

Title: Legal Aid Fees in the Illegal Migration Act – The Government’s response to the consultation on fees in relation to the Illegal Migration Act IA No: MoJ 061/2023 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: Legal Aid Agency (LAA)	Impact Assessment (IA)			
	Date: 18/09/2023			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
	Contact for enquiries: IMBLegalAid@justice.gov.uk			

Summary: Intervention and Options **RPC Opinion: N/A**

Cost of Preferred (or more likely) Option (in 2023 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
N/A	N/A	N/A	Not a Regulatory Provision

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

The Illegal Migration Act (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 IMA also amended the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) so that legal advice and assistance (including representation) regarding IMA removals is included in the scope of legal aid in England and Wales. Given the strict removal timelines implemented through the IMA and the anticipated volume of cases, the Government has decided to increase fees for IMA Work by 15% to help support the sector in meeting the increased demand for legal aid and provide access to justice for individuals facing removal. In addition, to further incentivise and build capacity within the legal aid sector, the Legal Aid Fund will pay the costs of travel time for providers when they travel to Immigration Removal Centres (IRCs) for Detained Duty Advice Scheme (DDAS) surgeries and ensure that DDAS surgeries can be provided remotely at the discretion of providers subject to their professional judgment and their obligations towards vulnerable persons. Without intervention there is a risk that not all individuals who receive a removal notice may receive access to legal aid in relation to their removal notice.

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

The policy objective is by implementing higher hourly rates for IMA work and introducing additional measures on remote DDAS legal aid provision and payment of travel time costs to DDAS surgeries, legal aid providers will be better placed to meet demand for legal aid under the IMA. The intention is to help ensure that the sector can meet the demand for legal aid and provide all individuals who receive a removal notice with access to legal aid in relation to that removal notice, including any suspensive appeal, within the prescribed removal timelines stated in the IMA.

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

The following options are assessed in this Impact Assessment:

- Option 0/do nothing: No changes made to fees or additional measures introduced to incentivise providers to meet the demands of IMA Work.
- Option 1: Pay higher fees for IMA Work at an hourly rate 15% higher than existing immigration hourly rates. This will apply to all activities captured by the hourly rates, including for Controlled Work and Licensed Work.
- Option 2: Pay for travel time to and from Detained Duty Advice Scheme (DDAS) surgeries.
- Option 3: Allow remote advice in DDAS surgeries at the discretion of providers and subject to their professional judgment and their obligations towards vulnerable persons.
- Option 4: Implement options 1 to 3 above. Option 4 is the Government’s preferred option as it best meets the policy objectives.

Will the policy be reviewed? Yes. **If applicable, set review date:** Within two years of fee change

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro N/A	Small N/A	Medium N/A	Large N/A
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: 0		Non-traded: 0	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits, and impact of the leading options.

Signed by the responsible: SELECT SIGNATORY _____ Date: _____

Summary: Analysis & Evidence

Option 1

Description: Pay higher fees for IMA Work at an hourly rate that is 15% higher than existing immigration hourly rates. This will apply to all activities paid by the hourly rates, including for Controlled Work and Licensed Work.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023	PV Base Year 2023	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Negligible	N/A	N/A		N/A
High	Negligible	N/A	N/A		N/A
Best Estimate	Negligible	N/A	0.1		N/A
Description and scale of key monetised costs by 'main affected groups'					
<ul style="list-style-type: none"> There will be an additional steady state cost to the Legal Aid Fund (LA Fund) from the fee uplifts of around £0.1m per annum per 1,000 legal aid applicants. The Legal Aid Agency (LAA) will not face any additional ongoing costs relative to Option 0 and any additional one-off costs are expected to be negligible. 					
Other key non-monetised costs by 'main affected groups'					
N/A					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	N/A	N/A	N/A		N/A
High	N/A	N/A	N/A		N/A
Best Estimate	N/A	N/A	0.1		N/A
Description and scale of key monetised benefits by 'main affected groups'					
<ul style="list-style-type: none"> Legal aid providers will receive additional annual fee income from the fee uplifts, of around £0.1m per annum per 1,000 legal aid applicants. 					
Other key non-monetised benefits by 'main affected groups'					
N/A					
Key assumptions/sensitivities/risks					N/A
<p>The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.</p> <ul style="list-style-type: none"> The baseline modelling assumes all firms can work at sufficient capacity to complete the work flowing from IMA, which requires many firms to complete more immigration legal aid work than they have completed before. Legal aid impacts also depend on sufficient wider system capacity to process the IMA caseload in steady state, such as detention capacity, HMCTS capacity, and sufficient interpreters being available. There is a risk providers may prioritise other work ahead of IMA caseload, despite the proposed fee uplifts. This is not a total cost of the option but due to the uncertainty of volumes of legal aid applicants, we have estimated the incremental cost of 1,000 legal aid applicants. 					

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Option 2

Description: Pay for travel time to and from Detained Duty Advice Scheme (DDAS) surgeries.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023	PV Base Year 2023	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)		Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		Negligible	N/A	N/A	N/A
High		Negligible	N/A	N/A	N/A
Best Estimate		Negligible	N/A	< 0.1	N/A
Description and scale of key monetised costs by 'main affected groups'					
<ul style="list-style-type: none"> The cost to the Legal Aid fund associated with paying providers' travel time is likely to be relatively small, in the region of £2,000 - £10,000 per 1,000 legal aid applicants. 					
Other key non-monetised costs by 'main affected groups'					
N/A					
BENEFITS (£m)		Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		N/A	N/A	N/A	N/A
High		N/A	N/A	N/A	N/A
Best Estimate		N/A	N/A	< 0.1	N/A
Description and scale of key monetised benefits by 'main affected groups'					
<ul style="list-style-type: none"> Legal aid providers will receive additional income, equal to the cost to the Legal Aid fund, as a result of having their travel time being paid. 					
Other key non-monetised benefits by 'main affected groups'					
N/A					
Key assumptions/sensitivities/risks					N/A
<p>The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.</p> <ul style="list-style-type: none"> Given the uncertainties around journey times to DDAS surgeries, how many appointments per surgery providers are taking and whether providers take up the remote advice option, it is difficult to provide an exact figure on the cost to the LAA. We have assumed that the hourly rate for travel will not change from its current level. This is not a total cost of the option but due to the uncertainty of volumes of legal aid applicants, we have estimated the incremental cost of 1,000 legal aid applicants. 					

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Option 3

Description: Allow remote advice in DDAS surgeries at providers' discretion except where vulnerable clients are involved.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023	PV Base Year 2023	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Negligible	N/A	N/A		N/A
High	Negligible	N/A	N/A		N/A
Best Estimate	Negligible	N/A	N/A		N/A
Description and scale of key monetised costs by 'main affected groups'					
<ul style="list-style-type: none"> There are no monetised costs of this option. 					
Other key non-monetised costs by 'main affected groups'					
N/A					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	N/A	N/A	N/A		N/A
High	N/A	N/A	N/A		N/A
Best Estimate	N/A	N/A	N/A		N/A
Description and scale of key monetised benefits by 'main affected groups'					
<ul style="list-style-type: none"> There are no monetised benefits of this option. 					
Other key non-monetised benefits by 'main affected groups'					
Legal aid providers will benefit from increased flexibility to offer their services remotely to DDAS surgeries.					
Key assumptions/sensitivities/risks					N/A
The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.					
<ul style="list-style-type: none"> There are no key assumptions or risks related to the cost estimate as this option does not have a cost. 					

BUSINESS ASSESSMENT (Option 3)

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

Summary: Analysis & Evidence

Option 4

Description: Implement options 1, 2 and 3.

FULL ECONOMIC ASSESSMENT

Price Base Year 2023	PV Base Year 2023	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

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

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

- There will be an additional steady state cost to the Legal Aid Fund from the fee uplifts of around £0.1m per annum per 1,000 legal aid applicants.
- LAA will not face any additional ongoing costs relative to Option 0 and any additional one-off costs are expected to be negligible.

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

N/A

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

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

- Legal aid providers will receive additional annual fee income from the fee uplifts, of around £0.1m per annum per 1,000 legal aid applicants.

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

Legal aid providers will benefit from increased flexibility to offer their services remotely to DDAS surgeries.

Key assumptions/sensitivities/risks

N/A

The key assumptions/sensitivities/risks for the above estimates are presented below. For a full description please refer to the Risks and Assumptions section of this IA.

- The baseline modelling assumes all firms can work at sufficient capacity to complete the work flowing from IMA, which requires many firms to complete more immigration legal aid work than they have completed before.
- Legal aid impacts also depend on sufficient wider system capacity to process the IMA caseload in steady state, such as detention capacity, HMCTS capacity, and sufficient interpreters being available.
- There is a risk providers may prioritise other work ahead of IMA caseload, despite the proposed fee uplifts.
- Given the uncertainties around journey times to DDAS surgeries, how many appointments per surgery providers are taking and whether providers take up the remote advice option, it is difficult to provide an exact figure on the cost to the LAA.
- We have assumed that the hourly rate for travel will not change.
- This is not a total cost of the option but due to the uncertainty of volumes of legal aid applicants, we have estimated the incremental cost of 1,000 legal aid applicants.

BUSINESS ASSESSMENT (Option 4)

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

Evidence Base

A. Background

The Illegal Migration Act 2023

1. The Illegal Migration Act (IMA) received Royal Assent on 20 July 2023. The IMA will impose a duty on the Home Secretary to arrange for the removal of individuals who enter the United Kingdom (UK) illegally from a safe country. The purpose of this Act is to deter people from entering the UK illegally. The IMA can be accessed at the following link: <https://www.legislation.gov.uk/ukpga/2023/37/enacted>.
2. The IMA makes provision for the removal of persons who enter the UK illegally through safe countries 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 after which an individual will be able to raise a suspensive claim in relation to the notice. If the claim is refused, the IMA 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).
3. The IMA also provides that protection claims, and Human Rights claims in relation to a person to be returned to their 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. The IMA also introduces the authority for the Home Office (HO) to detain individuals for up to 28 days without access to bail by the Tribunal. Furthermore, the Act 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 applications for permission to appeal should be made, appeals should be notified, and the Tribunal should give notice of its decision in the case.
4. Legal aid in relation to removal notices under the IMA is being brought into scope of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) through the IMA (section 56 subsections (3) and (4)). This will ensure that individuals who receive a removal notice under the IMA will have access to legal advice and representation in relation to that removal notice. The IMA also disapplies the legal aid merits test for such work and Regulations are to be laid which will also remove the means test.
5. 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. Controlled Work is where authority to grant legal aid to a client is delegated to the provider and includes advice and assistance, Licensed Work covers representation and providers are required to apply for permission from the Legal Aid Agency (LAA) to undertake legal aid work. This applies to work undertaken at the Upper Tribunal.
6. The IMA 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 IMA to a third country where their claim arises from Article 2 or 3 of the European Convention on Human Rights.
7. The IMA therefore introduces additional demand for legal aid given the anticipated volume of individuals captured by the Act and timescales for removal. This new volume of work created by the IMA 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 IMA have access to legal aid funded advice and representation within the required timescales. This is required in order to support the overall delivery of the IMA, a key Government priority.

8. We understand the challenges posed by the existing caseload and capacity constraints within the immigration legal aid sector. To help meet the demand for legal aid under the IMA, we propose to implement higher hourly rates for IMA Work. Our aim is to augment the 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 IMA and wherever they are located.
9. The purpose of the IMA is to serve as a deterrent and effectively decrease the number of small boat crossings, consequently reducing the demand for legal advice. We will closely monitor the delivery and utilisation of services through the LAA billing and contract management procedures. Additionally, we are proposing to conduct a post-implementation review of IMA work fees within two years of the increase.

Immigration Legal Aid

10. LASPO governs the legal aid scheme in England and Wales. It specifies that some types of services are "in scope" of legal aid, including certain asylum and immigration cases, including 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 EU retained law breaches.
11. The remuneration applicable to immigration services are set out in the Civil Legal Aid (Remuneration) Regulations 2013 ("the Regulations"). 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.
12. 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. This approach ensures fairness for providers handling longer or complex cases and eliminates disincentives for accepting such cases.
13. The Government believes 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, which require swift and targeted action.

The Consultation

14. The Government consulted on the fees increases measures in this Impact Assessment (IA) between 27 June and 7 August 2023. The aim of the consultation, the Government's response to which this impact assessment (IA) supports, was to determine the appropriate hourly rate for IMA Work. The consultation related solely to fees for IMA Work, aimed at encouraging more providers to do IMA Work in response to the anticipated volumes of individuals likely to be subject to removal notices.
15. This will be new work resulting from the IMA and we consider hourly rates to be the most appropriate payment type. 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.

16. The consultation considered a fee uplift of **up to 15%** for IMA Work (see full proposal below). This 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 existing immigration and asylum work under the Regulations will remain unchanged and were not subject to consultation.

The Consultation Response

17. Following careful consideration of all consultation responses and wider stakeholder engagement, and further consideration of the issues around building capacity for immigration legal aid provision in England and Wales, the Government now 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:
 - a. for IMA Work, 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. 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 (IRCs) for Detained Duty Advice Scheme (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.
18. After careful consideration of the responses, the LAA and MoJ will further consider other issues such as interpreters' fees and disbursements.
19. On fees, we are announcing in our consultation response that, for all IMA Work (defined as work in relation to a removal notice under the IMA, including any suspensive claims and appeals), hourly rates will be 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.
20. 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. Previously, a 15% rise in remuneration was utilised to motivate legal practitioners to join the Law Society Advanced Family Panel and/or the Children 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

will also bring the increase in line with the level recommended by the Criminal Legal Aid Independent Review (CLAIR).

21. The Government's view is that a fee increase of 15% will 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 building sufficient capacity among providers to enable individuals facing removal to have access to legal aid.

B. Rationale and Policy Objectives

Rationale

22. The conventional economic approach to Government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, for example monopolies overcharging debtors, or if there are strong enough failures in existing Government interventions, such as outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).
23. The principal rationale for Government intervention is equity. By increasing fees, our aim is to augment the market capacity to ensure that all individuals who are in scope of IMA Work have access to legal aid, including any suspensive appeal, within the prescribed removal timelines stated in the IMA and wherever they are located.

Policy Objectives

24. The policy objective is that by implementing higher hourly rates for IMA work and introducing additional measures on remote DDAS legal aid provision and payment of travel time costs to IRCs for DDAS surgeries, legal aid providers will be better placed to meet demand for legal aid under the IMA. The intention is to help ensure that the sector can meet the demand for legal aid and provide all individuals who receive a removal notice with access to legal aid in relation to that removal notice, including any suspensive appeal, within the prescribed removal timelines stated in the IMA.

C. Affected Stakeholder Groups, Organisations and Sectors

25. The following groups will be most directly affected by the options assessed in this IA:
 - **Legal aid clients**, who are individuals who enter the UK illegally from a safe country.
 - **The Legal Aid Agency (LAA)**, which is responsible for administering the means test for legal aid and processing claims.
 - **Legal aid providers**, including private businesses and not-for-profit organisations such as Law Centres. Third sector organisations who provide advice on legal matters and providers that exclusively undertake private immigration work will also be affected.
 - **The Home Office**, which will be facilitating the remote legal advice at DDAS surgeries in IRCs.
 - **Taxpayers**, who ultimately fund the Legal Aid Fund.

D. Options under Consideration

26. The following options are assessed in this IA:

- **Option 0/do nothing:** No changes made to fees or additional measures introduced to incentivise providers to meet the demands of IMA work.
- **Option 1:** Pay higher fees for IMA work at an hourly rate that is 15% higher than existing immigration hourly rates. This will apply to all activities captured by the hourly rates, including for Controlled Work and Licensed Work.
- **Option 2:** Pay for travel time to and from Detained Duty Advice Scheme (DDAS) surgeries.
- **Option 3:** Allow remote advice in DDAS surgeries at providers discretion except where vulnerable clients are involved.
- **Option 4:** Implement options 1 to 3 above.

27. Option 4 is preferred as it best meets the policy objectives.

Option 0/Do nothing

28. Under this option, no changes will be made to the fees paid for IMA Work meaning that they would continue to be paid at the existing immigration legal aid hourly rates. We believe that this will not augment market capacity quickly or sufficiently. As a result, individuals who receive a removal notice may not have timely access to legal aid in relation to that removal notice, including any suspensive appeal.
29. Failure to ensure capacity quickly or sufficiently could create a backlog of cases, which will in turn create additional costs (e.g. costs of housing individuals waiting for legal services).

Option 1

30. Under this option, hourly rates will be 15% higher than existing immigration hourly rates for IMA Work. This will apply to all activities captured by the hourly rates, including for Controlled Work and Licensed Work.
31. Fees paid 15% higher for IMA Work will 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 uplift recommended by the Independent Review of Criminal Legal Aid in 2021.
32. The uplift applied in these instances have been sufficient to ensure adequate provision for both panels and has also resulted in an increase in this type of work. It is our intention that the 15% uplift will have a similar motivating effect by better enabling providers to respond to demand arising from IMA work.

Option 2

33. Under this option, the Government will pay travel time for providers travelling to IRCs for DDAS surgeries. DDAS will be used for detained persons subject to the IMA.

34. This will recognise the issues faced by providers when travelling to remote detention centres and the additional costs incurred for this.

Option 3

35. Under this option, remote advice at DDAS surgeries can be an option at the discretion of the legal aid provider. Geographic limitations mean there is a significant time and resource cost for providers of physical attendance for DDAS appointments at IRCs. We have developed telephony facilities and processes at IRCs to provide remote advice in anticipation of the demands of IMA. The ability to provide advice remotely should widen the pool of providers who will undertake IMA Work.

Option 4

36. Under this option, options 1, 2 and 3 will be implemented.

E. Cost and Benefit Analysis

37. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
38. This IA identifies impacts on individuals, groups and businesses in England and Wales, with the aim of understanding what the overall impact to society would be from implementing the options considered. The government's approach to IAs places a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised, which might include how the policy impacts differently on particular groups of society or changes in equity and fairness.
39. While it is normal to use real prices in IAs, in this IA the ongoing costs and benefits are presented on a steady state annual basis and are in nominal prices (for the price year 2022-23).
40. No optimism bias (OB) is applied to any Legal Aid fund or administrative costs or benefits. The steady state estimates presented should be read in conjunction with the sensitivity analysis in section F as our attempt to capture the system uncertainty.
41. Unless otherwise stated, the quantitative estimates in this IA have been rounded as follows: financial estimates have been rounded to the nearest £100,000 for estimates below £1m, and to the nearest £1m for estimates of £1m or more. Non-financial estimates have been rounded to the nearest 100. This rounding methodology does not apply to figures quoted from legislation. The components in tables may not sum to the total due to rounding.
42. Any changes that arise as a result of increased access to legal aid, are assumed to amount to a transfer between the LAA and legal aid providers and, as such, a net present value (NPV) is not included.

Methodology

Modelling Approach

43. The baseline or option 0 is to do nothing. However, in the absence of an uplift in fees, the IMA will still lead to a large increase in legal aid volumes which would need to be paid at existing legal aid rates. As such, it is important to set out the baseline cost increase, so

that the impact on costs of a fee uplift can be estimated. This is because the cost of the Option 4 will depend on the baseline; however, the cost of the decision to be made is only the cost of higher fees on top of the baseline – these costs are shown in the following section detailing the costs of option 4.

44. This baseline approach implicitly assumes that IMA Work will be undertaken at existing fee rates. It may be the case that providers could be unwilling to take up work if fee levels remain the same. This baseline does not account for that potential behavioural response.
45. Estimating the volumes of legal aid work associated with the IMA is complex and uncertain. To do this, the MoJ has estimated how much time legal aid providers will require to complete the expected work flowing from the IMA, at each stage of the process, and applied this to case volumes expected to estimate costs.
46. People who receive a removal notice under the IMA system will receive legal advice in relation to that removal notice, will be able to raise a suspensive claim, and if refused, can make applications to appeal to the Upper Tribunal.
47. A key modelling assumption is the number of people expected to receive legal aid each year for IMA Work. In the short term, there may be some impacts of roll out which means that a steady state position may not be reached initially. Given the uncertainties around volumes, this IA takes the approach to estimate the cost attributed to every 1,000 IMA legal aid applicants. This means that we cannot give an absolute figure as to what the preferred option (option 4) will cost but will indicate the scale of the absolute cost.
48. This approach will account for the fact that unaccompanied children, who are expected to be out of scope for this process initially, will become adults who re-join the process later. In the longer term, the IMA policy intention is to reduce illegal migration over time and so the sensitivity analysis also explores the impact of different numbers of people.
49. There is uncertainty around the impacts in this IA and risks around the current capacity and willingness of legal aid providers to deliver the expected level of IMA Work. The legal aid impacts are also dependent on wider system capacity, such as there being sufficient interpreters, as well as HMCTS capacity to process the expected number of immigration and asylum appeals in future years. It is assumed herein that all the expected IMA Work is deliverable in steady state, for both the baseline and Option 1. Please see the Assumptions and Risks section (section F) for further information, especially the sensitivity analysis in that section which captures our estimates of uncertainty.
50. Note, all costs reported exclude disbursements, because disbursements are not subject to the proposed fee uplifts. The only impacts covered in this IA relate to the areas of IMA Work remunerated by the proposed uplifts. It is assumed that VAT does not apply to any of the work done under IMA, because those arriving illegally are not normally resident in the UK, and so the estimates shown do not include VAT.

Baseline costs

The LAA

51. At current rates, for the areas of work in scope of Option 1, the total annual legal aid spend for 1,000 legal aid applicants is estimated to be £800,000 per annum. This is made up of £800,000 of advice and preparation for appeals and less than £100,000 for advocacy.
52. There will also be an additional steady state administration spend for the LAA to process the IMA caseload, estimated to be around £6m per year, and one-off costs of around £1m

for the IT and guidance changes required; however, these costs will arise regardless of whether Option 0 or Option 1 is chosen.

Legal Aid Providers

53. There will be costs to legal aid providers for completing the administrative work related to the increased IMA caseloads. We do not hold data on provider administrative work so cannot quantify this impact. We do not expect these costs to be different between the baseline and option 1.

Total baseline cost

54. The cost of Option 0, the “do nothing” option, is necessarily zero because this is baseline spending which has already been committed as part of the IMA. The preferred option will not affect this baseline level of spend, which will be the same under any decision made on fees. The true cost of the options under consideration is the difference between the “do nothing” option and the fees policy implemented – it is this additional cost which is considered in the “Costs of Option 4” section following.

Baseline benefits

Legal Aid Providers

55. Legal aid providers will receive a significant amount of additional work as a result of the work flowing from the IMA. At current rates, this will provide them annually with an income equal to the legal aid spend above. As above, these are the baseline benefits considered under the “do nothing” option and the true benefits of the options under consideration will be the difference between the baseline benefits and the benefits which arise under the chosen option.

Legal Aid Clients

56. Legal aid clients will receive a benefit of legal services which is assumed to have a value equal to the baseline spend of the legal aid fund for IMA Work. The actual legal services received under Option 0 and Option 1 will be the same so the benefits accrued to clients is not affected by the options considered here.

Option 1: Pay higher fees for legal aid IMA work at an hourly rate that is 15% higher than existing immigration hourly rates. This will apply to all activities captured by the hourly rates, including for Controlled Work and Licensed Work.

57. Given the uncertainties around volumes, the cost attributed to every 1,000 IMA legal aid applicants is used. This means that we cannot give an absolute figure as to what the option will cost but will indicate the scale of the absolute cost.

Costs of Option 1

The LAA

58. There will be an additional cost to the Legal Aid Fund from a 15% fee uplift of just over £100,000 per 1,000 legal aid applicants per annum. This will comprise an additional £100,000 for IMA related advice and preparation for appeals and less than £100,000 for advocacy.

59. The LAA will not face any additional ongoing costs relative to Option 0 and any additional one-off costs are expected to be negligible.

Benefits of Option 1

Legal Aid Providers

60. Legal aid providers will receive additional annual fee income from the fee uplifts, equal to the cost to the legal aid fund detailed above.

Legal Aid Clients

61. Legal aid clients will receive a benefit of legal services which is expected to be the same under Option 0 and Option 1 so the benefits accrued to clients is not affected by the options considered here.

Option 2: Pay for travel time to and from Detained Duty Advice Scheme (DDAS) surgeries.

62. Given the uncertainties around volumes, the cost attributed to every 1,000 IMA legal aid applicants is used. This means that we cannot give an absolute figure as to what the option will cost but will indicate the scale of the absolute cost.

Costs of Option 2

The LAA

63. There will be an additional cost to the Legal Aid Fund as a result of this option. Given the uncertainties around journey times to DDAS surgeries, how many appointments per surgery providers are taking and whether providers take up the remote advice option, it is difficult to provide an exact figure on the cost to the LAA.
64. We believe that even with these uncertainties, the cost is likely to be relatively small, in the region of £2,000 - £10,000 per 1,000 legal aid applicants.

Benefits of Option 2

Legal Aid Providers

65. Legal aid providers will receive additional income as a result of having their travel time being paid for.

Legal Aid Clients

66. Legal aid clients will receive a benefit of legal services which is expected to be the same under Option 0 and Option 2 so the benefits accrued to clients is not affected by the options considered here.

Option 3: Allow remote advice in DDAS surgeries at providers discretion.

Costs of Option 3

The LAA

67. There will not be any additional cost to the LA Fund as a result of this option.

Benefits of Option 3

Legal Aid Providers

68. Legal aid providers will not receive any monetised benefits but will benefit from increased flexibility to offer their services remotely to DDAS surgeries.

Legal Aid Clients

69. Legal aid clients will receive a benefit of legal services which is expected to be the same under Option 0 and Option 3 so the benefits accrued to clients is not affected by the option considered here.

Option 4: Implement options 1, 2 and 3 above.

70. Given the uncertainties around volumes, the cost attributed to every 1,000 IMA legal aid applicants is used. This means that we cannot give an absolute figure as to what the option will cost but will indicate the scale of the absolute cost.

Costs of Option 4

The LAA

71. The cost to the Legal Aid fund will be equal to the sum of the costs of options 1, 2 and 3, which is equal to over £100,000 per 1,000 legal aid applicants. This will comprise an additional £100,000 for IMA related advice and preparation for appeals, less than £100,000 for advocacy and less than £100,000 on paying for providers travel time to and from DDAS surgeries.

Benefits of Option 4

Legal Aid Providers

72. Legal aid providers will benefit from additional annual fee income from the fee uplifts and payment for travel, equal to the cost to the legal aid fund detailed above. They will additionally receive the non-monetised benefit of flexibility to offer remote advice.

Legal Aid Clients

73. Legal aid clients will receive a benefit of legal services which is expected to be the same under Option 0 and Option 4 so the benefits accrued to clients is not affected by the option considered here.

F. Assumptions, Risks and Sensitivity Analysis

Assumptions and Risks

74. There are many assumptions which feed into the analysis presented in this IA. As such, we have captured the assumptions below that have the greatest impact on the modelling outputs:

	Assumption	Risk
Provider capacity	Legal aid providers will complete the additional work expected from the IMA, in Option 0 and Option 4.	<p>While it is anticipated that increasing fees for IMA Work is likely to attract more providers to IMA work, there is limited behavioural evidence on the relationship between fee levels and capacity. Therefore, there is a risk that providers may choose to prioritise other work ahead of IMA caseload, although this risk is likely greater under Option 0.</p> <p>Failure to meet IMA demand with legal aid provider supply could affect delivery of the intended removals, which could reduce estimated costs but also lead to knock-on costs that have not been considered here.</p>
Wider system capacity	There will be enough capacity available to meet IMA demand to support the provision of legal aid, such as sufficient interpreters.	<p>There will be a significant increase in demand for supporting services, which may lead to a risk of some supply constraints which prevent providers from effective working.</p> <p>Failure to meet IMA demand with legal aid provider supply could affect delivery of the intended removals, which could reduce estimated costs but also lead to knock-on costs that have not been considered here.</p>
Unaccompanied minors	In steady state we assume that the number of arrivals is equal to the number of people entering the IMA system, including children.	<p>Children will be subject to the duty when they become adults.</p> <p>As children are not removed until they are adults then we are assuming that children from previous years becoming adults will equal the number of new children arriving, so that the number of arrivals and people entering the IMA system each year is the same even though some entering the IMA system may have arrived a previous year.</p>
Case timings	The amount of legal aid provider time expected to be spent on each stage of the process is: 10 hours of legal help (including preparing an appeal) and 23 hours representation (for appeals, of which four hours is advocacy). The 10 hours of legal help time may reduce in future as the system matures. The impact of a possible	These time assumptions are informed by legal aid data with additional insight from LAA operational and MoJ policy colleagues. However, given the nature of new work these may be too high or too low. If more hours are required, then costs will be higher and capacity constraints more likely to bite (and vice versa).

	reduction in hours is tested in the sensitivity analysis	
Case flow through the system	It is assumed that all people entering the IMA system will receive advice, then the majority will appeal and a smaller number will go on to a hearing at the Upper Tribunal.	The estimated proportion of adults reaching each IMA stage are unknown, but these assumptions are agreed between HO and HMCTS; however, given the uncertain nature of new work these estimates may be too high or low. If these are too low, then costs will be higher and capacity constraints more likely to bite (and vice versa).
VAT and disbursements	VAT does not apply to these cases and disbursements, which are not subject to the proposed fee uplifts, will not increase due to these proposals.	
Consequential legal aid work	The cost of increasing fees for IMA Work will not increase consequential work, such as bail or work in the higher courts, such as judicial reviews.	Other legal aid may be relevant, such as for judicial reviews, during the IMA process; however, these will happen regardless of fee uplifts and so do not affect the costs and benefits of the decisions being considered in this consultation.
Case volumes	IMA will increase demand on legal aid, as people entering the IMA system will be eligible for legal aid.	It is uncertain by how much the volumes will increase, therefore a “per 1,000 legal aid applicants” approach has been used to estimate the impact.

Sensitivity Analysis

75. We have identified above that one of the key uncertainties of the modelling is IMA case volumes over time. To provide an idea of the potential impacts, the table below shows the additional cost of a 15% fee uplift against different case volumes.

Table 1: Sensitivity analysis of total cost of IMA legal aid work dependent on different case volumes

Volume	Cost of IMA advice & prep	Cost of IMA advocacy	Total
1,000	£0.1m	£0.0m	£0.1m
10,000	£1m	£0.1m	£1m
15,000	£2m	£0.1m	£2m
30,000	£4m	£0.2m	£4m
45,000	£5m	£0.3m	£6m
60,000	£7m	£0.4m	£7m

G. Wider impacts

Equalities

76. Analysis on the impacts on protected characteristics can be found in the Equality Impact Assessment which has been published alongside this IA.

Regulatory Impacts

77. There are no wider impacts on regulation.

International Trade Impacts

78. There will be no impacts of international trade as a result of Option 4.

H. Monitoring and Evaluation

79. We will assess whether the objectives have been met through regular engagement with stakeholders to get feedback on the impact of the policies.

80. While the Government intends to enhance capacity to meet the demand for IMA Work, we also recognise the importance of anticipating changes in demand over the medium and long term. In the consultation response (which this IA supports) we are proposing to conduct a post-implementation review of IMA work fees. The purpose of this review would be to assess the sustainability and effectiveness of the fee structure for IMA work, ensuring its continued suitability as the demand for legal aid services evolves over time.

81. We propose conducting an initial review of the higher fees, in close consultation with key stakeholders, within two years of the fees being implemented. The timing of the review will be informed by the emerging evidence of the impact of fees changes.