summarises the main issues raised through the pre-consultation:

4.3.1 General Issues

A number of pre-consultees commented on the effect that the proposals would have on the principle of legal aid as a means of ensuring access to justice. One consultee suggested “*if legal aid is a loan then justice becomes a loan*”. Another consultee suggested that the proposals effectively mean that “*there is no such thing as legal aid*” in affected cases and concern was expressed that for some people reforms may mean that they do not pursue proceedings because of the costs involved.

The proposals were welcomed by one consultee as a way of avoiding legally aided party “*dragging things out*” in order to try and get a privately funded party to agree to a settlement. It was suggested that the statutory charge should disincentivise such behaviour.

It was suggested that problems with misuse of the legal aid system have been overstated and that legal professionals provide a safeguard to make sure that this doesn't happen.

In response to the proposed reforms, it was suggested that legally aided people would seek to pass the charges on to the other party which could increase acrimony. Rather than reducing the likelihood of protracted proceedings it was suggested that the proposals could result in a "*splinter effect*" reducing the likelihood of out of court settlements and pushing more people towards court as they would seek to recoup costs from the other side.

4.3.2 Mediation / Collaborative Law

The majority of consultees suggested that it is important that the proposals are accompanied by the creation of an environment that supports alternatives to contested actions such as mediation and collaborative law. It was further suggested that these options are insufficiently resourced at the moment.

Some consultees expressed support for the proposals providing that mediation or collaborative law options are accessible to mitigate any potential adverse impacts arising from the proposals on the basis that "*it is right that people should pay back if they are able as it makes things fair and equitable*".

4.3.3 Need for Information and Clarity

The complexity of the proposals and the need for clarity of information on the practical impact of the proposals to clients was underlined by consultees. Concern was expressed that people may not understand the impact of the statutory charge until costs have been incurred and it was suggested that clear, straightforward and practical information for legal professionals, community and voluntary sector and members of the public is essential to mitigate any potential adverse impacts arising from the policy. Case studies were suggested as a means of practically illustrating the changes.

Consultees suggested that attention should be focused on clarifying the following areas:

- whether there are alternatives to using a solicitor for divorce cases to reduce costs;
- how the statutory charge will apply if someone wants / needs to downsize to another property from one subject to the statutory charge;
- whether and how the statutory charge will apply to deferred assets such as pensions; and
- whether there is a time limit after which the charge expires and clarification on what would happen at that point as there could be an incentive to avoid paying the charge until time limit was up.

These issues have been considered by NILSC within Section 7 of this EQIA below.

4.3.4 Impact on Specific Section 75 Groups

People with Disabilities

Consultees noted that people with a disability could be adversely affected by the proposals if the statutory charge were applied to a home that has been specially adapted to meet their needs. It was suggested that consideration should be given to exempting these from the statutory charge.

It was noted that people with disabilities (and those caring for a disabled person) incur greater costs than people without and suggested that disability benefits do not fully cover the costs faced by someone with a disability. It was also noted that people with a physical and/or learning disability are more likely than others to rely on benefits and, therefore, more likely to rely on legal aid and consequently may be more affected by the proposals.

The application of the statutory charge to compensation payments was queried as it was suggested that the application of costs to such amounts could leave people with insufficient funds to meet their future care and living needs.

In cases where legal costs included accessibility costs such as interpretation, clarification was sought on who would pay for these and whether they would be included in the calculation of costs for the purposes of the statutory charge. It was suggested that such accessibility costs should be exempted as a reasonable adjustment.

Women

A majority of consultees noted that women are more likely to be legally aided than men in connection with divorce or family proceedings and would therefore be more likely to be affected by the proposals. It was also noted that often the woman retains the matrimonial home especially where there are children but that this is often to provide for the housing needs of the children.

Two alternative views were offered by consultees on the effect the proposals would have on the promotion of equality of opportunity between man and women. These are:

- the proposals will adversely affect women by removing the entitlement to legal aid and consideration needs to be given to how such impact is mitigated; or
- the proposals will promote equality of opportunity between men and women as the current system is unfair and places the legally aided party in a much stronger position than a privately paying client.

People Affected by Domestic Violence

While victims of domestic violence can be male or female (the 2001/2002 British Crime Survey found that 19 per cent of domestic violence victims were men), women are most often the victims of domestic violence, linking to the “*men and women*” Section 75 group.

Particular concern was expressed about the impact of the proposals on people who have been affected by domestic violence and that they might discourage them from pursuing divorce or other proceedings. It was also suggested that the need to negotiate about costs could inflame already difficult relationships.

People with Dependants

It was suggested that the proposals would cause increased potential for family conflict which will affect children in particular and that costs issues would add to acrimony impacting on the overall welfare of children and family.

It was further suggested by consultees that an allowance should be made for people with dependants as the proposals may affect them more in cases where the family home is retained to meet the housing needs of the children.

5. AVAILABLE DATA AND RESEARCH

This section presents data from a range of sources to assess the likely impact of the proposed statutory charge reforms on people from the nine categories.

Information Sources

A range of data was collected for the purposes of the draft EQIA. Table 5.1 overleaf details the main data sources which have been used to inform this EQIA.

Table 5.1
Summary Review of Information Sources

Source	Data
www.ark.ac.uk	2005 Local Government Election Results (2005)
Concordia Partnership	Migrant Workers in Northern Ireland (2007)
NISRA	NI Census Data (2001)
NILSC	Financial, Economic and Policy Appraisal of Reforming the Application of the statutory charge in Northern Ireland conducted by Dr Tony Dignan (Economic Research and Evaluation) on behalf of Northern Ireland Legal Services Commission
NILSC	NI Legal Needs Survey (2006) designed, managed and analysed on behalf of NILSC by Dr Tony Dignan (Economic Research and Evaluation). The survey field-work was conducted by the Northern Ireland Statistics and Research Agency. Available at www.nilsc.org.uk
NILSC	Northern Ireland Legal Aid Model 2006, constructed on behalf of NILSC by Dr Tony Dignan (Economic Research and Evaluation), to assess existing patterns of civil legal aid financial eligibility and the likely impacts of reform. Available from www.nilsc.org.uk
OFMDFM	Lifetime Opportunities – Governments Anti poverty and Social Inclusion Strategy for Northern Ireland (2007)

5.1 General Data

In 2005-2009, 6613 legally aided matrimonial reports were paid. Of these 2,045 (31 per cent) were recorded as resulting in money or property being recovered and treated as exempt from the statutory charge under existing regulations. The majority of these would be likely to be subject to the statutory charge under the proposed reforms.

A Financial, economic and policy appraisal of Reforming the Application of the statutory charge in Northern Ireland was undertaken on behalf of NILSC. The findings suggest that removing the exemptions on matrimonial cases could potentially yield an annual payments stream of £1.4-£1.8 million beyond what currently accrues from the charge.

5.2 Religion

According to the 2001 Northern Ireland Census, 40 per cent of the Northern Ireland population are Roman Catholic and 46 per cent are Protestant (Methodist, Presbyterian, Church of Ireland and other Christian religions).

Table 5.2 below details existing levels of eligibility for Civil Legal Aid by religion based on data collected for the Northern Ireland Legal Aid Model (NILAM) research which informed the development of the NILSC revised Financial Eligibility Criteria.

This research found that 50 per cent of adult Catholics were eligible for full or partial legal aid, compared to 40 per cent of Protestants. The difference is almost entirely due to the higher receipt of passport benefits amongst Catholics (twenty per cent) than for Protestants (twelve per cent).

The NI Legal Needs Survey found no significant difference between the proportion of Catholics (34 per cent of respondents) and Protestants (35 per cent of respondents) experiencing one or more legal problems in the previous three years. There were also no differences between these two groups in relation to the likelihood of experiencing family or divorce legal problems

The Strategic Equality Impact Assessment for Lifetime Opportunities, the Northern Ireland Governments anti-poverty and social inclusion strategy for Northern Ireland found that there is a greater risk of poverty for Roman Catholics than Protestants and for children in Roman Catholic households due to larger family sizes and higher risk of poverty than the population as a whole.

5.3 Political Opinion

In the 2005 Local Government elections, the five main political parties: In Northern Ireland (DUP, Sinn Fein, Ulster Unionist Party, Social Democratic and Labour Party and Alliance parties) received 90 per cent of the first preference votes cast. The DUP was the largest political party with 30 per cent of the votes and Sinn Fein second largest with 23 per cent. The UUP and SDLP had 18 and 17 per cent of the first preference votes cast respectively and the Alliance Party 5 per cent.

Analysis of the responses to the NI Legal Needs Survey showed no significant differences in respect of the number or type of legal problems experienced by people of different political opinion over the last three years.

The Strategic Equality Impact Assessment for Lifetime Opportunities found that there is a greater risk of poverty for nationalists and those not stating a political preference.

5.4 Racial Group

According to the 2001 Census, less than 1 per cent of the Northern Ireland population (14,279 people) are from a black or minority ethnic community. Due to recent migration and undercounting, it is suggested that around 45,000 or 2.5 per cent of the population would be a more accurate estimate of the Northern Ireland BME population¹.

Data collected for the NILAM research, show that that 50 per cent of adults describing themselves as Irish are eligible for legal aid, compared to 40 per cent of those describing themselves as Northern Irish and 42 per cent of those describing themselves as British and 33 per cent of those describing their National Identity as ‘other’.

The Strategic Equality Impact Assessment for Lifetime Opportunities found that ethnic minorities are at high risk of poverty and that Irish Travellers have high levels of multiple disadvantage. It also found that children in ethnic minority or traveller households were at increased risk of poverty.

5.5 Age

Almost one quarter (24 per cent) of the Northern Ireland population is under the age of sixteen. A total of 29 per cent of the population is

¹ “*Changing Ireland?*” National Consultative Committee on Racism and Interculturalism and the Equality Commission

between the ages of 25 and 44 and a further 13 per cent over the age of 65. Those between the ages of 16 and 24 account for 13 per cent of the population, between 45 and 54, 12 per cent and between 55 and 64, 10 per cent.

Table 5.2 overleaf details existing levels of eligibility for Civil Legal Aid by age group based on data collected for the NILAM research.

Table 5.2
Civil Legal Aid Eligibility: Profile by Age

	Passport	Full	Partial	Ineligible
16-19	15	41	35	8
20-29	12	13	23	53
30-44	13	5	13	69
45-59	15	5	13	66
60+	19	5	34	42
All	15	8	21	56

Source: NILAM Dec 06

Eligibility for legal aid varies sharply by age group. Eligibility is higher amongst younger adults and those in the over 60 age group and lowest amongst those aged thirty-forty.

The NI Legal Needs Survey found significant differences across age groups on the number and type of legal problems experienced. Table 5.3 below illustrates the survey findings in respect of divorce, family and all legal problems.

Table 5.3
Incidence of Legal Problems by Age Group

	18-24	25-34	35-44	45-59	60+	All
Problem Type	%	%	%	%	%	%
Divorce	0	2	4	2	0	1.6
Family	1	4	2	2	0	1.6
All with 1+ problems	39	45	45	36	18	35.5

Source: NI Legal Needs Survey (2006)

People aged between 25 and 44 experienced most problems with 45 per cent reporting at least one problem in the last three years. This compares with a figure of 39 per cent of those aged 18-24 and 36 per cent for those aged 45-59. Just 18 per cent of those over the age of 60 had experienced one or more legal problems in the last three years, the lowest proportion of any age group.

Analysis conducted on the likely impact of the statutory charge proposals on people of different ages is detailed in Table 5.4 below.

Table 5.4

Age Profile of persons likely to be affected by SC reforms

Age	Cases Where the statutory charge isn't applicable	Cases exempt from the statutory charge	All Matrimonial Cases	Population aged 18+
18-24	2.5	1.0	2.2	13.7
25-34	27.9	18.5	25.8	17.5
35-44	40.5	42.0	40.9	19.8
45-59	24.7	34.9	26.9	24.2
60+	4.4	3.7	4.2	24.9
	100	100	100	100

Sources: NILSC; NISRA (Full reports paid in divorce/nullity and maintenance/other matrimonial cases, 2002/03 to 2007/08)

This analysis attempts to illustrate the likely impact of the statutory charge by looking at the profile of legal assisted persons in matrimonial cases that are currently exempt from the statutory charge but would be affected by these proposals.

People aged 45-59 comprise 27 per cent of all matrimonial cases but 35 per cent of those presently exempted from the statutory charge. It is likely therefore that this group will experience a proportionately greater effect from the proposals than other age groups. Of the population aged over the age of 18, the proposals would most heavily impact those in the 35-44 and 45-59 age brackets as these age groups account for 77 per cent of those presently exempted. If the 25-34 age group is included, this figure rises to 95 per cent.

The Strategic Equality Impact Assessment for Lifetime Opportunities found that younger people with children have a higher risk of poverty.

5.6 Marital Status

According to the 2001 Northern Ireland Census 49 per cent of the population are married and a further 33 per cent are single (have never married). 8 per cent are widowed, 4 per cent each, divorced and separated and 3 per cent remarried.

The findings of the NI Legal Needs Survey by marital status are summarised in Table 5.5 below.

Table 5.5
Incidence of Legal Problems by Marital Status

	Single	Married	Separated	Divorced	Widowed	All
Problem Type	%	%	%	%	%	%
Divorce	0	0	14	23	0	1.6
Family	2	0	10	11	0	1.6
All with 1+ problems	38	35	45	58	15	35.5

Source: NI Legal Needs Survey (2006)

Separated and divorced people were most likely to have experienced a legal problem (45 and 58 per cent respectively). People in these groups were much more likely to have experienced divorce and legal family problems than other groups. Given that the likely impact of the proposed reforms will be most significant in relation to matrimonial cases, it is expected that separated and divorced/divorcing people may be particularly affected,

The Strategic Equality Impact Assessment for Lifetime Opportunities found that divorced, single and separated people with children were at heightened risk of poverty due to the association with lone parenthood and high risk of poverty and because family breakdown is an indicator of future financial hardship.

5.7 Sexual Orientation

Insufficient data exists to assess the impact of the proposed reforms in relation to sexual orientation. The statutory charge applies to legal aid for proceedings regarding civil partnerships. The NILSC welcomes any feedback on how the proposals will impact people in relation to sexual orientation.

5.8 Gender

Northern Ireland Census data indicates that 51 per cent of the population is female and 49 per cent male.

Table 5.6 below details existing levels of eligibility for Civil Legal Aid by gender based on data collected for the NILAM research.

Table 5.6
Civil Legal Aid Eligibility by Gender

	Passport	Full	Partial	Ineligible
Men	13	8	20	59
Women	17	8	22	53
All adults	15	18	21	56

Source: NILAM Dec 06

Higher proportions of women are eligible (47 per cent) than men (41 per cent). The Legal Needs survey found that men reported a higher incidence of problems than women although not a statistically significant difference.

Analysis conducted on the likely impact of the statutory charge proposals on men and women is detailed in Table 5.7 overleaf.

Table 5.7
Gender Profile of persons likely to be affected by SC reforms

Age	SC applicable	No SC Exemption Ticked	All	Population aged 18+
Male	31.1	34.2	31.8	48.2
Female	68.9	65.8	68.2	51.8

Sources: NILSC; NISRA (Full reports paid in divorce/nullity and maintenance/other matrimonial cases, 2002/03 to 2007/08)

Based on the above analysis, women account for more than two thirds of full reports in matrimonial cases. Around the same proportion of statutory charge exemptions were women (65.8 per cent), suggesting that women are likely to be more affected by the proposals than men.

The Strategic Equality Impact Assessment for Lifetime Opportunities found that women and children in households headed by single females have a higher risk of poverty.

5.9 People with Dependants and those without dependants

According to the Northern Ireland Census, 36.5 per cent of Northern Ireland households have dependant children and 41 per cent of households had at least one person with a limiting long term illness.

Table 5.8 overleaf details existing levels of eligibility for Civil Legal Aid by family type based on data collected for the NILAM research.

Table 5.8
Civil Legal Aid Eligibility by Family Type

Family type	Passport	Full	Partial	Ineligible
Pensioner couple	13	5	28	55
Pensioner single	28	6	48	18
Couple with children	8	5	13	75
Couple without children	10	3	9	78
Single with children	52	8	17	22
Single without children	17	18	27	38
All adults	15	18	21	56

Source: NILAM Dec 06 and Legal Needs Survey

Eligibility levels are highest for single pensioners and lone parents. Eligibility also tends to be slightly higher for couples with dependent children than those without.

The findings of the NI Legal Needs Survey by dependant children and elderly dependents are detailed in Table 5.9 below and 5.10 overleaf.

Table 5.9
Incidence of Legal Problems by Dependent Children

Problem Type	Couples		Single Persons	
	With Children	Without Children	With Children	Without Children
Divorce	1	1	11	2
Family	1	0	11	2
All with 1+ problems	43	36	59	37

Source: NI Legal Needs Survey (2006)

Fifty-nine per cent of single people with children had experienced one or more legal problems in the last three years compared with 37 per cent of single people without children. A smaller differential was evident in the comparison between couples with and without children, with 43 per cent of couples with children experiencing one or more legal problems compared with 36 per cent of couples without children.

Both couples and single people with children experienced more consumer and children related problems. Single people with children experienced a significantly higher incidence of divorce and family problems.

Table 5.10
Incidence of Legal Problems among those with Disabled or Elderly Dependants

Problem Type	Dependants	
	Without	With
Divorce	2	2
Family	1	3
All with 1+ problems	34	46

Source: NI Legal Needs Survey (2006)

The Survey found that 46 per cent of those with dependants experienced one or more legal problems in the last three years compared with 34 per cent of those without. More of those with elderly / disabled dependants experienced family legal problems.

The Strategic Equality Impact Assessment for Lifetime Opportunities found that people with dependants, particularly those in larger families and lone parents have higher risks of poverty than others.

5.10 People with a Disability and those without

According to the Census, of the 1,187,079 people aged between 16 and 74 in Northern Ireland, 110,787 (9.3 per cent) were permanently sick or disabled.

Table 5.11 overleaf details existing levels of eligibility for Civil Legal Aid by disability status based on data collected for the NILAM research.

Table 5.11
Civil Legal Aid: Eligibility by Disability

	Passport	Full	Partial	Ineligible
Without Disability	10	8	18	64
With Disability	31	7	29	33
All Adults	15	8	21	56

Source: NILAM Dec 06

Two in three persons with a disability are eligible for Civil Legal Aid compared to 36 per cent of those without a disability.

The findings of the NI Legal Needs Survey by disability status are detailed in Table 5.12 below.

Table 5.12
Incidence of Legal Problems Among People with Disabilities

Problem Type	Working Age		Retirement Age		All
	With disability	Without disability	With disability	Without disability	
Divorce	3	2	0	0	1.6
Family	4	2	0	0	1.6
All with 1+ problems	55	38	20	17	35.5

Source: NI Legal Needs Survey (2006)

The Survey found that people with a disability experienced more problems than people without a disability. The difference was most marked for people of working age with a disability (55 per cent compared with 38 per cent for people of the same age profile without a disability).

People of working age with a disability experienced more divorce and family problems than those without.

The Strategic Equality Impact Assessment for Lifetime Opportunities found that persons with a disability have among the highest risk of poverty.

6. ASSESSMENT OF IMPACTS

This section details the NILSC assessment of the likely impact of the proposed statutory charge reforms, based on analysis of the data and information sources detailed in Sections 4 and 5 of this report.

6.1 Introduction

The available data has been assessed to consider whether there is a differential and / or adverse impact on any of the Section 75 groups. Differential impact suggests that a group may be affected differently by the policy, while adverse impact is an indication that the effect is less favourable.

6.2 Indicators of Differential Impacts on Section 75 Groups

The data in Sections four and five has been used to assess whether there is a differential and /or adverse impacts arising on any Section 75 groups from the proposed statutory charge reforms. Possible indicators of differential / adverse impact in respect of the proposals may include:

- evidence that the changes to the statutory charge will impact specific Section 75 groups more than others through, for example, higher proportions of one group being exempt under current arrangements but not under the proposals;
- evidence of additional needs or priorities in relation to the policy; or
- evidence that the proposals pose particular problems for specific Section 75 groups.

6.3 Assessment of Differential Impacts

This section details the assessment of whether the proposals are likely to impact differentially on the following Section 75 groups based on the evidence considered.

6.3.1 Persons of Different Religious Belief

A greater proportion of adult Catholics are eligible for legal aid, compared to Protestants but no significant differences were found between the proportion of Catholics and Protestants experiencing one or more legal problems in the previous three years. There were no significant differences between these two groups in relation to the likelihood of experiencing different types of legal problems and no differences between the proportions reporting family/divorce problems.

The slightly greater proportions of Catholics eligible for legal aid could result in a differential impact arising from the proposals on Catholics.

6.3.2 Persons of Different Political Opinion

Analysis of the responses to the NI Legal Needs Survey showed no significant differences in respect of the number or type of legal problems experienced by people of different political opinion over the last three years.

The conclusions of the Lifetime Opportunities Strategic Equality Impact Assessment that there is a greater risk of poverty for nationalists and those not stating a political preference would indicate higher levels of legal aid among these groups and could result in a slight differential impact arising from the proposals on Nationalists and those not stating a political preference arising from the proposals.

6.3.3 Persons of Different Racial Group

There is limited data to assess the impact of the proposals on people of different racial groups and the existing data on national identity does not link sufficiently to racial group to allow robust conclusions to be drawn.

The consultation noted that people from minority ethnic groups might incur accessibility costs (interpretation or translation) that other groups would not. The proposals could therefore impact differentially on people minority ethnic groups.

6.3.4 Persons of Different Ages

Eligibility for legal aid is higher amongst younger adults and those in the pensioner age-groups and lowest amongst those aged thirty-four. Those aged 25-34 and 35-44 were found to be most likely to have experienced a legal problem and those aged 25-59 most likely to experience a divorce / family problem. Analysis conducted on the impact of the statutory charge proposals on people of different ages found that the proposals would most heavily impact those in the 35-44 and 45-59 age brackets as these age groups account for 77 per cent of those presently exempted from the charge

It is likely that the proposals will impact differentially on people of different ages and will impact most significantly in those aged 35-59.

6.3.5 Persons of Different Marital Status

Eligibility for civil legal aid is highest amongst those who are separated and divorced. Separated and divorced people were more likely to have experienced a legal problem and much more likely to experience divorce and family problems than other groups.

Based on this evidence, it is likely that the proposals will impact differentially on people of different marital status and will impact most significantly on separated and divorced people.

6.3.6 Persons of Different Sexual Orientation

In common with other EQIAs data to assess the impact of the proposed reforms on people of different sexual orientation is not available.

NILSC would particularly welcome feedback on whether the proposals are likely to impact differentially on people of different sexual orientation and will continue to seek to engage with representative groups during the consultation period to get feedback in this area.

6.3.7 Men and Women

More women than men are eligible for civil legal aid. Women account for more than two thirds of Legal Aid reports in matrimonial cases and around the same proportion of current exemptions from the statutory charge. This is in line with consultation feedback that suggests that women are more likely to be affected by the proposals than men.

Based on this evidence, it is likely that the proposals will impact differentially between men and women and will impact most significantly on women.

6.3.8 Persons with Dependants and Persons Without

Eligibility for civil legal aid is highest for single pensioners and lone parents. Eligibility is also slightly higher for couples with dependent children than those without.

Both single people and couples with children experienced more legal problems than those without children, particularly in relation to family problems. Single people with children experienced a significantly higher incidence of divorce problems and people with dependants, particularly those in larger families and lone parents have higher risks of poverty.

People with dependants may have different needs in relation to the policy as a matrimonial home may be seen as an asset for the purposes of the statutory charge but may not be a realisable asset as it is providing for the housing needs of dependants.

The evidence suggests that it is likely that the proposals are likely to impact differentially between people with dependants and those without and will impact most significantly on those with dependants, especially lone parents.

6.3.9 Persons with a Disability and Persons Without

People with a disability are much more likely to be eligible for Civil Legal Aid than those without and those of working age with a disability are more likely to experience divorce or family legal problems than those without. Persons with a disability also are among those at highest risk of poverty.

The greater proportions of people with a disability eligible for legal aid and experiencing family / divorce legal problems suggest that there could be a differential impact arising from the proposals on people with a disability.

6.4 Consideration of whether Differential Impacts are Adverse

The purpose of an EQIA is to identify adverse impact which is defined as an indication that a differential effect of a policy on a Section 75 groups is less favourable (i.e. negative). Table 6.1 below defines the different types of impact.

Table 6.1
Definitions of Different Equality Impacts

Type of Impact	Definition
No Differential impact	Section 75 groups are affected by the policy in the same way
Positive Differential Impact	A Section 75 group has been affected differently by a policy and the effect is more favourable
Neutral Differential Impact	A Section 75 group has been affected differently by a policy and the effect is neither more nor less favourable
Adverse Differential Impact	A Section 75 group has been affected differently by a policy and the effect is less favourable.

Source: Practical Guidance on Equality Impact Assessment

A number of groups have been identified as potentially differentially impacted by the proposed reforms based on the likelihood that more people from these groups will be required to repay their legal aid costs as a result of the proposals than is the case presently. These are:

- those aged 35-59;
- divorced/divorcing and separated people;
- women; and
- those with dependants and lone parents.

There are a number of groups who are proportionately more likely to be eligible for legal aid and who could therefore be impacted differentially by the proposals. These are:

- Catholics;
- Nationalists and people not expressing a political opinion; and
- People with disabilities.

A number of groups have also been identified as having particular needs in relation to the policy. These are:

- people from minority ethnic groups (who might also incur accessibility costs such as translation / interpretation that other groups would not);
- people with dependants (as a house recovered may be meeting the housing needs of dependants and not therefore be a realisable asset);
- people affected by domestic violence; (who may be in a more vulnerable position than other groups and less able to access collaborative channels); and
- people with a disability (as a house may have been specially adapted to meet their needs and may not therefore be a realisable asset. People with a disability might also incur accessibility costs that other groups would not.

Whether the differential impacts of reform will be adverse depends partly on the patterns of expenditure of funds recovered by the statutory charge. The accompanying consultation document notes that the impact of reforms will be to “*provide NILSC with a revenue stream which NILSC is allowed to keep and buy funding for future cases*” The impact of patterns of redistributing additional revenue recouped from the statutory charge reforms is not known definitively at this stage. Therefore impacts on identified groups are potentially adverse (as the groups impacted will potentially be in a less favourable position than under the current system).

Proposals for mitigating the potential adverse impacts identified are detailed in Section 7 overleaf.

6.5 Summary of Impacts on Section 75 Groups

Table 6.2 overleaf summarises the findings of this EQIA in relation to impacts on Section 75 groups.

Table 6.2

Summary of Impacts of Statutory Charge Reform Proposals on Section 75 Groups

Category	Possible Differential Impact Identified	Specific Groups Impacted
Religion	Yes	Catholics
Political Opinion	Yes	Nationalist and those with no political preference
Racial Group	Yes	People from minority ethnic groups
People of Different Ages	Yes	People aged 35-59
People of Different Marital Status	Yes	Divorced / Divorcing and separated people
People of Different Sexual Orientation	Not Known	Not Known
Men and Women	Yes	Women.
People with Dependants	Yes	Those with dependants, lone parents
Persons with a Disability	Yes	People with a disability

7. MITIGATION OF IMPACTS

This section details consideration by the NILSC to mitigate the differential impact(s) identified.

7.1 Impacts Identified

This EQIA suggests that there are potential adverse impacts arising from the proposed statutory charge reforms on the following groups:

- Catholics;
- nationalist and those with no political preference;
- people from minority ethnic communities;
- those aged 35-59;
- divorced / divorcing and separated people;
- women;
- those with dependants and lone parents; and
- people with a disability.

7.2 Mitigation and Alternative Policies

The Equality Commissions “*Practical Guidance on Equality Impact Assessment*” notes that:

“the consideration of mitigating measures and alternative policies is at the heart of the EQIA process. Different options must be developed which reflect different ways of delivering the policy aims. The consideration of mitigation of adverse impacts is intertwined with the consideration of alternative policies. Mitigation can take the form of lessening the severity of the adverse impact.”

The guidance also notes that decision making documentation is required to show how the impact of alternative policies and mitigation were considered and that it is not sufficient to “*merely take equality into account; it must be accorded considerable weight*”.

7.3 Actions to Mitigate Adverse Impacts Identified

The differential impacts identified will only arise if the policy is implemented. Therefore non-implementation of the proposals is one option to be considered to effectively mitigate the impacts identified on all groups.

NILSC considers that there is a need to ensure that parties recovering money, property or compensation as a result of proceedings in which they have been legally aided should contribute to the costs of these proceedings so far as they are able.

A number of other actions to mitigate potential adverse impacts arising from the proposals have been identified below. These are:

- NILSC will implement a £3,000 threshold exemption to mitigate the potential impact of the proposals. Therefore application of the statutory charge would ensure that legally aided parties can keep the first £3,000 of property or monies;
- accessibility related costs relating to access to legal proceedings for people with disabilities will be exempted from the calculation of costs for the purposes of the statutory charge (for example, the costs of interpretation for a deaf person);
- investigating how mediation services can be encouraged and funded as an alternative to court proceedings;
- NILSC will work with the Northern Ireland Court Service to raise awareness of the existence of the “Self Petitioners” service which would significantly reduce the costs of divorce proceedings;
- in cases where someone wants / needs to downsize to another property from one subject to the statutory charge, NILSC intend to replicate the England and Wales system, allowing the charge to be transferred to on another property provided NILSC is satisfied that the substituted property still provides adequate security for recovering the charge;
- if the situation arises where a home is recovered in situations where the statutory charge applies, the assisted person is given the option to pay the amount by means of a monthly payment plan. If this is not possible payment can be deferred by a charge being placed on their home. This would include situations where the property recovered is to be used as a home by the assisted person or their dependants; and

- NILSC will provide comprehensive information on the statutory charge and has revised civil application forms to include an information leaflet “*Paying for your legal aid – the Statutory charge*”. The leaflet explains in plain language the principles behind the charge and how NILSC seeks to enforce it. The leaflet can be made available in accessible formats on request. It will remain the duty of the legal adviser to warn their client of the potential impact of the statutory charge in their case and that legal aid may need to be repaid.

7.4 Monitoring

In the event that the proposals are implemented, a monitoring system to gather data on the impact of the proposals across all nine equality categories must be established. The results of this monitoring will be reviewed on an annual basis, published and included in the NILSC annual report to the Equality Commission for Northern Ireland.

Such monitoring will be considered by NILSC and used to inform decisions about policy development.

8. FORMAL CONSULTATION

This section details NILSC's arrangements for formal consultation on this draft EQIA.

8.1 Consultation Arrangements

This document has been developed to provide an opportunity to engage with interested parties and to identify the views of consultees on the EQIA process, findings and next steps. It should be noted that a consultation document, setting out in more detail the proposed reforms, has been circulated with this EQIA and should be read in conjunction with it.

NILSC is committed to meaningful consultation and would welcome the opportunity to facilitate participation in this process. A list of those NILSC are inviting to participate in the consultation on this draft EQIA is included at Appendix One. An advert will also be placed in the Belfast Telegraph, Newsletter and Irish News inviting individuals and organisations to participate in the consultation. This document will also be available from the NILSC website at <http://www.nilsc.org.uk>. Different formats of this document are available on request including summaries, Braille, disk, audiocassette, minority languages, and electronic versions.

NILSC would be happy to receive requests for further information and will endeavour to meet such requests. NILSC would also be happy to hear from groups and/or individuals that would like to inform the consultation for this EQIA through meeting, telephone interview or group discussion as an alternative to the written consultation.

8.2 Consultation Responses and Timescale

This consultation period will run in tandem with the policy consultation on the statutory charge for 12 weeks from 10th March to 5th June. All consultation responses and enquiries should be directed to:

Statutory Charge EQIA Consultation
Northern Ireland Legal Services Commission
2nd Floor, Waterfront Plaza
8 Laganbank Road
Belfast, BT1 3BN
Email: accesstojustice@nilsc.org
Telephone: 028 9024 6441
Fax: 028 9040 8990

All views and comments will be considered and NILSC particularly would welcome feedback on the following areas:

- whether there any additional data sources which should be used to inform this assessment included at Section 5;
- whether or not consultees agree with the assessment of impact of the proposals on Section 75 groups detailed in Section 6; and
- views on the NILSC's proposals for mitigating the identified impacts and on proposals for future monitoring (Section 7).
- whether the list of those to be consulted is comprehensive (Appendix One)

8.3 Consultation Feedback

NILSC is grateful for the participation of individuals / organisations in this consultation and recognise the time and energy that goes into responding. We are committed to providing feedback on how views expressed during the consultation are used and affect the policy and recognise this as an important element of the consultation process. The final EQIA will contain a summary of consultation responses received and a response to each by NILSC. Should you not wish your consultation response to be published or wish it to be published anonymously, please note this on your response.

8.4 Policy Decision

In making decisions in respect of the statutory charge, NILSC will take into account the findings of this EQIA and the results of the policy consultation in accordance with Schedule 9 Paragraph 9 (2).

Where adverse impacts or potential adverse impacts are found, consideration will be given to mitigating such impacts. Details of mitigation will be included in the final recommendations presented during decision making. In the event that such alternatives are not accepted full reasons will be given.

8.5 Timetable

The proposed timescale for completing the EQIA and making a policy decision are detailed in Table 8A below.

Table 8A
Timetable for Completing EQIA

Stage	Detail	Timescale
<i>Formal Consultation</i>	This will include written and e-consultation for a minimum of 12 weeks.	March – June 2010
<i>Policy decision</i>	A decision will be taken on proposals taking into account the results of the EQIA and of the consultation.	June 2010
<i>Future Monitoring</i>	As part of the required EQIA process, proposals for future monitoring will be confirmed, along with the arrangements for publishing these.	June 2010
<i>Completion of EQIA and publication of results</i>	Development of completed EQIA document detailing all of above stages and including substantive Consultation responses and NILSC response.	July 2010

Source: NILSC

Once the EQIA is finalised, NILSC will write to all those who participated in the consultation and those detailed at Annex One to advise of the EQIA's publication on NILSC website and to offer a copy of the final EQIA in a format of their choice.

**Amendments to the Statutory Charge provisions contained in Regulation
17(9) of the Legal Aid (General) Regulations (Northern Ireland) 1965**

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Introduction

1. This document provides an initial Regulatory Impact Assessment undertaken in relation to proposed amendments to the Statutory Charge provisions contained in Regulation 17(9) of the Legal Aid (General) Regulations (Northern Ireland) 1965.

An Equality Impact Assessment is also available on the Commission's website:

http://www.nilsc.org.uk/uploads/consultation/documents/DraftEQIA_160310.pdf

Conclusion of this initial RIA

2. The Commission's initial assessment suggests that the reform proposals set out in the consultation document are unlikely to have a direct or indirect impact on business, charities, social economy enterprises or the voluntary sector. We would invite your comments on this assessment. Please submit your response by post, fax or email to:

The Consultation Co-ordinator
Northern Ireland Legal Services Commission
2nd Floor, Waterfront Plaza
8 Laganbank Road, Mays Meadow
Belfast BT1 3BN
Email jillherron@nilsc.org.uk
Facsimile 028 9040 8995

Background to the statutory charge

3. The “statutory charge” arises in circumstances where a legally assisted person has kept or won money or property in legal proceedings, but where their legal aid contributions (if any), or any costs they have recovered from the other side are not enough to cover their total costs payable out of the legal aid fund. In these circumstances the Northern Ireland legal Services Commission is entitled to a charge over the money or property gained by the assisted person for the amount payable from the legal aid fund.
4. The purpose of the statutory charge is to ensure that a legally assisted person seeks to achieve the most economical resolution possible to their legal dispute; and to ensure at the conclusion of proceedings that they pay what they can reasonably afford towards the costs of their case.
5. There are a number of exemptions to the application of the statutory charge which are set out in Regulation 17(9) of the Legal Aid (General) Regulations (Northern Ireland) 1965
6. The most significant exemption from the statutory charge is that money recovered under the aegis of Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 is exempt from charge (property recovered under Article 26 is subject to the charge)).

The Proposed Reforms to the Operation of the Statutory Charge

7. This initial RIA should be read in conjunction with the consultation document “Substantive changes to the operation of the Statutory Charge as defined in the Legal Aid (General) Regulations (Northern Ireland) 1965”, which contains full details of the proposed reforms, and which can be found on the Commission’s website:
8. http://www.nilsc.org.uk/uploads/consultation/documents/Statutory%20Charge%20Consultation_070410.pdf

Options

Option 1: Do Nothing.

9. This option is not feasible as, under existing regulations, the statutory charge does not consistently apply where an assisted person has recovered money / and or property in matrimonial proceedings.

Option 2: Reform the existing exemptions from the statutory charge.

10. The core element of the proposed reform is the removal of the existing exemption for lump sum payments recovered under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978.
11. In practice this will significantly narrow the exemptions from the statutory charge. However, it is also proposed that legally assisted persons who recover money or property in “family” type proceedings will benefit from a threshold of £3,000, below which the statutory charge will not apply.
12. There are a number of other proposed amendments to the existing statutory charge exemptions, and these are set out in full in the consultation document:
13. http://www.nilsc.org.uk/uploads/consultation/documents/Statutory%20Charge%20Consultation_070410.pdf

Benefits

Option 1: Do Nothing

14. There is no benefit in doing nothing as current regulations are not consistent in the way they treat money and property recovered in matrimonial proceedings.

Option 2: Reform the existing exemptions from the statutory charge.

15. The core element of the proposed amendments is to delete the exemption from the statutory charge for lump sum payments obtained in matrimonial proceedings.

This will reduce the current scope of the exemptions, and will therefore, in many cases, re-distribute a degree of responsibility for meeting legal costs from the legal aid fund to the legally assisted person.

16. The economic benefit is that public money which is required to provide access to justice for the less well-off, and which would otherwise be lost to the legal aid fund, can be recycled and re-directed towards other areas of unmet legal need, and other priority areas of legal aid spending.

17. To the extent that this happens, legal aid will be regarded more as a loan rather than a gift, and this will have the effect of encouraging quicker and less expensive resolution of legal disputes (private client realism).

Costs

Option 1: Do Nothing

No further costs.

Option 2: Reform the existing exemptions from the statutory charge.

The Commission obtained an economic appraisal on the effect of proposed reforms² which indicates that savings and income for the legal aid fund will

² Tony Dignan – “Financial Economic & Policy Appraisal of Reforming the Application of the Statutory Charge in Northern Ireland”. August 2008

exceed the cost to the Commission of administering the proposed reforms to the statutory charge.