

<b>Title:</b> The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Family and Domestic Abuse) (Miscellaneous Amendments) Order 2023	Impact Assessment (IA)
<b>IA No:</b> MoJ044/2022	<b>Date:</b> 29/11/2022
<b>RPC Reference No:</b> N/A	<b>Stage:</b> Final
<b>Lead department or agency:</b> Ministry of Justice	<b>Source of intervention:</b> Domestic
<b>Other departments or agencies:</b> Legal Aid Agency	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> civil.legalaid@justice.gov.uk
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Not Applicable

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£0m	£0m	£0m	Not a regulatory provision

**What is the problem under consideration? Why is government action or intervention necessary?**

The scope of the legal aid scheme is set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Following the introduction of the Domestic Abuse Act 2021 and the Covid-19 pandemic, there are individuals, specifically victims of domestic abuse going through certain proceedings who are ineligible for legal aid who the Government believes should be eligible. Additionally, the Post Implementation Review of LASPO in 2019 identified groups of people, most notably parents having their child taken away from them by the state or a private party, who are receiving less favourable legal aid than individuals going through analogous, either through a less favourable merits test or the case being out of scope of LASPO. Government intervention is required to provide wider access to legal aid and, in some cases, to amend the eligibility criteria for those identified to help ensure fairness across the legal aid space.

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

The policy objective behind the proposals in this Impact Assessment (IA) is to ensure that legal aid is available to the groups of people identified and that legal aid is fairly provided across all proceedings. 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, including victims of domestic abuse, and parents having their child taken away.

**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 the family, immigration or criminal legal aid schemes.
- Option 1:** Bring Special Guardianship Orders in private family law proceedings into scope of legal aid.
- Option 2:** a) Bring the Domestic Abuse Protection Order into scope of civil legal aid; b) Make criminal legal aid available for breach of a Domestic Abuse Protection Notice.
- Option 3:** Make legal aid for Placement and Adoption Orders non-means tested and apply less stringent merits criteria.
- Option 4:** Allow medical practitioners to provide letters of evidence of domestic abuse without an in-person consultation.
- Option 5:** Implement options 1 to 4 above.

The Government's preferred approach is to implement option 5 (all of options 1-4 above).

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

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
	Yes/No	Yes/No	Yes/No	Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b>		<b>Non-traded:</b>

***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:                         29/11/2022

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Bring Special Guardianship Orders in private family law proceedings into scope of legal aid.

## 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	N/A		£3.3m	£27.4m
High	N/A		£7.6m	£63.2m
Best Estimate	N/A		£5.6m	£46.6m

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

- Expanding the scope of legal aid to cover private law Special Guardianship Orders (SGOs) is estimated to cost £3 to £8m per annum at steady state cost to the Legal Aid Fund, with a best estimate of £5.6m per annum.

### 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	N/A		£3.3m	£27.4m
High	N/A		£7.6m	£63.2m
Best Estimate	N/A		£5.6m	£46.6m

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

- This option would increase annual revenue for providers of legal aid. The total benefit to providers is estimated to be equivalent to the cost of providing the service.
- We anticipate that legal aid will be given to approximately 2,000 represented parties, which could include parents or those with parental responsibility, or prospective special guardians.

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

- An expansion of legal aid scope may result in more individuals (parents/those with parental responsibility and/or prospective special guardians) applying, and qualifying for, legal aid funding.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
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- We assume that the need for initial advice and assistance ("Legal Help") for parents or those with parental responsibility will be low, due to the severity of the case meaning that they will progress to needing legal representation quickly.
- The family court records of private law SGO applications is used as the core volume estimate for these figures. It is assumed that all applications will translate into contested orders in need of representation for both parties involved.
- There is a core risk around the estimate of future volumes, sensitivity analysis has been conducted to estimate the impact of high and low volumes estimates in addition to the best estimate.

## BUSINESS ASSESSMENT (Option 1)

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

## Summary: Analysis & Evidence

## Policy Option 2

**Description:** a) Bring the Domestic Abuse Protection Order into scope of civil legal aid; b) Make criminal legal aid available for breach of a Domestic Abuse Protection Notice.

### 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	
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>	
Low	N/A		£3.7m		£30.7m	
High	N/A		£6.4m		£53.2m	
Best Estimate	N/A		£5m		£41.5m	
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>Legal aid for Domestic Abuse Protection Orders and Domestic Abuse Protection Notices is estimated to cost between £3.7m to £6.4m per annum at steady state cost, with a best estimate of £5m per annum.</li> </ul>						
<b>Other key non-monetised costs by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>N/A</li> </ul>						
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>	
Low	N/A		£3.7m		£30.7m	
High	N/A		£6.4m		£53.2m	
Best Estimate	N/A		£5m		£41.5m	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>Legal aid providers are expected to see an increase in annual revenue equivalent to the cost of the services.</li> </ul>						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>By bringing these orders and notices into scope of legal aid, individuals going through these proceedings will have appropriate access to legal advice.</li> </ul>						
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate</b>	3.5%
<ul style="list-style-type: none"> <li>There are key assumptions around the volumes of defendants and applicants receiving legal aid. High and low volumes estimates have been used to provide a range of the cost estimates.</li> </ul>						

### BUSINESS ASSESSMENT (Option 3)

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

## Summary: Analysis & Evidence

## Policy Option 3

**Description:** Make legal aid for Placement and Adoption Orders non-means tested and apply less stringent merits criteria.

### 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
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>		<b>Total Cost (Present Value)</b>
Low	N/A		£0.2m		£1.5m
High	N/A		£3.4m		£28.6m
Best Estimate	N/A		£1.8m		£15.0m
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>Extending eligibility for non-means tested legal aid and a less stringent merits test to parents/those with parental responsibility who wish to oppose applications for placement orders and adoption orders will cost approximately up to £3.4m per annum at a steady state cost to the Legal Aid Fund, with a best estimate of £1.8m per annum.</li> </ul>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>N/A</li> </ul>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>		<b>Total Benefit (Present Value)</b>
Low	N/A		£0.2m		£1.5m
High	N/A		£3.4m		£28.6m
Best Estimate	N/A		£1.8m		£15.0m
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>This option would increase annual revenue for providers of legal aid. The total benefit to providers is estimated to be equivalent to the cost of providing the service.</li> </ul>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>By amending the means and merits tests for placement and adoption orders, it means the contesting party in these proceedings (i.e. parents or those with parental responsibility) may be more likely to qualify for legal aid funding.</li> </ul>					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate</b>	3.5%
<ul style="list-style-type: none"> <li>We have assumed the number of additional certificates for placement and adoption orders is between the number of refused certificates and the number of certificates which would be required to make the ratio of adult to child adoption and placement order certificates equal to the ratio of adult to childcare order certificates.</li> <li>There is a core risk around the estimate of future volumes, sensitivity analysis has been conducted to estimate the impact of high and low volumes estimates. The best estimate shown for this option is the central of the lower and higher estimates for indicative purposes.</li> </ul>					

### 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

# Summary: Analysis & Evidence

# Policy Option 4

**Description:** Allow medical practitioners to provide letters of evidence of domestic abuse without an in-person consultation.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year N/A	Time Period Years N/A	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		N/A		N/A		N/A	
High		N/A		N/A		N/A	
Best Estimate		N/A		N/A		N/A	
<b>Description and scale of key monetised costs by 'main affected groups'</b> <ul style="list-style-type: none"> <li>N/A</li> </ul>							
<b>Other key non-monetised costs by 'main affected groups'</b> <ul style="list-style-type: none"> <li>We estimate that amending regulations so that a telephone consultation with a medical professional is sufficient evidence for victims of domestic abuse to access civil legal aid rather than needing an in-person consultation would bring the number of applications for domestic abuse cases back to pre-pandemic levels.</li> <li>We therefore estimate that this change will be cost neutral.</li> </ul>							
BENEFITS (£m)		Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		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	
<b>Description and scale of key monetised benefits by 'main affected groups'</b> <ul style="list-style-type: none"> <li>N/A</li> </ul>							
<b>Other key non-monetised benefits by 'main affected groups'</b> <ul style="list-style-type: none"> <li>Domestic abuse victims will be able to seek evidence from a medical professional, knowing that for legal aid purposes, it will not matter if they are seen in person, over the phone or via video conferencing.</li> <li>Medical professionals will benefit from the greater flexibility in providing this vital evidence in line with their professional medical opinion as to how to best treat their patient.</li> </ul>							
<b>Key assumptions/sensitivities/risks</b>						<b>Discount rate</b>	N/A
<ul style="list-style-type: none"> <li>We have assumed that those who depend on medical letters of evidence alone for legal aid applications have not been able to use an alternative form of evidence. Additionally, we have assumed that allowing letters of evidence without an in-person consultation will not increase demand for legal aid beyond the volume of individuals who depended on them previously.</li> </ul>							

## BUSINESS ASSESSMENT (Option 5)

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 5

**Description:** Implement options 1 to 4 above (preferred option).

## 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	£7.2m	£59.7m
High	N/A	£17.4m	£145.1m
Best Estimate	N/A	£12.4m	£103.1m

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

- Implementing options 1 to 4 is estimated to result in increased costs to the Legal Aid Fund of approximately £7.2m to £17.4m per annum, with a best estimate of £12.4m per annum.

### 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	£7.2m	£59.7m
High	N/A	£17.4m	£145.1m
Best Estimate	N/A	£12.4m	£103.1m

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

- This option would increase annual revenue for providers of legal aid. The total benefit to providers is estimated to be approximately £12.4m per annum, equivalent to the cost of providing the services.

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

- An expansion of legal aid scope may result in more individuals applying for legal aid funding.
- Removing the means test and changing the merits test may result in more individuals qualifying for legal aid funding.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
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- The assumptions and risks associated with this option are outlined in the respective policy option sheets.

## BUSINESS ASSESSMENT (Option 5)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
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. To ensure this, 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 regulations made under LASPO set out the eligibility criteria that need to be met before legal aid can be granted. LASPO came into force in April 2013 and the reforms it made 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 in policy, other legislation or world events over the past 10 years.
3. In 2019, the Government conducted the Post Implementation Review (PIR) of LASPO, the central purpose of which was to carry out an evidence-based and objective assessment of the impact of the changes made under LASPO. Alongside the PIR, the Government published the Legal Support Action Plan (LSAP) which, amongst other things, committed to expanding the scope of legal aid to cover certain private family law proceedings, and align public law proceeding eligibility criteria.
4. Most recently, the UK's Exit from the European Union, the Domestic Abuse Act 2021 and the Covid-19 pandemic have necessitated a rethink of legal aid provision to ensure that the original policy intention of LASPO of providing legal aid to those most in need is maintained.

### Family legal aid

5. Generally speaking, legal aid is available in public family proceedings, which is where the state is involved in the care and/or supervision of a child. Legal aid in private family proceedings is generally limited only to family mediation, cases where domestic or child abuse is involved, and where international agreements necessitate legal aid being made available.
6. The LASPO PIR in 2019 identified some groups of people who are receiving less favourable legal aid than individuals going through similar proceedings, for example, parents having their child taken into care by the state as opposed to by relatives with no state involvement. The less favourable legal aid arrangements could be that the matter was out of scope of the legal aid scheme, or that different means and merits test applied. This identification was made possible through the evidence submitted by many stakeholders to the PIR process.

### Legal aid in domestic abuse cases

7. Legal aid is available to domestic abuse victims in private family proceedings, in contrast to many other private family proceedings which remain out of scope of the legal aid scheme. Domestic abuse victims who can provide a form of evidence that they are, or are at risk of being, a victim of domestic abuse can obtain legal aid funding in private family proceedings, such as to obtain a protective injunction against their abuser. The landmark Domestic Abuse

Act 2021 was passed following extensive public consultation, and it has introduced new ways to protect and support victims of domestic abuse.

### The statutory instrument and this IA

8. This impact assessment sets out four options that we intend to pursue to expand the family and criminal legal aid scheme and which are contained in the accompanying statutory instrument.
9. There has not been a single public consultation on the options within this IA. However, Option 1 and Option 3 are the result of public submissions to the LASPO PIR, and Option 2 follows a consultation on the draft Domestic Abuse Bill, now the Domestic Abuse Act 2021. There was no public consultation on Option 4 as it does not change Government policy but ensures that the way supporting evidence in domestic abuse cases is providing is up to date with medical practices.

## **B. Policy Rationale and Objectives**

### **Rationale**

10. 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).
11. The rationale for intervention in this instance relates to equity. The interventions outlined in this impact assessment (IA) are intended to provide greater support to individuals who are unable to access legal aid, despite going through comparable proceedings to those who are eligible. The options in this IA are also intended to continue to fulfil the core function of LASPO of targeting legal aid at those most in need.

### **Policy Objectives**

12. The core policy objective is to ensure that legal aid is targeted to those most in need, which is a key objective of LASPO. The groups of people identified within this IA are those the Government believe are most in need, and the options within this IA will help to fulfil that objective.

## **C. Affected Stakeholder Groups, Organisations and Sectors**

13. The proposals assessed in this IA are expected to directly affect the following groups:
  - Individuals going through special guardianship order proceedings, including the parental parties, prospective special guardians and the child(ren).
  - Individuals making an application for a domestic abuse protection order, or individuals subject to or responding to a domestic abuse protection order.
  - Individuals who breach a domestic abuse protection notice.
  - Individuals going through placement and adoption order proceedings.
  - Victims of domestic abuse seeking to provide evidence of that abuse.



- Family legal aid providers and barristers doing publicly funded family work.
- Medical practitioners providing letters of evidence of domestic abuse.
- The Legal Aid Agency (LAA).

#### **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 the family or criminal legal aid schemes.**
- **Option 1: Bring Special Guardianship Orders in private family law proceedings into scope of legal aid.**
- **Option 2: a) Bring the Domestic Abuse Protection Order into scope of civil legal aid; b) Make criminal legal aid available for breach of a Domestic Abuse Protection Notice.**
- **Option 3: Make legal aid for Placement and Adoption Orders non-means tested and apply less stringent merits criteria.**
- **Option 4: Allow medical practitioners to provide letters of evidence of domestic abuse without an in-person consultation.**
- **Option 5: Implement options 1 to 4.**

15. The preferred option is Option 5: Implement options 1 to 4 as a package.

16. All options (except the do nothing option) require amendments to legal aid guidance and the relevant legal aid contract (family or criminal).

#### **Option 0: Do Nothing.**

17. Under the 'do nothing' or 'base case' option, the current family and criminal legal aid schemes would remain unchanged and would not fulfil the policy intention of targeting legal aid at those who need it most.

18. The family and criminal legal aid schemes would not take into account the measures introduced in the Domestic Abuse Act 2021, meaning legal aid would not be available for the domestic abuse protection orders and notices contained within it. There would also continue to be differing means and merits requirements in some types of analogous family proceedings, and legal aid would not be available for special guardianship orders brought in private family proceedings.

#### **Option 1: Bring Special Guardianship Orders in private family law proceedings into scope of legal aid.**

19. Special Guardianship Orders (SGOs) are family orders giving a special guardian full legal parental responsibility for a child for the duration of the SGO.

20. A special guardian is usually another family member such as a grandparent. They are applying to become a special guardian and therefore they are the person making the SGO application. A parental party could be a parent or anyone with parental responsibility for a child. They would be responding to the SGO application and are at risk of having the child taken away from them.

21. SGO applications can be brought in both private (where the SGO is applied for by a private party) and public family law proceedings (where the SGO is applied for by the local authority). Legal aid is currently only available for SGOs in public law proceedings due to the risk of the removal of a child as a result of those proceedings. Legal aid is generally not available in private law proceedings unless there is evidence of a risk of domestic or child abuse.
22. Evidence submitted to the PIR of LASPO criticised this approach, saying that there is equally a risk of removal of a child in private law proceedings, but that prospective special guardians may be deterred from seeking a SGO or the parental party might not get the legal advice they require when faced with the loss of their child without legal aid provision.
23. The Government accepted these arguments and committed to bringing SGOs in private family law proceedings within the scope of the legal aid scheme. The means and merits tests that apply to public family law SGO proceedings will be replicated, so that the parental party and the prospective special guardian have to meet the same means and merits tests irrespective of whether the SGO application is made within public or private family law proceedings.
24. For the parental party, initial advice and assistance before proceedings will be subject to a means test, but legal representation at the proceeding will be non-means tested. This is because the Government's policy that the parental party should be legally represented when faced with the risk of losing their child. The merits test will be the same as the test that applies in public law care proceedings.
25. The prospective special guardian (as they would not be facing loss of a child) will be subject to means and merits tests at both levels (initial advice and assistance and/or legal representation at proceedings). This mirrors the existing means and merits tests that apply in private law SGO proceedings.

**Option 2: a) Bring the Domestic Abuse Protection Order into scope of civil legal aid and b) Make criminal legal aid available for breach of a Domestic Abuse Protection Notice.**

26. The Domestic Abuse Act 2021 introduced the Domestic Abuse Protection Notice (DAPN) to provide immediate protection to victims following a domestic abuse incident, and the Domestic Abuse Protection Order (DAPO) to provide flexible, longer-term protection for victims.
27. The DAPO and DAPN will be piloted over two years commencing in early 2024, and they will replace the existing Domestic Violence Protection Order (DVPO) and Domestic Violence Protection Notice (DVPN). Legal aid is already available for DVPOs and DVPNs and this option will ensure the continuity of legal aid if and when DVPOs and DVPNs are phased out.

The DAPO

28. The DAPO is unique as it can be applied for in the civil, family and criminal courts. It can also be made in certain circumstances by the civil, family and criminal courts without an application, for example, a DAPO could be made by the court as part of ongoing civil proceedings.
29. Civil legal aid will be available for respondents for all standalone DAPO applications in family and criminal courts and applications made alongside civil proceedings. Criminal legal aid will be made available for DAPOs being considered during ongoing criminal proceedings (these can be made following conviction, acquittal or appeal).

30. We will also provide civil legal aid for all applicants (victims of domestic abuse and third parties) of a DAPO in the family court and alongside prescribed civil proceedings.

### The DAPN

31. Breach of a DAPN is not a criminal offence, however, if breached, the respondent may be arrested without a warrant, remanded in police custody and must come before the Magistrates' Court. The respondent to a DAPN may be before the Magistrates' Court for a bail hearing or for the hearing of a DAPO application, as the police must apply for a DAPO if a DAPN is served.

32. This policy change would therefore see criminal legal aid being applied for breach of a DAPN.

### **Option 3: Make Placement and Adoption Orders non-means tested and apply less stringent merits criteria.**

33. A placement order authorises a local authority to place a child for adoption. An adoption order gives the child legal status as a child of their adoptive parents and gives full parental responsibility to the adoptive parents.

34. Public family law proceedings are in scope for legal aid, subject to the appropriate means and merits tests being met. Cases which fall under the definition of a "special Children Act 1989 case", which includes care proceedings, are not means tested and have a less stringent merits test, meaning that the recipient is likely to receive legal aid. This is because these types of cases often involve the state having the power to remove a child from a parent, and the Government's policy is that where parents or those with parental responsibility are at risk of having their child permanently removed and they wish to contest this, they should be legally represented.

35. However, despite placement and adoption orders being proceedings where a parent could lose parental responsibility over their child, unless the placement or adoption order is sought within care proceedings, legal aid is subject to the usual means test and does not have the benefit of a less stringent merits test.

36. This option would extend eligibility for non-means tested legal aid for parents and those with parental responsibility who wish to contest applications for placement and adoption orders and apply a less stringent merits test in those proceedings. This policy change will effectively place placement and adoption orders sought outside of care proceedings on equal footing with "special Children Act 1989 cases". As these orders are comparable to care proceedings and directly comparable to placement and adoption orders made within those proceedings, our view is that they should benefit from the same legal aid provision.

### **Option 4: Allow medical practitioners to provide letters of evidence without an in-person consultation.**

37. To access civil legal aid as a victim of domestic abuse for non-urgent cases, for example divorce, an applicant must provide supporting documentation evidencing that they are, or are at risk of being, a victim, otherwise they may be considered out of scope for legal aid. This is known as the Domestic Violence Gateway. The list of the acceptable forms of evidence are set out in the Civil Legal Aid (Procedure) Regulations 2012.

38. One form of evidence currently acceptable is a letter or report from a health professional. In many cases, this letter or report is provided by a GP. The letter or report must say that in their professional opinion following a face-to-face consultation, the applicant for legal aid has, or has had, injuries or a condition consistent with being a victim of domestic abuse.

39. The requirement for a face-to-face consultation is no longer in keeping with the flexibility in the ways in which medical professionals deliver general care. As a result of the Covid-19 pandemic, legal aid applications with this type of evidence dropped, likely attributable to the changes in ways of working (such as increased use of telephone appointments) that were necessarily adopted to prevent the spread of Covid-19.
40. This policy change will offer medical professionals greater flexibility in how they can continue to provide this vital service of evidence for applicants for legal aid.

#### **Option 5: Implement options 1 to 4**

41. Under this option, options 1 to 4, laid out above, will be implemented together.

### **E. Cost & Benefit Analysis**

42. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
43. 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.
44. 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.
45. 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. We have not applied optimism bias in these estimates, but we have provided some sensitivity analysis in the Risk and Assumptions section to quantify some uncertainty. We have also not included transitional or implementation costs to the LAA, as these are expected to be negligible.
46. 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. 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.
47. The options in this IA (with the exception of Option 5) will lead to new funded services being provided, so 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: Bring Special Guardianship Orders in private family law proceedings into scope of legal aid.**

##### *Methodology*

48. Data from the Legal Aid Agency (LAA) and the Family Court Statistics data have been used to estimate the costs and benefits of Option 1. Volumes and unit costs have been estimated separately for two levels of service: Legal Help and Civil Representation. Legal Help provides initial advice and assistance to clients on their legal issue before any court or tribunal proceedings. Civil Representation provides legal representation in court or at a tribunal, with funding granted on an individual basis by the LAA.

### *Volumes*

49. To estimate the number of applicants for legal aid, we have used the court records of applications for special guardianship orders. The range of our estimates are based on the range of mean volumes recorded over the past four whole years. This amounts to 1,100 to 1,400 special guardianship cases per year.

50. We assume that each case will comprise 2.5 parties, one prospective guardian party, with either one or two parties with parental responsibility. We have assumed that all orders are contested by the parents or those with parental responsibility and so limited initial advice and assistance (Legal Help) will be provided as by the time a special guardianship application is made, legal representation will be required quickly by the parental party. This amounts to 1,100 to 1,400 special guardianship applicants and 1,100 to 2,100 parental responsibility applicants.

51. We have also assumed that all prospective guardian parties will desire and apply for legal help in the early stage of application and apply for legal representation at the later stage and that from 25-75% of these applications will result in a Legal Help fee, with 50% of these fees resulting in Civil Representation certificates. These assumptions are used to capture a wide range of potential volumes as we do not know the eligibility of the cohort. This amounts to 300 to 1,100 Legal Help claims and 150 to 550 Civil Representation certificates.

### *Costs*

52. We do not have a recorded figure for the Legal Help cost specific to SGOs. We have instead used the mean cost of all Public Family Law Legal Help given over the past four years as a likely cost for the Legal Help unit cost. This comes to approximately £440 per case.

53. The unit cost of providing Civil Representation has been estimated based on the current average cost of SGOs which remain in scope (those in public family proceedings) and have received funding over the past four whole years. This comes to approximately £2,600 per case.

## **Costs of Option 1**

### Monetised Costs

#### *Legal Aid Agency*

54. The cost of this option to the Legal Aid Fund, under the assumptions outlined above, is expected to be £3.3m-£7.6m per annum in steady state.

## **Benefits of Option 1**

### Monetised benefits

#### *Family legal aid providers*

55. Family legal aid providers are expected to receive a financial benefit of an amount equal to the cost of providing the service of £3.3m-£7.6m per annum in steady state.

### Non-monetised benefits

#### *Parental parties*

56. The evidence provided in the PIR showed that there are instances where a parental party could have their child taken away without access to legal aid. This amendment to expand the scope of legal aid to cover SGO in private family proceedings will allow parental parties to have the opportunity to secure legal representation in those proceedings.

57. Additionally, by providing non-means tested legal representation, more parental parties are likely to qualify for legal aid funding.

#### *Prospective special guardians*

58. Providing legal aid for private family SGO proceedings will benefit the prospective special guardian. They will be able to obtain legal aid to ensure that they are fully apprised of the advantages and disadvantages of being a special guardian, understand the consequences of being made a special guardian and can give fully informed consent.

59. There could also be some practical benefits to a prospective special guardian obtaining advice and representation, such as ensuring the SGO application is properly served on all parties and have someone who can set out their case effectively to the court.

#### *Children*

60. A SGO has significant implications for the child involved. This expansion of policy should indirectly benefit children going through private family proceedings, in the same way as it does currently in public family proceedings, for example, by helping ensure that their needs are fully considered by the prospective special guardian.

### **Option 2: a) Bring the Domestic Abuse Protection Order into scope of civil legal aid; b) Make criminal legal aid available for breach of a Domestic Abuse Protection Notice.**

61. The cost and benefit analysis corresponding to the creation of the DAPO and the DAPN and their impacts of the justice system is covered in detail in the IA of the Domestic Abuse Act 2021 published by the Home Office and Ministry of Justice in May 2021.<sup>1</sup>

62. Modelling includes costs to the LAA associated with civil representation for applicants (the victims) and criminal representation for defendants (the perpetrators). Assuming 10% of defendants currently receive legal aid representation in Domestic Violence Protection Orders (DVPO) applications,<sup>2</sup> the estimated impact of criminal representation to the LAA associated with approximately 40 to 80 additional defendants is estimated to be less than £0.1 million per year.<sup>3</sup>

63. Typically, victims make an application to the family court for a domestic abuse related protective order (for example, a non-molestation or occupation order). Modelling assumes that 50% of applicants receive civil representation (including assistance with the application

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<sup>1</sup> The impact assessment can be accessed in full here: [Impact Assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

<sup>2</sup> Based on MoJ analysis of DVPO pilot data.

<sup>3</sup> In any case where a family court is considering making a DAPO against a respondent, the respondent will also be able to apply for legal aid, subject to the usual means and merits criteria. We expect this to be low and have not monetised.

before the court hearing).<sup>4</sup> Modelling considers the estimated impact to the LAA of civil representation in approximately 800 to 1,600 additional applications (associated with an additional 5-10% in applications respectively).

64. Criminalisation of breach will impact on the LAA in the form of criminal representation at additional breach proceedings progressing through the criminal courts. Modelling assumes that 50% of defendants in the magistrates' courts and 93% of defendants in the Crown Court will receive criminal legal aid representation.

## **Costs of Option 2**

### Monetised costs

#### *Legal Aid Agency*

65. Using the volumes set out above, legal aid for the Domestic Abuse Protection Order and the Domestic Abuse Protection Notice is estimated to cost from £3.7m to £6.4m, with a central figure of £5 million at a steady state cost.

66. Any increase in expenditure will be as a result of increased volumes following wider changes made by the Domestic Abuse Act 2021. These increased costs were assessed at the time as part of the impact assessment of the Domestic Abuse Act 2021.

## **Benefits of Option 2**

### Non-monetised benefits

#### *Legal aid providers*

67. Legal aid providers are estimated to see an increase in annual revenue equivalent to the costs of providing the service of £3.7m to £6.4m per annum in steady state.

#### *Victims of domestic abuse*

68. Victims of domestic abuse seeking a DAPO will be eligible to apply for legal aid, and access to legal aid for a DAPO may allow them to get protection from their abuser.

#### *Individuals in breach of a DAPN*

69. By listing a DAPN as a criminal proceeding, we are helping to ensure that individuals who breach their DAPN are eligible for legal aid for that hearing.

## **Option 3: Make Placement and Adoption Orders non-means tested and have less stringent merits criteria.**

### *Methodology*

70. LAA data on the costs of placement and adoption orders has been used to create a unit cost for each. Family court statistics on current counts of placement and adoption orders has been used to estimate prospective volumes. In both cases, the financial year 2019-2020 is used for the central estimate to avoid including temporary effects produced by Covid-19.

### *Volumes*

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<sup>4</sup> MoJ analysis has found that approximately 50 per cent of private family law applications are made ex-parte to the family court (that is, where the respondent is absent). Modelling has assumed an upper bound of 50 per cent representation for applicants, covering all of those applications made when the applicant is present in court.

71. The range of additional certificates given legal aid is estimated to be between the number of Civil Representation certificates for placement and adoption orders which were refused during 2019-2020, up to the number of certificates which would be required to make the ratio of adult to child adoption and placement order certificates equal to the ratio of adult to child care order certificates.

### *Costs*

72. The unit cost for both adoption and placement orders has been estimated based on the mean cost of Civil Representation associated with each respective order during 2019-2020. For placement orders, this unit cost came to approximately £4,800. For adoption orders, this unit cost came to approximately £4,200.

## **Costs of Option 3**

### Monetised costs

#### *Legal Aid Agency*

73. There will be an increased cost to the legal aid fund as a result of this option equivalent to the total estimated costs of provision for both placement and adoption order certificates.

74. The volumes and unit costs above result in an expected range of annual steady state cost from £0.1m to £0.5m for placement order certificates, and £0.1m to £2.9m for adoption order certificates.

75. The total cost is expected to be between £0.2m to £3.4m per annum in steady state.

## **Benefits of Option 3**

### Monetised benefits

#### *Family legal aid providers*

76. Family legal aid providers are expected to see an increase in demand for services in this area, with the resultant rise in annual revenue equivalent to the costs of this option (from £0.2m to £3.4m).

### Non-monetised benefits

#### *Parental parties*

77. There is no material difference between placement and adoption orders being brought in care proceedings and being standalone, as the result in both cases may be a child being removed from its parents. By amending the means and merits tests for these proceedings, we are helping to ensure that any parents who risk having their child taken away from them has the opportunity to be represented in these proceedings.

78. It will also make going through these proceedings more financially viable for the parental party as there will be no means test.

## **Option 4: Allow medical practitioners to provide letters of evidence without an in-person consultation.**

### *Methodology*



79. We have used LAA data on the number of applications through the Domestic Violence Gateway to estimate the costs of this option.

#### *Volumes*

80. The number of applications made through the DV Gateway dropped as a result of the pandemic by approx. 13%. Within that, the number of legal aid applications using a medical practitioner's letter as the sole form of evidence decreased by more than twice as much (by around 30%). Prior to the pandemic, applications using letters of evidence only averaged 1,300 per year. For the financial years 2020-21 and 2021-22, the average dropped to around 900.

81. The drop in applications through the DV gateway is likely due to the barriers posed by the pandemic to prevent and control the spread of Covid-19, for example, by restricting face-to-face GP appointments. Since the pandemic, Civil Representation certificates in domestic abuse cases have started to rise from 7,500 claims in 2020-2021 to 8,200 claims in 2021-2022. However, certificates using letters of evidence only have not returned to pre-pandemic levels. This suggests that the rising number of domestic abuse claims more generally is due to other factors outside of this option, meaning that the barriers initially caused by the pandemic are still in place. We expect that this option will lead to claims using letters of evidence only to return to pre pandemic levels, causing total DV gateway volumes to return to pre-pandemic levels adjusted by other changing trends in volumes not caused by this option.

#### **Costs of Option 4**

##### Monetised costs

82. This option is intended to cause volumes to return to pre-pandemic levels, meaning its overall impact is expected to be roughly cost neutral at the normal steady state.

#### **Benefits of Option 4**

##### Monetised benefits

83. Given that this option is expected to be cost neutral, fees received by legal aid providers are also expected to return to pre-pandemic levels, meaning the overall financial impact on providers is expected to be neutral.

##### Non-monetised benefits

###### *Domestic abuse victims seeking to provide evidence of that abuse*

84. This option will enable domestic abuse victims to continue to seek evidence from a medical professional without fear that they will not be offered an in-person consultation and therefore unable to meet the evidence requirements.

###### *Medical professionals providing letters of evidence of domestic abuse*

85. Medical professionals will benefit from the greater flexibility that this amendment offers, allowing them to continue to perform this vital service in line with their professional opinion as to how they wish to treat their patient (e.g. in person, over the phone, or via video conferencing).

#### **Option 5: Implement options 1 to 4.**

86. Option 5 is the result of implementing options 1 to 4 together, and so the costs and benefits are the same as those out above when combined.

87. The overall expected cost to the Legal Aid Fund is expected to be £12.4m per annum, with an equivalent benefit to legal aid providers.

## F. Risks and assumptions

88. 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 future volumes.

### Sensitivity Analysis

#### **Option 1: Brings Special Guardianship Orders in private family law proceedings into scope of legal aid.**

89. The best estimate for this option is based on the court volumes for Special Guardianship Orders over the past four years, assuming a 50% rate of applying and receiving Legal Help, and a further 50% applying and receiving Civil Representation. The low and high scenarios show the resulting volume and cost in the case of a lower (25%) or higher (75%) application and acceptance rate for Legal Help and Civil Representation. The low and high estimate also start from the lowest and highest court volumes of SGOs in the past four years. This means that they represent a highest and lowest likely possible volume and cost, given that they are the result of compounding multiple low or high assumptions.

Scenario	Volume	Steady State Annual Cost	Net Present Cost
Low	1550	£3.3m	£27.4m
Best Estimate	2600	£5.6m	£46.6m
High	3850	£7.6m	£63.2m

#### **Option 2: a) Bring Domestic Abuse Protection Orders into scope of civil legal aid; b) Make criminal legal aid available for breach of a Domestic Abuse Protection Notice.**

90. We have not conducted any additional sensitivity analysis for Option 2, as the analysis for this option has been ported over from a previous Impact Assessment. The assumptions and analysis involved are carried over.

#### **Option 3: Make legal aid for Placement and Adoption Orders non-means tested and apply less stringent merits criteria.**

91. The low volume for this option is the average yearly volume of Placement and Adoption Orders which apply for but are refused legal aid. We assume that the change in scope will cause these cases to be accepted. The high scenario volume represents the possibility that the volume of cases which receive legal aid for Placement and Adoption Orders increased to the point at which the ratio of adult to child certificates would equal the ratio of adult to childcare order certificates. Volumes for this option are uncertain, meaning that the volumes shown below are illustrative of the range of possibilities rather than two distinct scenarios.

Scenario	Volume
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		<b>Steady State Annual Cost</b>	<b>Net Present Cost</b>
<b>Low</b>	40	£0.2m	£1.5m
<b>High</b>	800	£3.4m	£28.6m

**Option 4: Allow medical practitioners to provide letters of evidence of domestic abuse without an in-person consultation.**

92. We have not conducted a sensitivity analysis for Option 4, as this option is expected to return volumes to pre-Covid levels and thus be cost neutral.

## **G. Wider impacts**

### **Equalities**

93. 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.

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

### **Families**

95. We have no evidence to suggest that families would be disproportionately adversely affected by the proposals within this IA.

### **Impact on small and micro businesses**

96. 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**

97. We do not envisage any foreign trade impacts.

### **Better Regulation**

98. 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**

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

## **H. Monitoring and Evaluation**

100. Following implementation of these options, the Ministry of Justice and the Legal Aid Agency will continue to monitor the impact of these changes on the legal aid scheme.
101. The Ministry of Justice will carry out a formal review of Option 4 after a year to assess its effectiveness. We recognise that medical professional practices may change over time, therefore the review will consider whether, and how, legal aid evidence requirements remain aligned to NHS policy as well as how the evidence requirements have worked in practice.