

Title: The Civil Legal Aid (Immigration Interviews (Exceptions) and Remuneration) (Amendment) Regulations 2022 IA No: MoJ047/2022 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Legal Aid Agency, Home Office	Impact Assessment (IA)			
	Date: 16/12/2022			
	Stage: Enactment			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: civil.legalaid@justice.gov.uk				

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2022 prices)

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
N/A	N/A	N/A	Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?
 Access to legal aid plays a vital role in the immigration system in ensuring access to justice as well as the efficiency of the system as a whole. Following the Government’s consultation on immigration fees in June 2022, the Government is making a number of changes to ensure access to advice for individuals on referral into the National Referral Mechanism, which is a framework for identifying and referring potential victims of modern slavery. Wider changes are being implemented in the way immigration legal aid services are being delivered with the introduction of HM Court & Tribunal Service’s (HMCTS) online system for the lodging and processing of appeals. The Government wants to ensure the legal aid fee scheme reflects these changes and is therefore implementing a series of new legal aid fees.
 The Detained Asylum Casework (DAC) scheme currently operates in certain immigration removal centres (IRCs) to process asylum applications from detained individuals. It is the Government’s policy to expand the DAC scheme to more IRCs and to provide legal aid to individuals in the DAC scheme. Changes to secondary legislation are necessary to ensure that legal aid will be available at all IRCs where the DAC scheme exists, fulfilling the Government’s policy intention.

What are the policy objectives of the action or intervention and the intended effects?
 The overarching policy objective is to create a fair and equitable fee scheme for immigration and asylum legal aid practitioners to ensure they are appropriately remunerated for the new work being introduced into the system and the changing way in which they need to work. The changes ensure asylum seekers have access to legal aid for immigration interviews at any IRC where the DAC scheme takes place.

What policy options have been considered, including any alternatives to regulation?

- Option 0/Do nothing: No changes are made to how immigration and asylum legal aid is remunerated.
- Option 1: Introduce new fixed fees for online system appeals with changes to the escape mechanism for appeals and pre-appeal work.
- Option 2: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.
- Option 3: Expand the number of locations where legal aid providers are able to attend an immigration interview with their client.
- Option 4: Implement options 1 to 3 above.

The preferred option is Option 4 as this best meets the policy objectives

Will the policy be reviewed? It will not be reviewed.					
Is this measure likely to impact on international trade and investment?			No		
Are any of these organisations in scope?		Micro Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Bellamy _____ Date: _____ 16/12/2022 _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce new fixed fees for online system appeals with changes to the escape mechanism for appeals and pre-appeal work.

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	-		£0.4m		£3.0m
High	-		£0.5m		£3.7m
Best Estimate	-		£0.4m		£3.1m
Description and scale of key monetised costs by 'main affected groups'					
<ul style="list-style-type: none"> This option is expected to approximately cost the Legal Aid Fund £0.4m per annum compared to the hourly rates currently being paid. The implementation and ongoing processing costs to the Legal Aid Agency (LAA) are expected to be negligible. However, the assessment of fixed fees will likely offer a saving compared to hourly rates. 					
Other key non-monetised costs by 'main affected groups'					
N/A					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	-		£0.4m		£3.0m
High	-		£0.5m		£3.7m
Best Estimate	-		£0.4m		£3.1m
Description and scale of key monetised benefits by 'main affected groups'					
<ul style="list-style-type: none"> Immigration and asylum legal aid providers will receive a financial benefit of £0.4m per annum. 					
Other key non-monetised benefits by 'main affected groups'					
<ul style="list-style-type: none"> The new fixed fees will provide financial certainty for legal aid providers and better reflect the work done. 					
Key assumptions/sensitivities/risks					Discount rate
					3.5%
<ul style="list-style-type: none"> We have based our fee increase on the results of a survey of legal aid providers, which accords with other management information the LAA holds. Modelling of the escape case changes is based on a forecasted caseload based on 2019-20 data. The true impact of the fixed fee will depend on future caseload and the way that the online system works in practice. 					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	£1.5m	£11.2m
High	-	£4.5m	£33.7m
Best Estimate	-	£3.0m	£22.5m

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

- This option is expected to increase costs of the Legal Aid Fund by £3.0m per year in steady state.

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

- N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	£1.5m	£11.2m
High	-	£4.5m	£33.7m
Best Estimate	-	£3.0m	£22.5m

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

- Immigration and asylum legal aid providers and barristers will receive a financial benefit of £3m per year at steady state.
- Approximately 20,000 individuals will receive National Referral Mechanism advice of equal worth to the cost above.

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

- N/A

Key assumptions/sensitivities/risks

Discount rate

3.5%

- We assume 20,000 claims for NRM advice based on half of legal aid asylum cases in previous years.
- We assume the additional cost to the Legal Aid Fund is equal to the value of the additional services provided to the client.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Summary: Analysis & Evidence

Policy Option 3

Description: Expand the number of locations where legal aid providers are able to attend an immigration interview with their client.

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	-		£0.5m	£3.7m	
High	-		£3.0m	£22.5m	
Best Estimate	-		£0.7m	£5.2m	
Description and scale of key monetised costs by 'main affected groups' <ul style="list-style-type: none"> The cost to extend access to legal aid for immigration interviews relies on the Home Office's decisions on capacity of the scheme. This option is expected to increase costs of the Legal Aid Fund by £0.7m per year in steady state. 					
Other key non-monetised costs by 'main affected groups' N/A					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	-		£0.5m	£3.7m	
High	-		£3.0m	£22.5m	
Best Estimate	-		£0.7m	£5.2m	
Description and scale of key monetised benefits by 'main affected groups' <ul style="list-style-type: none"> Immigration and asylum legal aid providers and barristers will receive a financial benefit of £0.7m per year. Individuals in DAC will gain a benefit equal to the value of the cost paid above. 					
Other key non-monetised benefits by 'main affected groups' N/A					
Key assumptions/sensitivities/risks			Discount rate	3.5%	
<ul style="list-style-type: none"> We assume that as the scheme is expanded by across an additional four IRCs, the corresponding volumes of cases could increase by around 100%. 					

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Summary: Analysis & Evidence

Policy Option 4

Description: Implement options 1 to 3 above.

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	£2.4m	£18.0m
High	-	£8.0m	£60.0m
Best Estimate	-	£4.1m	£30.8m

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

- This option is expected to increase costs of the Legal Aid Fund by £4.1m per year in steady state.
- The implementation and ongoing processing costs to the Legal Aid Agency (LAA) are expected to be negligible.

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

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	£2.4m	£18.0m
High	-	£8.0m	£60.0m
Best Estimate	-	£4.1m	£30.8m

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

- Immigration and asylum legal aid providers and barristers will receive a financial benefit of £4.1m per year.
- Individuals in DAC will gain a benefit equal to the value of £0.7m per year and approximately 20,000 individuals will receive National Referral Mechanism advice of equal to £3.0m per year.

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

- The new fixed fees will provide financial certainty for legal aid providers.

Key assumptions/sensitivities/risks rate (%)	Discount	3.5%
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- We have based our fee increase on the results of a survey of legal aid providers, which accords with other management information the LAA holds.
- We assume 20,000 claims for NRM advice based on half of legal aid asylum cases in previous years.
- We assume the additional cost to the Legal Aid Fund is equal to the value of the additional services provided to the client.
- We assume that as DAC is expanded by across an additional four IRCs, the corresponding volumes of cases could increase by around 100%.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Evidence Base

A. Background

1. Access to legal aid plays a vital role in the immigration system in ensuring access to justice as well as the efficiency of the system as a whole. The legal aid scheme is governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). LASPO sets out which types of immigration services can be funded by legal aid. This is colloquially known as “in scope” legal aid. For immigration services that are not “in scope”, legal aid funding may still be available via the Exceptional Case Funding Scheme, where an individual can demonstrate that their human rights have been breached, or where there is a risk that failing to provide funding could result in such a breach.
2. This Impact Assessment (IA) supports the implementation of a series of new legal aid fees for immigration cases and the expansion of the Detained Asylum Casework (DAC) scheme.
3. The details of the legal aid scheme are set out in secondary legislation. Fees payable for immigration services are set out in the Civil Legal Aid (Remuneration) Regulations 2013 (the Remuneration Regulations).
4. The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012 (the Immigration Interviews Regulations) set out when legal aid is available for attendance at an immigration interview conducted by the Home Office. The 2018 Standard Civil Contract and Immigration Specification govern the provision of immigration advice between legal aid providers and the Legal Aid Agency (LAA) who contract for legal aid services on behalf of the Lord Chancellor.

Policy background

Legal aid fees

5. The Nationality and Borders Act 2022 expands access to immigration legal aid in four areas. Only one of those is of relevance for this IA, which is that legal aid for advice for potential victims of modern slavery who are already seeking immigration advice will now be available. Potential victims will be able to receive advice on referral into the National Referral Mechanism (NRM), which is the Government’s framework for identifying potential victims of modern slavery. As a new service being introduced into the legal aid scheme, no fee currently exists for this work.
6. Alongside the changes as a result of the Nationality and Borders Act, the way in which immigration legal aid services are being delivered is changing. The introduction of the HM Courts and Tribunals Service (HMCTS) online system for the lodging and processing of appeals has changed the work required of legal aid providers. It is right that the fees paid to providers take into account of these changes.
7. The Ministry of Justice published a consultation proposing new immigration fees in light of these two changes. The consultation was open from 13 June to 5 September 2022.¹
8. The DAC is a Home Office-led scheme to process asylum claims from individuals in immigration detention. Legal aid is currently available for asylum claims, and additional legal aid in the form of legal aid provider attendance at an immigration interview at an immigration removal centre (IRC) is available due to the nature of this scheme. The Home Office intends to expand the DAC to four other IRCs in England and Wales, and as such

¹ Immigration Legal Aid: A consultation on new fees for new services - GOV.UK (www.gov.uk).

the regulations need to be amended to provide that the same legal aid services can also be provided there.

B. Policy Rationale and Objectives

Rationale

9. The conventional economic approaches to government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules), where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
10. The rationale for government intervention in this instance is both equity and efficiency. The legal aid scheme exists to ensure access to the courts and tribunals system is available for individuals on low incomes who have serious legal issues by funding the costs of legal advice and representation by qualified legal aid practitioners. An efficient immigration legal aid system adapts and responds to changes to the immigration system to ensure that legal aid fees reflect the work required of legal aid practitioners to help their clients to access justice.
11. The options described in this IA aim to ensure fair and equitable remuneration for legal aid practitioners as a result of new work and processes being introduced into the immigration system. Option 3 will also ensure equity of treatment between clients accessing legal aid in the IRCs where the DAC scheme takes place. The proposed changes ensure legislation remains up to date with operational changes.

Policy Objectives

12. The associated policy objective is to ensure that delivering these services continues to be sustainable and accessible, ensuring that the efficiencies envisaged by the wider reform of the immigration system can be realised.

C. Affected Stakeholder Groups, Organisations and Sectors

13. The proposals assessed in this IA are expected to directly affect the following groups:

- Individuals involved in immigration and asylum proceedings in the courts and tribunals in England and Wales.
- Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work.
- The Legal Aid Agency (LAA).
- HM Courts and Tribunals Service (HMCTS).
- Home Office.

D. Description of options considered

14. To meet the policy objectives, the following options are assessed in this IA:

- **Option 0/do nothing: No changes are made to how immigration and asylum legal aid is remunerated.**
- **Option 1: Introduce new fixed fees for online system appeals with changes to the escape mechanism for appeals and pre-appeal work.**
- **Option 2: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.**
- **Option 3: Expand the number of locations where legal aid providers are able to attend an immigration interview with their client.**
- **Option 4: Implement options 1 to 3.**

15. The preferred option is Option 4: implement options 1 to 3 together as a package. This will deliver a suite of new immigration and asylum legal aid fees covering all of the new work being brought into the system.

16. All options (except the do nothing option) require negative statutory instrument (SI) secondary legislation. All options also require amendments to the relevant legal aid contract, which will be undertaken by the LAA.

Option 0: Base Case/Do nothing

17. Under the 'do nothing' or 'base case', the current immigration and asylum legal aid fees would remain unchanged and no new fees would be introduced.

18. Under this option, there would be no appropriate fees to remunerate the new work introduced into the system by the Nationality and Borders Act, specifically advice on referrals into the NRM. Appeal work is currently paid at an hourly rate, and this would continue to be the case if the legislation to set the fixed fees is not made. Legal aid would only be available in the three IRCs currently specified in the Immigration Interviews Regulations, which should the DAC scheme expand, will mean clients in other IRCs would not have the same access to the legal aid.

Option 1: Introduce new fixed fees for online system appeals with changes to the escape mechanism for appeals and pre-appeal work.

19. Currently, work done as part of HMCTS's online system for the lodging and processing of appeals to the First-tier Tribunal (Immigration and Asylum Chamber) are remunerated at the interim hourly rates set out in Table 8(ca) (and Table 4(ca) where appropriate) of the Civil Legal Aid (Remuneration) Regulations 2013.

Fixed fees

20. Under Option 1, going forward providers will be remunerated by a new fixed fee instead. For appeals that do not reach a hearing, this fee will be set at £669 in asylum appeals and £628 in non-asylum immigration appeals. For appeals that do reach a hearing, this fee will be set at £1,009 in asylum appeals and £855 in non-asylum immigration appeals.

Escape mechanism

21. Escape mechanisms in legal aid fixed fee schemes allow high cost cases to be paid their actual costs, as assessed at hourly rates, instead of the fixed fee. This prevents these high cost cases from being paid too little to be economically viable for providers to take on.

22. High cost cases are identified as those where the relevant costs assessed at hourly rates are above a certain threshold which is set as a multiple of the value of the relevant fixed fee. Where a case involves multiple fixed fees then the threshold is calculated in reference to the sum of the fixed fees.
23. Escape mechanisms are currently only applicable to appeal cases not going through the online system. The full details can be found in the immigration specification of the 2018 contract. In escape cases at the stage 2 (controlled legal representation) level, providers are able to claim for a case at the hourly rate in Table 8(a) of the Remuneration Regulations if they reach this threshold.
24. At the moment, the escape mechanism is not applicable to appeal cases going through the online system because those cases are paid by hourly rates on an interim basis.
25. This option will introduce changes to the escape mechanism alongside the fixed fees for online system appeals. Option 1 will introduce new fixed fees and make two changes to the escape mechanism compared to its implementation for cases not using the online system. Firstly, the escape threshold for legal help (stage 1) and appeal cases (stage 2) will both be reduced to two times the relevant fixed fee, instead of three times. Option 1 will also decouple the stage 1 (legal help) and stage 2 (controlled legal representation) claims of a case so that each stage could escape, and be paid at escape rates (hourly rates), separately. Both the fixed fee and escape mechanism changes will be implemented at the same time as part of a package to ensure providers are fairly remunerated for their work.
26. It is important to note however that the legislation will not include the changes to the escape threshold, these instead will be brought in by the LAA contract. For the purpose of the IA, we have grouped together the fixed fees and escape threshold as due to their partnership in providing a fair remuneration, we consider both as one whole change and hence assess their impact collectively.

Option 2: Introducing a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.

27. The Nationality and Borders Act extends the scope of legal aid so that legal aid providers can provide non-means tested advice on referral into the National Referral Mechanism (NRM) alongside advice on immigration matters. The overall purpose of this NRM advice is to facilitate the identification of more victims of trafficking and to provide them with the support they need.
28. Under this option, this work will be payable by an additional fee on top of the main immigration and asylum case fee. This will be set at £150, roughly equivalent to 3 hours of work when taking the existing hourly rates in table 7(d) of the Remuneration Regulations² as a guide.

Option 3: Expand the number of locations where legal aid providers are able to attend an immigration interview with their client.

29. Detained Asylum Casework (DAC) is a Home Office-led scheme for individuals seeking asylum when detained under immigration powers. The three IRCs where DAC currently operates are listed in Regulation 4(a) of the Immigration Interviews Regulations 2012.
30. However, there are other IRCs where the scheme does not currently operate and the Home Office is planning to expand it to all seven IRCs in England and Wales.

² [The Civil Legal Aid \(Remuneration\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

31. Option 3 will ensure that legal representation at asylum interviews is funded at all IRCs where the DAC operates. Regulation 4(a) will be updated to include a definition of IRCs, rather than list specific locations.
32. Under option 3, we will also make a minor clarificatory change to Regulation 3 to ensure that it is clear that legal aid funding is available for all immigration interviews that a child must attend. We consider that Regulation 3 as currently drafted is not sufficiently clear that both the screening (preliminary) and substantive interviews are funded.

Option 4: Implement options 1 to 3.

33. Under this option all of options 1 to 3 above will be implemented together, as a package.

E. Cost & Benefit Analysis

34. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
35. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the options under consideration. The costs and benefits of each proposal are compared to option 0, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero.
36. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those which are non-monetisable.
37. Where costs and benefits are monetisable, we have estimated the steady state implications of the policy change, as the cases involved are relatively short and so steady state will be reached very quickly. All figures are based on current 2022 prices and include VAT, unless otherwise stated, although most legal aid immigration cases do not attract VAT because the client is not resident in the UK due to the nature of the service being provided so the inclusion of VAT does not have a major impact on the analysis. Our cost estimates are based on assumptions of volumes and we have provided sensitivity analysis in the Risk and Assumptions section to quantify uncertainty. We have also not included transitional or implementation costs to the LAA, as these are expected to be negligible.
38. Values over £50,000 are rounded to the nearest £0.1m, while values under this level are rounded to the nearest £10,000, apart from specific fee values which are quoted exactly. Volumes have been rounded to the nearest 100. The net present costs in this impact assessment are based on a 10-year appraisal period and assume steady state is reached at the point of implementation.
39. As changes in Legal Aid fee schemes for existing services amount to a transfer of resources between the Legal Aid Fund and providers, it is normal not to calculate a Net Present Cost (NPC). However, as the options in this IA will lead to new funded services being provided, a NPC has been calculated for these changes. However, we have also assumed that the benefit to the client is equal to the cost to the Legal Aid fund so the Total Net Present Social Value for each option is zero.

Option 1: Introduce new fixed fees for online system appeals.

Methodology

40. The new fees proposed under this option are based on previous fixed fees which were used prior to the introduction of the online procedure and have been increased by an amount equal to the increased effort required for the online procedure taken from evidence gathered from a survey of legal aid providers. The survey was designed to fill the evidence gaps of LAA administrative data, so we could get an insight into how much extra work the online system was causing. Data from the LAA were consistent with the survey, so we were content to use the survey results to increase the fees accordingly.
41. A separate methodology was used to assess the escape mechanism changes, and this is described in the annex at the end of this IA.

Volumes and Costs

42. The overall cost of the new fixed fee scheme compared to the interim hourly rates which currently exist is expected to be around £0.4m per annum. The proposed new fixed fees have been increased from the previous fixed fees by the average amount of extra work required for the online system, and the proposed changes to the escape mechanism will further increase the overall fees paid by paying more higher cost cases at hourly rates.
43. The escape mechanism proposals will also have distributional impacts on the fees payable for individual cases with the result that more cases are paid closer to their actual costs at hourly rates. The annex at the end of this impact assessment shows the evidence base behind the specific changes to the escape threshold which are being proposed.

Costs of Option 1

Monetised costs

Legal Aid Agency

44. The overall impact of the fee scheme is expected to be roughly £0.4m per annum.

Benefits of Option 1

Monetised benefits

Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work

45. The overall impact of the fee scheme is expected to be roughly £0.4m per annum, although there are some distribution impacts shown in the annex to this IA.

Non-monetised benefits

Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work

46. A fixed fee scheme will give additional certainty to providers on what their income will be. In addition, the changes to the escape mechanism will reduce the chance that providers will be underpaid for their work on each case, compared to remaining with the existing escape mechanism for work done not through the online system. This is explored in more detail in the annex to this IA.

Option 2: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.

Methodology

47. While we have used legal aid data to determine the likely cost for this option, the true cost will be highly dependent on the number of clients who require this advice. We have assumed a future steady state that is based on a recovery in volumes similar to those prior to Covid-19.

Volumes

48. We have assumed that in future steady state there will be around 20,000 claims for the NRM fixed fee per year, based on around half of legal aid funded asylum claims in previous years.

Costs

49. The cost will be £150 per case. In some cases, VAT may be applicable, depending on the residency status of the client, however our best estimate for an effective VAT rate for legal aid funded asylum work is around 2%, so omitting VAT from the calculations below does not change the impact of this provision.

Costs of Option 2

Monetised costs

Legal Aid Agency

50. There will be a cost to the Legal Aid Fund of around £3.0m per year in steady state, taking into account the assumptions above.

Benefits of Option 2

Monetised benefits

Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work

51. Providers will receive a financial benefit equal to the cost to the Legal Aid Fund, which is estimated to be around £3.0m in steady state.

Individuals involved in immigration and asylum proceedings in the courts and tribunals in England and Wales

52. Those eligible and requiring NRM advice will receive a benefit of legal advice worth an amount equal to the cost to the Legal Aid Fund, which is estimated to be around £3.0m in steady state.

Option 3: Expand the number of locations where legal aid providers are able to attend an immigration interview with their client.

Methodology

53. It is difficult to quantify the exact cost of this narrow policy change to the provision of interviews, primarily because the cost of legal aid for DAC cases is driven by the Home Office's decisions on capacity of the scheme. There is uncertainty about how many cases

will require additional legal aid for attendance at interviews and, as the interview is only a small part of overall cost of the DAC scheme, we cannot isolate the cost of interviews from the wider cost of DAC.

54. The best approach to quantifying the impact is to consider the pre-pandemic costs of the scheme and that the scheme will expand from operating in three IRCs to all seven IRCs.

Costs of Option 3

Monetised costs

Legal Aid Agency

55. Spend on DAC cases across the three currently specified IRCs was £0.7m in 2019-20. Assuming that as the scheme is expanded by across all seven IRCs (an additional four), the corresponding volumes of cases could increase by around 100%, our best estimate is that this option will cost the legal aid fund in the region of £0.7m per annum.

56. Given the uncertainties outlined in paragraph 53, there is uncertainty about what this option will cost. Further sensitivity analysis can be found in section F of this IA.

Benefits of Option 3

Monetised benefits

Immigration and asylum legal aid providers doing publicly-funded immigration and asylum work

57. Providers will receive a financial benefit equal to the cost to the Legal Aid Fund, of approximately £1m per annum.

Individuals involved in immigration and asylum proceedings in the courts and tribunals in England and Wales

58. Those needing legal aid for immigration interviews will receive a benefit of legal advice worth an amount equal to the cost to the Legal Aid Fund, of in the region of £0.7m per year in steady state.

Option 4: Implement options 1 to 3.

59. Option 4 will be the result of doing options 1 to 3 together, and so the costs and benefits are the same as those set out above when combined. The overall expected cost to the Legal Aid Fund will be £4.1m per year, with an equivalent benefit to practitioners and in-kind benefit to clients.

F. Risks and assumptions

60. The assumptions used to cost these proposals are described in the methodology paragraphs in the Cost and Benefit Analysis section above. The core risk is concerning future volumes. While we have assumed that the legal aid immigration system will return to volumes seen prior to the coronavirus pandemic, there is a risk that migration could be lower or higher in future as the world adjusts to new ways of living. If volumes are higher, then the costs will also be proportionately higher. The following sensitivity analysis demonstrates this by considering the different total cost due to some realistic scenarios.

Sensitivity Analysis

Option 1: Introduce new fixed fees for online system appeals with changes to the escape mechanism for appeals and pre-appeal work.

61. We have conducted sensitivity analysis for option 1 to attempt to account for some of the uncertainty with the future volumes and unknown behavioural response.

Scenario	Steady State Annual Cost	Net Present Cost
Low	£0.4m	£3.0m
Central scenario	£0.4m	£3.1m
High	£0.5m	£3.7m

Option 2: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.

62. The best estimate for this option is based on around half of legal aid funded asylum cases in previous years. The following table shows how this could vary if actual provision were around 25% as a low scenario, or 75% as a high scenario. These scenarios could also be interpreted as if 50% of cases claim an NRM advice bolt-on fee but overall legal aid asylum volumes are 50% lower or higher.

Scenario	Volume	Steady State Annual Cost	Net Present Cost
Low	10,000	£1.5m	£11.2m
Best estimate	20,000	£3.0m	£22.5m
High	30,000	£4.5m	£33.7m

Option 3: Expand the number of locations where legal aid providers are able to attend an immigration interview with their client.

63. The cost estimate for this option is based on the assumption that the total spend and corresponding volumes for the scheme will increase by 100% as the number of IRCs where DAC is available increase.

64. Given the volumes and interview unit cost uncertainties with this option, we believe a range of £0.5m-£3m per annum is appropriate.

65. We have seen a decline in spend in previous years but as an upper estimate have taken the average annual spend of £3m. The low estimate of £0.5m assumes that there will be minimal volumes and spend impact with the expansion of DAC.

66. Whichever figure is used, the total spend covers more than just the interview portion which is being expanded and is considered an optimistic estimate.

Option 4: Implement options 1 to 3.

67. The following table shows the overall low and high scenarios by combining the sensitivity analyses above and compares them to the combined cost of the best estimates. The low and high scenarios represent the possibility that all the volumes (and therefore the costs) will be at the low or high value. This may present a wider range than might be expected in reality since the options relate to different parts of the immigration system and so it is unlikely that all the options will experience the low or high scenarios simultaneously – although they may all move with general international migration patterns.

Scenario	Steady State Annual Cost	Net Present Cost
Low	£2.4m	£18.0m
Best estimate	£4.1m	£30.8m
High	£8.0m	£60.0m

G. Wider impacts

Equalities

68. A full Equalities Impact Assessment is published alongside this IA.

Families

69. We have no evidence to suggest that families will be disproportionately adversely affected by the proposals.

Impact on small and micro businesses

70. Immigration and asylum legal aid is provided by businesses of various sizes, and these changes should have a positive impact for all sizes of business.

Foreign trade impacts

71. We do not envisage any foreign trade impacts.

Better Regulation

72. This measure is out of scope of the Small Business Enterprise and Employment Act 2015 and the Ministry of Justice's Business Impact Target.

Welsh language

73. We have considered the implications for Welsh language. A Welsh language version of the consultation and Government's response is available upon request.

H. Monitoring and Evaluation

74. Following implementation of any option, we will continue to monitor the impact of these changes on claims, volumes and costs with the help of the LAA.

Annex: Distributional impacts of Option 1

A1. This annex shows the distributional impact of the changes made in option 1, focusing on how the new fixed fee and escape mechanism changes work together and how many cases are paid more or less than they will be under hourly rates.

Methodology

A2. Since the effect of an escape mechanism depends on both the fee scheme itself and the underlying distribution of effort required for each case, we have based our assessment of the impact of these changes on a modelled caseload which is based on the reported costs of 2019-20 completed initial asylum cases (that is cases with an outcome code indicating the case has concluded). These cases were completed prior to the introduction of the online system, so we have added an additional amount of cost equal to the average increase in work done as gathered by the survey described in paragraph 40. We then modelled the fees which will be received on each case using the proposed fixed fees with the escape mechanism as described in the 2018 immigration contract specification with the modifications described in paragraph A4 below.

A3. We have not used more recent data as the baseline for assessing the escape mechanism since the case volumes have fallen and the case mix of billed cases has changed with the Covid-19 pandemic. Additionally, more recent closed case data is a mixture of cases billed both under the online system and the previous system, and so constructing a single baseline representing a year's worth of billing for future cases will not be possible without more complicated adjustment. We think the baseline we have constructed from 2019-20 caseload plus additional cost to simulate the online system cost is more likely to be reflective of future years' work.

A4. Since the option will both reduce the escape threshold and to decouple the stage 1 and stage 2 claims so they can escape separately, we have assessed four escape mechanisms:

- *3 times escape multiplier and coupled cases* – this is the previous escape mechanism, where the escape threshold for a case is calculated by three times the sum of all the relevant fixed fees in a case.
- *2 times escape multiplier and coupled cases* – this is a sub-option where the stage 2 escape multiplier is reduced to 2, so the escape threshold will be calculated as 3 times the stage 1 fixed fee for cases with stage 1 only, or 2 times the stage 2 fixed fee for cases with stage 2 only, or the sum of these where the case has stage 1 and 2.
- *2 times escape multiplier and decoupled claims* – this is a sub-option where each claim is treated separately instead of being added together as a case. In this case the escape threshold will be calculated as 3 times the stage 1 fixed fee for the stage 1 claims, or 2 times the stage 2 fixed fee for the stage 2 claim.
- *2 times escape multiplier for stage 1 and stage 2 and decoupled claims* – this is an amended option based on consultation responses and is the preferred option. This option sets the escape multiplier for both stages to 2 times the fixed fee. This was suggested both for the sake of administrative and provider efficiency, alongside reducing any unintended incentives created by separate escape multipliers.

A5. The above allows the different effects of the escape multiplier reduction and the decoupling of claims to be isolated and observed.

A6. To show a distributional analysis of these four different escape mechanisms, using the proposed fixed fees on the baseline of cases described above, we have classified each case into one of the following categories:

- “winning” - those being paid greater than 10% more under the fixed fee scheme than under their reported costs
- “losing” - those being paid less than 10% below their reported costs by the fixed fee scheme
- “neutral” – those being paid within 10% of their reported costs by the fixed fee scheme
- “escape” – cases which escape and are modelled as receiving their reported costs. In the decoupled 2 times escape multiplier option some cases can escape for stage 1 or 2 but receive a fixed fee for the other part of the case, so the escape grouping includes cases which have either stage 1, 2 or both escaping.

A7. We also calculate two estimates of total spend on the fee scheme (excluding disbursements and VAT) which are:

- The estimated total spend of the baseline – this is effectively our best estimate of what will be spent under the fee scheme if the online system had been in place in 2019-20. This demonstrates the effect of each escape mechanism on the cost of the fees paid.
- The difference from reported costs – this shows by how much the estimated total spend of the baseline differs from the baseline reported costs (including the addition of the assumed cost of the online system, as described above). This demonstrates the degree which the overall cost of the fees paid match the reported costs from providers. Reported costs may differ from costs which are assessed by the LAA as generally costs are revised down, so where this column is negative it is likely to be overestimating the true difference between fees payable and the fee which will be paid.

Results

A8. The model described in this annex was run on both a subset of cases from the baseline which had a stage 2 claim as part of the case as well as the whole baseline described above. Both tables show the same effects of the escape mechanism changes, but from different perspectives.

A9. Table 1 shows the results of the escape mechanism changes on the cases with a stage 2 claim. This table excludes cases which have only a stage 1 claim as they are not the focus of this change. The option change to Stage 1 escape multiplier is not included in Table 1.

Table 1: Distribution of immigration and asylum cases with a stage 2 fixed fee claim

Sub-option Considered	Case volumes				Estimated total spend	Difference from reported costs
	Winning	Neutral	Losing	Escape		
<i>3 times escape multiplier and coupled cases</i>	28%	26%	38%	8%	£111.6m	-9%
<i>2 times escape multiplier and coupled cases</i>	28%	26%	31%	15%	£12.3m	-3%
<i>2 times escape multiplier and decoupled cases</i>	25%	33%	25%	17%	£12.4m	-2%

A10. Table 2 shows the effect on the whole system. When providers take on a case and do not know at the outset whether it will progress to stage 2, then table 2 may provide more relevant information for providers on the incentive to accept a case. This table includes the option to change the Stage 1 escape multiplier in line with the change to Stage 2.

Table 2: Distribution of all fixed fee immigration and asylum cases

Sub-option Considered	Case volumes				Estimated total spend	Difference from reported costs
	Winning	Neutral	Losing	Escape		
<i>3 times escape multiplier and coupled cases</i>	41%	20%	31%	8%	£19.4m	-4%
<i>2 times escape multiplier and coupled cases</i>	41%	20%	30%	10%	£20.1m	-1%
<i>2 times escape multiplier and decoupled cases</i>	38%	26%	25%	10%	£20.2m	0%
<i>2 times escape multiplier for Stage 1 and 2, and decoupled cases</i>	38%	24%	22%	15%	£20.6m	2%

Discussion

- A11. Table 1 (above) showed that the effect of continuing with the previous 3 times escape multiplier is that more cases with stage 2 claims lose than win under the fixed fee scheme, and this may cause the fixed fee scheme to be unattractive to providers where a case has a stage 2 element. Reducing the escape multiplier for stage 2 cases to 2 times effectively moves the cases which are losing the most into escape cases and pays these their actual costs at hourly rates. Table 2 shows the same effect, although, it also shows that despite there being more “winning” cases than “losing” cases, the net effect is still that total spend under the fee scheme is less than reported costs – this is because the “losing” cases are losing by more than the “winning” cases are winning.
- A12. While decoupling the stage 1 and stage 2 fees so they escape separately is more complicated, it has the overall effect of narrowing the distribution so more cases are paid closer to their reported costs. Overall, this is expected to lead to a small increase in income for providers, but more importantly fewer cases will lose out by more than 10% as well as fewer cases winning by more than 10%.
- A13. Bringing the Stage 1 escape multiplier in line with the change to the Stage 2 escape multiplier outlined above results in a continuation of this trend. An additional 5%, 2% who are within 10% of reported costs, and 3% who are 10% below reported costs, will now

escape. This leads to a rise in costs for the whole system of £0.4m, equal to an additional 2% increase in total fee payments above baseline.

- A14. The estimated spend of the baseline (2019-20 reported costs plus the additional estimated cost of the online system) is around £1.2m more under the proposed escape mechanism than under the previous 3 times coupled escape fee system – this is targeted at cases which are higher value but not quite enough to escape under the previous system. Table 2 shows that the proposed escape mechanism is likely to be 2% above cost neutrality across all cases. For cases with a stage 2 claim it is likely that the proposed escape mechanism is roughly cost neutral since, in using reported costs, we have not taken into account the assessment of these costs and, on average, the assessment process revises bill values down.
- A15. Our conclusion is that changing the escape mechanism to the preferred one considered here will provide a system which is both more likely to be fair on individual cases (i.e. less difference between incurred costs and fee paid) than the previous system and also results in a system which minimises the difference between incurred costs and total fees paid while maintaining simplicity of administration and provision.