

ILPA information sheet

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Legal Aid 8 – The Consultation

22nd December 2010

This information sheet provides information for those who want to respond to the Government's consultation. As explained below, additional information sheets will be produced to help with particular parts and questions of the consultation.

For general information about Legal Aid and the Government's proposals, please see the "Legal Aid 5", "Legal Aid 6" and "Legal Aid 7" information sheets.

The consultation papers and process

The consultation papers are available on the Ministry of Justice website at:

<http://www.justice.gov.uk/consultations/legal-aid-reform-151110.htm>

These papers are lengthy and complex, and include a long paper setting out the Government proposals and several 'impact assessments' (documents describing what the Government predicts will be the effects of the proposals and what they will cost). There is also a questionnaire for people to use to respond to the consultation. It is not necessary to use the questionnaire in order to respond to the consultation. If you do use the questionnaire, it is not necessary to answer all of the questions. However, if you do respond to the consultation, it may be useful to address some of the specific questions. It may be helpful to provide real examples of the points you wish to make.

Responses should be sent by one of the following methods (to be received no later than 12 noon on 14 February 2011):

- on-line survey: <http://survey.euro.confirmit.com/wix/p485462495.aspx>
- email: legalaidreformmoj@justice.gsi.gov.uk
- post: Annette Cowell, Legal Aid Reform, Ministry of Justice, 102 Petty France, London SW1H 9AJ

Understanding the consultation

The consultation is made up of 51 questions. Not everyone will be interested in all or the same questions or parts of the consultation document. Not all of the consultation document and questions relates to immigration.

To assist those who wish to respond to the consultation, the remainder of this information sheet sets out some of the general background to the Government's proposals. Additional information sheets will provide some further explanation of some of the specific proposals and help with some (but not all) of the 51 questions. The first of these additional information sheets is "Legal Aid 9 –

Consultation Scope” will be available shortly.

General background

The Government’s starting point is that, because the scope of Legal Aid has been significantly extended since it was introduced in 1949, it is appropriate to now reduce its scope. This contrasts with the view of the late Lord Bingham, who in his book *The Rule of Law* (published earlier this year) wrote:

“Despite determined efforts, led by Lord Woolf, to reduce the cost of civil litigation, and the introduction of admirable pro bono (gratuitous) schemes by solicitors and barristers, there must be concern that there now exists, once again, a large unmet need.”

Underpinning this view of Lord Bingham was the concern that there be equal access to justice for rich and poor alike. Removing Legal Aid inevitably affects the poor, because Legal Aid is provided to allow those who cannot otherwise pay for legal assistance to get that assistance. However, there may be an even more disproportionate effect on the poor. Poverty often leads to other disadvantages in terms of education, health and other life experiences; and those who are poorly educated, ill or marginalised are very much less likely to be able to deal with “user-friendly” forms and “user-friendly” tribunal processes, let alone deal with or understand laws, legal language and evidential requirements.

It is also important to recall the areas for which Legal Aid is to be removed – debt, education, employment, housing, immigration, private family disputes, social welfare and asylum support. Many of those whose claims lie in these areas will be vulnerable by reason of their poverty. Many of the claims that are brought in these areas are expressly about whether someone’s poverty will remain or be made worse.

The Government highlights the growth in the cost to the taxpayer of Legal Aid. In 2008/09, around £2.1 billion was spent on Legal Aid. More than half of this was spent on criminal law Legal Aid. About £900 million was spent on civil law Legal Aid.

While the Government stresses that it is necessary to reduce this expenditure, the Government provides no significant analysis of what causes Legal Aid expenditure. In particular, the consultation document does not address how much Legal Aid expenditure is caused by Government departments (and other public bodies) making wrong decisions, refusing to admit or correct their mistakes, not learning from their mistakes or making changes to laws, policies and practices which increase Legal Aid and court costs.

Many of the areas for which it is proposed Legal Aid be removed concern Government decisions and actions. There is a real risk that what is being proposed will simply permit more wrong decisions to be made by Government departments (and other public bodies) without those subjected to these decisions being able to effectively challenge this. This provides no incentive for Government departments to improve their decision-making and act within the law.

Please note

ILPA will make detailed responses to this consultation. ILPA’s initial response is now available in the ‘Submissions’ section of the ILPA website at www.ilpa.org.uk and further responses will be available there but may not be available before the consultation deadline.

If you or your community group want more advice about how to respond to the Legal Aid proposals, please contact steve.symonds@ilpa.org.uk at ILPA.