



## DEBATE PACK

Number CDP-2018/0193, 31 July 2018

# Legal aid and the post-implementation review

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## Summary

A Westminster Hall debate on Legal aid and the post-implementation review is to take place on Tuesday 4 September 2018 at 6.30pm. The Member leading the debate is Karen Buck MP.

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# 1. Background

## 1.1 LASPO: the basics

The current civil and criminal legal aid schemes are governed by [Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) – also known as LASPO – and by an array of supporting secondary legislation.

LASPO was introduced by the Coalition Government, which argued repeatedly that it had to make savings from the legal aid budget in England and Wales. It also wished to discourage cases from coming to court when they might better be resolved by other means, such as mediation. Critics of the changes, on the other hand, argued that people seeking help with legal problems might be left with nowhere to turn.

The most significant changes made by LASPO were to the scope of the civil legal aid scheme.

Under the previous scheme, set out in the [Access to Justice Act 1999](#), the general approach was that any civil legal matter would be eligible for legal aid provided that it was not one of the “excluded” matters listed in Schedule 2 to the 1999 Act. Individual applications for legal aid funding were assessed by reference to a “Funding Code”, which set out general principles on eligibility for legal aid.

LASPO effectively reversed the 1999 Act’s general approach to legal aid: civil legal matters are excluded from the scope of legal aid unless they are one of the matters listed in [Schedule 1 to LASPO](#). Many areas of civil law were therefore removed from the scope of legal aid.

There have also been significant changes to criminal legal aid, particularly in relation to means testing of applicants and to rates of pay for solicitors and barristers undertaking criminal work. These changes have largely been implemented by secondary legislation, rather than by LASPO itself.

## 1.2 The Government’s review of LASPO

The Coalition Government had committed to review LASPO within three to five years of its implementation.<sup>1</sup> This commitment was reiterated by the Conservative Government following the 2015 election.<sup>2</sup>

There was no further progress until 30 October 2017, when the then Lord Chancellor David Lidington presented the Government’s post-legislative memorandum for LASPO to the Justice Committee: see [Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum](#), Cm 9486, October 2017.

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<sup>1</sup> See for example [HL Deb 4 December 2014 c1402](#)

<sup>2</sup> See for example [HC Deb 17 October 2016 WO 48968](#)

He also announced that he had asked Ministry of Justice officials to commence the promised post-implementation review of LASPO. He set out details of the intended scope of the review:

Our legal aid system is a fundamental pillar of access to justice, accounting for more than a fifth of the Ministry of Justice's budget. The reforms within the Act were founded on delivering better value for money for taxpayers by reducing the cost of the scheme and discouraging unnecessary and adversarial litigation, while ensuring that legal aid continues to be available for the highest priority cases, for example where life or liberty is at stake, where someone faces the loss of their home, in domestic violence cases, or where their children may be taken into care.

The Government has previously committed to review a number of areas, including:

- the changes made to the scope of legal aid for family, civil and criminal cases, and the introduction of the Exceptional Case Funding scheme;
- the changes made to fees for various types of legal aid work;
- the procedural changes the Act made, including the introduction of the mandatory telephone gateway and the introduction of evidence requirements for victims of domestic violence and child abuse;
- changes to the rules on financial eligibility, including the application of the capital eligibility test to all legal aid applicants, increasing income contributions for those eligible to contribute, and capping the subject matter of dispute disregard;
- changes to the application of the merits test;
- the abolition of the Legal Services Commission and its replacement with the Legal Aid Agency.<sup>3</sup>

He indicated that the review would conclude before the start of the 2018 summer recess.

However, in March 2018 David Gauke, who had succeeded David Lidington as Lord Chancellor, indicated (in evidence to the Justice Committee) that this timetable was likely to slip in order to ensure that the review was conducted properly:

Q121 Alex Chalk: I want to ask you about timing. Are you able to assure this Committee that you will be able to keep to the summer recess deadline that was imposed by your predecessor for completing the review?

Mr Gauke: That is an ambitious timetable. I want to look at whether it is deliverable, to be honest. It is more important to get this right than to hit a particular timeframe. It is likely that it will take us longer to do that than the summer timetable, to be clear with you, but it is obviously something we need to make progress with. As I say, my focus is on getting it right rather than hitting any particular timetable.<sup>4</sup>

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<sup>3</sup> [HC Deb 30 October 2017 cc14-15WS](#)

<sup>4</sup> Justice Committee, [Oral evidence: The Work of the Ministry of Justice](#), HC 418, 7 March 2018, Q121

He set out further details of what he described as the “engagement phase” of the review in a letter to the Justice Committee:

While much of the data that will inform our assessment is held internally by the Ministry of Justice, in particular, the Legal Aid Agency and Her Majesty's Courts and Tribunals Service, we are keen to consider data and evidence held outside Government that could aid our assessment. As such, we plan to initiate a comprehensive process of structured engagement between Government and interested parties, starting in the coming weeks. This engagement is going to be conducted in several forms:

- Consultative groups led by MoJ officials, to which certain interested parties will be invited to participate. Interested parties will be grouped into four sectors: civil justice, family justice, criminal
- justice and the advice sector. Participants will vary for each group to broaden engagement and ensure the data and evidence discussed are as relevant as possible.
- Individual engagement between MoJ officials and interested parties who wish to provide data and evidence. This will be an avenue by which the MoJ can take into account the experiences of people who receive government-funded legal advice and representation.
- A route by which interested parties are able to submit data and evidence to MoJ officials for consideration as part of this work.

Invitations will be sent this week for the consultative groups, along with the enclosed terms of reference, and information about the route for other interested parties will be made available shortly.<sup>5</sup>

Further details were published on the gov.uk website: see [Post-implementation review of LASPO](#) [accessed 17 August 2018]. This includes details of the [agendas from the first round of consultative meetings](#), which give an idea of the issues under consideration. The first round of consultative meetings took place in April 2018, and the second round was due to take place in July 2018.<sup>6</sup>

The Government has said it is committed to completing the review by the end of 2018:

The Lord Chancellor has confirmed that we shall conduct an evidence-based review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), assessing the changes against their objectives. The Government remains committed to publishing the findings of the review by the end of this year.

The engagement phase of the post-implementation review into our legal aid reforms is currently underway and we are keen to hear from a range of stakeholders and interested parties to establish the impact of the changes.

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<sup>5</sup> [Letter from Secretary of State for Justice, to Committee Chair, regarding Post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), dated 6 March 2018

<sup>6</sup> [PQ 162037 \[on Legal Aid, Sentencing and Punishment of Offenders Act 2012\]](#), 17 July 2018

As part of our evidence gathering, we are hosting a series of engagement groups with stakeholders. We have already conducted the first round of engagement meetings and will be holding a further round of meetings later this month.

Alongside this the review team are engaging with a number of interested parties in a small group or 1-2-1 meeting. Other interested parties, including members of the public, are able to submit data or evidence directly so that their experiences can be taken into account.<sup>7</sup>

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<sup>7</sup> [PO 162038 \[on Legal Aid, Sentencing and Punishment of Offenders Act 2012\]](#), 19 July 2018

## 2. News and blogs

Law Society

[LASPO legal aid review](#)

9 August 2018

Law Society Gazette

[Court rules criminal legal aid reforms unlawful](#)

3 August 2018

Law Society

[MPs throw weight behind Law Society call for criminal legal aid review](#)

26 July 2018

Law Society Gazette

[Criminal legal aid fragility putting rights at risk – MPs](#)

26 July 2018

Family Law

[Legal aid restored for migrant children in care](#)

16 July 2018

Law Society

[Legal aid barriers deny most vulnerable their fundamental rights](#)

29 June 2017

### 2.1 Press

Guardian

[Cuts to legal aid and courts make a mockery of equal access to justice](#)

17 August 2018

Independent

[Guilty: How legal aid cuts and rising training costs are ruining our criminal justice system](#)

17 August 2018

Times [subscription]

[High Court quashes reform to legal aid that left lawyers unpaid](#)

4 August 2018

Guardian

[Cut to legal aid fees for evidence work ruled unlawful](#)

3 August 2018

Times [subscription required]

[Legal aid 'advice deserts' spreading, warn MPs and peers](#)

19 July 2018

Independent

[Legal aid cuts have made human rights 'unaffordable', warn MPs](#)

18 July 2018

Guardian

[Barristers threaten walkout over legal aid payment changes](#)

26 March 2018

## 3. Parliamentary material

### 3.1 Written statements

#### [Justice update](#)

#### **David Lidington (The Lord Chancellor and Secretary of State for Justice):**

I have today laid before Parliament, and shared with the Chair of the Justice Select Committee, the Government's post-legislative memorandum for the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012, introduced by the Coalition Government. This fulfils the commitment made by former Justice Minister Sir Oliver Heald before this House earlier this year.

My predecessors also committed to publish a post-implementation review of the legal aid changes made by the Act during its passage through Parliament. I have asked my officials to commence this review.

Our legal aid system is a fundamental pillar of access to justice, accounting for more than a fifth of the Ministry of Justice's budget. The reforms within the Act were founded on delivering better value for money for taxpayers by reducing the cost of the scheme and discouraging unnecessary and adversarial litigation, while ensuring that legal aid continues to be available for the highest priority cases, for example where life or liberty is at stake, where someone faces the loss of their home, in domestic violence cases, or where their children may be taken into care.

The Government has previously committed to review a number of areas, including:

- the changes made to the scope of legal aid for family, civil and criminal cases, and the introduction of the Exceptional Case Funding scheme;
- the changes made to fees for various types of legal aid work;
- the procedural changes the Act made, including the introduction of the mandatory telephone gateway and the introduction of evidence requirements for victims of domestic violence and child abuse;
- changes to the rules on financial eligibility, including the application of the capital eligibility test to all legal aid applicants, increasing income contributions for those eligible to contribute, and capping the subject matter of dispute disregard;
- changes to the application of the merits test;
- the abolition of the Legal Services Commission and its replacement with the Legal Aid Agency.

This review of Part 1 of the Act will be led by officials in my department. I am keen that we listen to views on these changes from all interested



parties, and I will shortly be inviting individuals and organisations to join consultative panels and contribute to this review work.

The review will conclude before the start of the summer recess 2018.

My predecessors also committed to a post-implementation review of the civil litigation funding and costs reforms in Part 2 of the Act. We are considering how to carry out that review, but we hope to conclude it to the same timetable.

**30 October 2017 | Written statement | HCWS 204**

## 3.2 Debates

[Bach Commission: The Right to Justice](#)

HC Deb 14 December 2017 c1725-62WH

[Legal Aid](#)

HC Deb 29 November 2017 c148-74WH

## 3.3 Parliamentary Questions

[Legal Aid Scheme: Immigration](#)

**Asked by: Baroness Lister of Burtersett**

To ask Her Majesty's Government what assessment they have made of the removal of non-asylum immigration cases from the scope of legal aid on young migrants with limited leave to remain.

**Answering member: Lord Keen of Elie | Department: Ministry of Justice**

The Government is currently undertaking a post-implementation review of the impact of the legal aid changes made under the Legal Aid Sentencing and Punishment of Offenders Act 2012. An assessment of the impact of recent changes to the provision of legal aid for non-asylum immigration cases will be made as part of the review process.

We have recently announced our intention to amend the scope of legal aid for unaccompanied and separated migrant children. This scope change will be informed by evidence gathered as a result of the review and delivered with the help of a consultative group.

HL Deb 31 Jul 2018 | HL9749W

[Legal Aid Scheme](#)

**Asked by: Julie Elliott**

To ask the Secretary of State for Justice, what steps he is taking to ensure that legal aid is available to people who need it.

**Answering member: Lucy Frazer | Department: Ministry of Justice**

The Government is currently undertaking a post-implementation review of the impact of the legal aid changes made under Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) and remains committed to publishing the findings by the end of this year.

The post-implementation review will assess the extent to which LASPO targeted legal aid to those who need it most – which was one of the objectives set out at the time of the reforms.

We are currently in the engagement phase of the post-implementation review. The first meetings of the consultative groups took place in April to provide evidence which will inform the review process. Officials within my Department will continue to meet with interested parties throughout the summer. We are using this opportunity to inform our wider consideration on the future of legal support in the justice system.

**HC Deb 03 Jul 2018 | 157161W**

[Legal Aid Scheme](#)

**Asked by: Julie Elliott**

To ask the Secretary of State for Justice, if he will reintroduce legal aid for early advice as part of the Government's review of legal aid.

**Answering member: Lucy Frazer | Department: Ministry of Justice**

Early legal advice is available for all cases within the scope of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO), subject to an assessment of means and merits.

The post-implementation review of the impact of the legal aid changes made by and under LASPO, includes changes to the scope of early legal advice and legal representation.

We are currently in the engagement phase of this review and are using this opportunity to gather information from stakeholders and other interested parties to inform our wider consideration on the future of early advice and other forms of legal support in the justice system.

**HC Deb 03 Jul 2018 | 157160W**

[Legal Aid Scheme](#)

**Asked by: Alex Sobel**

To ask the Secretary of State for Justice, if he will undertake a comprehensive review of legal aid provision.

**Answering member: Lucy Frazer | Department: Ministry of Justice**

The Legal Aid Agency frequently reviews market capacity to make sure there is adequate provision around the country, and moves quickly to ensure provision where gaps may appear.

The Government is currently undertaking a post-implementation review of the impact of the legal aid changes made under Legal Aid Sentencing

and Punishment of Offenders Act 2012 and remains committed to publishing the findings by the end of this year.

The Government plans to use the evidence gathered as part of the review to inform its wider consideration on the future of legal support in the justice system.

**HC Deb 12 Jul 2018 | 162154W**

[Legal Representation: Low Incomes](#)

**Asked by: Were Hobhouse**

To ask the Secretary of State for Justice, what steps his Department is taking to ensure access to legal representation for people with low incomes.

**Answering member: Rory Stewart | Department: Ministry of Justice**

The ability of individuals to resolve their legal problems is vital to a just society. Legal aid continues to be available in the highest priority cases – for example, when an individual’s life or liberty is at stake, when someone faces the loss of their home, in domestic violence cases, or when children may be taken into care – subject to an applicant passing the test of means and merits. In the Crown Court, over 99% of applications for legally-aided representation are granted.

As part of the evidence gathering phase of the Post-Implementation Review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, we are gathering evidence on people’s ability to access legal support to resolve their legal issues. The evidence gathered will be used to inform our wider considerations for the future of legal support in the justice system.

**HC Deb 06 Jul 2018 | 160335W**

[Legal Aid](#)

Oral questions

HC Deb 05 Jun 2018 | 642 c146

Including:

**Asked by: Anna Turley**

I appreciate the Minister’s response, but the cuts in legal aid are having a devastating effect. One of my constituents is seeking legal aid after leaving a coercive, controlling relationship in which she suffered not just physical but financial abuse. Her former partner left significant debts in her name. She works, but she does not qualify for legal aid now due to her salary. Because the payments are taken out under court order before she receives her pay, she is left with no money for legal costs. He gets legal aid because he works. Surely this is not fair, and will the Minister review it?

**Answered by: Lucy Frazer | Department: Justice**

The hon. Lady has made an important point. The Government have done a significant amount in relation to domestic violence, understanding that it often involves not just physical abuse but, as the hon. Lady says, coercive control. We have also changed many of the guidelines relating to domestic violence so that people who have experienced such abuse can obtain legal aid more easily. I hope that that resolves some of the problems that the hon. Lady has identified.

[Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)

**Asked by: Luciana Berger**

To ask the Secretary of State for Justice, whether the review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will include an evaluation of its effect on people with (a) mental health problems and (b) other disabilities.

**Answering member: Lucy Frazer | Department: Ministry of Justice**

The evidence based review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has now commenced and the evidence gathering phase is ongoing.

The review will consider how LASPO has targeted legal aid at those who need it most – one of the objectives set out during the passage of the Act. Alongside the review, the Government plans to use this opportunity of engagement with stakeholders to inform its wider consideration on the future of legal support in the justice system.

**HC Deb 14 May 2018 | 142432W**

[Legal Aid](#)

Oral questions  
Including:

**Asked by: Lord Beecham (Lab)**

My Lords, there are two forms of advice desert in relation to the current legal aid system. One is geographic, where legal advice is simply unavailable because there are no longer legal aid practitioners to provide it, and the other is in relation to particularly sensitive and important areas, such as housing or family law, where the number of cases receiving legal help since LASPO has dropped from 200,000 to 40,000 in the last financial year. Will the long-awaited LASPO review address these problems? Do the Government have an open mind in relation to the possible restoration of legal aid and advice currently denied to people of limited means, with the added benefit of reducing the pressure on the courts system from the growing number of unrepresented parties to proceedings?

**Answered by: Lord Keen of Elie**

My Lords, with particular reference to housing, at present 133 of the 134 housing and debt procurement areas for legal aid have provision,

and in addition there is provision for telephone advice in the context of housing issues that are covered by LASPO. Our review will embrace all the issues that are being raised by interested groups and will take account of the observations made by the noble Lord, Lord Low, and the noble Lord, Lord Bach, in their respective reports.

**HL Deb 19 April 2018 c1249-51**

[Legal Aid Scheme](#)

**Asked by: Alex Sobel**

To ask the Secretary of State for Justice, if his Department will take steps to ensure the accessibility of early legal advice; and what steps are being taken to include proposals to increase the provision of such early legal advice in the Government's review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

**Answering member: Lucy Frazer | Department: Ministry of Justice**

Early legal advice is available for all legal cases within the scope of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO), subject to an assessment of means and merits. Last year, nearly £100m of public money was spent on early legal advice in civil cases.

As part of the LASPO post-implementation review, we will be looking at the changes introduced to legal aid by and under Part 1 of LASPO, including the changes to the scope of early legal advice and legal representation.

We have now launched the engagement phase of the post-implementation review into legal aid reforms. We will be gathering information from stakeholders and other interested parties to inform the future of legal support. We will use this opportunity to inform our wider consideration on the future of early legal advice in the justice system.

**HC Deb 16 Mar 2018 | 132189W**

[Legal Aid Scheme: Cost Effectiveness](#)

**Asked by: Alex Sobel**

To ask the Secretary of State for Justice, what research his Department has undertaken into the cost effectiveness of legal aid for early legal help.

**Answering member: Lucy Frazer | Department: Ministry of Justice**

The ability of individuals to resolve their legal problems is vital to a just society. We are committed to ensuring legal aid and other forms of legal support are available to those who need it.

Legal aid for early advice continues to be available in a wide range of cases and last year nearly £100m of public money was spent on early legal advice in civil cases.

We are conducting an evidence-based review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, to assess the

changes made against their objectives. We will publish our findings this year.

**HC Deb 07 Mar 2018 | 130225W**

[Topical Questions](#)

**Asked by: Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP)**

Instead of carrying out their in-house review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, should Ministers not follow the excellent example of the Scottish Government by having an independent review of legal aid, and perhaps looking at how the Scottish scheme has managed to achieve greater scope and eligibility but with lower costs?

**Answered by: Lucy Frazer | Department: Justice**

The review of legal aid will be important. We will be inviting a number of independent experts to give evidence so that we can make the necessary decisions.

**HC Deb 06 Mar 2018 | 637 c168**

[Legal Aid](#)

Oral questions

**Asked by: Richard Burgon (Leeds East) (Lab)**

We have heard from the Law Society and the president of the Supreme Court on early legal help, which Labour's manifesto also backs. My hon. Friends have asked questions about this and the Minister has said that the evidence is not there. I want to help the Minister, so will he show today that he is not driven purely by ideology and agree to a simple thing: to commission independent research into the savings that can come from early legal help to inform the Government's legal aid review before it reports back next summer? Will he do it?

**Answered by: Dominic Raab | Department: Justice**

We have got the review in place. We will take a wide range of advice and set up expert panels to ensure that we get the proper and best advice. The hon. Gentleman should feel free to contribute. However, his proposals would add £400 million to the cost, and he needs to explain where the money would come from because it does not just grow on trees.

**HC Deb 05 Dec 2017 | 632 c873**

[Legal Aid](#)

Oral questions

**Asked by: Alex Chalk (Cheltenham) (Con)**

We are a nation of laws, but we must be one nation too, with access to justice for people from all backgrounds. Does my hon. Friend agree that, post the LASPO review, the most careful thought should be given to bolstering legal aid resources so that we can have early advice and assistance for all?

**Answered by:** Dominic Raab | Department: Justice

My hon. Friend, as usual, makes a powerful point. We will be able to look at this in the round, but we do still spend £1.6 billion on legal aid, which is a quarter of my Department's budget. If we want to put more resources in, the money has to be found elsewhere. We will also be looking carefully at making sure we have the right allocation to support those in the greatest need.

**HC Deb 05 Dec 2017 | 632 c872**

[Review of Legal Aid Reforms](#)

Oral questions

Including:

**Asked by: Mr Dhesi**

I thank the Minister for his response about progress on the review of legal aid reforms, but it is disappointing that, even though the Government first announced this review nine months ago, it still will not conclude for another nine months, which is nine more months of many thousands of people not being able to afford to access our justice system. His Government's reforms of legal aid were intended to save £350 million. In fact, legal aid has fallen by double that. Will the Minister lobby his colleague the Chancellor, so that some of those additional savings go immediately to help those who have been priced out of access to our justice system?

**Answered by: Dominic Raab | Department: Justice**

I thought the hon. Gentleman might at least welcome the fact that we laid out the terms of the review yesterday. I am not sure whether he has had a chance to study the post-legislative memorandum. Let us be clear about one thing: last year, we spent £1.6 billion on legal aid in England and Wales, which is a quarter of

the Ministry of Justice's budget. International comparisons are not exact, but according to the Council of Europe's review last year, the UK spent more per capita than any other Council of Europe member.

**HC Deb 31 Oct 2017 | 630 c687**

## 4. Organisations and further reading

Commons Library debate pack, [Housing and access to legal aid](#), 15 May 2018

Justice Committee, [Criminal Legal Aid](#), 26 July 2018, HC 1069

Ministry of Justice, [Post-implementation review of LASPO](#), 8 March 2018

Ministry of Justice, [Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum](#) – Submitted to the Justice Select Committee on 30 October 2017, Cm 9486

Fabian Society, [The Final Report of the Bach Commission](#), 22 September 2017

Law Society, [Access Denied? LASPO four years on: a Law Society review](#) [see PDF], June 2017



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