

Title: Modernising Lasting Power of Attorney IA: 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: 22/02/2022			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: mlpaconsultation@justice.gov.uk			

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2021 prices)

Total Net Present Social Value £96.2m	Business Net Present Value N/A	Net cost to business per year N/A	Business Impact Target Status Non regulatory
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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 LPAs were introduced in 2007, technology and society's 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 response impact assessment sets out the options the government intends to take forward to resolve these issues. Change will require primary legislation. Government intervention is needed as OPG is the only agency that can register LPAs while the Ministry of Justice has oversight of the legislation which governs the functions of 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: Evidence the execution of the LPA:** Provide a robust mechanism to evidence the donor's execution of the LPA and consider if execution by the attorney provides a safeguard to the process.
- **Option 2: Role of application:**
 - 2a: **Execution starts registration** - Require that an LPA is sent for registration as soon as it has been executed.
 - 2b: **Delayed registration** - Permit delayed registration with OPG after an LPA has been executed.
- **Option 3: OPG Remit: Conditional Registration** - Permit OPG to delay registration of an LPA until certain prescribed checks are met and to reject LPAs that cannot meet the requirement.
- **Option 4: How to object: OPG receives all objections** - All objections would be sent to OPG to review and investigate, and anyone can raise an objection.
- **Option 5: When to object: Creation to registration** – Concerns could be flagged to the OPG before the LPA is started, an objection can be raised during the LPAs creation or from the point it is sent for registration up until it is placed on the register.
- **Option 6: Access to the service: Integration** - Ensure the regulated legal sector can access a digital service via integration with existing document management systems.

The government will take forward options 3, 4 and 6. It will continue to investigate how options 1 and 5 will work in practice, as well as looking again at 2a and 2b. 3

Will the policy be reviewed? Review date:				
Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?		Micro Yes	Small n/a	Medium n/a
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, 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: 04/03/2022

Summary: Analysis & Evidence

Policy Option 1

Description: Provide a robust mechanism to evidence the donor's execution of the LPA and consider if execution by the attorney provides a safeguard to the process.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: £3.4m

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

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

It has not been possible to monetise costs associated with this option.

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

Given this option is introducing a new digital witnessing process, there will be costs to OPG associated with providing and maintaining a new digital alternative to the current system, that requires a physical witness. Due to current uncertainty as to how this service will be provided, we have not been able to monetise this cost.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0.3m	£3.4m

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

The new witnessing service will reduce the number of LPAs that cannot be registered due to witnessing and signing errors. 85% of all invalid LPA cases are due to these errors, which impose costs to OPG. It is therefore expected that OPG will experience an administrative cost saving on the reduction in the number of invalid LPAs. After adjusting for inflation and discounting, we estimate this to average £340,000 per annum over the course of the 10-year appraisal period

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

There will also be an administrative cost saving to OPG for the reduction in imperfect LPAs, as 42% of imperfect LPAs are due to due to witnessing and signing mistakes. OPG will also benefit from efficiency savings associated with simplifying the LPA registration process. We also expect donors to save in logistics, and travel costs of finding and organising and in-person witness.

Key assumptions/sensitivities/risks	Discount rate	N/A
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It's assumed that the unit costs of invalid LPAs will be constant after financial year 25/26 corresponding with the assumption that volume of LPAs remain constant after financial year 25/26. The benefit of preventing invalid LPAs and the associated costs of these LPAs to OPG could be understated in our estimations if these assumptions do not hold.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2a

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

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: £59.1m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0.01m	£0.1m

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

The cost of storing LPAs on a digital platform to reflect the need to digitally process LPAs is estimated at £110,000 over the 10-year transition period at 2021/22 prices (including 10 % optimism bias to account for the risk of changes in the exchange rate as digital storage costs would be paid in US dollars).

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

There are no non-monetised costs for this option.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£5.9m	£59.2m

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

This option will require all LPAs to be digitally stored rather than storing a paper LPA in a physical storage unit. We estimate that this will result in a discounted cost saving of £1.7m in 2021/22 prices to OPG across the 10-year appraisal period. We also assume the option will result in 80% of LPA submissions being digital. This will allow for the reduction and/or redeployment of OPG resource currently dedicated to handling paper LPA submissions. It is estimated that OPG will benefit from saving the equivalent of £57.5m in staff costs across the 10-year appraisal period, discounted and in 2021/22 prices.

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

This option reduces the risk of a donor having to access the Court of Protection, in the case when they have lost capacity and mistakes have been found in the LPA by OPG. Therefore, donors may avoid fees to pay for their intended attorney to be appointed a deputy.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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We have assumed volume of LPAs remain constant after financial year 2025/26. Depending on what actual volumes will be in the years post 25/26, the estimated cost savings could be notably different to the actual benefits and costs experienced. Due to this uncertainty, we have performed sensitivity analysis to demonstrate how monetised benefits and monetised costs would vary if we incorporate low or high estimates of future LPA volumes. The cost saving associated with eliminating 80% of the work involved in paper submissions is based on the assumption that 80% of users will choose to use the digital service. If this assumption doesn't hold and a smaller proportion of individuals use this digital system, then the expected benefits will be lower than stated in the IA.

BUSINESS ASSESSMENT (Option 2a)

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

Summary: Analysis & Evidence

Policy Option 2b

Description: Permit delayed registration with OPG after an LPA has been executed.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: £59.0m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£0.02m	£0.2m

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

There will be a cost to OPG of allowing users to delay registering their LPA. An estimated £0.2m over the 10-year appraisal period. This will be spent by OPG to digitally store LPAs which have been executed but not registered.

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

There are no identified non-monetised costs.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		£5.9m	£59.2m

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

As outlined in option 2a, this option will require all LPAs to be digitally stored rather than storing a paper LPA in a physical storage unit. We estimate that this will result in a discounted cost saving of £1.7m in 2021/22 prices to OPG across the 10-year appraisal period. We also assume the option will result in 80% of LPA submissions being digital. This will allow for the reduction and/or redeployment of OPG resource currently dedicated to handling paper LPA submissions. It is estimated that OPG will benefit from saving the equivalent of £57.5m in staff costs across the 10-year appraisal period, discounted and in 2021/22 prices.

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

This option will provide a formal delay process whilst retaining users' ability to choose when and whether to register their LPA.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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We have assumed volume of LPAs remain constant after financial year 2025/26. Depending on what actual volumes will be in the years post 25/26, the estimated cost savings could be notably different to the actual benefits and costs experienced. Due to this uncertainty, we have performed sensitivity analysis to demonstrate how monetised benefits and monetised costs would vary if we incorporate low and high estimates of future LPA volumes. The cost saving associated with eliminating 80% of the work involved in paper submissions is based on the assumption that 80% of users will choose to use the digital service. If this assumption doesn't hold and less individuals use this digital system, then the expected benefits will be lower than stated in the IA.

BUSINESS ASSESSMENT (Option 2b)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Permit 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 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: £33.9m

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

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

It has not been able to monetise the costs of this option.

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

There will be a cost to OPG of creating and maintaining the automated checks on LPAs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	£3.4m	£33.9m

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

There will be cost savings to OPG from eliminating an estimated 90% of the staff resource dedicated to manually checking LPAs and automating these checks. The estimated saving per LPA is £4.25, resulting in the estimated present value of cost-saving over the 10-year appraisal period of £33.9m in 21/22 prices.

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

By reducing the staff resource used to manually check LPAs, OPG will be able reprioritise resources into the call centre, investigations team and the triage team. Reorganising resources in this way may result in more in-depth consideration of evidence which could lead to increased protection against coercion and abuse.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

We have assumed the volume of LPAs remains constant after financial year 2025/26. Depending on what actual volumes will be in the years post 25/26, the estimated cost savings could be notably different to the actual benefits experienced. Due to this uncertainty, we have performed sensitivity analysis to demonstrate how monetised benefits would vary if we incorporate low and high estimates of future LPAs. Additionally, if the prescribed checks are too stringent, this could result in legitimate LPAs being rejected by the OPG.

BUSINESS ASSESSMENT (Option 3)

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

Summary: Analysis & Evidence

Policy Option 4

Description: All objections would be sent to OPG to review and investigate an anyone can raise an objection.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: N/A
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low		N/A	N/A	N/A	
High		N/A	N/A	N/A	
Best Estimate		N/A	N/A	N/A	
<p>Description and scale of key monetised costs by ‘main affected groups’ It has not been possible to monetise any costs of this option.</p>					
<p>Other key non-monetised costs by ‘main affected groups’ Given this option requires OPG to receive all objections, there will be associated OPG staff time spent in triaging these additional objections, administrative costs and IT costs of digitally storing the objections and their respective LPAs for the statutory waiting period. However, we expect these costs to be small.</p>					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low		N/A	N/A	N/A	
High		N/A	N/A	N/A	
Best Estimate		N/A	N/A	N/A	
<p>Description and scale of key monetised benefits by ‘main affected groups’ It has not been possible to monetise benefits for this option.</p>					
<p>Other key non-monetised benefits by ‘main affected groups’ Having a single-entry point to submit concerns with the OPG will provide clarity for a wider range of people and organisations, increasing the OPG ability to protect against abuse and fraud. It will also result in greater legal clarity, reducing staff time in making decisions about how objections should be dealt with, whilst it may also reduce the number of objections going to the Court of Protection (CoP) and save time in the CoP referring objections to the OPG to investigate. As all objections coming the CoP will have already been accessed by the OPG and referred to the CoP as necessary. This will free up time for the CoP to redirect into other legal concerns. These changes will result in a more cost-effective system.</p>					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5
N/A.					

BUSINESS ASSESSMENT (Option 4)

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

Summary: Analysis & Evidence

Policy Option 5

Description: Concerns could be flagged to the OPG before an LPA is started, an objection can be raised during the LPAs creation or from the point it is sent for registration up until it is placed on the register.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: N/A
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	N/A		N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised costs by 'main affected groups' It has not been possible to monetise any costs of this option.					
Other key non-monetised costs by 'main affected groups' A pre-creation objection system may create a false sense of confidence in the OPG being able to match every objection made before an LPA is created to the individual if an LPA is eventually created by the individual flagged as vulnerable. Whilst, allowing objections to be submitted during the creation of an LPA could increase the likelihood of being challenged This could increase the burden on OPG to triage legitimate objections. Lastly, reducing the statutory waiting period may not allow enough time for parties to be notified and lodge an objection with the OPG, this could increase the risk of the OPG registering an LPA it should not.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	N/A		N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised benefits by 'main affected groups' It has not been possible to monetise benefits of this option,					
Other key non-monetised benefits by 'main affected groups' Allowing objections to be submitted before an LPA is created would allow local authorities to flag existing vulnerable individuals to the OPG. This pre-emptive measure will allow the LPA to investigate the objection if an LPA comes in, creating greater safeguarding awareness and helping to prevent cases of fraud and abuse. There should also be benefits to users of reduced length of the LPA registration process, as the objection will be raised through the digital service either before an LPA is created or whilst the LPA is being created. This could benefit OPG in saving staff and storage costs. Additionally, reducing the period of time that an objection can be levelled would result in a speedier registration process for donors, attorneys and OPG. Whilst solicitors would also benefit as they will have a shorter waiting time in making decisions on behalf of the donor, whilst maintain the protection of a waiting period.					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5
It has been assumed that local authorities will have identified vulnerable individuals who they can flag to the OPG before an LPA is created. However, we do not know what the demand for this service will be, therefore there is a risk that local authorities will not use the pre-creation system, resulting in negligible benefits.					

BUSINESS ASSESSMENT (Option 5)

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

Summary: Analysis & Evidence

Policy Option 6

Description: Ensure the regulated legal sector can access a digital service via integration with existing document management systems.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: - £0.1m
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	N/A	1	N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	£0.1m		N/A	£0.1m	
Description and scale of key monetised costs by 'main affected groups' During the one-year transition period, in 2021/22 prices we estimate a one-time cost of £62,000 for two developers working to build a gov.uk website, including the development of an API that will allow OPG's LPA databases to be integrated with legal professionals' existing document management systems.					
Other key non-monetised costs by 'main affected groups' It's expected that larger, established firms with existing data management systems with legal stationers will not face additional costs associated with integration as stationers provide this as part of their regular services. This is not a mandated service; therefore, it is expected that firms without stationers will only opt to integrate if it is commercially viable. Small firms with in-house database management systems will be able to continue using these and obtain records manually via a new gov.uk website instead. Consequently, smaller firms will also not face additional costs. There may be familiarisation costs to solicitors and other sectors involved in assisting LPA users, however we expect this cost to be negligible.					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	N/A	1	N/A	N/A	
High	N/A		N/A	N/A	
Best Estimate	N/A		N/A	N/A	
Description and scale of key monetised benefits by 'main affected groups' It has not been possible to monetise the benefits of this option.					
Other key non-monetised benefits by 'main affected groups' Solicitors benefit from easier sorting and streamlining of the LPA process using a digital service rather than paper, a reduction in carbon emissions from a reduction in paper usage and a reduction in costs associated with errors from paper-based submissions. The scale of these benefits will be dependent on the proportion of legal professionals that decide to use the gov web service.					
Key assumptions/sensitivities/risks			Discount rate (%)	3.5	
Minimal familiarisation costs are assumed for legal professionals because it is assumed that the new gov.uk website and document management services will be intuitive for users. If this is not the case, legal professionals may face small time costs to familiarise themselves with the web service.					

BUSINESS ASSESSMENT (Option 6)

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

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, OPG must register the LPA before it can be used.
4. Since its creation in 2007, 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 OPG receives each year has also increased. In 2014/15, OPG received just over 390k LPAs for registration, but by 2019/20 this had risen to just under 920k. This has affected 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 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 has not 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 its 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 OPG is largely funded by fees, this could make OPG unsustainable in the long term without a significant increase in the fee for users. One aim of LPA modernisation is to allow 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 continued to increase under 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 since 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 do not want to use, or cannot 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 realise some improvements to access and efficiency without changes to primary legislation, to reap the full benefits and retain or improve the current level of safeguards, we need to amend the primary legislation governing LPAs.

Consultation

14. In order to make the necessary changes to primary legislation, we consulted on the changes we proposed to make. This resulted in the modernising lasting power of attorney public consultation, which ran from 20 July 2021 to 13 October 2021.
15. The consultation consisted of 16 questions and received 313 responses from individuals and organisations which have been analysed and set out in the Government's response. We have continued to use user research, interviews and surveys to gather views from users. We also held a series of workshops for the public and stakeholders, as well as one with the MLPA working group.
16. The consultation process identified a number of other potential options which needed further consideration on whether they should be progressed and on the right way to do so. These are acknowledged in the analysis below and analysis of the impacts of these options will be carried out in future Impact Assessments.
17. This consultation response impact assessment (IA) provides further analysis of the impacts of the policy options which will or may be taken forward as a result of the consultation. Please note that due to changes in the proposals as a result of the consultation, the option numbers in this IA do not match those in the IA for the consultation. Section D below sets out more information on how the old numbers and the new numbers align.

B. Policy Rationale and Objectives

18. 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).

19. The rationale behind the proposed changes to LPA reflect 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 OPG, whilst balancing the need for safeguards.

20. The policy objectives associated with modernising LPA are to:

- increase safeguards, especially 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

21. The following groups would be most affected by the options presented in this IA:

- Members of the public who make an LPA; donors and attorneys.
- Other actors involved in the creation and registration of LPAs: certificate providers, witnesses and correspondents; these could include members of the public, legal professionals or charities.
- OPG, Ministry of Justice, Court of Protection (CoP), Department for Health and Social Care, the NHS.
- 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

22. There are seven areas of the LPA creation and registration process that we considered changing as part of the consultation. Each of these areas could be changed in various ways to achieve the aims set out of improving safeguards, increasing access and achieving financial sustainability for OPG. In addition, for most of the seven areas, more than one potential option was consulted on.

Option 0/Do nothing

23. 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 the LPA as a deed, and send it to 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.

24. Likewise, 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 OPG with extremely limited ability to expedite the process where an urgent need arose. Solicitors would also continue to use the paper-based process for their clients.
25. Where the government is proceeding with an option that amounts to a “do nothing” approach, this has not been modelling in the below options. This includes the proposal to continue to treat the LPA as a deed.

Option 1: Role of the Witness

26. In the consultation, this proposal considered whether there was value to the role of the witness (aside from the role of the certificate provider) and, if there was, how to retain this value within a future service where digital methods of creating and executing an LPA will be possible.
27. To meet the policy objectives, the following options were considered:
- **Remove Witnessing:** Remove the requirement for another person to observe the signing of the LPA by the donor or the attorneys. (Previously proposal 1a)
 - **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. (Previously proposal 1b)
 - **Replace witnessing with a similar function:** Replace the witness with objective evidence that the donor executed the LPA. (Previously proposal 1c)
28. As a result of the responses received to the consultation, the Government will continue with investigating replacing witnessing with a similar function as this was the most positively received by members of the public. Reflecting some of the concerns and suggestions raised by respondents, in addition to taking forward this approach, the government will further consider three related areas:
- a) Whether it remains a safeguard to evidence the attorney’s execution
 - b) Whether to combine the role of the witness and the certificate provider
 - c) Whether execution by the donor and the attorneys could be different in the future.
29. This may mean that donors and attorneys are treated differently in the future in relation to execution of the LPA. While removing the witness for the attorney may be an option, removing the witness for the donor is felt to remove safeguards and remote witnessing potentially adds unnecessary complexity.
30. These three options can combine in four different ways to create a new system;
- I. Certificate provider witnesses the donor and tech evidences the attorneys
 - II. Certificate provider witnesses the donor and there is no witness for the attorney
 - III. Technology evidences the donor and attorneys
 - IV. Technology witnesses the donor and there is no witness for the attorney.

31. Therefore, further investigation is needed to determine the impacts of combining the certificate provider with the witness, and of removing the witness for the attorney. This means not all of the combinations can be modelled in this IA. There is one option we are able to model based on the information currently available; using technology to witness both the donor's and attorneys' signature. This also has the benefit of being the option requiring the most change and likely the biggest impact. It is therefore possible that once our preferred way forward is determined, the impacts may be less than those outlined. The IA will refer to this option as:

Option 1. Role of witness: Evidence the execution of the LPA - Provide a robust mechanism to evidence the donor's execution of the LPA, and consider if execution by the attorney provides a safeguard to the process.

32. Further investigation will determine which of these variations we take forward, the impacts for this will be set out in the next iteration of the impact assessment.

Option 2: Role of application

33. This consultation proposal examined what purpose application served within the process of creating and registering an LPA and who could apply to register one. The options also considered how to reduce the chance of an LPA being rejected.

34. To meet the policy objectives, the following options were considered:

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

35. Digital submission of the LPA would be a component of either option 2a or 2b, replacing the current paper-based application process.

36. While most respondents agreed there would be significant benefits to a system of immediate registration, feedback from a significant minority of respondents highlighted the reasons why some donors might choose to delay registration. These reasons require further consideration and there as a result of this feedback, the Government will continue to investigate both options. These are numbered through the rest of this IA as follows:

Option 2a. Execution starts registration - Require that an LPA is sent for registration as soon as it has been executed.

Option 2b. Delayed registration - Permit delayed registration with OPG after an LPA has been executed.

37. As these options are mutually exclusive, further development will help determine which option is ultimately taken forwards. This will involve additional analysis of these options which will be factored into the next iteration of the IA.

Option 3: OPG Remit

38. This proposal considered ways to widen the powers of OPG in legislation to provide clarity on the checks it can carry out and the actions it could take as a result of those checks. In particular, these options sought to clarify OPG's ability to check the LPA for more than just administrative purposes to aid the prevention of fraud, abuse and undue pressure.
39. To meet the policy objectives, the following options were considered:
- **Conditional registration:** An LPA would be registered if it can pass a set of prescribed checks, this process would be automated replacing the current manual process and introduce automated ID checks. OPG could delay registration until the checks are met and it would reject the LPA if it cannot meet the requirements. (Previously proposal 3a)
 - **Discretionary registration:** An LPA would be registered if it reached a confidence threshold about the level of risk associated with it. This would include automated ID checks. 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. (Previously proposal 3b)
40. The responses to the consultation overwhelmingly favoured conditional registration as the way forwards. This was seen to provide more clarity and consistency of approach. As part of developing this option further, we will:
- a) consider further if ID checks are needed for the attorney
 - b) continue work to ensure a proportionate approach is taken to ID and a wide range of options are made available.
41. Throughout the rest of this IA this option is referred to as:

Option 3. Conditional Registration - Permit OPG to delay registration of an LPA until certain prescribed checks are met and to reject LPAs that cannot meet the requirement.

Option 4: How to object

42. Within the consultation, this proposal considered how to clarify and streamline the way to object 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 sought to understand how to make it easier for those wanting to raise an objection to do so.
43. To meet the policy objectives, the following options were considered:
- **OPG receives all objections:** Anyone could raise an objection. All objections would be sent to OPG to review and investigate. (Previously proposal 4a)
 - **OPG receives only factual objections:** Anyone could raise an objection. Objections would need to be referred directly to OPG or the Court of Protection, depending upon the nature of the objection. (Previously proposal 4b)

44. Respondents were largely in favour of the OPG receiving all objections and having the power to refer these on to the Court of Protection where necessary. This was seen by most respondents as removing complexity and therefore making it easier to raise valid objections. As part of this option we will be making changes to allow anyone to raise an objection to an LPA's registration with the OPG.

45. Throughout the rest of this IA this option is referred to as:

Option 4. OPG receives all objections - All objections would be sent to OPG to review and investigate, and anyone can raise an objection.

Option 5: When to object

46. This proposal sought to understand what the benefits of an objections process were and how best to realise these in a future service.

47. To meet the policy objectives, the following options were considered:

- **Objection during creation:** Objections would be permitted from the point the donor starts creating their LPA until it is sent for registration. (Previously proposal 5a)
- **Reduce the statutory waiting period:** The current time period for objections to be received by OPG would be reduced. (Previously proposal 5b)
- **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. (Previously proposal 5c)

48. The government's preferred approach at the time was to combine all three of these options so that; objections could be raised at any time during creation up to registration; the statutory waiting period would remain but it would be shortened; and this would act as a cooling off period for the donor.

49. Following the consultation, a combination of the policy options remains the Government's preferred position. This is because the combination of features and benefits favoured by respondents would be achieved by different elements of each option. Additionally, respondents suggested introducing a system similar to one used in probate, so an objection could be flagged with the OPG before an LPA is started. The government sees some benefit to investigating the viability of this option.

50. This option is referred to in this IA as:

Option 5. Creation to registration – Concerns could be flagged to the OPG before the LPA is started, an objection can be raised during the LPAs creation or from the point it is sent for registration up until it is placed on the register.

51. The non-monetised impacts of this option are set out in section however as further work is needed on the feasibility of this option; we have been unable to provide monetised benefits at this stage. Further modelling and analysis work will be needed to determine its viability, costs and benefits. This will be set out in the next iteration of the impact assessment if this option is taken forward. Additionally, if some of the

elements prove to be non-viable, some of the identified costs and benefits may not be realised and this will also be reflected in an updated impact assessment.

Option 6: Access to the service

52. This proposal, previously called Solicitor Access, considered ways to support solicitors to use a new modernised service through the use of integrated digital systems and legislative requirements.

53. To meet the policy objectives, the following options were considered:

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

54. Following the consultation “integration only” remains the Government’s preferred position and we will proceed with developing an integrated service. This is because we believe it is the best way to achieve take up of the service and responses supported this view.

55. We will seek to make this integrated service available to as many organisations that provide support to donors as possible. This includes the regulated and unregulated legal sectors and charities. However, we will also ensure that there are sufficient powers within primary legislation to allow further work to require the regulated legal sector to use a digital channel if this proves necessary once the system goes live.

56. We will ensure there are powers in legislation such that if integration alone does not see the required level of take up once the service goes live, we can reconsider if mandating is necessary. If this is needed, further development work and consultation will take place which would include provision of an impact assessment.

57. This option is referred to throughout the rest of this IA as:

Option 6. Integration - Ensure the regulated legal sector can access a digital service via integration with existing document management systems.

Options not taken forward - Speed of Service

58. In the consultation document, the changes outlined by old options 1-5 could have significantly reduced the administrative time it takes to create and register an LPA for all people who wish to make one. Speed of Service (previously Option 6) considered 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.

59. To meet the policy objectives, the following option was considered:

- **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. (Previously option 6)

60. As a result of the consultation, the government is not taking this option forward. This is because the evidence obtained from consultation responses indicates that it would not be viable to provide an urgent service with quicker registration times than the standard service. This option is therefore not modelled in the IA.

E. Cost and Benefit Analysis

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

62. Where possible, MoJ IAs identify impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society would be from implementing the options considered. The costs and benefits of each option are usually compared to the 'do nothing' or 'counterfactual' option. As the counterfactual is compared to itself, its costs and benefits are zero, as is its Net Present Value (NPV).

63. The NPV has been appraised over a 10-year period beginning in 2024/25, with a 3.5% discount rate applied. All costs in this IA are given in 2021/22 prices. It should be noted that figures quoted in Section E are inflation adjusted and only apply social discounting where NPV's are mentioned. However, the figures quoted in other sections of this IA are discounted.

64. IAs typically place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised which might include how the policy impacts differently on particular groups of society or changes in equity and fairness. In the case of these proposals, it has not been possible to sensibly monetise the cost and benefits associated with the measures proposed in Options 4 and 5.

65. Many of the quantified costs associated with options presented below have been produced using MoJ's forecasted February 2020 volume of LPA creation. This forecast estimated volumes of LPA creation up until the financial year 2025/26. In order to provide a 10-year appraisal period, it has been assumed that LPA creation volumes would remain flat from 2025/26 onwards. Forecasted LPA volumes are provided in Section F in Table 7.

66. We will look to refine our figures and further monetise costs and benefits ahead of any future IAs accompanying legislation being introduced to parliament.

¹ [Regulatory impact assessments: guidance for government departments - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424247/Regulatory_impact_assessments_guidance_for_government_departments.pdf)

² [The Green Book: appraisal and evaluation in central government - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424247/The_Green_Book_appraisal_and_evaluation_in_central_government.pdf)

Option 1 – Role of the witness - Evidence the execution of the LPA: Provide a robust mechanism to evidence the donor’s execution of the LPA and consider if execution by the attorney provides a safeguard to the process.

67. As part of this option, we have committed to investigate how to provide robust evidence of execution where this is needed. We will continue to investigate how to combine certificate provider and witness role and whether it provides a safeguard to evidence the attorney’s execution.

68. Because work to determine how these options would work has not yet been carried out, it has not yet been possible to identify the costs and benefits associated with these changes. The below therefore focuses on the costs and benefits of using technology to evidence the execution of either party. This is likely to result in the biggest impacts given it would be a fundamental change for both the donor and the attorney so anything short of this option would likely have less impact.

69. If further investigation indicates the other options are viable then analysis of the costs and benefits will be undertaken and included in the next iteration of the IA.

Costs of Option 1

70. It has not been possible to monetise costs associated with Option 1.

Non-Monetised Costs

71. This option will impose costs on OPG for the set up and maintenance of a new digital alternative to replace the current witnessing function. It has not been possible to quantify these costs due to uncertainty and lack of available evidence.

Benefits of Option 1

Monetised Benefits

72. If errors are found in an LPA that prevents its registration, depending on the nature of the errors, OPG will either seek to correct these errors with the donor (imperfect LPAs), or a new LPA will need to be created and submitted for registration (invalid LPAs).

73. The new digital witnessing service will likely reduce the number of LPAs that cannot be registered due to witnessing and signing errors. 85% of all invalid LPA cases are due to these errors, which impose costs to OPG. Therefore, it is expected that OPG will experience a cost saving on the reduction in the number of invalid LPAs as represented in Table 1, shown in real terms. The change to year on year cost savings are due to the changes in the forecasted unit cost of an invalid LPA.

Table 1: Cost saving to OPG from the reduction in invalid LPAs									
<u>24/25</u>	<u>25/26</u>	<u>26/27</u>	<u>27/28</u>	<u>28/29</u>	<u>29/30</u>	<u>30/31</u>	<u>31/32</u>	<u>32/33</u>	<u>33/34</u>
£0.5m	£0.5m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m	£0.4m

74. The 10-year NPV (Net Present Value) of cost savings to the OPG from preventing invalid LPAs totals £3.4m. Where NPV denotes the sum of the costs and benefits

over the 10-year appraisal period, which have been converted into real terms and discounted to bring them into present values.

Non-Monetised Benefits

75. 42% of imperfect cases are due to signing and witnessing errors, fixing these errors imposes time costs to OPG. By digitising the witnessing process, it is expected that the chance of imperfect LPA being created due to witnessing and signing errors will be reduced. This results in a time saving to OPG for preventing these imperfect LPAs.
76. LPA donors will save the time, travel and logistic costs of finding and organising an in-person witness.
77. OPG will benefit from efficiency savings as the witnessing process is simplified and quicker.

Option 2: Role of application

78. Following the consultation, the government will continue to investigate the two options presented below, therefore, we have presented analysis for both. These options are mutually exclusive, such that the implementation of one would mean the implementation of the other could not occur. As such, any benefits or costs associated with either option should be understood as independent costs or benefits, rather than ones that should be added together.

Option 2a – Execution starts registration: Require that an LPA is sent for registration as soon as it has been executed.

Costs of Option 2a

Monetised Costs

79. This option requires the use of digital channels for creation and registration of an LPA. Such that LPAs will need to be stored on a digital platform rather than a paper LPA being kept and stored physically by OPG, as under the current system.
80. LPAs are held by OPG for an average of 63 days, therefore we have estimated the cost of digitally storing LPAs for 63 days shown in Table 2. A 10% optimism bias has been applied to the unit cost of digitally storing an LPA to reflect the risk of changes to the exchange rate, since these costs would be paid in US dollars by OPG. Since the unit cost of digitally storing an LPA was given for a single year, we have converted the costs into a real terms value for all financial years included in our 10-year appraisal period. Year on year costs vary due to the changes to the forecasted volume of LPAs (see Table 7), as well as due to inflation adjustment.

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£15,000	£14,000	£14,000	£14,000	£14,000	£13,000	£13,000	£13,000	£13,000	£12,000

Benefits of Option 2a

Monetised Benefits

81. Under Option 0 paper LPAs are held and stored physically, however, OPG's physical storage costs would decrease under Option 2a as more LPAs are submitted digitally. OPG estimate that there will be a 19p cost saving to OPG per LPA for digital rather than paper-based storage. This is because physical storage costs are higher than the equivalent digital storage costs. Over the 10-year appraisal period this equates to a yearly saving of not having to provide paper storage as represented in Table 3 (given in real terms).

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m

82. Option 2a requires digital submission of an LPA for registration rather than paper-based submission. OPG estimate a minimum of 80% of users will transfer over and use the digital submission process and 20% will continue using a paper form to submit their LPA. The 80% of applications which are submitted via the digital route will avoid administrative staff costs associated with handling paper forms. All LPAs, whether submitted digitally or by paper would be stored digitally. Therefore, benefits estimated elsewhere in the IA apply to 100% of LPAs.

83. Applying the forecasted LPA volumes in Table 7 (in Section F below), and associated staff costs, OPG are expected to experience an administrative cost saving as represented in Table 4 (given in real terms). These yearly monetised benefits to the OPG are due to the removal of 80% of the work associated with handling incoming post, posting physical LPA documents, taking payments by cheque or by card over the phone, filing and file creation for LPA applications and completing support work associated with LPAs. We have excluded remissions/exemptions related work from the associated benefits (e.g. DWP records stating whether the user is eligible for a fee exemption). Since OPG do not expect this element of the checks will be automated but will continue to be manually checked.

84. It should be noted that these staffing costs estimates do not include costs associated with the processing of LPAs once digitised. In addition, it should be noted that this estimate is not intended to represent an estimate of cash-releasing benefit to OPG. Instead, the figures quoted in Table 4 purely represent a monetised estimate of administrative resource that would no longer need to be dedicated to processing paper applications were Option 2a to be implemented. Any resource savings would be for OPG to decide how to manage and redeploy to alternative activities.

85. No optimism bias has been applied because of a high degree of certainty that at least 80% of users will transfer to the digital solution. This is because OPG statistics suggest approximately 90% of LPA submissions are filled using a word processor rather than being completed by hand.

86. Year on year costs vary due to changes in the volume of LPAs forecasted (see Table 7) as well as inflation adjustments. It has been conservatively assumed that staffing costs saved by Option 2a would remain flat in nominal terms across the appraisal

period, thus when inflation adjustments are applied, the annual real terms saving presented in Table 4 decreases year by year.

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£7.6m	£7.6m	£7.5m	£7.3m	£7.2m	£7.1m	£6.9m	£6.8m	£6.7m	£6.5m

87. Taking into account the costs of digitally storing LPAs and the cost savings from associated with digitally submitting LPAs and avoiding paper-based storage costs, the NPV of option 2a over the 10-year appraisal period is £59.1m.

Non-Monetised Benefits.

88. 4% of users delay registering their LPA by over 200 days. This leads to a risk of a mistake being found by OPG after the donor has lost mental capacity to address the issue. If this happens, the error cannot be corrected, and a new LPA cannot be made. The donor is left without a usable LPA. In this circumstance, where an LPA is no longer a possibility, the intended attorney would need to make an application to the CoP to be appointed as a deputy, at a fee of £371. In addition to this, the intended attorney would also have to pay a deputy assessment fee of £100 payable up front, and thereafter an annual fee of either £35 or £320 depending on whether the deputyship is a minimal or general supervision³. Therefore, this option reduces the risk of the donor having to access the CoP and pay these additional fees.

Option 2b – Execution allows delayed registration: Permit delayed registration with OPG after an LPA has been executed.

Costs of Option 2b

Monetised Costs

89. Delayed registration will require a database of LPAs to be kept until the user decides to submit the LPA to OPG. There will be a cost to OPG of digitally storing these LPAs until the user makes the decision to submit.

90. It is not precisely known how many LPAs are executed but not submitted for registration with OPG, however using data on the number of outstanding unregistered LPAs, we have estimated the potential cost of digitally storing unregistered LPAs over the 10-year appraisal period. Table 5 details the expected costs in real terms.

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£18,000	£21,000	£21,000	£22,000	£22,000	£21,000	£21,000	£21,000	£21,000	£21,000

Benefits of Option 2b

Non-Monetised Benefits

³ Minimal supervision exists for some properties and affairs orders for deputies managing less than £21,000.

91. Under this option the process of delaying registration would be simpler for donors and legal professionals whilst also retaining the choice about whether and when to register their LPA, as OPG would be providing a formal delay option. 4% of LPA applications are received by OPG 5 months after the donor signed the forms, suggesting that 4% of users delayed registering their LPA.
92. Implementation of option 2b also requires the digital storage and digital submission of LPAs rather than submitting a paper application and storing the paper in a physical storage unit. Therefore, the monetised benefit to OPG of digital storage (outlined in Table 3) and the benefits of digital submission (outlined in Table 4) would also be experienced under this option.
93. The NPV of option 2b is estimated at £59m, including the cost of delaying registration, and the cost savings associated with digitally submitting LPAs and avoiding paper-based storage costs.

Option 3 – OPG Remit: Conditional registration: Permit OPG to delay registration of an LPA until certain prescribed checks are met and to reject LPAs that cannot meet the requirement.

Costs of Option 3

Non-Monetised Costs

94. There will be staff and time costs associated with creating the system and checks, as well as for carrying them out manually where checks cannot be automated, or the conclusions need to be manually verified.
95. In instances where these prescribed checks cannot be passed including via an in-person interview, a donor or attorney would need to apply to the CoP to have their LPA registered. This would result in additional time and CoP fee costs for the donor.

Benefits of Option 3

Monetised Benefits

96. A digital channel for creation and submission of an LPA will allow for checks made on LPAs to be automated in place of the current manual process, increasing the efficiency of registering an LPA. OPG expects to experience efficiency savings of £4.25 per LPA, from eliminating 90% of the staff resource dedicated to manually checking LPAs and automating these checks. Estimated inflation-adjusted savings are represented in Table 6. Here, year on year changes are due to changes in OPG's forecasted volume of LPAs (see Table 7) as well as inflation adjustments. We have conservatively assumed the £4.25 unit cost of digital checks would remain flat in nominal terms across the 10-year appraisal period.
97. It should be noted that these cost savings represent a monetised estimate of the administrative resource that would be freed up as a consequence of implementing Option 3. This does not necessarily imply a cashable saving to OPG, but we estimate this would allow resource of equivalent monetary worth to be deployed to alternative uses by the organisation.

98. It should also be noted that savings to OPG associated with Option 3 differ to those from digitisation associated with Option 2a or 2b. The savings presented in Table 6 represent savings associated with manual checks being automated. By contrast, the savings presented in Table 4 represent savings associated with a reduction in paper LPA submissions reducing staff time used to create digital records.

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£4.6m	£4.5m	£4.4m	£4.3m	£4.3m	£4.2m	£4.1m	£4.0m	£3.9m	£3.8m

99. The NPV is estimated to be £33.9m in 21/22 prices, of cost-saving over the 10-year appraisal period.

Non-Monetised Benefits

- 100. Automating checks on LPAs could ensure that OPG can better focus its resources on investigations that will require more in-depth considerations of evidence, such as concerns about capacity or abuse. This could lead to increased protection against coercion and abuse. There could also be reprioritisation of resources into both the call centre (which provides direct user support) and triage team (which triages concerns before they go to the investigation team).
- 101. The introduction of ID checks would be a further deterrent to fraudsters seeking to create LPAs through false representation or impersonation. This would serve as a further protection to potentially vulnerable donors by bolstering protections that exist in the wider LPA service through third party checks.

Option 4 - How to object: OPG receives all objections - All objections will be sent to OPG to review and investigate, and anyone can raise an objection.

Costs of Option 4

102. It has not been possible to monetise costs and benefits for this option.

Non-Monetised Costs

- 103. The number of investigations may increase which will increase OPG costs. OPG may have increased staff costs as they will be taking on additional prescribed objections. However, we believe these costs are likely to be small. In 2019 there were only 47 objections that were sent to the CoP, compared to OPG receiving 277 prescribed objections in 2019/20.
- 104. There will be additional small administrative costs of handling and triaging all objections through to the investigations team where the OPG may decide to make an application to the CoP to make a determination on specific cases
- 105. Alongside this, we expect there will be small IT costs of digitally storing the objections and their respective LPAs during the statutory waiting period.

Benefits of Option 4

Non-Monetised Benefits

106. We expect that Option 4 will make the objections system more cost-effective, as the legal clarity it provides will reduce staff time in making decisions on how objections should be dealt with. Having a single point to submit an objection may also reduce the number of objections going to the CoP and save time in the CoP referring objections to the OPG to investigate. As all objections coming to the CoP will have already been assessed by the OPG and referred to the CoP as necessary, giving the CoP more time to deal with other legal concerns.
107. Having a single-entry point to report a concern to will provide clarity for a wider range of people and organisations. This will be particularly beneficial for those with a statutory safeguarding role, increasing OPG's ability to protect against abuse and fraud.

Option 5 – When to Object: Creation to registration - Concerns could be flagged to the OPG before the LPA is started, an objection can be raised during the LPAs creation or from the point it is sent for registration up until it is placed on the register.

108. Following the consultation, a combination of options remains the government's preferred way forward, such that we will seek to provide a method for objections to be raised during the creation of the LPA and consider the appropriate length of the statutory waiting period which will allow a cooling off period for the donor. Additionally, the government has committed to investigate the feasibility of allowing a concern to be raised with OPG before an LPA is started.
109. It has not been possible to monetise costs and benefits for any of these options, so this section sets out the non-monetised costs and benefits. It is also possible that further development may indicate a pre-creation, or during creation system is not viable. In this case, the costs and benefits realised will be less than those outlined below. Further analysis of this will be set out in the next iteration of the impact assessment.

Costs of Option 5

Non-Monetised Costs

110. A pre-creation objection system may create a false sense of confidence in the OPG's ability to match every objection made to an LPA, assuming one is eventually created in the vulnerably adult's name.
111. Allowing objection to be submitted to the OPG during the creation of an LPA could increase the likelihood of incomplete LPAs being challenged. As the LPA details will not have been finalised which could increase the burden on OPG to triage legitimate objections.

112. Reducing the statutory waiting time below 4 weeks may not allow enough time for parties to be notified and lodge an objection with OPG, especially if they cannot make use of digital channels to object. This could increase the risk of OPG registering an LPA it should not.

Benefits of Option 5

Non-Monetised Benefits

113. Allowing objections to be submitted before an LPA is created would allow local authorities to flag existing vulnerable individuals to the OPG. This pre-emptive measure would allow OPG to investigate the objection if an LPA comes in, creating greater safeguarding awareness and helping to prevent cases of abuse.
114. Furthermore, receiving an objection earlier will permit OPG to investigate as soon as an LPA starts to be created, which may increase the efficiency of the LPA registration process. This may result in staff time and storage cost savings.
115. If objection during the creation of an LPA were to be implemented, this could reduce the length of the LPA registration process, as objections will be raised through the digital service whilst the LPA is being created. This could result in savings to OPG in staff and storage costs.
116. Changing the length of the statutory waiting period would result in a reduced period of time in which objections could be levelled. This would result in a speedier LPA registration process for donors, legal professionals and OPG.
117. This would also shorten the waiting time for attorneys in making important decisions on behalf of the donor where there are no objections, whilst also maintaining the protection of a waiting period.
118. Additionally, a statutory waiting period would double as a time for the donor to consider if they are comfortable with registering their LPA. This would retain a cooling off period for the donor.

Option 6 – Access to service: Integration only - Ensure the regulated legal sector can access a digital service via integration with existing document management systems.

119. This option aims to integrate the case management systems that solicitors, other legal professionals and other parties who assist in the creation and execution of LPAs already use, with OPG records. This will occur via two routes, an automated data linking process via an API, and a non-automated process via a gov.uk webpage from which LPA records can be securely accessed.
120. The government is clear that if integration alone does not result in the take up needed to realise improved safeguards, increased access and sustainability then it will need to consider other measures such as mandating the regulated legal sector to use the digital channel. While this option may be taken forward as part of the necessary changes to primary legislation, a decision on whether to implement this change will not be made before the service goes live. If at this point mandating use

proves necessary, this change will be scoped and consulted on with further analysis carried out as part of the accompanying IA. Therefore, we have not modelling the costs and benefits in this IA.

121. It should be noted from a regulatory perspective that no measure under the set of options outlined in this IA would impose such regulation on the regulated legal sector. Any measures associated with the contents requiring the regulated legal sector to use a digital channel would require additional legislation. As such, costs and benefits associated with such regulatory measures have not been considered in this IA.

Costs of Option 6

Monetised Costs

122. This option will require OPG to build and maintain a gov.uk website for legal professionals and other organisations that assist individuals with making LPAs. The indicative cost of two developers for 6 months is £70,000 (2021/22 prices). This will include the development of an API (Application Programming Interface) that will allow OPG LPA databases to be integrated into legal practitioners' existing document management systems.

Non-Monetised Costs

123. It is expected that larger, more established legal services firms will have existing data management subscriptions to legal stationers (legal software providers). In this case, API integration will be possible as stationers will be expected to offer this integration as part of their regular services. As a consequence, it is not expected that larger legal services firms will face any new costs as a consequence of Option 6.
124. For smaller firms that maintain their records via in-house database management, it is expected that firms will only opt to integrate the new API if the expenditure of resources (for instance, hiring IT contractors) is commercially viable. (I.e. if the firm will enjoy sufficient increases in revenue by improving the competitiveness of its services to cover the IT costs.) This is because these firms will have the alternative option of obtaining records manually via a new gov.uk website. Consequently, it is not anticipated that Option 6 will result in smaller legal services firms facing a net cost.
125. It should be noted that no organisation will be mandated to integrate these services into their existing document management systems.
126. There may be familiarisation costs to solicitors and other sectors involved in assisting individuals with creating and registering LPAs. However, we expect these costs to be negligible.

Benefits of Option 6

Non-Monetised Benefits

- 127. Using the digital service instead of paper will reduce the number of errors being made in an LPA. This will result in a time saving in processing LPAs for legal professionals.
- 128. The digital service will result in a minor reduction in paper usage as compared with current paper-based processes. This is likely to result in a minor reduction in carbon emissions.
- 129. Using digital instead of paper will allow for easier sorting and streamlining of the LPA process, saving OPG and legal professionals' time. The scale of this benefit will be dependent upon the proportion of legal professionals who decide to use this service.

F. Risks, Assumptions and Sensitivity Analysis

- 130. The analysis presented in Section E is based on assumptions, each of which have associated risks. This section highlights the main assumptions made and the nature of the related risks.
- 131. The cost and benefits in this IA have been appraised over 10 years, beginning in financial year 2024/25, assuming an implementation date of all options occurring simultaneously in April 2024. However, the implementation date of these options will be influenced by whether a legislative slot for the legislative changes required is acquired in summer 2022. Currently, the policy has not been given a slot and therefore there is a risk that delivery of the policy could be pushed back. This could have an impact on when the costs and benefits are realised.
- 132. Sensitivity analysis involves exploring the sensitivity of expected outcomes of an intervention to potential changes in key inputs. It can be used to test the impact of changes in assumptions and is intended to reflect modelling uncertainty.
- 133. Sensitivity analysis has been applied to look at the impact on associated costs and benefits of changing assumptions regarding the forecasted volume of LPAs. Table 7 displays low and high estimates of LPA volumes, alongside the central forecasted volumes that have been used to calculate the NPV present in the IA.

Year	21/22	22/23	23/24	24/25	25/26
Low scenario	840,000	890,000	990,000	970,000	940,000
Central forecast	920,000	960,000	1,100,000	1,110,000	1,120,000
High Scenario	990,000	1,000,000	1,210,000	1,270,000	1,310,000

- 134. These February 2020 LPA donor forecasts largely reflect predictions about how the general population is expected to age and amongst this population who is likely to need an LPA. The upper and lower donor forecasts primarily reflect the difference in high and low population forecasts and assumptions about how many people who have not yet purchased an LPA are likely to do so in the future.
- 135. All tables showing sensitivity analysis in the section below display figures which have been amended to reflect a 3.5% social discount rate. This has resulted in figures

differing to those in the central scenario estimates quoted in the cost and benefit analysis sections above.

Option 1: Remove Witnessing

136. The forecasted unit cost of an invalid LPA in real terms is assumed to remain the same after financial year 2025/26. Likewise, we have conservatively applied the average number of invalid LPAs between 2018/19 and 2019/20 in calculating the cost saving through the 10-year appraisal period, rather than assuming a continued increase. Therefore, the benefit of preventing invalid LPAs and the associated costs of these LPAs to OPG could be understated in our estimations.

Option 2a: Execution starts Registration

137. Currently LPAs are held by OPG for 63 working days, however, pre-COVID, LPAs were being held for 40 days. In estimating digital storage costs, we have assumed that LPAs are being held for 63 days throughout the 10-year appraisal period. If the storage time was to go back to its pre-Covid levels, then paper-based storage costs would be lower than our current estimates. As a consequence, the net benefit to OPG associated with Option 2a may be overstated.

138. The central forecast in Table 7 suggests that growth in LPAs is expected to flatten out in the mid-2020s, therefore we have assumed the forecasted volume of LPAs will remain constant after financial year 2025/26. However, actual number of LPAs may not follow these forecasts, such that the cost saving from digital rather than paper-based storage could be understated or an overestimation.

139. We have applied sensitivity analysis to observe how costs and benefits will be impacted if there are changes to the forecasted LPA figures. Table 8 estimates the impact over the 10-year appraisal period, of LPA volumes in the low and high scenarios to illustrate the sensitivity of the digital storage cost, to variations in LPA volumes.

	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
Low	£12,000	£11,000	£10,000	£10,000	£9,000	£9,000	£8,000	£8,000	£7,000	£7,000
Central	£14,000	£13,000	£12,000	£12,000	£11,000	£10,000	£10,000	£9,000	£9,000	£8,000
High	£16,000	£15,000	£14,000	£14,000	£13,000	£12,000	£12,000	£11,000	£10,000	£10,000

140. Table 8 illustrates that costs associated with digital storage could vary by approximately minus £2,000 p/a in the low scenario and plus £2,000 p/a in the high scenario. This narrow range conveying that we are relatively confident in this particular cost estimation.

141. Similarly, in Table 9 we have applied the upper and lower bound of LPA volumes to the discounted cost saving associated with transferring from physical storage of paper LPAs to digital storage of a digital LPA.

	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34

Low	£180,000	£165,000	£156,000	£148,000	£140,000	£133,000	£126,000	£119,000	£113,000	£107,000
Central	£207,000	£198,000	£187,000	£177,000	£168,000	£159,000	£151,000	£143,000	£135,000	£128,000
High	£236,000	£230,000	£218,000	£207,000	£196,000	£185,000	£176,000	£166,000	£157,000	£149,000

142. The cost saving associated with eliminating 80% of the work involved in paper submissions is based on the assumption that 80% of users will choose to use the digital service. However, if the digital submission process is not user friendly then less people may decide to use the digital solution, the benefits we have estimated may be less than the benefits realised.

Option 3: Conditional Checks

143. Similar to the cost saving in option 2a, we have assumed volume of LPAs remain constant after financial year 2025/26. Depending on what actual volumes will be in the years post 25/26, the estimated cost savings could be notably different to the actual benefits experienced.

144. We have further modelled the impact of changing the assumption on LPA volumes on the cost saving from automating checks on LPAs. The discounted benefits of this over a 10-year period is shown in Table 10.

	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
Low	£3.7m	£3.4m	£3.2m	£3.0m	£2.9m	£2.7m	£2.6m	£2.5m	£2.3m	£2.2m
Central	£4.3m	£4.1m	£3.8m	£3.6m	£3.5m	£3.3m	£3.1m	£3.0m	£2.8m	£2.6m
High	£4.8m	£4.7m	£4.5m	£4.2m	£4.0m	£3.8m	£3.6m	£3.4m	£3.2m	£3.1m

145. Additionally, If the prescribed checks are too stringent then it could result in legitimate LPAs being rejected. This may result in donors having to submit a new LPA or make an application to the Court of Protection for their attorney to be appointed as a deputy, at an additional cost of £371.

Option 5: When to Object

146. It has been assumed that local authorities will have identified vulnerable individuals who they can flag to the OPG before an LPA is created. However, we do not know what the demand for this service will be, therefore there is a risk that local authorities will not use the pre-creation system, resulting in negligible benefits.

Option 6: Integration Only

147. Minimal familiarisation costs are assumed for legal professionals as a consequence of Option 6. This is because it is assumed that the new gov.uk webpage and document management services it will provide will be intuitive for users. If this is not the case, legal professionals may face small time costs to familiarise themselves with the webpage.

G. Wider impacts

Equalities

148. An equalities statement has been published in addition to this IA at annex C of the response.

Better Regulation

149. Option 6 described in this Impact Assessment is classed as a non-qualifying regulatory provision as there are familiarisation costs to business however, this cost is negligible so will not qualify for the departments' business impact target.

Potential implications for trade

150. There is no significant impact on trade.

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.