

Title: Amendments to the Civil Legal Aid (Procedure) Regulations 2012 (the Procedure Regulations) in relation to the domestic violence and child abuse evidence requirements for legal aid in private family law. IA No: MoJ014/2017 Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: Legal Aid Agency (LAA)	Impact Assessment (IA)
	Date: 8/12/2017
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary Legislation
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Summary: Intervention and Options	RPC Opinion: Not applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of One-In, Two-Out?	Measure qualifies as
N/A	N/A	N/A	N/A	N/A

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

Legal aid is available for victims, or those at risk, of domestic violence and/or child abuse when seeking legal support for a family dispute, such as making child custody arrangements. In addition to the means and merits tests, applicants must also provide objective evidence of the abuse in order to qualify. The evidence must accord with the list of acceptable evidence set out in paragraph 33 and 34 of the Civil Legal Aid (Procedure) Regulations 2012 (as amended). In April 2016, the Government began working with domestic violence support groups, legal representative bodies and others to review the domestic violence evidence requirements in paragraph 33 of the Procedure Regulations. This work has shown that the evidence requirements in their current form could be improved to make sure that victims, or those at risk, of domestic violence can evidence their abuse, to enable them to access legal aid. Intervention is necessary to meet the policy intention of making legal aid available to victims, or those at risk, of domestic violence in private family law proceedings.

What are the policy objectives and the intended effects?

The Government's intentions are to:

- make it easier for victims, or those at risk, of domestic violence to obtain and provide the evidence required to access legal aid for private family law matters;
- reduce the risk of victims not being able to obtain the required evidence;
- provide certainty and efficiency by reducing the need for future regulatory amendments.

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

- **Option 0/Do nothing: No amendments would be made to the current regulations.** This option is not considered viable as the Government has shown that improvements could be made to the existing arrangements to make sure that victims, or those at risk, can receive legal aid.
- **Option 1: Expand the scope of existing evidence, introduce new forms and remove the time limit in all cases.** Under this option the Procedure Regulations would be amended in order to introduce new forms of domestic violence evidence, expand the scope of existing evidence, and remove the current time limit of five years (including for child abuse evidence in paragraph 34). These actions seek to address the findings of the Government's research activities and ensure that legal aid is delivered in line with government policy.

Will the policy be reviewed?
The impact of these proposals will be monitored closely by the Ministry of Justice and the Legal Aid Agency.

Does implementation go beyond minimum EU requirements?	N/A				
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
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 (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: _____ Dominic Raab _____ Date: _____ 08/12/17 _____

Summary: Analysis & Evidence

Policy Option 1

Description: Amend the domestic violence evidence requirements to expand the scope of certain existing forms of evidence, introduce new forms of evidence and remove the time limit. The time limit removal also applies to the child abuse evidence requirements.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
2015-16	N/A	N/A			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	£0.025m	Up o £24m	N/A

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

There will be an increase in costs to the legal aid fund as the Legal Aid Agency (LAA) is expected to fund more cases compared to the current position. This is estimated to cost up to £24m per year in nominal terms, in steady state.

The LAA will face one-off administrative costs from changing their IT systems to account for the regulatory changes. The LAA estimates this additional one-off cost to be around £25,000. There may also be an increase in workload for the Agency's staff as they will have to handle and assess more cases per year resulting in on-going costs of around £80,000 a year.

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

Legal aid practitioners: The potential increase in workload could increase administrative costs for family legal aid providers.

Her Majesty's Courts and Tribunal Service (HMCTS): Potential increase in costs to HMCTS if the policy results in more proceedings going through the court system.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	N/A	Up to £24m	N/A

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

Legal aid practitioners: This option may result in an increase in case volumes and thus legal aid fee income for providers. This is estimated at up to £24m per year in nominal terms, in steady state.

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

Civil legal aid claimants: Victims previously unable to receive legal aid due to their evidence of domestic abuse or child abuse not meeting criteria may now be eligible for funding.

HMCTS: The policy might result in fewer litigants in person as more cases fall in scope of legal aid.

Key assumptions/sensitivities/risks	Discount rate
	N/A
<p>There is some uncertainty in estimating the number of additional cases that could apply for and be granted legal aid following this policy proposal. The £24m estimate has been calculated using the proportion of all private family law cases going through court in 2015-16 that allege some form of harm (excluding cases in which a protective injunction was sought), and applying this proportion to the volume of legal aid grants from 2012-13 prior to the changes made to the scope of legal aid. The legal aid grants volume has been adjusted to account for those who would be able to provide evidence under the current regulations. This estimate is likely to be an upper bound, because it assumes all private family law cases alleging harm, would apply for and be granted legal aid. In reality this is unlikely to be the case. The analysis also assumes that private family law legal aid volumes in 2015-16 and beyond will be the same as 2012-13 volumes.</p>	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	N/A	N/A

Signed by the responsible Minister:

..... Dominic Raab Date: 08/12/17

A. Background

1. The Government's objective is to make sure that victims, or those at risk, of domestic violence and child abuse get the help and support they need, including access to legal aid for private family law proceedings. In order to ensure legal aid is available for victims, or those at risk, and in order to maintain control and stewardship of public funds, the Government originally introduced evidence requirements per regulation 33 and 34 of the Procedure Regulations in April 2013.
2. In April 2016, in conjunction with making interim amendments to address a judgment by the Court of Appeal, the Government began working with domestic violence support groups, legal representative bodies and others to review the current evidence requirements in order to facilitate access to legal aid in private family law matters for victims, or those at risk, of domestic violence. This work has now concluded, with findings showing that the evidence requirements in their current form could be expanded and improved in order to make sure that victims, or those at risk of being a victim, can access legal aid.

B. Policy Rationale and Objectives

3. Conventional economic approaches to government intervention are usually based on efficiency or equity arguments. Governments may consider intervening on the grounds of efficiency if there are strong enough failures in the way markets operate (e.g. monopoly), or similar failures in existing interventions (e.g. outdated regulations generating inefficiencies). In all cases the proposed intervention should avoid generating disproportionate costs and distortions. Intervention can also be justified on equity grounds where governments intervene for reasons of fairness and/or for distributional reasons (e.g. by reallocating resources from one group in society to another).
4. The main rationale for the options assessed in this Impact Assessment is equity as the associated policy objective is to make sure that victims, or those at risk, of domestic violence and child abuse get the help and support they need, including access to legal aid for private family law proceedings. The Government's more specific policy objectives are to:
 - a. make it easier for victims, or those at risk, of domestic violence to obtain and provide the evidence required in order to access legal aid in private family law matters;
 - b. reduce the risk of victims not being able to obtain the required evidence; and
 - c. provide certainty and efficiency by reducing the need for future regulatory amendments.
5. To achieve these aims the Government is making amendments to the Procedure Regulations that introduce new forms of domestic violence evidence, expands the scope of existing evidence and removes the five year time limit within which these must be obtained. The Government is also removing the time limit placed on evidence of child abuse.

C. Description of Options Considered

6. In order to meet the policy objectives, the following options have been considered:
 - **Option 0: Do nothing:** Under this option no changes would be made to the regulations introduced in April 2016.
 - **Option 1: Expand the scope of existing evidence, introduce new forms of evidence and remove the time limit in all cases:** Under this option the Procedure Regulations would be amended in order to introduce new forms of evidence, expand the scope of existing evidence, and remove the current time limit of five years.

Option 0: Do nothing

7. Under this option no changes would be introduced and the amendments made in 2016 would be retained.

8. This option is not considered viable as the Government has shown that improvements could be made to the existing arrangements to make it easier for victims, or those at risk, to receive legal aid.

Option 1: Expand the scope of existing evidence, introduce new forms and remove the time limit in all cases

9. Under this option the Procedure Regulations would be amended in order to introduce new forms of evidence, expand the scope of existing evidence, and remove the current time limit of five years for both domestic violence and child abuse.
10. The intention is to make it easier for victims, or those at risk, of domestic violence to obtain the evidence required to support their application for legal aid in private family law proceedings. The requirement that applicants provide a form of objective verification that domestic violence is a factor in the private family matter to which a legal aid application pertains has been retained in recognition of the Government's responsibility to steward taxpayer's money responsibly.
11. These aims will be achieved via amendments to regulation 33 of the Procedure Regulations that:
 - a. Introduce new forms of evidence;
 - b. Broaden the scope of existing evidence forms; and
 - c. Remove the current time limit of five years from all forms of evidence (for domestic violence and child abuse).
12. The amendments also seek to further encompass applicants that are at risk of domestic violence by allowing acceptance of evidence that relates to domestic violence that occurred against the other party's previous partners.
13. The definition of 'health professional' is to be broadened to make it easier for victims to obtain evidence and to reduce the reliance upon evidence from GPs and the prescriptive list of protective injunctions is to be removed to reduce the risk that new types of injunctions may be created that are not included within the regulations.
14. The time limit on supporting documents of child abuse, set out at regulation 34, will also be removed.

D. Affected Groups

15. The following key groups are likely to be affected by the proposals:
 - a. Victims, or those at risk, of domestic violence and/or child abuse applying for legal aid funding in private family law proceedings;
 - b. Family law practitioners holding a legal aid contract with the Legal Aid Agency (LAA);
 - c. The LAA, which is responsible for the administration of legal aid;
 - d. Her Majesty's Courts and Tribunal Service (HMCTS), which is responsible for the administration of criminal, civil and family courts and tribunals in England and Wales; and
 - e. The organisations that applicants may approach in order to acquire evidence.

E. Cost Benefit Analysis

16. Where possible, this IA outlines the potential costs and benefits from implementing the proposal on the key groups identified. The costs and benefits are compared to the 'do nothing' option. IA's place a strong emphasis on valuing the costs and benefits in monetary terms but there are some aspects that cannot always be meaningfully monetised. This IA considers the impact of the proposed reform in isolation.

Key Assumptions

17. It is inherently difficult to provide a precise estimate of the number of additional private law family cases that will be granted legal aid as a result of these policy changes. In order to provide an estimate of the potential upper bound, the following key assumptions have been made:
- When estimating the additional volume of cases that could be granted legal aid, we have assessed the proportion of all private family law cases going through court in 2015-16 that allege some form of harm (excluding cases in which a protective injunction was sought). This proportion has then been applied to the volume of private family law legal aid grants in 2012-13, prior to the changes made to the scope of legal aid, to estimate a potential case volume that may demand legal aid funding in the future¹(in 2012-13 it was possible to receive legal aid for private family proceedings without providing evidence of domestic violence or child abuse).
 - The costing implicitly assumes that all those alleging harm in the family courts would be able to evidence their domestic violence under the proposed amendments.
 - Caseload estimates do not account for any changes in general private family law trends that may have increased or decreased private family law demand volumes from a 2012-13 baseline.
 - The overall cost of the proposal has been estimated by multiplying the volume of additional legal aid grants by a weighted average cost of private family law legal aid certificates.

Option 1: Expand the scope of existing evidence, introduce new forms and remove the time limit in all cases

Costs of Option 1

Legal Aid Fund

18. Option 1 is estimated to increase the costs to the legal aid fund by up to £24m per year in steady state due to the potential increase in cases being granted legal aid.

Legal Aid Agency

19. The one-off costs for the LAA are expected to be around £25,000. These costs primarily relate to administration costs of amending IT systems.
20. There is likely to be an increase in workload for the Agency's staff as they will have to handle and assess more cases per year resulting in on-going costs of around £80,000 a year. The changes would represent an additional pressure on the department's finances.

Family legal aid practitioners

21. There could be an increase in administrative costs for family legal aid practitioners if their workload increases.

Her Majesty's Courts and Tribunal Service

22. As the Lord Chief Justice remarked in a recent statement, "It is quite interesting that we now have quite a lot of evidence, it is anecdotal rather than properly empirical, that suggests that litigants in person do not necessarily clog up the courts. Some shorten the cases, others lengthen the cases, but as a general proposition it usually assists judges to have professionals in front of them if that is at all possible."² The overall cost impact on HMCTS is not possible to estimate.

¹ The pre-LASPO volume does not include domestic violence (protective injunction) certificates, any applicants under 18 (as they continue to be granted legal aid following the reforms), respondents or the current volume of cases being granted legal aid in private family law cases.

² <https://www.judiciary.gov.uk/wp-content/uploads/2017/12/lcj-press-conference-20171205.pdf>, *Press Conference held by the Lord Chief Justice of England and Wales, 5 December 2017*

Benefits of Option 1

Family legal aid practitioners

23. Family legal aid providers may experience an increase in demand for their services if more cases qualify for legal aid. Consequently, their legal aid fee income could increase by up to an estimated £24m per year, in steady state.

Victims of domestic violence and/or child abuse

24. Beyond the costs of the proceedings, the wider benefits to victims have not been monetised.

Her Majesty's Courts and Tribunal Service

25. The policy might result in fewer litigants in person as more cases fall in scope of legal aid.

F. Risks and Uncertainties

26. There is a risk that the cost of the additional cases this policy brings in-scope are different from the average cost used to estimate this policy. If the new cases are more expensive than the current cases, the costs (and benefits) estimated would increase in magnitude in steady state and vice versa if the average cost of new cases is lower than average.
27. There is uncertainty in estimating the number of additional cases that would apply for and be granted legal aid as a result of this policy. The current estimate is based on using the proportion of all private family law cases that include allegations of harm (excluding cases where a protective injunction was sought) and applying that to a 2012-13 legally aided private family law baseline when estimating a possible case volume increase. Firstly, there is a risk that the current case load of private family law is different to the one in 2012-13. This carries a risk that fewer/more cases than estimated will apply and that the benefit of the policy change to family legal aid providers will be less/more than estimated. If this is not the case, the true cost of the policy is likely to be less than the £24m estimate.
28. There is the possibility of a short-term spike in volumes (over and above the potential increase estimated) as a result of people applying for legal aid soon after the changes are implemented.

G. Enforcement and Implementation

29. The proposals would be implemented by a negative Statutory Instrument, amending the Procedure Regulations, under powers granted to the Lord Chancellor by sections 12 and 41 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

H. Monitoring and Evaluation

30. The impact of these proposals will be monitored closely by the Ministry of Justice and Legal Aid Agency. In order to assist with the monitoring and evaluation of these changes, the Ministry of Justice and Legal Aid Agency have begun to publish details of the forms of evidence used by legal aid applicants. The Ministry of Justice also intends to continue work with its external advisory group to monitor the impact of the changes.

I. One in Three Out

31. Legal aid is out of scope of the regulatory agenda. It is excluded by section 22 (4) (c) of the Small Business Enterprise and Employment Act 2015 on the grounds that it relates to 'the giving of grants or other financial assistance by or on behalf of a public authority'. The measure does not require Reducing Regulation Committee or Regulatory Policy Committee clearance.