



Ministry
of Justice

Legal Aid Fees in the Illegal Migration Bill

**A consultation on fees in relation to the
Illegal Migration Bill**

This consultation begins on 27 June 2023

This consultation ends on 24 July 2023



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A consultation produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

About this consultation

To: The consultation is aimed at anyone with an interest in the provision of immigration and asylum legal aid, specifically the work impacted by the Home Office's Illegal Migration Bill. This includes, but is not limited to, members of the legal profession and their professional representative bodies, and legal services regulators.

Duration: From 27 June 2023 to 24 July 2023

Enquiries (including requests for the paper in an alternative format) to: Civil and Family Legal Aid Policy Team
Ministry of Justice
102 Petty France
London SW1H 9AJ
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IMBLegalAid@justice.gov.uk

How to respond: Respond online at <https://consult.justice.gov.uk/digital-communications/legal-aid-fees-in-the-illegal-migration-bill> by 24 July 2023.

Additional ways to feed in your views: A series of stakeholder meetings will be organised where views and comments will be taken.

Written responses can also be sent to:

IMB Legal Aid Policy Team
Ministry of Justice
102 Petty France
London SW1H 9AJ

Email:

IMBLegalAid@justice.gov.uk

For further information, please use the “Enquiries” contact details above.

Response paper: A response to this consultation exercise will be published in due course.

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Ministerial Foreword

As the Prime Minister has made clear, stopping the boats is a priority for this Government because it is a priority for the public, and we are keeping our promise to the British people by reforming the immigration and asylum system so that it is firm but fair.

We want to deter those who attempt to come to this country illegally using dangerous routes and illegal means – while at the same time freeing up capacity to support those who come to the UK in genuine need of asylum through safe and legal processes.

The Illegal Migration Bill currently making its way through Parliament will change the law so that it is easier to remove those who arrive to the UK illegally. Instead, they will be issued with a notice to ensure their swift removal, either to their home country or a safe third country.

Given the high volume of cases anticipated as a result of this legislation, we are proposing to pay higher fees for related immigration work. This will make sure legal aid practitioners are properly remunerated for the important work they do – and ensure fair payment and access to justice for all who seek it.

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I encourage anyone with an interest in this area of law to respond to this consultation and make their views heard so that we can make the appropriate changes to the legal aid system ahead of the measures in the Illegal Migration Bill being implemented. The Government will consider all responses carefully and publish a response in due course.

Our aim with the changes we are proposing is to help the legal sector to meet the increased demand and, crucially, ensure individuals are provided with the due process that is required by the rule of law and is a hallmark of our fair legal system.

Rt Hon Alex Chalk MP

Lord Chancellor and Secretary of State for Justice

Executive summary

1. The Government has introduced the Illegal Migration Bill (IMB) to make changes to its immigration policy. The IMB places a duty on the Home Secretary to arrange the prompt removal of individuals who enter or arrive in the UK illegally.
2. To ensure that individuals issued with a removal notice under the IMB have access to legal aid in relation to the removal notice, the IMB also amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Legal advice and assistance regarding IMB removals will be included in the scope of legal aid. The IMB will also streamline the legal aid application process by amending secondary legislation to remove the merits eligibility criteria for individuals issued with a removal notice under the IMB, and a statutory instrument will be laid to make legal aid pursuant to the IMB means-free. Detailed information on the provision of legal aid can be found in this consultation document.
3. 45,755 people arrived in the UK on small boats in 2022. Given the strict timelines implemented through the IMB and the high anticipated volume of cases, the Ministry of Justice (MoJ) will implement measures to enhance capacity to

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enable us to meet this increased demand for legal aid. The Government, therefore, proposes higher fees for immigration work related to the IMB, to help ensure that the sector can meet the demand for legal aid and provide access to justice for individuals subject to removal.

4. The focus of this consultation is how legal aid services to people served with a removal notice will be remunerated. The consultation document first outlines our proposal that hourly rates for work undertaken pursuant to Clause 55 of the IMB be up to 15% higher than existing immigration hourly rates. Secondly, it proposes that we will conduct a review of those new rates, in close consultation with key stakeholders, within two years of the fees being implemented. The consultation proposals have been developed following initial stakeholder input from the immigration legal aid sector, and further engagement will take place during the consultation process to ensure all perspectives are considered. The Government believes that these proposed changes are necessary to help meet the legal aid demand in this situation. They constitute and ensure fair and appropriate compensation for immigration and asylum legal aid providers for the new work introduced by the IMB.
5. After the consultation has concluded, the Civil Legal Aid (Remuneration) Regulations 2013 will

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be amended to reflect the final decisions made on relevant changes. Consequential amendments will also be made to the 2018 Standard Civil Contract in relation to the Immigration and Asylum Category of Law.

6. We invite input from all interested stakeholders and partners and welcome their views on these matters.

Introduction

7. This consultation paper seeks input only in relation to the fees applicable to immigration legal aid work being brought into scope by the IMB in England and Wales. The proposed increased hourly rates pertain exclusively to legal aid work as done pursuant to the matters set out in Clause 55 subsections (3)-(4) of the Bill and do not extend to other immigration legal aid matters or any other area of legal aid. Specifically, legal aid services provided to a person served with a removal notice, in relation to the removal notice, including any suspensive claim brought in relation to the notice and any application under Clause 55 subsection (4) of the Bill (“IMB Work”).

8. The consultation targets individuals and organisations with an interest in the provision of immigration and asylum legal aid in England and Wales, particularly those affected by the IMB. This includes legal professionals, their representative bodies, and legal services regulators, among others.

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9. A summary of the consultation paper in the Welsh language is available upon request.
10. This document presents a series of questions seeking feedback on our proposals for increased legal aid fees for IMB-related work only.
11. Instructions for responding to the consultation can be found on page 24. The deadline for submissions is 24 July 2023. The Government will carefully consider the responses received and subsequently publish a response.
12. The IMB is currently progressing through Parliament, meaning that certain aspects and provisions of the IMB are subject to potential changes. To view the latest progress and version of the IMB, please refer to the following link: [Illegal Migration Bill - Parliamentary Bills - UK Parliament \(https://bills.parliament.uk/bills/3429\)](https://bills.parliament.uk/bills/3429).

Background

Immigration Legal Aid

13. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) governs the legal aid scheme in England and Wales. It specifies that some types of services are "in scope" of legal aid, whereas others are available only via an "exceptional case funding" route. Some immigration matters are already within scope of legal aid, including certain asylum and immigration cases, such as asylum claims, certain applications for leave to remain and deportation appeals. For immigration matters that fall outside scope, individuals may be able to obtain legal aid funding through the Exceptional Case Funding (ECF) Scheme if they can demonstrate potential human rights or retained EU law breaches.

14. The provision of immigration advice under the legal aid scheme is governed by the 2018 Standard Civil Contract, which establishes the agreement between legal aid providers and the Lord Chancellor. The Legal Aid Agency (LAA) acts

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on behalf of the Lord Chancellor in contracting for legal aid services.

15. The remuneration applicable to immigration services is set out in the Civil Legal Aid (Remuneration) Regulations 2013 ("the Regulations").
16. Immigration legal aid remuneration, as defined in the Regulations, includes both fixed fees and hourly rates for various services. Standard asylum cases typically receive fixed fees, which do not vary based on the time spent on the case. For instance, the fixed fee for initial advice and assistance (legal help) in standard asylum cases is £413.
17. In cases where a legal aid matter requires more work than what is covered by the fixed fee, an escape threshold is applied. This means that the entire case is remunerated based on hourly rates rather than a fixed fee. In other words, if the number of hours expended on the case exceeds a certain multiple of the standard fee, it "escapes" the standard fee and is compensated based on hourly rates. This approach ensures fairness for providers handling longer or complex cases and

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eliminates disincentives for accepting new such cases.

18. This consultation paper specifically addresses the remuneration for IMB Work only.

The Illegal Migration Bill

19. The Home Secretary introduced the IMB to Parliament on 7 March 2023. The IMB will place a duty on the Home Secretary to arrange for the removal of individuals who enter the UK illegally from a safe country. The purpose of the IMB is to deter people from entering the UK unlawfully.

20. The IMB provides that those who enter the UK illegally through safe countries will either be removed to their home country or to a safe third country where claims for asylum will be considered. A person in scope of the duty will be issued with a removal notice and given eight days to make a suspensive claim (this includes a day for submitting a suspensive claim). If the claim is refused, the IMB provides a right of appeal to the Upper Tribunal or for permission to appeal to the Upper Tribunal (if the claim is certified as clearly unfounded).

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21. The IMB provides that protection claims and human rights claims in relation to a person's country of origin are inadmissible and will not be considered by the Home Secretary. Other human rights claims will be considered and determined but will not prevent removal while the claim is undecided or any decision is subject to challenge. The IMB also introduces the authority for the Home Office to detain individuals for up to 28 days without access to bail. Furthermore, it intends that all suspensive claims will be resolved within weeks, setting timelines for making a claim and for the Home Secretary to decide the claim, as well as timelines for the Upper Tribunal Rules related to when appeals should be notified and the Tribunal decide the case.
22. As the IMB is currently progressing through Parliament, it is subject to potential changes. The current status and version of the IMB can be accessed at the following link: [Illegal Migration Bill - Parliamentary Bills - UK Parliament \(https://bills.parliament.uk/bills/3429\)](https://bills.parliament.uk/bills/3429).

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Provision of Legal Aid within the Illegal Migration Bill

23. Legal aid for removal notices under the IMB is being brought into scope of legal aid through the IMB (Clause 55 subsection (3)). This will ensure that individuals who receive a removal notice under the IMB will have access to free legal advice and representation in relation to that removal notice.
24. Legal aid will be available for both Controlled and Licensed Work (should claims make it to appeal stage) and will be available to all individuals served with a removal notice.
25. The IMB also amends current provision for legal aid in relation to Judicial Reviews (JRs). This will increase the scope of legal aid for individuals who wish to judicially review refusals of human rights claims regarding removal under the IMB to a third country where their claim arises from Article 2 or 3 of the European Convention on Human Rights. The higher fees proposed within this consultation would not apply to such JR claims or indeed any other JRs or claims outside the definition of IMB Work.

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Legal Aid Clause

26. The intention of the legal aid clause (Clause 55) is to amend LASPO as follows (Subsections (2) to (4)):

- i. Subsection (2) amends paragraph 19 of Part 1 of Schedule 1 to LASPO, so that JRs of refusals of a human rights claim in relation to removal to a third country arising from Article 2 or 3 of the Human Rights Convention are in scope without restrictions. This prevents an exclusion from legal aid (para 19(5) Schedule 1) from applying to such JRs.
- ii. Subsection (3) brings legal aid for recipients of a removal notice into scope. The amendments bring legal advice and assistance relating to the removal notices in scope, including in relation to:
 - i. a suspensive claim relating to the removal notice; and
 - ii. an application under clause 45(4) of the IMB to the Upper Tribunal for a declaration that there were compelling

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reasons for the person not to make a claim within the claim period.

- iii. Subsection (4) puts advocacy in proceedings in the Upper Tribunal under clauses 43 to 48 (or any Tribunal Procedure Rules made for the purposes of those clauses) of the IMB into scope of legal aid so that where there is a right of appeal to the Upper Tribunal relating to a suspensive claim under the IMB, legal aid for advocacy at the Upper Tribunal will be available.
 - iv. Subsection (5) amends the Civil Legal Aid (Merits Criteria) Regulations 2013 to ensure that recipients of a removal notice do not have to undergo merits testing prior to receiving civil legal services, including representation, in relation to the removal notice.
27. We also intend to remove the means test for legal aid for removal matters. This will be done through a statutory instrument amending the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

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Delivery of Legal Aid

28. The IMB introduces additional demand for legal aid because of the number of individuals captured by the Bill and timescales for removal (eight days to make a claim). This new and large volume of work created by the IMB is a unique challenge and we have been considering the most effective way to ensure that all individuals served with a removal notice under the IMB have access to legally- aided advice and representation within the required timescales. This is required in order to support the overall delivery of the IMB, a key Government priority.

29. We understand the challenges posed by the existing caseload and the capacity constraints within the immigration legal aid sector. To ensure that we can meet the demand for legal aid under the IMB, we propose to implement higher hourly rates for IMB Work. Our aim is to rapidly ramp up market capacity to ensure that all individuals who receive a removal notice have access to legal aid in relation to that removal notice, including any suspensive appeal, within the prescribed removal timelines stated in the IMB and wherever they are

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located. We value your input and would appreciate hearing your views on this proposal.

30. Feedback from stakeholders has helped shape the proposal presented in this consultation paper.
31. Capacity-boosting measures, including the introduction of higher fees for IMB Work, will enable us to respond to the demand arising from the IMB in the near-term. However, we recognise the need to create a more sustainable and effective legal aid system in the long-term. To this end, in January 2023, the MoJ launched a comprehensive review of civil legal aid to identify evidence-based options for creating a more effective, efficient, and sustainable system for both legal aid providers and the individuals who rely on legal aid. That review encompasses the entire civil legal aid system, including the procurement of services, user experiences and the broader impact of civil legal aid on the justice system.
32. This consultation relates solely to the proposed fee for IMB Work aimed at encouraging more providers to do IMB Work in response to the

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anticipated volumes of individuals likely to be subject to removal notices.

The proposal

33. The consultation proposal specifically addresses the remuneration of legal aid services provided in relation to IMB Work only. As set out in paragraph 7 above, “IMB Work” means civil legal services provided to an individual who has received a removal notice, in relation to the removal notice (including in relation to a suspensive claim relating to the removal notice), and an application under Clause 55 subsection (4) of the IMB as regards such a claim (as brought into scope of legal aid by the insertions into LASPO of Paragraph 31C in Schedule 1, Part 1 and Paragraph 16A of Schedule 1 Part 3 by the IMB).

34. The Government believes that hourly rates should be used to compensate IMB Work at this time and that there should be no cap on the number of hours. This is because of the demand and timeframes imposed by IMB Work, which require swift and targeted action. The aim of this consultation is to determine the appropriate hourly rate for IMB Work. Due to the nature of this work,

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which has until now been out of scope of legal aid, we consider it adequate to rely on hourly rates for payment for IMB Work. The reason for this is the lack of evidence to determine the appropriate level at which fixed fees should be set. Without sufficient evidence or historical information, it would be challenging to establish fair and accurate fixed fees.

35. The proposal does not encompass remuneration for other areas within the immigration legal aid sector or any other area of legal aid. The current hourly rates and fixed fees for immigration and asylum work under the Regulations will remain unchanged and are not subject to this consultation.

Remuneration for IMB Work

Proposal: Higher fees for legal aid IMB Work

36. We propose that for all IMB Work, hourly rates will be up to 15% higher than existing immigration hourly rates. We propose that this will apply to all activities captured by the hourly rates, including for Controlled Work and Licensed Work.

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37. An example of immigration legal aid hourly rates is included in the table below:

Example Immigration Legal Aid Fees	Hourly rates cases (Preparation, Attendance and Advocacy)	
	London rate	Non-London rate
Existing hourly rates	£51.62	£47.30

Table 1: Example immigration legal aid fees (Civil Legal Aid (Remuneration) Regulations 2013)

38. Initial consultation with stakeholders indicated that an increase in the existing fees could help enable the IMB system to function effectively and to respond to the forecasted increase in demand under the IMB. Fees paid up to 15% higher for IMB Work would broadly align with the uplift in fees (charged on an hourly rate basis) which has previously been used to motivate experienced solicitors to join the Law Society Advanced Family Law Panel and/or the Children Panel (as set out in the Standard Civil Contract 2018), and with the fee

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uplift recommended by the Independent Review of Criminal Legal Aid in 2021.

39. We believe that a fee increase of up to a 15% would be an adequate uplift to incentivise legal aid providers to take on IMB Work. This higher rate strikes a balance between managing costs for taxpayers and ensuring sufficient capacity among providers to enable individuals facing removal to have access to legal aid.

Question 1: Do you agree with our proposal to pay higher fees for IMB Work? Please state yes/no/maybe and provide reasons.

Question 2: We are evaluating the possibility of increasing fees for IMB Work by up to 15% compared to the current immigration legal aid fees. Within the range of up to 15%, what percentage increase do you believe would be appropriate?

Question 3: Do you have any views on further measures that would help build capacity of the profession to complete IMB Work [Open Question]?

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40. While the Government intends to enhance capacity to meet the demand for IMB Work, we also recognise the importance of anticipating changes in demand over the medium and long-term period. We therefore propose conducting a post-implementation review of IMB Work fees. The purpose of this review would be to assess the sustainability and effectiveness of the fee structure for IMB Work, ensuring its continued suitability as the demand for legal aid services evolves over time.

41. We propose conducting an initial review, in close consultation with stakeholders and interested parties, within two years of the new fees being implemented. The timing of the review will be informed by the emerging evidence of the impact of fee changes.

Question 4: Do you agree with our proposal to conduct the first post-implementation review of fees for IMB Work within two years of its implementation? Please state yes/no/maybe and provide reasons.

Equalities Impact Assessment

42. This Equalities Statement considers the likely equality impacts on providers, barristers and clients from the proposal set out in this consultation. The proposal seeks to implement changes to fees payable for legal aid work solely undertaken under the Illegal Migration Bill (IMB).
43. As far as possible using the latest evidence available, we have indicated what the likely equalities impacts are in this Statement. We invite feedback on the equalities statement and have asked one specific question on the statement.
44. The consideration of the impact of the proposal and the implementation of any proposal is an ongoing duty. We will publish a Government response to this consultation in due course which will set out those reforms we intend to implement. At that stage we may also publish a revised Equalities Statement in light of any responses received to the consultation.

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Equality duties

45. Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have “due regard” to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act;
 - Advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - Foster good relations between people who share a protected characteristic and those who do not.
46. Paying “due regard” needs to be considered against the nine protected characteristics under the Equality Act. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, and pregnancy and maternity.

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47. Statistics about the demographics of the general population have been sourced from the 2021 Census and refer to England and Wales.¹

Summary of the policy change

48. The proposal aims to pay fees for legal aid work carried out for individuals in receipt of a removal notice under the IMB in relation to that removal notice at a rate up to 15% higher than current immigration legal aid hourly rates. Such an increase would meet the level suggested by providers in initial discussions on fees for this work and is broadly aligned with the 15% uplift in fees (charged on an hourly rate basis) which has previously been used to motivate experienced solicitors to join the Law Society Advanced Family Law Panel and/or the Children Panel – as set out in the Standard Civil Contract 2018.
49. We consider this proposal appropriate as it recognises the current challenges and capacity issues within the immigration legal aid sector and is in line with stakeholder views. It also strikes the right balance between costs to the taxpayer and providing an incentive to providers to ensure sufficient capacity to enable individuals facing

¹ Census 2021 results - Census 2021.

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removal to have access to legal aid in the required timescales.

Methodology to determine potential discrimination

50. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the proposal has been to identify the individuals whom the proposal would impact (the “pool”), and then draw comparisons between the potential impacts of the proposal on those who share particular protected characteristics, with those who do not share those characteristics.

51. Guidance from the EHRC states that the pool to be considered at risk of potential indirect discrimination should be defined as those people who may be affected by the policy (adversely or otherwise) and that this pool should not be defined too widely.

The pool of affected individuals

52. The primary pool of individuals affected by the proposals will be immigration legal aid providers, including barristers who take on publicly funded

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immigration work, as well as new providers who may wish to enter the immigration legal aid market. The proposals will also affect the individuals who are seeking advice and/or representation, who we will refer to as “clients” for the purposes of this Equalities Statement.

Available data

Legal aid providers

53. We have limited information on legal aid providers. In January and February 2015, the Legal Aid Agency (LAA) carried out an online survey to learn more about providers doing legal aid work.² The survey was sent to all 2,262 legal aid providers (across the entire legal aid market) to complete between 19 January and 27 February 2015. There were 644 providers who completed the survey; a response rate of 28%. The survey asked about the protected characteristics of those who have ownership or managerial control of the firm (2,057 people), not the total headcount of the firms who responded (13,578).

² Ministry of Justice, Legal Aid Statistics in England and Wales: January to March 2015, available at: www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015.

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54. The limited response rate and the age of the data limits our ability to draw robust conclusions.

55. The available data shows that owners and managers of legal aid providers were disproportionately within the 40-49 years age range: 32% for all civil legal aid providers, 39% for immigration and asylum providers, 48% for public law providers, and 37% for community care providers. This is higher than the general adult working age population (aged 18-64) where 20% of people are in the 40-49 years age range.

56. The available data shows that generally, the owners and managers of civil legal aid providers are more likely to be male than the general population where 49% of people are male. For all civil legal aid providers, 59% of owners and managers were male, for immigration and asylum this was 59%, and for community care 53%. In public law, 48% were male, closer to the general population.

57. The available data shows that generally, across all of civil legal aid, the percentage of owners and managers from ethnic minority background matches the general population

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(18%). However, the percentage of owners and managers from an ethnic minority background in immigration (53%), public law (21%) and community care (25%) were all higher than the general population.

Barristers

58. We have also considered the impact of the above proposals on barristers, as they also undertake immigration and asylum work. Whilst the LAA does not contract with barristers directly, we understand that legal aid providers often instruct Counsel at the appeal stage and therefore it is appropriate for us to also undertake this assessment.

59. This analysis is based on data published by the Bar Standards Board (BSB) in 2023, which is a summary of the data available to them as of 1 December 2022.³ It is the best available data that we can refer to.

60. There are some limitations to this data. It only provides information for all barristers across the

³ BSB-Report-on-Diversity-at-the-Bar-2022-FinalVersionv2.pdf (barstandardsboard.org.uk).

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justice system, whether they are doing legal aid work, non-legal aid work, or both. It also only provides information for barristers across the system, rather than specific information on barristers practising in certain areas of law – so, for example, we cannot ascertain the protected characteristics of barristers working in immigration and asylum law. Finally, the response rate was low, meaning that for some protected characteristics, reliable conclusions cannot be drawn from the data.

61. Of those that have provided information on disability status, around 7% of the Bar disclosed a disability. This is substantially lower than the percentage of people reporting a disability in England and Wales of 18% in the general population. The relatively low response rate to this question of 63% should be borne in mind when drawing conclusions from this data.

62. The statistics show that 16% of barristers who provided ethnicity information come from minority ethnic backgrounds, defined by the BSB as including those from Asian/Asian British, black/black British, Mixed/Multiple ethnic and other minority ethnic backgrounds. This is slightly lower than the population breakdown of 18% in the 2021 Census. When looking more closely at the data by

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ethnic group for barristers who provided responses:

- a. 8% of the Bar are from an Asian/Asian British background, which is slightly lower than the general population percentage of 9%;
- b. 3% are from a black/black British background, also broadly in line with the general population of 4%;
- c. 4% are from a Mixed or Multiple ethnic background, also broadly in line with 3% of the general population;
- d. and 1% are from another ethnic background, which is slightly lower than of the general population percentage of 2%;
- e. It should be borne in mind when drawing conclusions that this question had a response rate of 93%.

63. The BSB statistics also show that men are overrepresented among barristers when compared to women. The statistics show that there were a total of 18,026 barristers in practice. 6,943 practising barristers who provided gender information were female, which represents 40% of the profession; this is below the 2021 census of the population of England and Wales of 51%. There will therefore be an uneven impact as men are more likely to be affected by the policy change. Encouragingly, the BSB note that these

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statistics continue to show a longer-term trend of an increase in the proportion of practising barristers who are female. It should be noted when drawing any conclusions that this question had a response rate of 97%.

64. The two largest cohorts of barristers who provided age information are the 35-44 and 45-54 age groups, around 27% of barristers are in each of these age ranges. This is below the 2021 census (18-64 year-olds only) of 21% for both of the same age groups. 35–54 year-olds are more likely to be affected by this policy change due to them making up the largest proportion of people at the Bar. It should be noted when drawing any conclusions that this question had a response rate of 88%.

Clients

65. In general, existing recipients of legal aid for immigration and asylum cases are much more likely to have an ethnic minority background. Around 86% of clients who provided this information to the LAA are from an ethnic minority (comprising of Asian or Asian British; black, black British, Caribbean or African; mixed or multiple ethnicity; or other ethnicity), compared to 18% in

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the wider population. However, a relatively large proportion of clients (54%) did not disclose their ethnicity which makes it difficult to draw firm conclusions. Existing recipients are also more likely to be male, making up 75% of recipients.⁴

66. The nationalities who most frequently attempt to enter via illegal routes are likely to be different, depending on a range of factors. For example, Vietnamese nationals accounted for 1,403 small boat arrivals in 2021 (6th highest nationality) but only 477 in 2022 (12th highest nationality).⁵ While data on race and ethnicity may not be collected in some countries or classified differently in others, it is clear that the majority of small boat arrivals were from countries with populations which, in the UK, are minority ethnic.

67. Of the 45,755 people who arrived by small boats in 2022⁶:

⁴ Legal aid statistics England and Wales client diversity data to March 2022 - GOV.UK (publishing.service.gov.uk)

⁵ Equality Impact Assessment - Illegal Migration Bill (publishing.service.gov.uk).

⁶ Equality Impact Assessment - Illegal Migration Bill (publishing.service.gov.uk).

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- f.* 17,678 were aged 25-39 and 15,786 were aged 18-24;
- g.* 12,561 were Albanian nationals, 8,633 were Afghans, 5,642 were Iranian and 4,377 were Iraqi. Syria (2,916) was the 5th country on the list; and
- h.* 83% of arrivals were males.

68. Below we have highlighted the equalities considerations, impacts and mitigations of the proposal to pay higher fees for legal aid work brought into scope by the IMB. In accordance with our legal duties, we will continue to consider the equalities impacts as we continue to develop this proposal, and we will publish an updated equalities assessment alongside our consultation response.

69. We also welcome the views of respondents to the consultation on the likely equalities impacts of these proposals. The Government acknowledges that there are gaps in the data collected about the protected characteristics of those who provide publicly funded legal services and of those who are granted legal aid. We would welcome any empirical data that respondents can provide covering this. In addition, we would welcome any qualitative data or case studies that may illustrate the equalities impacts of these proposals.

The Assessment

Eliminating unlawful discrimination

Direct discrimination

70. Our assessment is that paying higher fees for legal aid brought into scope by the IMB is not directly discriminatory within the meaning of the 2010 Act. It is intended to ensure legal aid providers and publicly-funded barristers are appropriately remunerated for all work done under the IMB. The proposal will not treat anyone less favourably as a result of a protected characteristic.

71. The proposal will ensure that individuals subject to removal notices under the IMB can access justice by building capacity within the immigration legal aid market and incentivising providers and barristers to take on legal aid work brought into scope of legal aid by the IMB. We therefore do not consider that the proposed change will result in clients being at a disadvantage or treated less favourably because of their protected characteristics.

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Indirect discrimination

72. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.

73. The available data indicates that males, individuals from an ethnic minority background and individuals between the ages of 40-49 are overrepresented amongst owners and managers in legal aid providers with an immigration and asylum contract when compared to the general population. This means that the benefits which arise for providers as a result of this proposal – for example, receiving higher fees for IMB work than for other immigration work – may be disproportionately witnessed by individuals who fall into these groups.

74. The available data indicates that males are overrepresented amongst barristers, but we cannot accurately see the breakdown of barristers carrying out publicly funded immigration and asylum work. This means benefits which arise as a result of these proposals may be disproportionately witnessed by male barristers.

75. The available data indicates that males, individuals aged between 18-39, and individuals

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from an ethnic minority are overrepresented amongst immigration and asylum legal aid clients. Therefore, any benefits which will arise for clients as a result of this proposal may be disproportionately witnessed by individuals who fall into these groups.

76. Even though certain protected groups are overrepresented in the groups affected by the proposal, our policy proposal would not be indirectly discriminatory because they are not likely to particularly disadvantage clients, providers or barristers. We think that any particular disadvantage as a result of this proposal is justified as a proportionate means to achieve the policy aim of building capacity in the immigration legal aid market and incentivising providers by adequately remunerating them for their work.

Advancing equality of opportunity

77. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.

78. As indicated above, the proposal is to pay higher fees for legal aid work brought into scope by the IMB to build capacity in the immigration

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legal aid market. It is therefore likely that providers, barristers and clients will benefit from these proposals.

79. As outlined above, data indicates that males, individuals aged between 18-39, and individuals from an ethnic minority background are likely to be overrepresented amongst clients; males, individuals from an ethnic minority background and individuals aged 40-49 are likely overrepresented amongst the owners and managers of immigration and asylum legal aid providers; and males are overrepresented amongst barristers, when compared to the general population. We do not consider that these proposals will negatively impact on the duty to advance equality of opportunity.

Fostering good relations

80. Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposal.

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Harassment and Victimisation

81. We do not consider there to be a risk of harassment or victimisation as a result of this proposal.

Monitoring and evaluation

82. We will continue to monitor the equalities impacts of these proposals. We will update this Equalities Statement as necessary and publish the revised version alongside our consultation response.

83. Any final decision will include the evidence of impact from the Equalities Statement. We will continue to pay due regard to the Public Sector Equality Duty as the proposals are implemented and will consider the most effective ways of monitoring equalities impacts.

84. We would also welcome the views of respondents to the consultation on the likely equalities impacts of these proposals.

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Question 5: From your experience, are there any groups or individuals with protected characteristics who may be particularly affected by the proposals in this paper, who are not included in the Equalities Statement? [Open Question]

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Questionnaire

Question 1: Do you agree with our proposal to pay higher fees for IMB Work? Please state yes/no/maybe and provide reasons.

Question 2: We are evaluating the possibility of increasing fees for IMB Work by up to 15% compared to the current immigration legal aid fees. Within the range of up to 15%, what percentage increase do you believe would be appropriate?

Question 3: Do you have any views on further measures that would help build capacity of the profession to complete IMB Work [Open Question]?

Question 4: Do you agree with our proposal to conduct the first post-implementation review of fees for IMB Work within two years of its implementation? Please state yes/no/maybe and provide reasons.

Question 5: From your experience, are there any groups or individuals with protected characteristics who may be particularly affected by the proposals in this paper, who are not included in the Equalities Statement? [Open Question]

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Thank you for participating in this consultation exercise.

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About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement	

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should be sent, if different from above	
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Are you content for the Ministry of Justice to include your affiliated organisation in a public list of respondents to the consultation exercise?

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

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Contact details/How to respond

Respond online at <https://consult.justice.gov.uk/digital-communications/legal-aid-fees-in-the-illegal-migration-bill> by 24 July 2023

Other ways to respond:

Written responses can be sent by 24 July to:

Civil and Family Legal Aid Policy Team
Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: IMBLegalAid@justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Ministry of Justice at the above address.

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Extra copies

Further paper copies of this consultation can be obtained from this address, and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested from imblegalaid@justice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in due course. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to

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information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations (2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

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Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

OGI

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