

Title: Modernising Lasting Power of Attorney IA No: MoJ006/2021 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Office of the Public Guardian	Impact Assessment (IA)
	Date: 15/06/2021
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: mlpaconsultation@justice.gov.uk
Summary: Intervention and Options	RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option (in 2021/22 prices)

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

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

A Lasting Power of Attorney (LPA) is a deed that allows an individual (the donor) to plan for circumstances where they can no longer make decisions for themselves due to a loss of mental capacity, by granting such powers to another person (the attorney). Since paper LPAs were introduced in 2007, technology and societies' expectations have changed and people now expect digital services, with appropriate safeguards. The current process for creating LPAs is also overly complex and confusing and The Office of the Public Guardian (OPG) is at risk of financial unsustainability. We therefore need to create an LPA system for the digital world which retains the balance of access to an LPA while providing increased protection for individuals against fraudulent or abusive use of the system. This consultation describes the options for doing this. Government intervention is needed as the OPG is the only agency that can register LPAs while the Ministry of Justice has oversight of the legislation which governs the functions of the OPG.

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

The main policy objectives of modernising lasting powers of attorney are to:

- increase safeguards for the donor
- improve the process of making and registering an LPA for donors, attorneys and third parties
- achieve sustainability for OPG whilst keeping LPAs as affordable as possible for all people in society

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

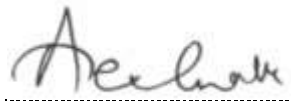
- **Option 1: Role of witness:**
 - 1a: Remove the witnessing requirement for the signing of an LPA by the donor or attorney.
 - 1b: A person uses technology to witness the donor or attorneys signing the LPA but is not physically present.
 - 1c: Replace the witness with objective evidence that the donor signed the LPA.
- **Option 2: Role of application:**
 - 2a: Require that an LPA is sent for registration as soon as it has been executed.
 - 2b: Permit delayed registration with OPG after an LPA has been executed.
- **Option 3: OPG Remit**
 - 3a: Permit the OPG to delay registration of an LPA until certain prescribed checks are met and to reject LPAs that cannot meet the requirements.
 - 3b: An LPA would only be registered if it reached a confidence threshold about the level of risk associated with it. OPG would have discretion as to the evidence it accepted to understand the risk.
- **Option 4: How to object:**
 - 4a: Allow anyone to raise an objection. All objections would be sent to OPG to review and investigate.
 - 4b: OPG receives only factual objections: Anyone could raise an objection which would need to be referred directly to the OPG or the Court of Protection, depending upon the nature of the objection.
- **Option 5: When to object:**
 - 5a: Allow objections from the point the donor starts creating their LPA until it is sent for registration.
 - 5b: Reduce the current statutory waiting period for objections to be received by OPG.
 - 5c: Remove the statutory waiting period but provide a mechanism for the donor to withdraw their LPA.
- **Option 6:** Provide an urgent registration service to those with an urgent need to create and register an LPA.
- **Option 7: Solicitor access to the service:**
 - 7a: Ensure solicitors can access a digital service via integration with existing document management systems.
 - 7b: Require solicitors to use the new service for certain aspects of the registration process.
 - 7c: Require solicitors to use the whole digital channel for all LPA registrations after a certain date.

At present, the government's preferred options are 1c, 2a, 3a, 4a, 7a and a combination of options 5a-5c as these best meet the policy objectives. At present, the Government does not intend to implement option 6.

Will the policy be reviewed? It will not be reviewed.					
Does implementation go beyond minimum EU requirements?			N/A		
Is this measure likely to impact on international trade and investment?			No		
Are any of these organisations in scope?		Micro No	Small No	Medium No	LargeNo
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 responsible Minister:



Date:

15.06.21

Summary: Analysis & Evidence

Policy Option 1a

Description: Role of the witness; Remove the witnessing requirement for the signing of an LPA by the donor or attorney.

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
Removing witnessing (1a) could remove a legitimate safeguard and therefore increase the risk of fraud and abuse.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Removing witnessing (1a) would be quicker and easier for users, the OPG, and solicitors.					
Key assumptions/sensitivities/risks					Discount rate (%)
Removing witnessing (1a) assumes witnessing provides no additional safeguard, and that there is no risk to donors in removal.					

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 1b

Description: Role of the witness; A person uses technology to witness the donor or attorneys signing the LPA but is not physically present.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups' It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups' Under 1b, users may find the process more complex and there may be increased resistance to making an LPA. Introducing digital systems could have operational and training costs for OPG and solicitors.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups' It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups' Remote witnessing (1b) will still allow users to have their LPA witnessed, and may help them find someone to witness the LPA, especially for those with smaller social circles. Easier for users and solicitors due to fewer logistical burdens in arranging a witness.					
Key assumptions/sensitivities/risks					Discount rate (%)
Remote witnessing (1b) assumes digital witnessing is preferable for users.					

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 1c

Description: Role of the witness; Replace the witness with objective evidence that the donor signed the LPA.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

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

It has not been possible to identify any monetised costs associated with this option.

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

A new process to function similarly to witnessing (1c) would have costs to the OPG of digital storage. It may take a longer time to understand and use the process if users are unfamiliar with similar services.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

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

It has not been possible to identify any monetised benefits associated with this option.

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

A new process (1c) could provide the OPG with objective evidence rather than witness evidence, which could save OPG and the Court of Protection legal fees and staff costs. Would also reduce the number of LPAs that cannot be registered due to signing and witnessing errors. Easier for applicants as they do not have to organise an in-person witness.

Key assumptions/sensitivities/risks

Discount rate (%)

A new process (1c) assumes an assisted virtual solution will provide the same gravitas and safeguard as in-person witnessing.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2a

Description: Role of application; Require that an LPA is sent for registration as soon as it has been executed.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

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

It has not been possible to identify any monetised costs associated with this option.

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

Execution starting registration (2a) could cost OPG for digital storage but would be offset by savings made elsewhere through modernisation. It also removes a choice, which could negatively affect user perception of the process.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

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

It has not been possible to identify any monetised benefits associated with this option.

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

Execution starting registration (2a) would simplify the process and increase the speed. Errors are more likely to be found early saving users logistical costs, especially if they are found only after the donor has lost capacity.

Key assumptions/sensitivities/risks	Discount rate (%)
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Where an LPA sent for registration after the donor has lost capacity is found to be imperfect or invalid, it cannot be registered and a new LPA cannot be made.
 Execution starting registration (2a) could exacerbate the misunderstanding that registering an LPA immediately transfers all decision-making power to the attorneys.

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 2b

Description: Role of application, Permit delayed registration with OPG after an LPA has been executed.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
Execution allowing delayed registration (2b) could have a time limit on storage, which may cost clients and solicitors time if they have to redo the application. It would cost OPG in digital storage, and fees could not offset the cost as users would not pay until the LPA was registered.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Under execution allowing delayed registration (2b) the user retains the choice about whether and when to register their LPA. The process would be simpler for those who want to delay, as 4% of LPA applications are received by OPG more than 5 months after the donor signed the forms.					
Key assumptions/sensitivities/risks					Discount rate (%)
Execution allowing delayed registration (2b) has a risk to the OPG as if payment is taken before registration, then OPG may be paid for LPAs that are never registered.					

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3a

Description: OPG remit; Permit the OPG to delay registration of an LPA until certain prescribed checks are met and to reject LPAs that cannot meet the requirements.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

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

It has not been possible to identify any monetised costs associated with this option.

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

Conditional registration (3a) could make the service more complex for users and could make the system too expensive for the OPG.

It could also result in legitimate LPAs failing if the checks are too stringent. If checks are failed under this option, the user would need to do an in-person interview, which could cost time and have travel costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

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

It has not been possible to identify any monetised benefits associated with this option.

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

Conditional registration (3a) provides increased protection against fraud by false representation, increasing protection of people's finances and assets.

Increased checks under conditional registration (3a) guarantee registration once checks have been passed, leading to increased efficiency and consistency for OPG due to automated checks. This would reduce staff time and costs and help deter abuse and fraud. Safeguards are also improved.

Key assumptions/sensitivities/risks	Discount rate (%)
<p>The public and solicitors believe the OPG currently carries out more checks than it does. This option could make the service more complex for users and could make the system too expensive for the OPG. Introducing ID verification could make it more difficult for some people to access LPAs.</p>	

BUSINESS ASSESSMENT (Option 3)

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

Summary: Analysis & Evidence

Policy Option 3b

Description: OPG remit; An LPA would only be registered if it reached a confidence threshold about the level of risk associated with it. OPG would have discretion as to the evidence it accepted to understand the risk.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	Optional		Optional	Optional	
High	Optional		Optional	Optional	
Best Estimate					
Description and scale of key monetised costs by 'main affected groups' It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups' Discretionary registration (3b) could give rise to legal challenges due to the discretionary nature of checks, which may cost OPG in legal fees.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	Optional		Optional	Optional	
High	Optional		Optional	Optional	
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups' It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups' This option provides increased protection against fraud by false representation, increasing protection of people's finances and assets. Discretionary registration (3b) would give OPG discretion, which is valuable.					
Key assumptions/sensitivities/risks				Discount rate (%)	
The public and solicitors believe the OPG currently carries out more checks than it does. Introducing ID verification could make it more difficult for some people to access LPAs. This option could make the service more complex for users and could make the system too expensive for the OPG.					

BUSINESS ASSESSMENT (Option 3)

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

Summary: Analysis & Evidence

Policy Option 4a

Description: How to object; Allow anyone to raise an objection. All objections would be sent to OPG to review and investigate.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
OPG receiving all objections (4a) could slow the process, as increased objections will lead to an increase in costs to OPG to check the validity of the objection and increased investigations.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Both options could allow more people to object, and this should help identify undue pressure and fraud. OPG receiving all objections (4a) would expand who can object, which might allow for greater protection against abuse. Single organisation with which to raise an objection provides clarity and assistance in doing so may ensure people with legitimate concerns are not put off raising them.					
Key assumptions/sensitivities/risk					Discount rate (%)
People named in the "people to notify" section don't always have enough of an understanding of the relationships between the donor and proposed attorney to be able to comment in a meaningful way. Users currently do not understand where to direct their objections to.					

BUSINESS ASSESSMENT (Option 4)

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

Summary: Analysis & Evidence

Policy Option 4b

Description: How to object; OPG receives only factual objections: Anyone could raise an objection which would need to be referred directly to the OPG or the Court of Protection, depending upon the nature of the objection.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
OPG only receiving factual objections (4b) has the potential to increase cases before the court of protection. It could add cost and complexity for objectors who now need to go through a court process. It may even deter some from making an objection.					
BENEFITS £m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Both options could allow more people to object, and this should help identify undue pressure and fraud. OPG only receiving factual objections (4b) retains a clear distinction between the role of the OPG as an administrative body and the Court of Protection.					
Key assumptions/sensitivities/risk					Discount rate (%)
People named in the "people to notify" section don't always have enough of an understanding of the relationships between the donor and proposed attorney to be able to comment in a meaningful way. Users currently don't understand where to direct their objections to.					

BUSINESS ASSESSMENT (Option 4)

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

Summary: Analysis & Evidence

Policy Option 5a

Description: When to object; Allow objections from the point the donor starts creating their LPA until it is sent for registration.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
Objection during creation (5a) could delay the process, and incomplete LPAs may be more likely to be challenged. Fraud and abuse may not be found, as those who are aware of such would not necessarily be aware of the creation of an LPA.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Objection during creation (5a) would allow quicker determination about whether to register in the case of fraud or undue pressure. It could streamline the process significantly and reduce the length of the process, as objections would be raised through the digital service, whilst the LPA is being created, which would save OPG staff and storage costs.					
Key assumptions/sensitivities/risks					Discount rate (%)
Evidence demonstrates that donors are having conversations with their attorneys so neither party is likely to objects to the LPA. People to notify section don't always have enough of an understanding of the relationships between the donor and proposed attorney to be able to comment in a meaningful way.					

BUSINESS ASSESSMENT (Option 5)

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

Summary: Analysis & Evidence

Policy Option 5b

Description: When to object; Reduce the current statutory waiting period for objections to be received by OPG.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
Reducing the statutory waiting period (5b) may not give enough time to notify parties about the LPA resulting in missed objections and LPAs being registered that shouldn't be.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Reducing the statutory waiting period (5b) would allow for quicker registration of the LPA while allowing objections once an LPA is completed so objectors are sighted on the content of the LPA.					
Key assumptions/sensitivities/risks					Discount rate (%)
Evidence demonstrates that donors are having conversations with their attorneys so neither party is likely to object to the LPA. People to notify section don't always have enough of an understanding of the relationships between the donor and proposed attorney to be able to comment in a meaningful way.					

BUSINESS ASSESSMENT (Option 5)

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

Summary: Analysis & Evidence

Policy Option 5c

Description: When to object; Remove the statutory waiting period but provide a mechanism for the donor to withdraw their LPA.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
If there are concerns that are not caught by earlier checks, removing the statutory waiting period could result in harm to users via abuse or fraud.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Removing the statutory waiting period (5c) could speed up the process for users, saving them logistical costs, and save OPG and solicitors staff and storage costs.					
Key assumptions/sensitivities/risks					Discount rate (%)
Evidence demonstrates that donors are having conversations with their attorneys so neither party is likely to object to the LPA. People to notify section don't always have enough of an understanding of the relationships between the donor and proposed attorney to be able to comment in a meaningful way.					

BUSINESS ASSESSMENT (Option 5)

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

Summary: Analysis & Evidence

Policy Option 61

Description: Speed of service; Provide an urgent registration service to those with an urgent need to create and register an LPA.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
An urgent service (6) may need additional staff time to process LPAs as urgent, which may have costs to the department of hiring and training if extra staff are required. It may add an additional burden to the health sector. There could be high demand, which could strain OPG resource. Users would have the difficulty and cost of organising and acquiring medical proof of urgent need for an LPA. The provision of an urgent service may mean that the standard service for other users is not as quick as it could be with a single service for all.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
An urgent service (6) may allow more flexibility in the process. This option could allow those who need an urgent LPA to get one, whilst minimising the risk of fraud and abuse by requiring additional safeguards to be met.					
Key assumptions/sensitivities/risks					Discount rate (%)
There is a risk that the requirements of an urgent system are cost prohibitive for OPG to run. Additionally, the process for proving need adds complexity for the parties involved and puts added burden on the NHS and medical professionals.					

BUSINESS ASSESSMENT (Option 6)

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

Summary: Analysis & Evidence

Policy Option 7a

Description: Solicitor access to the service; Ensure solicitors can access a digital service via integration with existing document management systems.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
Integration only (7a) may have costs to solicitors of training to use the tool, and also possible costs to their clients if there are delays in solicitors learning to use the new digital service or transferring to the new digital service.					
BENEFITS £m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Using the digital service would be cheaper, easier, and more efficient for solicitors, saving them time and staff costs. It is also more environmentally friendly and could allow for easier sorting and streamline the LPA process, as there would be less paper used. Depending on uptake for integration only (7a), these benefits would be lowest in 7a and highest if solicitors were mandated to use the full digital service (7c).					
Key assumptions/sensitivities/risks					Discount rate (%)
There is some uncertainty in how successful integration only would be in converting solicitors to use a digital service. Solicitors move to the new digital channel too slowly to be sustainable, and the cost of an LPA to users has to rise.					

BUSINESS ASSESSMENT (Option 7)

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

Summary: Analysis & Evidence

Policy Option 7b

Description: Solicitor access to the service; Require solicitors to use the new service for certain aspects of the registration process.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups'					
Partially mandating solicitors to use the service (7b) could damage solicitors' relationship with the department and OPG by mandating solicitors to use a digital service. It could restrict solicitors to a service that does not meet their needs or their clients. It could result in some solicitors no longer offering an LPA service.					
BENEFITS £m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups'					
Using the digital service would be cheaper, easier, and more efficient for solicitors, saving them time and staff costs. It is also more environmentally friendly and could allow for easier sorting and streamline the LPA process, as there would be less paper used. Depending on uptake for integration only (7a), these benefits would be lowest in 7a and highest if solicitors were mandated to use the full digital service (7c).					
Key assumptions/sensitivities/risks					Discount rate (%)
This approach could be judged to be a restriction on how solicitors offer their services and amount to regulation of legal services.					
Solicitors move to the new digital channel too slowly to be sustainable, and the cost of an LPA to users has to rise.					

BUSINESS ASSESSMENT (Option 7)

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

Summary: Analysis & Evidence

Policy Option 7c

Description: Solicitor access to the service; Require solicitors to use the whole digital channel for all LPA registrations after a certain date.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised costs by 'main affected groups' It has not been possible to identify any monetised costs associated with this option.					
Other key non-monetised costs by 'main affected groups' Fully mandating solicitors to use the service (7c) could damage solicitors' relationship with the department and OPG by mandating solicitors to use a digital service. It could restrict solicitors to a service that does not meet their needs or their clients. It could result in some solicitors no longer offering an LPA service.					
BENEFITS £m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate					
Description and scale of key monetised benefits by 'main affected groups' It has not been possible to identify any monetised benefits associated with this option.					
Other key non-monetised benefits by 'main affected groups' Using the digital service would be cheaper, easier, and more efficient for solicitors, saving them time and staff costs. It is also more environmentally friendly and could allow for easier sorting and streamline the LPA process, as there would be less paper used. Depending on uptake for integration only (7a), these benefits would be lowest in 7a and highest if solicitors were mandated to use the full digital service (7c).					
Key assumptions/sensitivities/risks					Discount rate (%)
Some solicitors could be left unable to offer an LPA service due to lack of digital access or capability once the digital channel is the only option.					

BUSINESS ASSESSMENT (Option 7)

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

Evidence Base

A. Background

Lasting Powers of Attorney & The Office of the Public Guardian

1. A Lasting Power of Attorney (LPA) is a deed that allows an individual (the donor) to plan for circumstances where they can no longer make decisions for themselves due to a loss of mental capacity, by granting decision making powers to another person (the attorney).
2. LPAs can cover the donor's property and affairs or their health and welfare arrangements. The donor can choose how wide ranging or limited the powers of their attorney(s) will be, potentially including decisions about life sustaining treatment (for health and welfare) or the ability to take instruction before a loss of capacity (property and affairs). They can also set out preferences and instructions for how their attorney should make decisions.
3. The LPA was established in 2007 when the Mental Capacity Act 2005 (MCA or 'the Act') was implemented, replacing the old enduring power of attorney (EPA). The Act set out a new approach to supporting and protecting those without mental capacity in England and Wales and included the requirements to register an LPA before use. The Act also set up the Office of the Public Guardian (OPG) to oversee the registration of LPAs as a safeguard against the increasing abuse that was present under the old system. Thus, although they are private agreements, in all cases, the OPG must register the LPA before it can be used.
4. Since its creation in 2007, the OPG has also been responsible for investigating concerns about how an attorney is using an LPA. It is also responsible for registering any remaining EPAs created prior to them being replaced by LPAs. The number of LPAs the OPG receives each year has also increased. In 2014/15, the OPG received just over 390k LPAs for registration, but by 2019/20 this had risen to just under 920k. This has affected the OPG's budget as it is funded through the fees it charges for the services it offers, including for LPA and EPA registration, on a cost recovery basis.

Problem Under Consideration

5. All LPAs are created and registered on paper. This is because the LPA is a deed and to be valid, it must be executed. This means it must be signed, witnessed, attested and delivered. Although there is a digital tool to help people fill in the details of their LPA, the final stages must be completed on a paper document: The document must be printed out so that all the parties, the donor and all attorneys, can sign it. Each of these signatures must be witnessed, and a certificate provider must sign to confirm the donor understands the document and that no fraud or undue pressure has taken place. The completed document must then be sent to the OPG for registration before use. This involves a labour-intensive process of data entry and checks to ensure the information required under the Act is included.
6. The intricacies of this process can cause difficulties for those involved. User research suggests that the process is overly complicated and the language difficult to understand. Large amounts of planning are required to ensure the document is completed in the right order, papers can get lost or damaged and it is too easy to make mistakes that result in the document being rejected at registration, requiring further time, effort and potentially an additional fee to correct. This can be the case even when people seek advice from third parties such as solicitors or charities. In the worst cases, it can leave a donor without the protection of an LPA because an error hasn't been picked up until registration, but the donor has already lost capacity and so cannot make a new one. Modernising the process, to allow

submission of an LPA by digital means, would allow us to create a more straight-forward service with a more positive experience for those creating and registering their LPAs.

7. While applications to register LPAs have risen substantially, the trend is slowing and is predicted to plateau over the next three years. This will impact OPG's financial position as its costs are expected to increase at a faster rate than income because the size of the register and case management system the OPG needs to maintain will continue to increase. Similarly, demand for its investigation services is increasing, further adding to OPG costs.
8. As the OPG is largely funded by fees, this could make the OPG unsustainable within the next 3-5 years without a significant increase in the fee for users. One aim of LPA modernisation is to allow the OPG to achieve sustainability, reallocate its resources to achieve better value for its users and increase accessibility. As a significant amount of the current costs are on legally mandated processes that do not increase protection for customers, we are confident we can increase the value of the service while reducing costs.
9. The impact of these issues has increased due to Covid-19. The reliance on paper-based processes combined with social distancing requirements, has further complicated the creation process for some people. OPG has also seen a significant impact on its ability to process registrations due to the need to keep its staff safe and its premises Covid-secure, as the process requires people present in the office to accept and process the paper documents. A modern, more digital, service would build resilience into the system by ensuring there are multiple channels to enable more flexible creation and registration.
10. Balanced against ease of access and efficiency, it is vital that we consider the safeguards against fraud, abuse and undue pressure, including coercion, in any new system. The safeguards introduced with the LPA were appropriate for 2007. However, since then, technology has moved on and society's attitudes to fraud and abuse, as well as the expected protections against them, have changed. These changes increasingly expose the system to the risk of abuse, including fraud. Action is needed to ensure that the system continues to protect the public in the way it was intended to, allowing the registration of valid LPAs while identifying and preventing the registration of invalid ones, including those created fraudulently or through undue pressure. Digital systems offer new ways for OPG to protect its users through the use of identity and information verification.
11. In summary, the intention behind the introduction of LPAs was to retain freedom of access for all who wanted one while increasing protection against abuse compared to EPAs. Since their introduction, however, society has increasingly moved from paper to digital services and COVID-19 has accelerated this. However, digital systems require different safeguards to paper services in order to achieve the same, or better, levels of protection.
12. We therefore need to create an LPA service for the digital world which retains the balance of access to an LPA while providing increased protection for individuals against fraudulent or abusive use of the system. This needs to be done while retaining access and improving safeguards for those who don't want to use, or can't use, digital services. Modernising the LPA will require the development of a service that allows for both digital and analogue (including paper) access for individuals to create and register their LPAs.
13. While we could potentially introduce a modernised system to improve access and efficiency without changes to primary legislation, if we also want to retain or improve the current level of safeguards then we need to amend the primary legislation governing LPAs. The consultation document sets out a number of areas where changes may be needed.
14. This impact assessment (IA) therefore discusses the policy options for reform which are being consulted on, in the Modernising Lasting Power of Attorney public consultation.

B. Policy Rationale and Objectives

15. 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).
16. The rationale behind the proposed changes is for both equity and efficiency reasons. The options are intended to improve accessibility and ensure that the process is as efficient as possible for those most in need and the OPG, whilst balancing the need for safeguarding.
17. The policy objectives associated with modernising lasting powers of attorney are to:
 - increase safeguards for the donor
 - improve the process of making and registering an LPA
 - achieve sustainability for OPG whilst keeping LPAs affordable for all those people in society who may need one.

C. Affected Stakeholder Groups, Organisations and Sectors

18. The following groups would be most affected by the options presented in this IA:
 - Members of the public who make an LPA, particularly donors and attorneys.
 - Other actors involved in the creation and registration of LPAs: certificate providers and correspondents. ; These could be member of the public, legal professionals or charities.
 - The OPG, Ministry of Justice, Court of Protection (CoP), Department for Health and Social Care, the NHS and Welsh Government.
 - Those who provide legal assistance and advice on creating lasting powers of attorney including solicitors, will writers, and estate planning practitioners;
 - Third sector and charity organisations who advise and support people making LPAs.
 - Third parties that have concerns about the creation of the LPA or that interact with an LPA once it has been registered or is being used such as local authorities, the financial sector, health and social care providers, and utility companies.

D. Description of Options Considered

19. There are seven areas of the LPA creation and registration process that we are considering changing as part of modernising the LPA. Each of these areas could be changed in various ways to achieve the aims set out of creating a smoother user experience, increasing safeguards and achieving financial stability for the OPG. As such, for most of the seven areas, more than one option is being consulted on.

Option 0/Do nothing

20. Under this option, the existing LPA system would remain unchanged. Individual donors would continue to create paper LPAs following the existing requirements to make their mark on the document (most commonly as a pen and ink signature), witness in person, execute and deliver the LPA as a deed, and send it to the OPG for registration. The donor, or attorney, would still be able to choose when to register the LPA, delaying until a later point in time if they wished to.
21. Likewise, the OPG would continue to carry out the administrative checks required by the MCA and a statutory waiting period of 4 weeks for objections to be raised by those named within the LPA would continue to apply. This would leave the OPG with extremely limited ability to expedite the process where an urgent need arose. Solicitors would also continue to use the paper base process for their clients.

Option 1: Role of the Witness

22. These options consider whether there is value to the role of the witness (aside from the role of the certificate provider), and if there is, how to retain this value within a future service where digital methods of creating and executing an LPA will be possible. The options examine how we can achieve this by using technology to support remote witnessing, in replacing the need for a person with a similar safeguard or in removing witnesses entirely.
23. To meet the policy objectives, the following options have been considered:
- **Option 1a – Remove witnessing:** remove the requirement for another person to observe the signing of the LPA by either donor or the attorneys.
 - **Option 1b – Remote witnessing:** A witness would be able to use technology to witness the donor and attorneys signing the LPA without being physically present in the same location.
 - **Option 1c – Replace witnessing with a similar function:** We would replace the witness with objective evidence that the donor executed the LPA.
24. **Option 1c is the Government’s preferred position.** Our research demonstrates that there is value to the role of the witness when combined the certificate provider and ID requirements. Members of the public acting in this role take their responsibility seriously and solicitors, charities and those supporting the creation of the LPA view it as a key safeguard. However, it is a safeguard that can be easily manipulated where coercion or fraud are the objectives of those involved, as witness details can be falsified or they may be part of the coercion. Remote witnessing does not resolve these issues and additionally creates further difficulties in relation to the use of digital signatures, some of which can’t be witnessed without compromising their security. We therefore propose to look at the introduction of objective evidence-based approaches to verifying the valid consent of the parties to the LPA.

Option 2: Role of application

25. These options examine what purpose application serves within the process of creating and registering an LPA and who can apply to register one. The options also consider how to reduce the chance of an LPA being rejected. We examine changes that would either require

that an LPA is sent for registration as soon as it is completed by the donor or which facilitate the digital storage of a completed LPA before it is sent for registration.

26. To meet the policy objectives, the following options have been considered:

- **Option 2a – Execution starts registration:** There would be a requirement for an LPA to be sent for registration as soon as it has been executed.
- **Option 2b – Execution allows delayed registration:** Applicants would be allowed to delay registering an LPA with OPG after it has been executed.

27. **Option 2a is the Government's preferred position.** Given the number of LPAs that are currently found to be either imperfect or invalid, early checks and immediate registration would allow OPG to vastly reduce the number of LPAs that have to be returned, reducing the burden on donors and attorneys and reducing the risk that the donor cannot make a replacement due to loss of capacity. The practical limitations of creating a system that allows digital storage of LPAs without registration (option 2b) is undesirable as we do not believe it is appropriate to delete an LPA that has, to all intents and purposes, been created and is valid but has simply not been registered.

Option 3: OPG Remit

28. These options consider ways to widen the powers of OPG in legislation to provide clarity on the checks it can carry out and the actions it can take as a result of those checks. In particular, these options seek to clarify the OPG's ability to check the LPA for more than just administrative purposes to aid the prevention of fraud, abuse and undue pressure. We consider approaches based on set conditional checks and discretionary powers. Both options include the introduction of identity verification.

29. To meet the policy objectives, the following options have been considered:

- **Option 3a – Conditional registration:** An LPA would be registered if it can pass a set of prescribed checks. The OPG could delay registration until the checks are met and it would reject the LPA if it cannot meet the requirements.
- **Option 3b – Discretionary registration:** An LPA would be registered if it reached a confidence threshold about the level of risk associated with it. Where the LPA does not meet the threshold, it would not be registered. OPG would have discretion as to the evidence it accepted to understand the risk.

30. **Option 3a is the Government preferred position.** Conditional registration would provide clarity for all involved. All those applying would know what they need to do and the information they need to provide before they register their LPA. All individuals would be required to pass the same checks to register their LPA. Discretionary checks could lead to inconsistent outcomes for individuals and potentially indirect discrimination against those people who are less able to provide evidence.

Option 4: Objection Process

31. These options consider how to clarify and streamline the current processes for objecting to the registration of an LPA. This process allows people to raise an objection to an LPA being registered if they have concerns about what is contained within it or how it was created. Currently, the legislation sets out different processes for different types of objection. We are seeking to understand how to make it easier for those wanting to raise an objection to do so.

32. To meet the policy objectives, the following options have been considered:

- **Option 4a – OPG receives all objections:** Anyone could raise an objection. All objections would be sent to OPG to review and investigate.
- **Option 4b – OPG receives only factual objections:** Anyone could raise an objection. Objections would need to be referred directly to the OPG or the Court of Protection, depending upon the nature of the objection.

33. **Option 4a is the Government preferred position.** Our research demonstrates that people want a simpler and better signposted route to raise objections. Additionally wider group of people have objections to raise with OPG than the MCA currently includes. Changing the legislation to allow objections from anyone to be directed to OPG would achieve a simplified process. This approach allows the investigation to begin earlier and avoid delay. Option 4b would not make the objection process simpler for those with a concern.

Option 5: Objection Period – When to object

34. These options consider how to clarify and streamline the current processes for objecting to the registration of an LPA. Currently, the legislation sets out different processes for different types of objection. We are seeking to understand how to make it easier for those wanting to raise an objection to do so.

35. To meet the policy objectives, the following options have been considered:

- **Option 5a – Objection during creation:** Objections would be permitted from the point the donor starts creating their LPA until it is sent for registration.
- **Option 5b – Reduce the statutory waiting period:** The current time period for objections to be received by OPG would be reduced from 4 weeks to 2 weeks.
- **Option 5c– Remove the statutory waiting period:** The objection period would be removed, although there would still be a mechanism for people to object to an LPA.

36. **A combination of the above options is the Government preferred position.** We believe that all three options have benefits that can be combined. People still see value in the ability for individuals outside the process to object to the LPA and given those creating an LPA have limited interaction with OPG, it is important that third parties, especially those with statutory safeguards roles, continue to have the ability to raise concerns before an LPA is registered. We would therefore not want to completely remove the ability to object from the process. However, shortening the period for objection after registration, while extending it in parallel with creation opens up new opportunities for these groups to lodge an objection at the earliest possible point and still have it fully considered.

Option 6: Speed of Service

37. The changes outlined in options 1-5 could significantly reduce the amount of time it takes to create and register an LPA for all people who wish to make one. This option considers whether there is a group of people for whom an even quicker service is needed and, if so, how to balance this against the safeguards needed and ease of access for those same users.

38. To meet the policy objectives, the following option is being considered:

- **Option 6 – Dedicated urgent service:** Those who can prove an urgent need to create and register the LPA before they lose capacity are granted access to an urgent registration service.

39. **Based on the current evidence available, the Government’s preferred approach is not to proceed with an urgent service.** The evidence available indicates that the need for a quicker registration service is not insignificant. Focusing resources on an urgent service could mean that the standard service remains slower than the optimum level OPG could offer. Additionally, an urgent service would likely require the complete removal of the objection period, which would otherwise continue to function as safeguard. There is a significant risk that the safeguards needed to replace the objection period would block access or be too complex for OPG to operate. We do not believe it is possible to offer an urgent service with the necessary safeguards to protect donors. For this reason, we believe the best way to proceed is to provide an optimal speed of service to all donors.

Option 7: Solicitor access to service

40. This option considers ways to support solicitors to use a new modernised service through the use of integrated digital systems and legislative requirements.

41. To meet the policy objectives, the following options have been considered:

- **Option 7a – Integration only:** The new service would meet the needs of solicitors and be integrated into their existing document management systems.
- **Option 7b – Mandate solicitors to use parts of the service:** Solicitors would be required to use the new service for certain aspects of the registration process.
- **Option 7c – Mandate Solicitors to use the service:** Solicitors would be required to use the whole digital channel for all LPA registrations after a certain date.

42. **Option 7a is the Government’s preferred position.** In order to achieve the level of take up necessary to successfully achieve the aims of modernisation, we would currently seek to work with the legal sector to create a system that meets both the public’s needs and their needs, and which would be seamlessly available through their current legal stationers. We would also work to provide direct access for those smaller solicitors’ firms, charities and other organisations that support the creation of LPAs.

43. However, if the evidence demonstrated that this option on its own would not provide the necessary take up of service, we would need to consider taking forward options 7b or 7c.

E. Cost Benefit Analysis

44. This IA follows the procedures and criteria set out in the Impact Assessment Guidance¹ and is consistent with Her Majesty’s Treasury Green Book².

45. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall

¹ <https://www.gov.uk/government/collections/impact-assessments-guidance-for-government-departments>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf

impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. 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 not monetised.

46. The costs and benefits of the options for each policy area are compared to Option 0, the counterfactual or 'do nothing' option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

47. Only non-monetised impacts have been included in this IA. It has not been possible to monetise the impacts of the options being considered for a variety of reasons;

- This is a consultation on the key design principles of the proposed digital system, so the key logistics have yet to be decided and therefore cannot be costed.
- Some data is not held by OPG or others, therefore it is not possible to monetise. Some of this is due to the nature of the cost, for example abuse is hidden by nature, and is therefore difficult to quantify. On some occasions, user research has not been carried out, and there is incomplete data. Consultation should provide further evidence which will be included in the final impact assessment.
- The user-centred design, development and research for any future service is happening in parallel with, and feeding into, the development of policy, and is an iterative process. We are still in the early stages of this work and so are seeking to gather evidence on our proposals to fill the gaps in our evidence base and add to our existing findings.

48. Should Option 7b or 7c be chosen and the EANDCB exceeds the +/- de minimis of £5million, a full economic analysis will be conducted and subject to Regulatory Policy Committee (RPC) independent scrutiny.

Option 1: Role of witness

Option 1(a) – Role of witness: Remove witnessing

Costs of Option 1(a)

Non-monetised costs

49. User research suggests some people believe witnessing does not provide a safeguard. If this is indeed the case, there are no costs under this option if witnessing was to be removed. However, we believe that witnessing does provide an extra level of safeguard when combined with other elements of the system (ID and the certificate provider). Therefore, its complete removal with no replacement could lead to an overall decrease in protection in a future service and an increased risk of fraud and abuse for the public.

Benefits of Option 1(a)

Non-monetised benefits

50. Given that LPA users can struggle with the correct order of signatures, no witnessing requirement would make the process simplest and quicker. It would also save time and travel costs for users.

51. Removing witnessing requirements would also reduce the number of LPAs that cannot be registered due to witnessing errors. In 2019/20, 7.24% of LPAs contained errors that made them imperfect while 8.24% were rejected as being invalid. Signing and witnessing errors are a large subset of this, as most errors are related to signing, signing order, and date sequence. It would reduce errors in the order of signatures, which could save OPG time and reduce staff costs. As a result, this option would save OPG money in detecting and correcting errors that could be re-invested more efficiently into the modernised process.

Option 1(b) – Role of witness: Remote witnessing

Costs of Option 1(b)

Non-monetised costs

52. Creating and using a digital system would create training and operational costs for OPG, although these could be offset due to other parts of the process being made more efficient.

53. There may be costs for solicitors from learning the new service. It would be expected that solicitors would pass these costs onto their clients.

54. Remote witnessing may result in users finding the process more complex than paper if users are unfamiliar with the system used in a future service or lack technical know-how.

Benefits of Option 1(b)

Non-monetised benefits

55. This option will still allow users to have their LPA witnessed, and may help them to find someone to witness the LPA, especially for those with smaller social circles. It would also save users time making logistical arrangements for a witness.

56. This option could make the process simpler as it would contribute to a digital channel of access, which would be easier for users and solicitors, due to time and logistical costs of travelling to witness signatures in person

Option 1(c) – Role of witness: Replace witnessing with a similar function

Costs of Option 1(c)

Non-monetised costs

57. This option would have costs to the OPG for digital storage although these could be offset against savings made elsewhere.

58. It may initially take users longer to understand and use the process as it could be different to other services they are used to.

Benefits of Option 1(c)

Non-monetised benefits

59. Having objective evidence, instead of witness evidence, for the creation of the LPA by the donor would save the OPG and the Court of Protection legal and staff costs in the event of court applications and investigations.

60. This new process would reduce the number of LPAs that cannot be registered due to signing and witnessing errors.
61. Applicants would save time, travel, and logistical costs on finding and organising an in-person witness.

Option 2: Role of Application

Option 2(a) – Role of Application: Execution starts registration

Costs of Option 2(a)

Non-monetised costs

62. This option would remove a choice, which could negatively affect perceptions of the process.
63. There would be a cost to OPG for digital storage but this could be offset by savings made elsewhere through modernisation.

Benefits of Option 2(a)

Non-monetised benefits

64. 4% of users delay registering their LPA by over 200 days. This leads to a risk of the donor losing capacity and a mistake being found later by OPG. Any mistakes after a loss in mental capacity cannot be corrected and a new LPA cannot be taken out. Roughly 15% of LPAs have mistakes in them. Therefore, early identification of errors would simplify the process, increase speed and, for errors which are found before the donor loses capacity, reduce costs for users.
65. This option would also reduce OPG's physical storage costs, as more LPAs would be digital and there would be a reduced need for paper storage.

Option 2(b) – Registration: Execution allows delayed registration

Costs of option 2(b)

Non-monetised costs

66. Delayed registration would require a database of personal information to be kept until it is needed by the user and transferred to the Register. It is possible the storage costs could increase disproportionately if the stored, unregistered LPAs cannot be deleted without permission. This could become a significant cost for OPG to digitally store.
67. As the user would not pay the OPG until the LPA is registered, the OPG would not receive a fee for every LPA that they store, which would mean OPG would not be able to offset the cost of storage.
68. However, if there were a time limit on digital storage, this may cost users and solicitors time if they have to redo the LPA because it's been deleted at the point they go to register it, due to the time limit having expired.

Benefits of Option 2(b)

Non-monetised benefits

69. Users would retain the choice about whether and when to register their LPA.
70. Under this option, the process would be simpler for users and solicitors who want to delay registration by providing a formal delay option, as 4% of LPA applications are received by OPG more than 5 months after the donor signed the forms.

Option 3: OPG remit

Option 3(a) – OPG Remit: Conditional registration

Costs of Option 3(a)

Non-monetised costs

71. This option could result in legitimate LPAs failing if the checks are too stringent.
72. There would also be a staff and time costs from creating the system and checks, as well as from carrying them out where the checks cannot be automated, or the conclusions need to be manually verified. There could also be a training cost to the OPG as OPG staff would need to be able to check passports and other forms of identification.
73. If identity checks are outsourced, for example to the post office, there would be an associated outsourcing cost.
74. There would also need to be an analogue system, potentially retaining paper, to ensure that there is parity for those who cannot do the checks online. Additional checks within a paper system would also cost OPG in staff and time costs. Finally, if checks are failed, the user would need to do an in-person interview, which could cost time and have travel costs.

Benefits of Option 3(a)

Non-monetised benefits

75. Users would be guaranteed registration once they had passed certain checks, leading to increased efficiency and consistency for OPG due to automated checks while helping to deter fraud and abuse. This would reduce staff time and costs of checking LPAs.
76. Safeguards would be improved as OPG would have the ability to refuse registration where the information an LPA contains cannot be verified.

Option 3(b) – OPG remit: discretionary registration

Costs of Option 3(b)

Non-monetised costs

77. This option's checks could lead to inconsistency and confusion about the process, which would increase staff costs to clarify it to users and to correct mistakes. There could be a greater cost to the OPG in legal fees from legal challenges than in Option 3a, as the checks would be discretionary.

78. This option would have higher training costs for the OPG, as staff would need more detailed training and guidance.

Benefits of Option 3(b)

Non-monetised benefits

79. This option would give OPG discretion, which is valuable as it would allow consideration of rarer or more unusual forms of ID.

80. Illegitimate LPAs would not be registered by OPG, reducing the risks of fraud and abuse.

Option 4: How to object

Option 4(a) – How to object: OPG receives all objections

Costs of Option 4(a)

Non-monetised costs

81. The number of investigations may increase which would increase OPG costs. The OPG may have increased staff costs as they would take on additional prescribed objections. However, these costs are likely to be small. In 2019 there were only 47 objections that were sent to the Court of Protection, compared to OPG receiving 277 prescribed objections in 2019/20.

82. The OPG may need staff training costs on how to manage objections. There may be additional administrative costs of sorting the objections, and IT costs of storing all objections whilst they are sorted.

Benefits of Option 4(a)

Non-monetised benefits

83. This option would provide clarity for a wider range of people and organisations, especially those with a statutory safeguarding role, that they can object to an LPA, so increasing the OPG's ability to protect against fraud and abuse.

84. Legal clarity could reduce staff time in making decisions about how objections should be dealt with and may reduce legal costs to the OPG and possibly the CoP if objections are then taken to the CoP. This could give the CoP more time to deal with other legal concerns, making the system more cost-effective.

85. Having a single-entry point to report a concern reduces complexity and legal costs for users as this option reduces the potential time delay for the concern to be dealt with.

Option 4(b) – How to object: OPG receives only factual objections

Costs of Option 4(b)

Non-monetised costs

86. Users may be confused about where to direct their objections and be put off making one, reducing the OPG's ability to gain vital information on whether to register the LPA.

87. There may be increased cost and complexity for users who need to make a court application in order to raise an objection.

88. This option could lead to an increased number of cases going to the CoP given that in 2019 there were only 47 objections sent to the CoP, compared to OPG receiving 277 prescribed objections in 2019/20.

Benefits of Option 4(b)

Non-monetised benefits

89. This option would provide clarity for a wider range of people and organisations, especially those with a statutory safeguarding role, that they can object to an LPA, increasing OPG's ability to protect against fraud and abuse.

90. There would be no need for the OPG to manage all objections, and this could save staff costs and training.

91. This option retains a clear distinction between the roles of the OPG as an administrative body and the CoP as an arbiter of disputes.

Option 5: Objection period – When to Object

Option 5(a) – Objection period: Objection during creation

Costs of Option 5(a)

Non-monetised costs

92. Fraud and abuse may not be found if objectors can only object during the creation period, as those who could be aware of abuse or fraud would not necessarily be aware of the creation of an LPA and be able to object in time. This could expose donors to increased risk of abuse.

93. Incomplete LPAs may be more likely to be challenged as the details would not have been finalised which could increase the burden on the OPG to triage legitimate objections.

Benefits of Option 5(a)

Non-monetised benefits

94. Making a determination about whether to register an LPA could happen quicker as an LPA could be investigated as soon as it was sent for registration.

95. This option could streamline the process significantly and reduce the length of the process, as objections would be raised through the digital service, whilst the LPA is being created, which would save OPG staff and storage costs.

96. This would shorten the time an attorney has to wait to make urgent decisions in cases where there were no objections

Option 5(b) – Objection period: Reduce the statutory waiting period.

Costs of Option 5(b)

Non-monetised costs

97. Two weeks may not provide enough time for parties to be notified and lodge an objection with the OPG, especially if they cannot make use of the digital channel to object, particularly in the event of bank holidays. This increases the risk that OPG registers an LPA that it should not register.

98. In comparison to 5c, this option may result in logistical costs to users, as they may have to wait to make urgent decisions.

Benefits of Option 5(b)

Non-monetised benefits

99. In comparison to the current process, this would save a week or more for users, solicitors, and the OPG. This option would also shorten the time attorneys need to wait to make urgent decisions where there are no objections while retaining the protection of a waiting period.

Option 5(c) – Objection period: Remove the statutory waiting period.

Costs of Option 5(c)

Non-monetised costs

100. If there is fraud that is not caught by earlier checks, removing the statutory waiting period could increase the level of harm to users via abuse or fraud.

Benefits of Option 5(c)

Non-monetised benefits

101. LPAs currently take 8-10 weeks to register, with no mistakes or objections. If there are adequate safeguards earlier in the LPA process, removing the statutory waiting period could speed up the process for users, saving them logistical costs, and save OPG and solicitors staff and paper storage costs.

Option 6: Speed of application: Dedicated urgent LPA.

Costs of Option 6

Non-monetised costs

102. This option may need additional staff time to process LPAs as urgent, which may have costs to OPG of additional staff hours or hiring and training costs if extra staff are required. The new service would require additional training even for existing staff.

103. There are a significant minority (in a survey from Ministry of Justice Digital User Researchers in 2020, approximately 25% of solicitors' clients required some level of urgency) who may attempt to access an urgent LPA, many of whom have dementia or terminal illness. Currently, it takes OPG staff 5 days to complete initial checks while many of these checks could be automated in a future process, adding in a further check of whether the LPA is urgent and the medical proof is valid would add to that time as these would likely need to be manual checks. It would be logistically difficult to sift out the

genuinely urgent LPAs and creating a sifting process could create a longer and more complex process. Creating a standardised sifting process would also cost in time and staff costs.

104. It may be seen as unequitable to have a two-speed system, as it would force users who needed an urgent LPA to spend time and money to acquire additional medical information for a service they have to use.
105. This option could also add an additional burden to the care, by placing responsibility onto them to provide medical certification to access the urgent LPA process. It will cost time to produce a certification and send it to OPG and there may be an additional cost to the user where this service is charged for. Capacity assessments cost £125 to £225, dependant on complexity, and there may be time and administrative costs additional to this cost. This could also prohibit some users accessing the urgent service.
106. There would also be time and logistical issues for the donor and/or attorneys Organising appointments to discuss the LPA with a medical professional may take time and cost money. If the medical professional takes time to provide the evidence, it may further delay the process for the user.
107. The provision of an urgent service may mean that the standard service for other users is not as quick as it could be with a single service for all.

Benefits of Option 6

Non-monetised benefits

108. This option may be more efficient as it could allow those who need an urgent LPA to get their LPA processed quicker, whilst minimising the risk of fraud and abuse by including enhanced safeguards and allowing a standard path for others with a non-urgent need.
109. The OPG receives 5-10 calls per day to expedite LPAs, suggesting a need for the process to be quicker. A quicker service could reduce OPG staff costs by reducing these calls for urgency.
110. Trying to pay care home fees, make healthcare decisions, or sell property while facing an imminent loss of mental capacity are all reasons for urgency that can be impacted by the waiting period. This adds to the emotional burden families are already experiencing. This suggests that many users could benefit monetarily and emotionally from a quicker process.
111. At the moment, any prioritisation of LPAs to be registered urgently is carried out ad-hoc and usually needs a letter or contact centre call, and there is no guarantee of shorter processing times. The statutory waiting applies in all cases so processing cannot be shorted beyond this four-week period. This is exacerbated by backlogs and reliance on paper. This option could allow the OPG a clearer and more efficient sorting process, which could save time and staff costs, as well as saving users logistical costs caused by delays.

Option 7: Solicitor access to service

Option 7(a): Solicitor Access: Integration only

Costs of Option 7(a)

Non-monetised costs

112. This option may have costs to solicitors of training in the use of the tool, which could be passed on to customers, and possible costs to their clients if there are delays in solicitors learning to use a new digital service or transferring to the new digital service. This cost would increase as the number of solicitors using the service increases.

Benefits of Option 7(a)

Non-monetised benefits

113. Using the digital service would be more environmentally friendly than the current paper-based process, and this benefit would be lowest when only using incentives and highest if full use of the tool is mandated.

114. Using digital instead of paper could allow for easier sorting and streamline the LPA process, saving the OPG and solicitors' time. It could also save OPG staff costs and storage costs. This benefit would increase as more solicitors use the service.

Option 7(b) – Solicitor Access: Mandate solicitors to use parts of service

Costs of Option 7(b)

Non-monetised costs

115. Mandating solicitors to use part of the digital service could delay the service for their clients if there is unreliable access to the internet, which could increase legal or logistical costs for clients.

Benefits of Option 7(b)

Non-monetised benefits

116. Using digital under this option may make the process quicker, saving solicitors time and staff costs.

117. Using the digital service would be more environmentally friendly. Using digital over paper could allow for easier sorting and streamline the LPA process.

Option 7(c) – Solicitor Access: Mandate solicitors to use the service

Costs of Option 7(c)

Non-monetised costs

118. Mandating could damage solicitors' relationship with the OPG and the MoJ and could restrict solicitors to using a service that does not meet their needs or those of their client.

119. There would be an alternative paper channel in this case for other users, but this option would not enable solicitors themselves to use analogue channels from a set date. If sole practitioners with limited internet access are mandated to use the digital service, it may not be cost effective for them to offer an LPA service to a greater extent than Option 7b. This could result in more vulnerable people not having access to LPA services, and may increase their legal costs, travel costs, or logistical costs.

Benefits of Option 7(c)

Non-monetised benefits

120. This option would make the process the quickest, as digital is more time-efficient, saving the most time and staff costs. As using digital over paper would allow for easier sorting and streamline the LPA process, it would save OPG time and staff costs which would be reinvested in other areas of modernising the LPA service. These benefits would be greatest under this option.
121. Using the digital service would be more environmentally friendly, and this benefit would be highest in this option.

F. Risks and Assumptions

122. The above analysis is based on assumptions, each of which has associated risks. This section draws attention to the main assumptions made and the nature of the associated risks.
123. Not all of the options in this IA are associated with assumptions and risks which might influence the assessments made in the previous section. As a result, only those options where such assumptions and risks are more significant are included in the paragraphs below.

Option 1: Role of Witness

Option 1a: Remove witnessing

Assumptions

124. Witnessing adds no additional value or safeguards for users at the point of creation or registration that are not already covered by other parts of the process.
125. That no changes are needed to cover the role and purpose of witnessing.

Risks

126. Donors are put at increased risk due to the removal of the safeguard provided by requiring a witness.

Option 1b: Remote witnessing

Assumptions

127. Digitising the witnessing process makes it simpler, reducing error rates and rejections.

Risks

128. Digitising the witnessing may not reduce error rates, but may result in different types of errors, resulting in savings not being realised.

Option 2: Role of application

Option 2a: Execution starts registration

Assumptions

129. Costs for storage are controllable because storage would only apply to registered LPAs and those within the timeframe for creation.

Risks

130. The timeframe may not be set to a limit that balances storage costs with fees.

Option 2b: Execution allows delayed registration

Assumptions

131. Payment can be taken before the point the LPA is sent for registration to cover digital storage costs.

132. Costs for storage are not controllable without a time limit on storing un-registered LPAs.

Risks

133. Executed but unregistered LPAs cannot be changed. Instead users must make and execute another LPA meaning OPG may have to pay to store multiple LPAs for one donor.

134. If payment is taken before registration to fund storage, the OPG may be paid for LPAs that are never registered.

Option 3: OPG remit

Option 3b: Discretionary registration

Assumptions

135. OPG will have the resources to conduct case work for LPAs where discretion may need to be exercised.

Risks

136. If the OPG does not have the resource, there may be additional hiring and staff costs.

Option 4: Objection period – Process

Option 4a: OPG receives all objections

Assumptions

137. The OPG can manage a greater number of objections and be able to direct them accordingly.

Risks

138. If the OPG does not have the resource, there may be additional hiring and staff costs.

Option 5: Objection period – When to object

Option 5a: Objection during creation

Assumptions

139. OPG is overburdened with illegitimate or frivolous objections, placing undue burden on its resources.

Risks

140. OPG may have to acquire additional resource, which would lead to hiring and staff costs.

Option 6: Dedicated urgent LPA

Assumptions

141. The requirements of an urgent system are cost prohibitive for OPG to run.

Risks

142. If an urgent service is cost prohibitive, then the OPG would be unable to offer a separate urgent service.

Option 7: Solicitor access to service

Option 7a: Integration only

Assumptions

143. It will still be cost effective for solicitors to offer LPA services.

Risks

144. Solicitors move to use of the new digital channel too slowly to be sustainable, and the cost of an LPA to users has to rise.

145. If the digital channel can't be offered through legal stationers that Solicitors won't use the channel, which could make it unsustainable for OPG to run.

Option 7b: Mandate solicitors to use parts of the service

Assumptions

146. It will still be cost effective for solicitors to offer LPA services.

Risks

147. There is a risk that there will be very slow uptake from solicitors in using the digital channel, which means that the benefits and costs may be realised slower than expected.

Option 7c: Mandate solicitors to use the service

Assumptions

148. It will still be cost effective for solicitors to offer LPA services.

Risks

149. There is a risk that there will be very slow uptake from solicitors in using the digital tool, which means that the benefits and costs may be realised slower than expected.

G. Wider Impacts

150. An Equalities Statement has been completed and will be published as an Annex to the consultation document alongside this Impact Assessment.

H. Monitoring and Evaluation

151. We are open to monitoring and evaluating the impact of a new service to ensure there are no significantly adverse impacts. Appropriate monitoring arrangements will be determined based on the evidence available, including that gained through consultation.