



Ministry
of Justice

Legal Aid Fees in the Illegal Migration Act

**The Government's response to the
consultation on fees in relation to the
Illegal Migration Act**

September 2023

CP 939



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in relation to the Illegal Migration Act

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice

by Command of His Majesty

September 2023



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ISBN 978-1-5286-4466-2

E02990238 09/23

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of
the Controller of His Majesty's Stationery Office

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Ministerial Foreword

The Prime Minister made it clear earlier this year that stopping small boats crossing the English Channel and removing individuals arriving on them illegally, as quickly as possible, is a top priority for the Government. The Illegal Migration Act 2023 provides the framework to do just that by enabling these individuals to be issued with a notice to ensure their swift removal, either to their home country or to a safe third country.

At the same time, it is crucial that we respect due process under the rule of law and ensure there is timely and effective access to justice, which is the foundation of fairness in our society. The Act makes provision for legal advice in these circumstances so that people's rights to access to justice are respected.

Given the volume of cases anticipated as a result of this legislation including the expedited timeframes for dealing with them, I recognise the need to bolster capacity in the immigration legal aid market. That is why in June this year, I consulted on proposals to increase fees for work pursuant to the Illegal Migration Act inviting engagement from across the sector on these proposals.

I am grateful to the individual practitioners, law firms and representative bodies who engaged with us and responded to the consultation – we recognise their professionalism, commitment and expertise and their input to this process has been invaluable. We have considered the responses carefully before deciding how to proceed.

The Government has determined that a 15 percent increase in fees in relation to work under the Illegal Migration Act is a meaningful step forward, representing an increase in remuneration and fair recognition of the expectations the Illegal Migration Act puts on practitioners. The Government will review the fee increase within two years of implementation.

We have also listened to the sector on the other issues raised during the consultation period and are taking steps to remove additional barriers so that providers are supported in taking on this work including exploring proposals to help address the financial burden of accrediting caseworkers at senior caseworker level to conduct immigration and asylum legal aid work, paying for the time it takes providers to travel to Immigration Removal Centres for Detained Duty Advice Scheme surgeries and allowing advice to be provided remotely for DDAS surgeries, at the discretion of providers. We will continue to work with legal aid providers as the new arrangements are implemented.

Lord Bellamy KC

Parliamentary Under-Secretary of State for Justice

About this consultation response

This document is the post-consultation report for the consultation paper, 'Legal Aid Fees in the Illegal Migration Bill.'

It will cover:

- the background to the report
- a summary of the responses to the consultation
- a detailed response to the specific questions raised in the consultation
- the next steps following this consultation

Further copies of this report and the consultation paper can be obtained by contacting Civil and Family Legal Aid Policy at the address below:

Civil and Family Legal Aid Policy

Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: IMBLegalAid@justice.gov.uk

This report is also available at: <https://www.gov.uk/government/consultations/legal-aid-fees-in-the-illegal-migration-bill>

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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.

Chapter 1: Executive Summary

1. The Government's response to the consultation 'Legal aid fees in the Illegal Migration Bill' sets out our intention to ensure that individuals issued with a removal notice under the Illegal Migration Act (IMA) (previously referred to as the Illegal Migration Bill (IMB)) have access to legal aid in relation to the removal notice. This is required under amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) made by the IMA which received Royal Assent on 20 July 2023.
2. The consultation focused on how legal aid services to people served with a removal notice will be remunerated, and the Government's proposal that hourly rates for legal aid work undertaken pursuant to section 56 of the IMA be up to 15% higher than existing immigration hourly rates. The consultation also sought views on the proposal that the Government conducts a first-post implementation review of fees within two years. In addition, the consultation sought views on further measures that would help build capacity of the legal aid profession to complete IMA Work and on views in relation to our Equalities Impact Statement.
3. The consultation posed five questions and received 38 responses. We also held five roundtable events during the consultation period, which focused on the consultation questions and supplemented the information in responses. We have considered all responses carefully and they have helped inform the steps we now propose to take. Following the consultation, we will be taking forward a wider package of measures with the aim of incentivising and maximising capacity within the legal aid sector to deal with IMA Work. The full details of our proposals are set out in this document. In summary they are that:
 - a. for IMA Work (as defined in paragraph 14), hourly rates will be 15% higher than existing hourly rates;
 - b. IMA fees will be reviewed within two years of implementation;
 - c. the Government will pursue the development of proposals to help address the financial burden of accrediting caseworkers at senior caseworker level to conduct immigration and asylum legal aid work. The Government will communicate further with immigration legal aid providers on specific steps taken later this year;
 - d. the Government will pay travel time for providers when they travel to Immigration Removal Centres (IRCs) for Detention Duty Advice Scheme (DDAS) surgeries (which will be used for detained persons subject to the IMA); and
 - e. the Government will allow advice to be provided remotely in DDAS surgeries, at the discretion of providers and subject to their professional judgment and their obligations towards vulnerable persons.

Chapter 2: Introduction

4. The Ministry of Justice (MoJ) published the consultation titled 'Legal aid fees in the Illegal Migration Bill' on 27 June 2023. The consultation was due to close on 24 July; however, it was extended for two weeks and closed on 7 August 2023.
5. The consultation focused on how legal aid services to people served with a removal notice under the IMA will be remunerated. The consultation sought views on our proposal that hourly rates for work undertaken pursuant to section 56 of the IMA be up to 15% higher than existing immigration hourly rates. It also proposed that we conduct a review of those new rates, in close consultation with key stakeholders, within two years of the fees being implemented. These proposals were developed following initial stakeholder input from the immigration legal aid sector.
6. In addition to these proposals, two open questions were asked. One asked respondents to suggest additional measures which could effectively address capacity and improve incentivisation so that legal aid providers can feasibly undertake this work. The other addressed the Equalities Impact Assessment (EIA) and asked respondents to provide comments on any groups or individuals who may be particularly affected by the proposals in the consultation who were not included in the Assessment.
7. We invited input from all interested stakeholders and partners and welcomed their views on these matters. In total, the Government received 38 responses to this consultation. There were 16 law firms who responded (there were two instances where two respondents who belonged to the same law firms submitted separate responses), four professional associations/representative bodies, nine non-profit organisations, three law centres, one barristers' chambers and three individuals who did not state that they belonged to a particular organisation.
8. To support the consultation, five roundtables were held with legal aid providers and representative bodies involved in immigration legal aid. This included large, medium and small provider firms. In addition to the roundtables, we also received an open letter from 66 providers who shared their views about the civil legal aid sector. The feedback received in these meetings and in the open letter have also been taken into consideration within the Government's response.
9. This paper sets out the Government's response to the consultation responses that were received; and the policies the MoJ will now take forward following the consultation. Readers should refer to the consultation paper for comprehensive descriptions of the proposals and thus measures covered in this response.

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10. This has been an open and collaborative consultation. The MoJ is grateful for the invaluable engagement from a wide range of stakeholders throughout the consultation period including, but not limited to, legal aid providers and a broad range of legal aid firms and representative bodies across the legal aid sector.

Background

11. On 8 March 2023, the Government introduced the IMA to make changes to its immigration policy. On 20 July 2023, the IMA received Royal Assent and became the IMA. The IMA places a duty on the Home Secretary to arrange the prompt removal of individuals who enter or arrive in the United Kingdom (UK) illegally. The purpose of the IMA is to deter people from entering the UK unlawfully.
12. The IMA 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. Individuals in scope of the duty will be issued with a removal notice and given eight days to make a suspensive claim. If the claim is refused, the IMA provides a right of appeal to the Upper Tribunal (UT) or to seek permission to appeal to the UT (if the claim is certified as clearly unfounded).
13. To ensure that individuals issued with a removal notice under the IMA have access to legal aid in response to the removal notice, the IMA amended LASPO. Legal advice and assistance for those served with a removal notice under IMA will therefore be included in the scope of legal aid in England and Wales. The IMA also streamlines the legal aid application process by amending secondary legislation to remove the merits eligibility criteria for individuals issued with a removal notice under the IMA. Legislation will also be introduced to remove the means eligibility test.
14. The proposed higher hourly rates as consulted on pertain exclusively to legal aid work as done pursuant to the matters set out in section 56 subsections (3)–(4) of the Act and do not extend to other immigration legal aid matters or any other area of legal aid. Specifically, the uplift applies to 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 section 46(4) of the Act (“IMA Work”).
15. For clarity, section 56(3) of the IMA adds a new paragraph into Part 1 of Schedule 1 to LASPO. This brings into scope of legal aid civil legal services provided to an individual who has received a removal notice, in relation to that removal notice (including in relation to a suspensive claim relating to the removal notice, and an application under section 46(4) of the IMA relating to claims brought outside of the claim period). These civil legal services are what constitute IMA Work.

Approach to analysis

16. In total the Government received 38 responses to this consultation. Twenty-seven respondents chose to reply via the online survey (Citizen Space) with 11 sending in their responses via email. The consultation asked five questions. Respondents could choose which questions they answered, and not all respondents answered all the questions asked or all parts of the question.
17. Two questions were closed-ended questions asking for respondents to indicate their view by stating 'Yes/No/Maybe'. These questions also asked respondents to provide reasons for their view. Upon analysis, many Yes/No/Maybe returns did not clearly depict agreement or disagreement, as respondents interpreted the question differently depending on the individual. For example, some respondents stated that on principle they agreed with the 'up to 15%' proposal but then went on to say in their response that they did not agree with the level proposed. Some respondents would classify this as 'agreeing' to the proposal but others classified this as a disagreement with the proposal.
18. Both quantitative and qualitative analysis has been used when analysing the responses to the consultation. Stakeholder responses have been considered in detail and organised by theme. A theme has been noted as being mentioned by a respondent if referred to in their answers – this includes when respondents noted their views, raised the issue, or explicitly recommended that something should be done in relation to that area.
19. A threshold has been applied to the number of responses classified as a 'theme' in this document. We have set this threshold at 5% (i.e. two or more respondents). All responses have been analysed, including comments and issues mentioned by only one respondent. Anything that has been mentioned, which does not meet the threshold, has not been summarised in this document.
20. Some statistics will not necessarily add up to the total number of responses. This is because some respondents did not engage with the categorical questions laid out in the consultation. Additionally, some respondents may have provided several reasons for their answer or several answers to the question. Specific questions were not asked about each of the themes, which may also contribute to the fact that statistics will not add up to the total number of responses.
21. Many respondents did not answer the question posed or raised a separate issue as part of their response. There were some issues that appeared out of scope, but when looking at the response were given as part of the detail of their answer.

Summary of consultation responses

Remuneration of IMA Work

22. In summary, most stakeholders welcomed the proposal to set higher fees for IMA Work but called for an increase greater than 15% to incentivise the market and suggested that the increase should apply more widely than IMA Work. Reasons given included the caseload and capacity of firms, cost of living, depreciation and inflation and the complexity of the work. Many stakeholders also suggested that the implementation of other supportive measures was also required to make a 15% fee increase more attractive in incentivising providers.

Further measures to help build capacity for IMA Work

23. Respondents proposed a variety of further measures that could help boost capacity for firms undertaking IMA Work. These include accreditation; changes to payment processes; reducing administrative burdens; interpreter services; payment of travel time; remote advice; and mental health and wellbeing.

First post-implementation review of IMA fees

24. In summary, most stakeholders agreed with the proposal to conduct a review but called for the review to be conducted sooner than two years, i.e. within one year, or that the review should commit to both not reducing the fee at any review and not changing it to a fixed fee. Proposals on timing and process of future reviews were driven by the desire to secure access to justice in this area. The level of changes, demands of the act, and extent of the future workload were also key views.

Equalities Impact Assessment

25. Respondents raised views that the effect of proposals on both IMA and non-IMA cohorts, on immigration caseworkers and asylum seekers, including around their ethnicity, sex and mental health had not been considered in the EIA. Comments were also raised that the data sources used/quoted within the EIA were not the most up to date.

Summary of the Government's proposals

26. Following careful consideration of all consultation responses and wider stakeholder engagement and further consideration of the issues around building capacity for legal aid provision in England and Wales, the Government believes that a package of measures will best enable providers to respond to the demand arising from the Act and ensure access to justice for individuals issued with removal notices under the IMA. These measures are that:

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- a. for IMA Work (as defined in paragraph 14), hourly rates will be 15% higher than existing hourly rates – this will apply to all activities captured by hourly rates, including for Controlled and Licensed Work;¹
 - b. the Government will conduct a first post-implementation review of IMA fees within two years of implementation;
 - c. the Government will pursue the development of proposals to help address the financial burden of accrediting caseworkers at senior caseworker level to conduct immigration and asylum legal aid work. We will communicate further with immigration legal aid providers on specific proposals later this year;
 - d. the Government will pay travel time for providers when they travel to Immigration Removal Centres for DDAS surgeries; and
 - e. the Government will allow advice to be provided remotely for DDAS surgeries, at the discretion of providers and subject to their professional judgement and their obligations towards vulnerable persons.
27. After careful consideration of the responses, the Legal Aid Agency (LAA) and MoJ will further consider other issues such as interpreters fees and disbursements.
28. The Impact Assessment and an updated EIA have been published online alongside this consultation response paper.
29. The Government believes that these proposed changes are necessary to help meet the legal aid demand under the IMA. The Government believes that these changes constitute fair and appropriate compensation for immigration and asylum legal aid providers and will assist in delivering capacity for the new work introduced by the IMA.

Immediate next steps

30. The Government will lay a Statutory Instrument (SI) to amend the Civil Legal Aid (Remuneration) Regulations 2013 to reflect the decision made on fee changes. Consequential amendments will also be made to the 2018 Standard Civil Contract in relation to the Immigration and Asylum Category of Law.

¹ Controlled Work means the provision of any of the following forms of civil legal services: (a) legal help; (b) help with family mediation; (c) help at court; (d) family help (lower); or (e) legal representation for proceedings in the Immigration and Asylum Chamber of the First-tier Tribunal; or the Immigration and Asylum Chamber of the Upper Tribunal in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal. Licensed Work means the provision of any of the following forms of civil legal services: (a) family help (higher); or (b) legal representation that is not Controlled Work or Special Case Work.

Chapter 3: Remuneration of IMA Work

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

Question 2: We are evaluating the possibility of increasing fees for IMA 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?

Consultation summary

31. In total there were 38 responses to both Question 1 and Question 2. Of the 38 responses to Question 1, 17 agreed with the proposal to pay higher fees for IMA work (45%), 11 disagreed with the proposal (29%) and 10 responded with 'maybe' (26%). Of these, 34 respondents went on to provide reasons for their answer.
32. Most respondents agreed with the Government's proposal to pay higher fees for IMA Work but disagreed with the 'up to 15%' fee level and the focus on IMA Work. Upon analysis, the overall sentiment of responses was negative (36 respondents, 95%). Of the remaining responses (two respondents, 5%), one gave a neutral response and another respondent gave a positive response – however no additional comments were given.
33. There were many reasons given for why respondents either disagreed with the proposal or agreed with the proposal overall but had a negative sentiment. These have been summarised below.

Fee level

34. Most respondents agreed with the Government's proposal to pay higher fees for IMA Work but disagreed with the 'up to 15%' fee level, with only two respondents (5%) agreeing with the 'up to' 15% rise. A reason given by one of these respondents was that 'lawyers/barristers do very hard important work and should be paid more to reflect huge responsibility that comes with doing [IMA] work'.
35. There were varying views about what fee level should be required, but over half of respondents stated that 15% is either insufficient or inappropriate, should be the minimum increase and/or that the fee level should be higher than 15%. Many

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respondents did not provide an alternative rate, but of those that did, increases ranged from 50% to 150% – these included that fees should be:

- 50% (six respondents);
- raised in line with inflation (three respondents);
- 50% for regular work carried out under the IMA; but raised to 100% for any work that progresses to the High Court or beyond (three respondents); and
- 100–150%: reflective of inflation, and the lack of increases and subsequent cuts to fees over the years (three respondents).

36. Of those who said 15% was insufficient or inappropriate, or that a higher rate should be pursued, there were a multitude of reasons that formed the basis of this response. For example, respondents stated that 15% would not incentivise capacity and that increasing legal aid fees by 'up to 15%' was insufficient to reflect increased caseload, and its subsequent impact on capacity within an already 'overstretched' sector. Views were also raised that the proposed increase would not be sufficient to 'address the challenges the consultation identified', especially considering the short timeframe for making a suspensive claim (eight days). Another view was raised by respondents around the expected complexity of the work.
37. Respondents also stated that 15% higher fees for IMA Work was insufficient because legal aid rates have not increased, nor been augmented in line with inflation, since 1996 and furthermore were cut by 10% in 2011. One provider noted that 15% 'does little more than address inflationary increases in costs that providers have had to absorb over the last two years'. Some also noted the depreciation of legal aid fees over time. Respondents also remarked on a difference in levels of legal aid capacity across different areas of the UK as an increasing challenge.
38. However, two respondents stated that an increase less than 15% should be pursued. One stated that it should be 0% as the Government should move to 'fixed competitive fees' acquired by chambers bidding. The other stated it should be 3% on the basis that legal aid should be a fixed amount no matter the demand.

Scope of fee proposal

39. Some respondents suggested that the proposal should not be restricted to work done under the IMA. Eight respondents said that the fee increase should be expanded to all immigration legal aid (21%), two suggested that it should be expanded to all civil legal aid (5%), and one suggested it should be expanded to all legal aid (3%). Three other respondents raised the restrictive nature of the proposal but did not provide further detail.

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40. Views included that a raise in fees for IMA Work only could 'encourage a shift to this work by providers, away from other essential work that needs to be done' and could lead to 'perverse' incentives to undertake this work, to the detriment of other immigration work.

Additional measures

41. Across Questions 1 and 2, respondents stated that additional measures would be required to improve the effectiveness of the 15% increase. The further measures mentioned included: accreditation, interpreter fees and disbursements. Some also stated that additional measures were needed but did not specify further. Those responses have been summarised in Chapter 4.

Wider stakeholder feedback

42. At the stakeholder engagement events, on costs and fees many stakeholders noted that the fees uplift should be expanded beyond IMA Work. They also shared the view that limiting the uplift to IMA Work could risk shifting capacity away from other policy priority areas and aggravate access to legal aid for other migrants. Several stakeholders also noted that the 15% uplift is not high enough to increase capacity and suggested increasing fees in line with inflation (which amounts to a 100% uplift.) Other proposals included paying between £150–250 per hour as the adequate compensation level that could incentivise providers and help build capacity.
43. In addition to the roundtable sessions, we also received an open letter from 66 providers who shared their views about the civil legal aid sector and provided various capacity building measures, such as increasing hourly rates for all legal aid Controlled Work in line with inflation since 1996 (based on the Bank of England inflation calculator, this comes to around £100 an hour). They further called for a 50% uplift on work undertaken under the IMA, on top of inflationary increases set out above, to enable providers to train new staff and take on this work at pace.

Government response

44. The Government acknowledges the views put forward by respondents and intends to proceed with implementing the proposal of raising fees for work carried out under the IMA.
45. After carefully considering all of the suggestions and comments made by respondents, the Government has decided to introduce rates for IMA Work at 15% higher than current immigration legal aid rates. This will apply to all activities captured

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by the hourly rates, including for Controlled Work and Licensed Work. This is the maximum level proposed in the consultation and reflects the fact that there was little support in responses to the consultation and at the stakeholder roundtables for not increasing fees for IMA work at all, or for increasing fees by less than 15%.

46. As IMA Work is a new area of work in the immigration sector and is not currently being conducted by legal aid providers, the Government feels that this level of fee increase is appropriate at this time given the expected demands, timescales and complexity of the work under the IMA. Previously, a 15% rise in remuneration was utilised to motivate legal practitioners to join the Law Society Advanced Family Panel and/or the Children's Panel. The Government believes that this rate of increase for IMA Work is a meaningful step to incentivise immigration and asylum legal aid providers to take on work incurred by the IMA. This rate would also bring the increase in line with the level recommended by the Criminal Legal Aid Independent Review (CLAIR).
47. The Government continues to believe that hourly rates should be used to compensate IMA Work at this time and that there should be no cap on the number of hours. This is because the IMA introduces new procedures, and in light of the demand and timeframes imposed by IMA Work, which require swift and targeted action.
48. The Government's view remains that a fee increase of up to 15% would be an adequate uplift to incentivise legal aid providers to take on IMA Work. This higher rate strikes a balance between managing costs for taxpayers and helping to build sufficient capacity among providers to enable individuals facing removal to have access to legal aid.
49. The Government acknowledges the views of respondents about the wider legal aid market, and in particular the issues raised around legal aid fees more generally. The Government thanks respondents for their comments on the wider legal aid market, however, as the IMA is a top priority for the Government and given the expected and unprecedented demand and timescales that the IMA will bring, the Government intends to raise fees for IMA Work only, as was consulted upon. The current hourly rates and fixed fees for immigration and asylum work under the Regulations will remain unchanged.
50. The Government appreciates the views of providers about the current state of the sector and recognises the need to create a more sustainable and effective legal aid system on a long-term basis. Thus, in January 2023, the MoJ launched the Review of Civil Legal Aid (RoCLA), 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. This

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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.

51. The Government appreciates and acknowledges the additional measures brought to its attention in response to Question 1 and Question 2. These views have been summarised in Chapter 4 which deals with further measures and therefore have been responded to within that section of the Government Response.

Chapter 4: Further measures to help build capacity for IMA Work

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

Consultation summary

52. In total, there were 35 responses to this question. Three respondents did not provide an answer to this question and one respondent answered 'no' to the open question.
53. A variety of further measures that could help boost capacity for firms undertaking IMA Work were proposed by respondents. These have been categorised into the following themes: accreditation; change in payment processes; reducing administrative burdens; interpreter services; payment of travel time; remote advice; and mental health and wellbeing. Comments made by respondents on additional measures in response to Question 1 and Question 2 have been summarised and responded to within this chapter.

Accreditation

Consultation summary

54. Of the 35 responses, 17 respondents (49%) suggested that the MoJ should help with and/or fully fund the cost of accreditation, with six respondents (17%) also mentioning that accreditation timelines should be shortened. One respondent supported the measure of lowering the cost of accreditation, and another noted that 'the scheme should be looked at in the round to assess if it is actually performing its intended function'. The same respondent noted that 'given the pace of change in the immigration field, assessments in the past have been based on out of date law'. Transitional arrangements that may enable trainee caseworkers to carry out a wider range of work under supervision prior to formal accreditation were also raised by one respondent.
55. Within the responses, accreditation was stated by one respondent as being a 'hugely costly barrier to increase and maintain existing levels of controlled asylum and immigration' work. Some respondents noted that this is because the 2018 Standard Civil Contract Specification requires fee-earners to have the relevant level of

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accreditation under The Law Society's Immigration and Asylum Accreditation scheme. Other respondents went on to state that this is a financial burden for firms that may create a barrier to recruitment, hence why many respondents stated that the costs should be borne by the MoJ.

56. Another view raised was that recruitment of qualified staff has become an obstacle for providers. Providers also shared views that the financial burden of accreditation could prevent progression and, crucially, retention within the sector.
57. Accreditation timelines were raised, as respondents stated that The Law Society only accredits twice a year, which providers stated can be limiting. Therefore, respondents called for greater access to training and accreditation to build capacity in the sector as the process for new advisors typically takes 9–12 months for senior caseworkers. One individual stated that, given the pace of the Immigration and Asylum law sector, assessments have been based on an 'out of date law' and require change to increase the sector's capacity.
58. However, what is important to note is that many respondents stated that the standard of accreditation cannot fall, especially given the complexity and sensitive nature of work carried out. One respondent stated that IMA Work must be carried out by those holding the 'senior caseworker' accreditation which if needed must be funded by the MoJ so that providers do not have to bear training costs while simultaneously ensuring that quality is maintained.
59. Some respondents also suggested that the MoJ needs to support the training of caseworkers. In particular, two respondents stated that the MoJ should accept the Westminster Commission on Legal Aid's recommendation that the MoJ should 'fund training and qualification placements within legal aid firms and [not for profits] and publicly-funded chambers'.

Wider stakeholder feedback

60. During the roundtables carried out as part of the consultation, training and accreditation emerged as a central theme. Roundtable participants also stated that the MoJ should support accreditation costs and shorten accreditation timelines, which was also a key point raised within the open letter signed by 66 providers. A few stakeholders also criticised the current system for falsely incentivising caseworkers to move quickly from level 1 to level 2 accreditation, resulting in a shortage of level 1 staff and/or lack of professional experience among level 2 staff. However, most stakeholders agreed that accreditation was necessary and that accreditation standards should not be lowered.

Government response

61. The Government has carefully considered all of the comments and responses received on accreditation and is considering at pace options to help address the

financial burden of accrediting caseworkers at senior caseworker level to conduct immigration and asylum legal aid work. The Government recognises the views of many respondents that this would be an important additional measure to address and assist with capacity and thus will communicate further with immigration legal aid providers on specific steps later this year.

62. The Government also notes the views raised regarding the standard of accreditation and will aim to ensure that efficiency is not prioritised over quality and acknowledges the importance of IMA Work and all immigration and asylum legal advice given by providers in this sector.

Change in payment processes

Consultation summary

63. Six respondents (17%) suggested that reducing delays and related cash flow issues would be useful capacity building measures. It was noted that Home Office decisions on costs 'could be years' and that this makes it more difficult to perform Controlled Work, and additionally becomes a cost that firms must bear. This adds to the financial pressure on organisations who provide immigration and asylum legal aid.
64. Twelve respondents (34%) noted payments on account (PoAs)² in their responses and agreed that changes should be made to the structure of PoAs by the LAA. It was suggested that payments on account should be made by the LAA every three months for Controlled Work, as currently providers are often not paid for work undertaken for up to three years after it commences which they say 'creates an unmanageable burden' on them.
65. It was also noted by one provider that they receive PoAs from work they do on certified matters but they do not provide this for Controlled Work. At present, therefore, they noted that their firm carries a significant amount of Controlled Work that is in progress and cannot be billed, which is detrimental to their ability to commit to representing vulnerable individuals. They stated that making changes to the payment process would avoid firms paying out large sums and not being reimbursed quickly.
66. Thirteen respondents (37%) suggested changes to disbursement³ as a measure to help providers. Respondents typically suggested that disbursements for Controlled

² Payments on Account (PoA) apply to licensed work and allow a provider to claim for work undertaken at fixed points during the lifetime of the case

³ A disbursement has been defined by the Immigration and Asylum specification as 'generally expenses a solicitor has to pay out on behalf of a client, for goods or services provided to the client, or on the clients behalf' but notes that there is 'no absolute definition of disbursements'

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Work matters must be paid out by the LAA as soon as they are incurred, in line with the rules, as is the case for certified work as this means that providers are 'forced to carry large levels of debt for months at a time'. One respondent specifically suggested that the LAA should pay disbursements directly to the supplier and therefore reduce administration for firms, as most firms use the same suppliers. They also suggested that invoices could be uploaded to a portal and firms could link them to a matter and authorise them as they go, paid monthly. It was noted that in categories other than immigration and asylum, reasonable disbursements can be obtained without making a LAA application and that this could be applied to IMA work given tight timescales. This would mean that firms are not in essence subsidising legal aid work, which has been expressed as a view.

67. Five respondents (14%) suggested that enhanced rates for Controlled Work must be available where they can be justified in line with the pre-existing criteria for enhanced rates for certificated work (exceptional competence, skill, expertise, speed, circumstances, or complexity).

Wider stakeholder feedback

68. Stakeholders at the roundtables called for changes to the current payment structures, commenting on slow billing timings which can stretch over multiple years, and related cashflow issues. These comments primarily related to Home Office processes. Some providers suggested that the LAA should also speed up payment of disbursements, for example, for interpreters or medical experts. The open letter from 66 signatories also echoed this point and suggested that the LAA should ensure that PoAs for Controlled Work are made every three months.
69. Other points raised by stakeholders included the simplification of payment processes, such as Enhanced Rates and Controlled Work, and incrementally increasing rates for more experienced caseworkers to help with retention.

Government response

70. The Government has carefully considered all of the comments made in relation to delays and cash-flow issues. The MoJ has shared the views of respondents with the Home Office. As outlined in paragraph 12, the IMA outlines that individuals will have eight days to make a suspensive claim once issued with a removal notice. These short timeframes should enable decisions on IMA cases to be made swiftly and that payments are made quickly.
71. In response to the comments made by respondents on issues surrounding disbursements, the LAA is currently exploring the possibility of making digital changes to the way disbursements are claimed, to allow for disbursements to be claimed monthly.

72. The LAA continues to look at how to speed up payments to providers and the enhanced rates available are as set out in the contract.

Reduce administrative burdens

Consultation summary

73. Three respondents (9%) mentioned reducing audit requirements and taking the burden off providers. One provider noted that the audit process for legal aid providers should be simplified by taking a more pragmatic approach which 'avoids punitive sanctions and minimises transaction costs in cases of human error or minimal risk to the legal aid fund'. Another supported this view and stated that the approach to audits and file reviews should be 'supportive and sensible' to 'minimise claw back and self-review exercises' and that core testing should not review files already accessed by other parts of the LAA, such as escape case claims that have already been billed and paid. They noted that this would not only be less administratively burdensome but would also place more trust in providers.
74. Five respondents (14%) suggested that for areas without high grant rates, the application process and evidential requirements should be simplified and be financially viable. Practitioners (whether legal aid providers or not) should be paid for the time taken to make an Exceptional Case Funding (ECF) application, regardless of the outcome. Providers should have increased delegated powers to determine eligibility for ECF Controlled Work. One respondent also suggested speeding up ECF decisions and certificate decisions, so they do not have to work at risk in urgent cases, such as permissions to appeal to the UT from the First Tier Tribunal. Another suggested that delegated functions could be provided to firms with a peer rating of 1 or 2 on audit to approve applications for ECF.

Wider stakeholder feedback

75. Several stakeholders described the reduction of administrative burdens as a key measure that could increase capacity. Many called for a reduction in audit requirements, while some also mentioned the administrative simplification of the ECF scheme. Overall, stakeholders remarked that lengthy and complex administrative and billing processes created considerable overhead costs, and especially for smaller provider firms, reduced the time solicitors could spend on casework, thus impacting the sector's capacity.

Government response

76. The Government acknowledges the views of respondents in relation to reducing administrative burdens. On views raised over audit requirements, the LAA has a duty to work with the National Audit Office and within their framework. Therefore, the LAA cannot make any changes to the current audit requirements.

77. The LAA intends to give delegated function to grant funding for IMA Work as neither the means nor merits tests will apply to IMA cases once the IMA is implemented and secondary legislation has been laid. Therefore, there will be no delays to providers. The LAA has also increased the cost limitations on certificates to reduce the number of times that providers need to contact the LAA and thus reduce delays in the progression of cases.
78. In response to the comments made on ECF applications, ECF should not be required for IMA Work given legal aid will be available to all those that are issued with a removal notice under the IMA and will be means and merits free. More widely, the LAA continues to review the ECF process in response to feedback.

Interpreter services

Consultation summary

79. Many respondents (31%) supported increasing fees for interpreters. One of the main suggestions was that interpreter fees have not increased with inflation and therefore should be increased to address a lack of 'suitability qualified interpreters' created by low remuneration and to widen the available number of interpreters to work at short notice. Interpreter fees are £25 an hour and have not increased since 2011, with one provider stating it was 'nearly impossible' to find interpretation services. One respondent noted that 'a key tenet of receiving quality legal advice is being able to comprehend said advice' and that lower fees and thus lesser capacity of interpreters have decreased the usefulness of legal advice received by non-English speaking individuals, which is 'indispensable' to access to justice.

Wider stakeholder feedback

80. Several stakeholders in roundtables also commented on the difficulty of securing interpreters, which many linked to low interpreter fees and the nature of requests – for example, last-minute and for a brief period of time. Given these difficulties, organising interpreters was described as a time-consuming task, reducing solicitors' capacity to do casework. In their joint letter to the MoJ, 66 providers raised similar views, calling for interpretation fees to be recalculated in line with inflation.

Government response

81. The Government acknowledges the issues raised around interpreter fees and recognises this as an issue requiring further consideration and longer-term solutions. This was not a policy the Government consulted upon within the consultation; however, we thank respondents for raising comments on this matter which will further inform our consideration of this matter.

Payment of travel time

Consultation summary

82. Two respondents (6%) supported the payment of travel time, and one mentioned that waiting in accommodation centres should be factored into this.

Government response

83. The Government acknowledges the views raised by respondents regarding other costs incurred by legal aid practitioners and firms. In response to respondents suggesting that travel time should be paid, the Government intends to pay travel time for providers as it already does for travel costs. This recognises the issues faced by providers when travelling to remote detention centres and the additional costs incurred for this.

Remote advice

Consultation summary

84. Two respondents mentioned the issue of providing advice remotely in response to Question 3. One respondent raised views about "remote-only advice" and commented on the continued need for face to face advice for vulnerable individuals, wherever they are located. Another respondent commented on the need for access to reliable technology to enable individuals in detention to remain in contact with their legal representatives, and views they had in this regard should there be a move to more remote advice.

Government response

85. The Government has considered the particular comments made in relation to the provision of remote advice and also, separately, on the broader issue around how both remote and in-person advice will address and potentially increase capacity to meet the demand of IMA Work. A great deal of legal advice is already provided "remotely", largely by telephone. If issues surrounding technology are reported to the LAA, these issues are brought attention to the Home Office and IRCs. The Government intends to allow advice to be provided remotely at DDAS surgeries for those detained at IRCs. However, it acknowledges and agrees with stakeholder feedback on the need for some clients to continue to be seen face-to-face. Accordingly, conducting remote advice will be enabled at provider discretion, thus ensuring the continuation of appropriate decisions on the delivery of advice in relation to vulnerable clients. The Government believes that this measure will help address views outlined above on the remote location of IRCs and will strive to address wider views (as outlined in paragraph 37) on the difference in levels of legal aid capacity across different areas of the UK.

Mental health and wellbeing

Consultation summary

86. Three respondents (9%) have indicated that the mental health and wellbeing of caseworkers needs to be accounted for. This included consideration of how to support mental health, including preventative care and care for vicarious trauma to improve recruitment and retention. The proposal itself was also quoted as disregarding the mental health of practitioners.

Government response

87. The Government recognises the essential work providers undertake and the commitment they demonstrate, often in complex and emotive circumstances. It believes one of the most important steps that can be taken in the context of IMA Work is to help increase capacity among providers, thereby ensuring enhanced resource and greater system resilience. The package of measures set out in this response is intended to achieve this.

Other issues

88. Some respondents made comments that have not been addressed within the themes outlined above. These included: granting funding for set up costs and salaries for the first two years of caseworkers and trainee solicitors; that the MoJ and LAA closely monitor the quality and availability of legal aid advice in detention centres; and that applications for permission to appeal in the UT should be remunerated regardless of whether successful. As these were singular views brought up by one respondent and do not necessarily fall under any specific themes, they have not been explored further.

Chapter 5: First post-implementation review of IMA Fees

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.

Consultation summary

89. A total of 33 responses were received in response to Question 4. Sixteen responses were received from legal firms or barristers' chambers, six from charitable organisations, four from professional associations or representative bodies and four from law centres. Three anonymous responses were also received.
90. Twelve respondents (32%) agreed with the proposal, 17 (45%) disagreed and four (11%) answered 'maybe'. Five respondents did not answer this question. Many stakeholders called for a review sooner than two years, i.e. within one year, but some also stated that the Government should commit to both not reducing the fee at any review and not changing it to a fixed fee.
91. Proposals on timing and process of future reviews were driven by the desire to secure access to justice in this area. The potential for future fee decreases, whether due to fixed fees and/or inflation, was a reoccurring theme. The level of change and extent of the future workload were also key views.

Timing of first post-implementation review

92. Twelve respondents (36%) agreed that the first post-implementation review should take place after two years in their 'Yes/No/Maybe' response. From the textual responses, twenty-five respondents (76%) felt a shorter review period was appropriate. One respondent stated that the review should occur every three months, four opted for six months/within six months, a further four stated six to twelve months, eight opted for one year/within one year, four stated within two years and four selected 'sooner than two years.' Six respondents stated that fees should be reviewed regularly to allow for inflation and to 'avoid the collapse of the sector.'

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93. Those who advocated for a review to take place up to and including six months post-implementation cited: the demands and timescales imposed by the Act; to see how the fee structure worked; to allow for inflation; and because the extent of the work is presently unknown.
94. Those advocating for six to twelve months stated that increase in demand and 'structural deficiencies' of the system meant closer monitoring was required; and because the impact of higher fees would be evident sooner than two years. Those who stated around the twelve-month mark noted the present position of the legal aid system and suggested that any review should be linked to RoCLA. They, and the four who maintained their view that two years was the appropriate interval for review, also cited inflation, ensuring access to justice, and the implications of not providing legal advice.

Proposed scope of future reviews

95. Five respondents gave the view that any review must be conditional on fees not being lowered and/or fixed as this would otherwise disincentivise growth. The importance of designing a review system prior to the review's implementation, and the need to engage provider firms, was also emphasised. Two respondents proposed that a review should track capacity, whilst one respondent questioned whether continuity of firms and meaningful access to justice could be guaranteed if the fee increase was limited only to one area.
96. Two respondents also suggested linking the review with RoCLA, one proposed that it should form part of an 'urgent system-level evaluation of the Lord Chancellor's duties under LASPO', and one advocated for a review of 'productivity and costs by legal representatives and chambers' [culminating in a decision to] 'abandon or revert'.

Wider stakeholder feedback

97. At the roundtable sessions, stakeholders stated that an initial review should take place within one year of the IMA. 'Within one year' was also agreed to be the appropriate time frame for monitoring the quality of advice and for conducting annual pay reviews. Stakeholders noted that the ability to respond quickly to address unintended or undesirable outcomes was key, particularly when considering the potential impact on vulnerable individuals. The proposed thematic focus of the review was broader than fees; capacity and quality of advice needed to be considered. It was felt that both IMA and non-IMA cases should be reviewed. The main obstacle cited was the view that fees might be reduced or fixed. It was felt that if this were to happen then it would create distrust within the sector and disincentivise providers from investing in capacity building measures.

Government response

98. Regarding the timing of the review, the Government intends to conduct the first post-implementation review within two years of the IMA as consulted upon; this will provide the Government with sufficient and representative data on the implementation of higher fees for IMA Work to determine if the fee level is appropriate. The Government acknowledges the views of respondents that a review period of 'within two years' was too long so will monitor the provision of legal aid for IMA Work as soon as the IMA and the higher fee level are implemented and will conduct the review accordingly as soon is appropriate within this two-year period.
99. The Government acknowledges respondents views of the review period, both what it may result in and its frequency. The review will take into consideration the outcome of RoCLA and the Government will work closely with the team conducting this review so that the best outcome is delivered for the sector.
100. The Government will also take into consideration suggestions raised on how to implement the review period and what it pertains to, and will determine how the review will work prior to implementation of the fee increase and on the nature and/or frequency of further reviews. As the IMA has not yet been implemented, the Government cannot give any guarantees or guidance on what the review will encompass, but it will work closely with stakeholders throughout the process to monitor how the fee increase is working and its impact on capacity.

Chapter 6: Equalities

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]

101. For the purposes of this response, the Equalities Statement will be referred to as the EIA.

Consultation summary

102. A total of 28 responses were received to this question. Of these, approximately half of responses were from the legal profession, primarily solicitors, with the rest from voluntary organisations, registered charities and other professional organisations, most of whom specialise in immigration matters.

103. Of the 28 responses received, 11 respondents (39%) raised views about the EIA, 11 respondents (39%) either provided no response or had no comments or observations to make, whilst the remaining six (21%) provided a response that did not address the question posed.

104. Respondents raised views on the effect of proposals on both IMA and non-IMA cohorts, on immigration caseworkers and “asylum seekers”, including around their ethnicity, sex and mental health, had not been considered in the EIA. Comments were also raised that the data sources used or quoted within the EIA were not the most up to date. A summary of responses can be found below.

Impact on IMA and non-IMA cohort

105. Around a quarter of respondents felt the increase in fees would adversely impact the non-IMA cohort by incentivising providers to turn away non-IMA clients to take on IMA clients. There were also views of a negative impact on the IMA cohort as the IMA would create enormous pressures on the legal aid market, thereby raising access to justice issues.

Consideration of caseworkers and/or their ethnicity

106. Several respondents expressed views that the EIA only considered the protected characteristics of the owners and managers of legal aid firms and not the caseworkers, who conduct the majority of immigration legal aid work.
107. In addition, one respondent noted that 2022 diversity data from the Bar Standards Board (BSB) indicated that black and Asian barristers represented around 15% of the total number of junior barristers, but only 10% of King's Counsel (KC). They stated that because Counsel instructed in Tribunal appeals (including the suspensive appeals process in the IMA) were more likely to be junior, the barristers affected by the proposed changes were more likely to be female and/or minority ethnic than the proportions of those groups at the Bar as a whole.

Consideration of sex

108. A small number of respondents raised that the EIA did not appropriately account for sex, pointing out the focus was on the owners and managers of legal aid firms and no other staff such as caseworkers. They added that according to the Solicitors Regulation Authority (SRA), while the majority (52%) of lawyers were female, they were minority at partner level (35%) and most female fee earners were solicitors (61%), thus they argue that the proposal would disproportionately affect female immigration caseworkers.
109. It was also pointed out that diversity data from 2022 from the BSB indicated that female barristers were disproportionately likely to be junior barristers (40% of all juniors) than KCs (19%) and because Counsel instructed in Tribunal appeals (including the suspensive appeals process in the IMA) were more likely to be junior, the barristers affected by the proposed changes were more likely to be female than the proportions of those groups at the Bar as a whole.

Mental health of caseworkers

110. Half of respondents who commented on this issue drew on an identical source and stated that the EIA did not consider the mental health implications on fee earners in this area of work. They stated that fee earners in immigration casework worked daily with highly vulnerable clients and heard accounts of trauma suffered by their clients, including accounts of conflict, persecution, torture, and sexual violence, and were therefore at a heightened risk of suffering from emotional strain and vicarious trauma. They added that reasonable adjustments and preventative care should be made

available for immigration fee earners who expose themselves to increased risks of mental health issues.

Outdated data

111. Around a third of respondents raised views regarding the data used and highlighted that it was either outdated and/or an inaccurate base to form policy, with one further respondent noting that there was an absence of meaningful data.
112. One respondent commented that the EIA identified two 'pools' of individuals affected by the proposals: immigration legal aid providers and clients, and that data used was from a survey conducted in 2015, which did not appear to have differentiated between legal aid providers providing immigration advice and representation, and those providing other types of civil legal aid services.
113. Similarly, one respondent noted that the data used to estimate the impact on the Bar was 2023 data from across the justice system, including those not practising in immigration or asylum law and those not practising in legal aid. The respondent felt this was highly unlikely to provide meaningful data as to the impact on immigration and asylum barristers funded by legal aid and the lack of accurate or up-to-date data on immigration legal aid providers and barristers hindered an effective EIA.

Government response

114. The Government welcomes the views of respondents to the consultation on the equalities impacts of these proposals.
115. This consultation focuses on the provision of legal aid to those individuals in receipt of a removal notice under the IMA. We have used equalities data for the wider immigration market, in recognition that these proposals will soon be part of the immigration legal aid scheme. We recognise that the areas covered in this consultation form one part of the wider immigration legal aid market, which the Government is considering as part of wider work on sustainability.
116. The data used for legal aid providers is from a 2015 survey carried out by the LAA which asked about the protected characteristics of those who have ownership or managerial control of the firm. As noted in the EIA, the Government acknowledges that there are limitations in the data collected on the protected characteristics of those who provide publicly funded legal services and of those who are granted legal aid and recognises the fact that the data is likely outdated as it was gathered prior to the current 2018 Standard Civil Contract.

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117. The Government welcomes the comments received by respondents about the use of other data sources to make assessments about any discriminatory impacts of IMA policy, these were: Legal Aid Practitioners Group (LAPG)'s Legal Aid Census 2021; the Westminster Commission on Legal Aid; Challenges for Publicly Funded Immigration and Asylum Legal Representation (Detailed analysis by Dr Jo Wilding); and the Solicitors Regulation Authority (SRA) online diversity tool. While these additional sources of information could be a more relevant description of people undertaking legal aid work as a whole, they are not specific to people undertaking immigration work and it is therefore difficult to draw firm parallels with the Government's data. We have therefore used the immigration-specific data from the 2015 survey as our primary source of data but also included data from the SRA's diversity report published in June 2023.⁴
118. Broadly, the LAPG data showed that women are overrepresented (61%), with the majority of practitioners being from a white British background (77%) and without a disability (91%). This data is different to the Government's assessment which assessed that males, individuals from an ethnic minority background, and individuals aged 40–49 are overrepresented when compared to general population. However the two cannot be directly compared as the pool of individuals were not the same. The Government's 2015 data from the survey was limited to owners and practitioners of immigration legal aid firms, and the LAPG data did not break down by category of law, and so it is difficult to draw firm parallels between the two.
119. The Government is grateful for the information provided on legal aid clients from respondents. This includes information on protected characteristics that the LAA does not routinely collect, such as sexual orientation.
120. The ethnicity data provided in the consultation responses matches the Government's assessment that the proposals will disproportionately indirectly impact clients from an ethnic minority background.
121. Whilst there are some differences between the comments provided by respondents and the Government's data, particularly around sex and age, we do not expect one respondent's experience to be directly comparable with the overall data used for legal aid clients, given the nature of certain organisations who predominantly work with one group, e.g. children.
122. The Government remains of the view that even though certain protected groups are overrepresented in the proposals, these would not be directly or indirectly discriminatory because they are not likely to particularly disadvantage clients, providers or barristers. We think that any disadvantage because of these proposals is

⁴ SRA | How diverse is the solicitors' profession? | <https://www.sra.org.uk/sra/equality-diversity/diversity-profession/diverse-legal-profession/>

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justified as a proportionate means to achieve the policy aim of introducing new fees that sufficiently remunerate practitioners for their work.

123. The Government acknowledges respondents' comments about the potentially detrimental impact of IMA Work on the non-IMA cohort due to additional pressures on capacity. The measures set out in this response are focused on increasing capacity of providers.
124. The Government acknowledges comments from respondents about the impact of the IMA on the mental health of individuals in receipt of legal aid. However the Government holds no data on mental health so is unable to assess the impact as part of the EIA. The Government does though respond to comments raised by respondents in relation to the mental health and wellbeing of the IMA cohort at paragraph 87.

Equalities Impact Assessment

125. The EIA published alongside the consultation considered the likely equality impacts on providers, barristers and clients of increasing fees for IMA work.
126. As far as possible using the latest evidence available, we indicated what the likely equalities impacts were in the EIA. We address the responses to the consultation 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?" in Chapter 6 of the Government response. Consideration of the impact of the proposals and the implementation of any proposal is an ongoing duty.
127. This EIA significantly repeats much of the information in the previous EIA but has been updated to include additional policy changes we are making alongside setting fees for IMA Work 15% higher than existing hourly rates. This includes paying for travel time for providers when they travel to IRCs for DDAS surgeries and allowing advice to be provided remotely for DDAS surgeries.

Equality duties

128. 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.
129. 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.
130. Statistics about the demographics of the general population have been sourced from the 2021 Census and refer to England and Wales.⁵

⁵ Census 2021 results – Census 2021.

Summary of the policy change

131. The Government consulted on an increase of up to 15% in fees for IMA Work, and the Government's response sets out that for IMA Work, hourly rates will be set 15% higher than current immigration legal aid rates. This will apply to all activities captured by the hourly rates, including for Controlled Work and Licensed Work. This is the maximum level proposed in the consultation and reflects the fact that there was little support in response to the consultation and at the stakeholder roundtables for not increasing fees for IMA work at all, or for increasing fees by less than 15%.
132. The Government also intends to pay travel time for providers as it already does for travel costs. This recognises the issues faced by providers when travelling to remote detention centres and the additional costs incurred for this.
133. The Government intends to allow advice to be provided remotely at DDAS surgeries for those detained at IRCs. However, it acknowledges and agrees with stakeholder feedback on the need for some clients to continue to be seen face-to-face. Accordingly, conducting remote advice will be enabled at provider discretion, thus ensuring the continuation of appropriate decisions on the delivery of advice in relation to vulnerable clients. The Government believes that this measure will help address views on the remote location of IRCs and will strive to address wider views on the difference in levels of legal aid capacity across different areas of the UK.

Methodology to determine potential discrimination

134. Adhering to guidance published by the Equality and Human Rights Commission (EHRC), our approach to assessing the potential for particular disadvantage resulting from the measures being introduced by Government has been to identify the individuals whom the measures would impact (the "pool"), and then draw comparisons between the potential impacts of the measures on those who share particular protected characteristics, with those who do not share those characteristics.
135. 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 measures (adversely or otherwise) and that this pool should not be defined too widely.

The pool of affected individuals

136. The primary pool of individuals affected by the measures are immigration legal aid providers, including barristers who take on publicly funded immigration work, as well

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

Available data

Legal aid providers

137. In January and February 2015, the LAA carried out an online survey to learn more about providers doing legal aid work.⁶ 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).
138. The limited response rate to the survey and the age of the data limits our ability to draw robust conclusions; however, we believe this is the most appropriate data to use given that it is specific to legal aid providers, and we can identify immigration providers specifically.
139. The survey 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. The survey figures are broadly in line⁷ with the SRA diversity reporting that 36% of partners are between 45 and 54; however, the profile of non-partner solicitors is younger with only 13% in the 45–54 bracket and almost half (45%) being 25 to 34.
140. 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. The survey figures are broadly in line with the SRA diversity reporting that 62% of partners are male. For non-partner solicitors then the split is the other way around with 61% being female.

⁶ 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.

⁷ Please note that our data was taken in 2015 and as a result, those falling within the 40–49 year age bracket would now be aged 48–57, however, there is some overlap with the SRA date which records data for those in the 45–54 year old bracket

141. 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 (18%) and is in line with the SRA diversity report which reports for partners (16%) and non-partner solicitors (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

142. We have also considered the impact of the above measures that the Government is taking forward 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.

143. This analysis is based on data published by the BSB in 2023, which is a summary of the data available to them as of 1 December 2022.⁸ It is the best available data that we can refer to.

144. There are some limitations to this data; 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.

145. 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.

146. 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 ethnic group for barristers who provided responses:

- a. 8% of the Bar are from an Asian/Asian British background, which is broadly in line with 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; and

⁸ BSB-Report-on-Diversity-at-the-Bar-2022-FinalVersionv2.pdf (barstandardsboard.org.uk).

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- d. 1% are from another ethnic background, which is broadly in line with the general population percentage of 2%.

147. It should be borne in mind when drawing conclusions that this question had a response rate of 93%.
148. The BSB statistics also show that men are overrepresented among barristers when compared to women. The statistics show that there was a total of 18,026 barristers in practice and 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.
149. 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

150. 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 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.⁹
151. 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).¹⁰ While data on race and ethnicity may not be collected in some countries or classified differently in others, many small boat arrivals were from countries with populations which, in the UK, are minority ethnic.
152. Of the 45,755 people who arrived by small boats in 2022:¹¹
- a. 17,678 were aged 25–39 and 15,786 were aged 18–24;

⁹ Legal aid statistics England and Wales client diversity data to March 2022 - GOV.UK (publishing.service.gov.uk)

¹⁰ Equality Impact Assessment - Illegal Migration Bill (publishing.service.gov.uk).

¹¹ Equality Impact Assessment - Illegal Migration Bill (publishing.service.gov.uk).

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- b. 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
- c. 83% of arrivals were males.

153. Below we have made an assessment of the impact of the proposal to pay higher fees for legal aid work brought into scope by the IMA. In accordance with our legal duties, we will continue to consider the equalities impacts as we develop our work on IMA.

The assessment

Eliminating unlawful discrimination

Direct discrimination

154. Our assessment is that paying higher fees for legal aid brought into scope by the IMA 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 IMA. The proposal will not treat anyone less favourably as a result of a protected characteristic.
155. The proposal will ensure that individuals subject to removal notices under the IMA 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 IMA. 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.
156. With regards to additional measures, our assessment is that neither remote advice nor paying for travel time will directly discriminate within the meaning of the 2010 Act. Both are expected to increase access to legal aid, enabling legal to aid to be provided in areas where there is little legal aid capacity. It could be argued that remote advice could directly discriminate against those clients with vulnerabilities; however, the Government will allow remote advice to be used at the discretion of the provider. Thus those for whom it is deemed unsuitable will still be able to access in-person advice.

Indirect discrimination

157. Our initial assessment is that this proposal will not be indirectly discriminatory within the meaning of the 2010 Act.
158. 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

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fees for IMA work than for other immigration work – may be disproportionately experienced by individuals who fall into these groups as the fees will be paid to firms.

159. Data from the SRA diversity reporting suggest that non-partner solicitors are younger and more likely to be female than the owners and managers in the survey, although the SRA data is not specific to those doing immigration work. There could be a disproportionate impact on these groups due to the fee increase incentivising firms to move staff away from their existing work onto IMA work, or if it enables firms to pay higher wages for IMA work.
160. 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 experienced by male barristers.
161. The available data indicates that males, individuals aged between 18–39, and individuals from an ethnic minority are overrepresented amongst immigration and asylum legal aid clients. Therefore, any impacts which will arise for clients as a result of these proposals may be disproportionately experienced by individuals who fall into these groups.
162. 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

163. Consideration has been given to how this proposal impacts on the duty to advance equality of opportunity.
164. As indicated above, the proposal is to pay higher fees for legal aid work brought into scope by the IMA to build capacity in the immigration legal aid market. It is therefore likely that providers, barristers and clients will benefit from these proposals.
165. 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.

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We do not consider that these proposals will negatively impact on the duty to advance equality of opportunity.

Fostering good relations

166. We recognised the importance of the legal aid sector and the consultation and accompanying engagement roundtable sessions strove to understand the views and perspectives of the sector. All responses were carefully considered and have informed the measures the Government is taking.

Harassment and victimisation

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

Monitoring and evaluation

168. We will continue to monitor the equalities impacts of our policy work. 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.

Conclusion and next steps

169. As outlined above, after careful consideration of the views raised by respondents, and after further consideration of the issues around capacity, the Government will take forward the following measures:
- a. for all IMA Work (as defined in paragraph 14), hourly rates will be 15% higher than existing hourly rates – this will apply to all activities captured by hourly rates, including for Controlled and Licensed Work;
 - b. the Government will conduct a first post-implementation review of IMA fees within two years of implementation;
 - c. we will actively pursue the development of options that may help address the financial burden of accrediting caseworkers at senior caseworker level to conduct immigration and asylum legal aid work. We will communicate further with immigration legal aid providers on specific proposals later this year;
 - d. the Government will pay travel time for providers when they travel to Immigration Removal Centres for DDAS surgeries; and
 - e. the Government will allow advice to be provided remotely for DDAS surgeries, at the discretion of providers and subject to their professional judgment and their obligations towards vulnerable persons.
170. After careful consideration of the responses, the LAA and MoJ will also further consider a variety of other areas, such as interpreters fees and disbursements, and after further consideration will make changes where required.
171. Following the publication of this consultation, the LAA will issue a contractual consultation which will incorporate the policy position laid out in this response. The findings from this consultation have been shared with the LAA in advance and have informed their contract consultation.
172. The Government will lay a SI to amend the Civil Legal Aid (Remuneration) Regulations 2013 to reflect the decisions made on fee changes. Consequential amendments will also be made to the 2018 Standard Civil Contract in relation to the Immigration and Asylum Category of Law.

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:

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

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978-1-5286-4466-2