

Title: The Civil Legal Aid (Housing and Asylum Accommodation) Order 2023

IA No: MoJ032/2022

RPC Reference No: N/A

Lead department or agency: Ministry of Justice

Other departments or agencies: Legal Aid Agency, HM Courts and Tribunals Service

Impact Assessment (IA)

Date: 24/11/2022

Stage: Final

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

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
£0m	N/A	N/A	Not a regulatory provision

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

The provision of legal aid is governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Following LASPO, most housing cases were removed from the scope of legal aid although it remains available where there was a risk of homelessness, possessions or eviction, and housing disrepair that risks serious harm to an individual and their family. In most cases, cases involving welfare benefits are also out of scope and need to qualify for Exceptional Case Funding to receive legal aid. However, as housing possession proceedings can be caused by underlying welfare benefits issues, by not addressing the issues driving many possession proceedings, we are not resolving issues at the earliest possible point and risk potentially spending more money in the long run.

Asylum-seekers (and their dependants), who would otherwise be destitute, can obtain support under s.95 of the Immigration and Asylum Act 1999 ("the 1999 Act"). However, Schedule 11 of the Immigration Act 2016 ("the 2016 Act") will, upon commencement, repeal s.4 of the 1999 Act and introduce a new s.95A (similar in substance to the repealed s.4). This means that, when the 2016 Act's provisions come into force, legal aid in relation to housing support for failed asylum seekers will no longer be specifically covered in LASPO and therefore those eligible for accommodation support under the new s.95A will not be eligible for legal aid to assist with obtaining it.

Government intervention is required as addressing both these issues will require introducing secondary legislation.

What are the policy objectives of the action or intervention and the intended effects?

The overarching policy objective of both options is the availability of legal aid where someone is at risk of homelessness, possessions or evictions. The secondary objective is to remodel an existing service to ensure a better service for clients and ensure the long-term availability of the service.

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

The following options are assessed separately in this IA:

- **Option 0:** do nothing. No changes are made to LASPO.
- **Option 1:** Expand the scope of civil legal aid to allow early advice before court, on a wider range of issues, for those at risk of losing their home.
- **Option 2:** Amend LASPO to provide legal aid for accommodation support for asylum-seekers following prospective changes to Immigration Act 2016.
- **Option 3:** Implement options 1 and 2 above.

The Government's preferred approach is to implement option 3 (all of options 1-2 above).

Will the policy be reviewed? We will monitor the impacts of this policy over the initial years following implementation.

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on trade and investment?	No			
Are any of these organisations in scope?	Micro	Small	Medium	Large
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

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

Signed by the Minister responsible:

..... Bellamy

Date: 24/11/2022

Summary: Analysis & Evidence

Policy Option 1

Description: Expand the scope of civil legal aid to allow early advice before court, on a wider range of issues, for those at risk of losing their home.

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: £0m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	-	£8.1m	£60.7m

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

- Paying providers of the HLPAS to offer early legal advice in addition to the in-court duty scheme is estimated to result in increased costs to the Legal Aid Fund of approximately £8.1m per annum.
- LAA implementation and ongoing processing costs 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	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	-	£8.1m	£60.7m

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

- Legal aid providers of the HLPAS will receive additional income where they deliver early legal advice under the scheme, equivalent to the cost of providing the service (£8.1m).

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

- It is expected that allowing providers to claim a fee for delivering early legal advice as well as the in-court duty scheme will make delivering these services more financially viable.
- If the provision of early legal advice successfully resolves a proportion of cases before court, this will reduce costs for HM Courts & Tribunals Service (HMCTS).
- Implementing this option will help to maintain access to justice for individuals facing possession proceedings in England and Wales.

Key assumptions/sensitivities/risks

Discount rate

3.5%

- It is assumed that all HPCDS claims (based on 2019 volumes) will also receive early legal advice. In practice, we do not expect all HPCDS claims to also receive early legal advice and expect some claims which receive early legal advice to be resolved before court, which will offset some of the costs.

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: Amend LASPO to provide legal aid for accommodation support for asylum-seekers following prospective changes to Immigration Act 2016.

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	Total Cost (Present Value)	
Low	N/A		N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised costs by 'main affected groups'					
<ul style="list-style-type: none"> As this change will be maintaining the status quo (legal aid provision for the same cohort of people), we expect no increased costs to the Legal Aid Fund. 					
Other key non-monetised costs by 'main affected groups'					
<ul style="list-style-type: none"> N/A 					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)	
Low	N/A		N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised benefits by 'main affected groups'					
<ul style="list-style-type: none"> N/A 					
Other key non-monetised benefits by 'main affected groups'					
<ul style="list-style-type: none"> Asylum-seekers will continue to receive legally aided advice on obtaining accommodation support from the Home Office. Housing legal aid providers will continue to be paid to deliver this service. 					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5%
<ul style="list-style-type: none"> It is assumed that the changes within the Immigration Act 2016 that affect the Immigration and Asylum Act 1999 will go ahead as planned. It is assumed that the volume of people who will use this service in the future will be broadly similar to the volumes accessing this service over the last 5 years. 					

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: Implement Options 1 and 2.

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	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	-		£8.1m	£60.7m

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

- Implementing both policy options is estimated to result in increased costs to the Legal Aid Fund of approximately £8.1m per annum.
- LAA implementation and ongoing processing costs 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	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	-		£8.1m	£60.7m

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

- Legal aid providers of the HLPAS will receive additional income where they deliver early legal advice under the scheme, equivalent to the cost of providing the service.

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

- It is expected that allowing providers to claim a fee for delivering early legal advice as well as the in-court duty scheme will make delivering these services more financially viable.
- If the provision of early legal advice successfully resolves a proportion of cases before court, this could reduce costs for HMCTS. However, these savings would likely be offset by the loss of court fees caused by a reduced number of hearings.
- Implementing this option will help to maintain access to justice for individuals facing possession proceedings in England and Wales.
- Asylum-seekers will continue to receive legally aided advice on obtaining accommodation support from the Home Office.
- Housing legal aid providers will continue to be paid to deliver legal support in relation to obtaining asylum accommodation.

Key assumptions/sensitivities/risks	Discount rate	3.5%
--	----------------------	------

- It is assumed that all HPCDS claims (based on 2019 volumes) will also receive early legal advice. In practice, we do not expect all HPCDS claims to also receive early legal advice and expect some claims which receive early legal advice to be resolved before court, which will offset some of the costs.
- It is assumed that Home Office changes to the Immigration and Asylum Act 1999 will go ahead as planned.
- It is assumed that the volume of people who will use this service in the future will be broadly similar to the volumes accessing this service over the last 5 years.

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

Evidence Base

A. Background

Scope of legal aid

1. The ability of individuals to resolve their legal issues is vital for a just society and it is crucial that people are able to access support when they need it. A core element of this support is access to legal advice and representation where it is necessary. The Government provides legal aid in England and Wales to ensure those who need it can access legal advice and representation.
2. The provision of legal aid is governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). LASPO covers both criminal and civil legal aid, and its accompanying regulations define the eligibility criteria. LASPO came into force in April 2013 and the reforms made under LASPO were intended to target legal aid at those who needed it most. Since then, the Government have made amendments to LASPO and its accompanying regulations to adapt legal aid provisions to align with developments that have taken place over the past 10 years.

Housing legal aid

3. Following LASPO, most housing cases which did not involve homelessness, significant disrepair or possession were removed from the scope of legal aid. Legal aid remained available for cases where there was a risk of homelessness, possession or eviction, as well as housing disrepair that risks serious harm to an individual and his/her family.
4. Anyone in danger of their property being repossessed or being evicted from their home can get free legal advice and representation from a duty solicitor on the day of their court hearing, regardless of their financial situation. Generally, for individuals facing possession proceedings, advice is predominantly sought at court through the Housing Possession Court Duty Scheme (HPCDS). The HPCDS provides 'on the day' emergency face-to-face advice and advocacy to anyone facing possession proceedings in court. This work falls outside of the normal legal aid financial eligibility rules and is a non-means tested service.
5. There is currently no legal aid available for welfare benefits, except for legal help at the Upper Tribunal and legal help and representation at the Court of Appeal or the Supreme Court. All other welfare benefit issues would have to qualify for Exceptional Case Funding (ECF) to receive legal aid. However, the Post-Implementation Review of LASPO¹ highlighted that the removal of certain areas of civil law from the scope of legal aid has resulted in a lack of early intervention in civil legal cases to prevent relatively minor problems (such as a welfare benefits issue) from escalating and clustering into more serious problems (such as a possession proceeding driven by rent arrears). Whilst this has saved money on legal aid, the report suggested these costs have been shifted elsewhere.
6. Although the work taken out of scope by LASPO does not directly affect the HPCDS, all HPCDS providers have to possess a standard civil contract in the housing and debt category to hold a HPCDS contract. The narrow scope of housing legal aid limits the follow-on work they can do for their clients. It also means that, in many instances, the first time someone with a housing legal problem comes into contact with a lawyer is on the day of their possession hearing.

Asylum accommodation support

7. Asylum-seekers and their dependants, who would otherwise be destitute, can obtain accommodation and financial support (for essential living needs) under s.95 of the Immigration and Asylum Act 1999 ("the 1999 Act"). Failed asylum-seekers and their dependants can be provided with support in the form of accommodation under s.4 of the 1999 Act, if the individual is taking all reasonable steps to leave the UK or is unable to leave due to a legal or practical obstacle.²

¹ [Post-Implementation Review of Part 1 of LASPO - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614442/Post-Implementation_Review_of_Part_1_of_LASPO_-_GOV.UK_(www.gov.uk).pdf).

² [Immigration and Asylum Act 1999 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1999/33/section/4).

8. However, Schedule 11 of the Immigration Act 2016 (“the 2016 Act”) will repeal s.4 of the 1999 Act and introduce a new s.95A, which will be similar in substance to the repealed s.4. These provisions have not yet come into force.
9. At present, legal services in relation to the provision of accommodation support under both s.4 and s.95 of the 1999 Act are in scope for legal aid under LASPO. It is the Government’s policy that asylum-seekers should have access to legal aid to assist with obtaining accommodation in these cases. The reason for this is that LASPO intends to provide legal aid where someone may be at risk of homelessness without it, as would be the case for an asylum seeker requiring accommodation support.
10. When the 2016 Act’s provisions come into force, legal aid in relation to housing support for failed asylum seekers will no longer be specifically covered in LASPO. This means that, once the provisions come into force, there will be failed asylum-seekers who are eligible for accommodation under the new s.95A, but will not be eligible for legal aid to assist with obtaining this.
11. The options assessed in this IA represent a responsible and practical response to the above issues emerging from the evidence gathering we have undertaken and ensure the continuity of these services for those who need them. Option one follows a public consultation conducted in 2021, and the Government’s response was published in 2022³. We have not publicly consulted on option two as it does not represent a policy change, but ensures that LASPO remains aligned with immigration legislation.

B. Policy Rationale and Objectives

Rationale

12. The conventional 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 operates (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).
13. The rationale for government intervention in this instance is both equity and efficiency. The first option - to expand the scope of legal aid to cover housing, debt and welfare benefits issues - has an equity rationale as remodelling the housing possession legal aid scheme will improve the sustainability of these services so they continue to be available for the clients who need them. The proposed changes will also generate efficiencies by improving the effectiveness of the scheme so that cases are resolved more quickly, ensuring a better service for clients and reducing costs later in the process.
14. The second option – to amend the scope of legal aid to link legal aid for asylum-seekers to new Home Office support provisions – will help uphold equity by ensuring failed asylum-seekers are not disadvantaged compared to British nationals, who can receive legally aided support to pursue homelessness cases against local authorities, and other asylum-seekers receiving legal aid for accommodation support under s.95.

Policy Objectives

Expand the scope of civil legal aid to allow early advice before court, on a wider range of issues, for those at risk of losing their home

15. The policy objective underpinning this option is to support the remodelling of the current HPCDS into the Housing Loss Prevention Advice Service (HLPAS) to ensure a better service for clients and the long-term sustainability of the scheme. Bringing housing, debt and welfare benefit issues back into scope of legal aid will help those facing proceedings at the earliest point in the process, supporting clients in resolving the issues at the core of their legal problem and potentially avoiding the need for

³ [Housing Legal Aid: the way forward - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/housing-legal-aid-the-way-forward).

court proceedings altogether. It will also create an additional income stream for providers, increasing the financial viability of delivering the scheme.

Amend the scope of legal aid to link legal aid for asylum-seekers to new support provisions being introduced by the Immigration Act 2016

16. The policy objective of this option is to ensure legal aid remains available where someone may be at risk of homelessness, as would be the case for an asylum seeker requiring accommodation support.

C. Affected Stakeholder Groups, Organisations and Sectors

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

- Individuals facing possession proceedings in the courts in England and Wales.
- Asylum-seekers at risk of becoming destitute.
- Housing legal aid providers.
- The Legal Aid Agency (LAA).
- HM Courts and Tribunal Services (HMCTS).

D. Options Under Consideration

18. The following options are considered in this IA:

- **Option 0: Do Nothing. No changes are made to LASPO.**
- **Option 1: Expand the scope of civil legal aid to allow early advice before court, on a wider range of issues, for those at risk of losing their home.**
- **Option 2: Amend LASPO to provide legal aid for accommodation support for asylum-seekers following prospective changes to Immigration Act 2016.**
- **Option 3: Implement Options 1 and 2.**

19. The preferred option is Option 3: Implement Options 1 and 2 as a package. This will expand LASPO to cover housing, debt and welfare benefit issues and amend LASPO to link legal aid for asylum-seekers to new support provisions being introduced by the Immigration Act 2016.

Option 0: Do Nothing.

20. Under the 'do nothing' option LASPO would remain unchanged: early advice on housing, debt and welfare benefits issues would remain out of scope of legal aid for those facing the loss of their home. It would also mean the scope of legal aid for asylum-seekers obtaining accommodation support could be narrowed when the 2016 Act is commenced.

Option 1: Expand the scope of civil legal aid to allow early advice before court, on a wider range of issues, for those at risk of losing their home.

21. This option will bring early advice on housing, debt and welfare benefits issues back into the scope of LASPO for those facing the loss of their home. This will in turn support the creation of the HLPAS.

22. The eligibility criteria for receiving the new advice will be the same as for the current provision of advice under Legal Help (initial advice and assistance) in the Housing and Debt category. Providers will not need to wait for housing possession proceedings to be issued before providing advice under Legal Help, as long as it appears proceedings will be issued unless there is some intervention (e.g. notice from the landlord that they want to possess the property, notice to quit, etc). The point at which an

individual can access this service (the “trigger point”) will be brought forward to when possession proceedings are first notified instead of just on the day of the possession hearing. The key difference will be that this new advice will cover a wider range of issues and will be non-means tested.

23. This expansion of scope aims to address and reduce relatively minor legal problems escalating and clustering into more serious problems. This has the intended outcome of supporting legal issues early and creating savings across government by reducing the escalation of legal issues.

Option 2: Amend LASPO to provide legal aid for accommodation support for asylum-seekers following prospective changes to Immigration Act 2016.

24. Under option 2, LASPO will be updated to align with support provisions in Schedule 11 of the 2016 Act, once they have come into force (the date of which is not yet confirmed). Legal aid provisions for failed asylum seekers, in relation to obtaining accommodation support, will be linked to the new s.95A instead of s.4 (which will be repealed by the 2016 Act). The new s.95A will have the same policy intention as the current s.4, which is to make support, in the form of accommodation, available to failed asylum-seekers who have an obstacle to leaving the UK.
25. Therefore, replacing s.4 with s.95A in LASPO should have minimal impact on the way legal aid is provided in the future, but will ensure we do not unintentionally narrow the scope of legal aid for obtaining accommodation against our policy intention. The SI is clear that this amendment to LASPO will be dependent on Schedule 11 of the 2016 Act coming into force.

Option 3: Implement Options 1 and 2.

26. Under this option, Options 1 and 2, as laid out above, will be implemented together.

E. Cost and Benefit Analysis

27. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
28. 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.
29. 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 that are non-monetisable.
30. 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. We have not applied optimism bias in these estimates, although we note that there is uncertainty over the future volumes of the services in this IA currently. Values over £50,000 are rounded to the nearest £0.1m, while values under this are rounded to the nearest £10,000, apart from specific fee values which are quoted exactly. All figures include VAT, unless otherwise stated.
31. We have used administrative data which the LAA collects to process claims in order to identify the likely financial impact of the options considered. We have used the financial year 2019-20 as the reference, as we expect that in the long run volumes are likely to return to this level although volumes continue to be suppressed because of the coronavirus pandemic at present. LAA administrative data has been sufficient to estimate the costs of the fee changes without any additional evidence, assuming no behavioural change. In relation to option 1 we have also used HMCTS data to identify an additional scenario where uptake of the new service could rise.
32. We believe this level of analysis is proportionate as, although there remains uncertainty about the pandemic recovery and actual uptake of the new service, it is unlikely that costs will rise above the

higher scenario for option 1. We have considered that it is better to implement this new approach sooner, rather than pausing to generate a new evidence base which would be based on the current unique circumstances and may not be able to guide policy making for the long term.

33. 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 Option 1 will lead to new funded services being provided, an 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: Expand the scope of civil legal aid to allow early advice before court, on a wider range of issues, for those at risk of losing their home.

Methodology

34. LAA data has been used to estimate the costs and benefits of Option 1.

Volumes

35. In 2019 there were 37,700 claims under the HPCDS. This figure has been used as the expected volumes of future cases that will receive advice through the HLPAS. This assumes that the total volume of HLPAS clients will be the same as the number of HPCDS clients in 2019, and that these clients will all continue to use the in-court service as well.
36. In reality we expect that the HLPAS will resolve some clients' issues earlier (so reducing demand on in-court services), but also that this new service might attract a higher proportion of individuals facing possession proceedings to seek legal aid (an increasing demand on the HLPAS). As these opposite pressures could lead to a higher or lower overall cost, so we assess a higher cost scenario in the "Risks and Assumptions" section below.
37. This option will move the point at which an individual can access this service ("the trigger point") forward to when possession proceedings are first notified. Based on feedback to the public consultation for this new delivery model, we expect that this will facilitate a process which the expected 37,700 claims will be able to access the service earlier, rather than increase volumes above this.

Costs

38. Under the new HLPAS, providers who deliver early legal advice to a client facing possession proceedings will be paid a Stage One fee of £157 plus VAT. However, if a provider undertakes a case that passes the escape threshold,⁴ they will be paid at hourly rates instead of the £157 fixed fee. To estimate the cost increase for the latter cases we looked at cases which used to escape in the housing, welfare benefits and debt categories prior to April 2013 – this is when the case mix of these categories was more similar to that which we are expecting under the HLPAS.
39. For these cases, on average around 4% to 5% of cases would escape and would cost between 3 and 5 times as much as the fixed fee. Assuming a similar proportion of cases escape, and those that do cost a similar amount, we estimate the additional cost of paying these cases at escape rates (rather than fixed fees) to be around £1m per annum. The shift in cost from fixed fee to hourly rate is accounted for within this additional cost estimate.

Costs of Option 1

Monetised Costs

Legal Aid Agency

40. The cost of providing the early advice will be the volume described in paragraph 35 (37,700), paid at the proposed new housing Legal Help fee (£157 excluding VAT) plus the expected volumes of cases that

⁴ The threshold at which a more complex case can be paid at an hourly rate rather than under the fixed fee.

will escape at the estimated rate. This option will therefore lead to an increased cost of £8.1m a year (£7.1m at the standard rate and £1m at escape rates), to the Legal Aid Fund in steady state, as work that was not previously remunerated by the HPCDS will now be paid under the new HLPAS.

41. It is assumed that any implementation or administrative costs to the LAA expected to arise in association with this option will be minimal.

Non-monetised costs

HMCTS

42. If the wider availability of early legal advice leads to possession proceedings being resolved earlier in the process, then this may lead to fewer cases reaching court which could reduce costs for HMCTS as there will be fewer hearings required. We have not attempted to quantify this cost, but it is likely to be wholly or partially offset by a reduction in court fee income.

Benefits of Option 1

Monetised benefits

HPCDS/HLPAS providers

43. Providers of these services will receive an expected increase in fee income of approximately £8.1m per year, and there will be a benefit to clients of additional legal services of the same value.

Non-monetised benefits

HPCDS/HLPAS providers

44. Remunerating providers for this additional early legal advice work which is not remunerated under the HPCDS will make delivering these services more financially viable for legal service providers.

Individuals facing possession proceedings in the courts in England and Wales

45. Individuals facing possession proceedings will be able to access legal advice earlier in the process, and on a wider range of issues, which may allow them to resolve their issue earlier and lead to better outcomes.
46. If remunerating providers for this additional work leads to a more sustainable service, this could lead to better outcomes for individuals facing possession proceedings in the courts in England and Wales, as well as helping to ensure access to justice.

Option 2: Amend LASPO to provide legal aid for accommodation support for asylum-seekers following prospective changes to Immigration Act 2016.

Methodology

47. LAA data has been used to estimate the costs and benefits of Option 2.

Volumes

48. From 2017-18 to 2020-21, the claims for legal aid in relation to asylum accommodation have ranged between 50-100 per year. This range has been used as the expected volumes of future cases.

Costs

49. Providers who deliver legal advice in relation to obtaining accommodation support from the Home Office will continue to be paid the standard civil fee of £157, under the Housing and Debt category.

Costs of Option 2

Monetised Costs

Legal Aid Agency

50. As this option will maintain the status quo, no additional cost expected to arise. We currently spend approximately £50k per annum on all advice regarding asylum support. We are unable to separate out the current spend on claims in relation to obtaining accommodation support under s.4 as opposed to s.95, but this would be a proportion of the £50k total spend.

Benefits of Option 2

Monetised benefits

Housing legal aid providers

51. Providers of these services will not lose this stream of income, as this option ensures the continuity of access to legal aid for failed asylum-seekers.

Non-monetised benefits

Failed asylum seekers

52. Asylum-seekers will continue to receive legally aided advice on obtaining accommodation support from the Home Office.

Option 3: Implement Options 1 and 2.

53. Option 3 is the result of doing options 1 and 2 together, and so the costs and benefits are the same as those set out above when combined.

54. The overall expected cost to the Legal Aid Fund is expected to be £8.1m per years, with an equivalent benefit to providers.

F. Risks and Assumptions

53. The key assumption is that we return quickly to a steady state, from the current level of demand due to Covid-19, and that this is at the same level of HLPAS uptake and proportions who go on to receive other legal aid services as in the calendar year 2019.

54. To test this assumption and demonstrate the potential financial risks we have considered a higher cost scenario where uptake of the HLPAS increases beyond the level of the current in-court service. This scenario has been generated by looking at the relationship between the number of HPCDS claims at each court and the volume of possession claims in the court, to understand the potential scope for increased take up. We have used a fuzzymatching technique because the HPCDS data identifying the court is recorded using a free text box and so the matching is not 100% accurate.

55. This exercise showed that there was wide variability in the ratio of HPCDS claims to court claims. The courts with the highest sustained ratio of HPCDS claims to court claims saw 0.5 HPCDS claims for every mortgage court claim, and 0.75 HPCDS claims for every tenant court claim. These courts are taken as an example of the maximum possible HPCDS volume. If the options considered brought all courts up to the volumes of these exemplary courts, we estimate that the additional cost of the early advice under HLPAS could rise to £17.8m. This cost is unlikely to arise immediately but illustrates the longer-term costs which could arise if this policy generates additional uptake for this new service.

G. Wider Impacts

Equalities

56. Section 149 of the Equality Act 2010 requires Ministers and the Department, when exercising their functions to have 'due regard' to the need to:

- Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and,
- Foster good relations between people who share a protected characteristic and those who do not.

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

Families

58. We have no evidence to suggest that families would be disproportionately affected by the proposals. Families may derive particular benefit from the service described here where they are able to stay in their existing accommodation.

Impact on small and micro businesses

59. Housing legal aid is provided by businesses of various sizes, and these changes should have a positive impact for all size of business.

Foreign trade impacts

60. We do not envisage any foreign trade impacts.

Better Regulation

61. 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

62. We have considered the implications for Welsh language in the development of these proposals.

H. Monitoring and Evaluation

63. Following implementation, we will continue to monitor the impact of these changes.