



Department of
Justice
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**Consultation on Proposed Covid-19
Interim Payment Scheme for Legal Aid
Suppliers**

10 April 2020

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1. INTRODUCTION

- 1.1. The Department of Justice (the Department) recognises that the current Covid-19 pandemic has brought changes to how the justice system is operating.
- 1.2. These changes range from The Lord Chief Justice's announcement on 24 March 2020 that court business is to be consolidated in five venues with court hearings being restricted to urgent matters, which typically involve the immediate liberty, health, safety and wellbeing of individuals, to the way in which practitioners engage with individual clients.
- 1.3. These changes are already impacting upon the volume of business which can be transacted and cases which can be concluded and paid, particularly those cases which proceed with the assistance of legal aid as well as cases involving privately paying clients.
- 1.4. The Department acknowledges that legal practitioners are having to adapt and cope with these shifts in the operation of the justice system and the running of their businesses, all in the face of financial uncertainty.
- 1.5. To assist practitioners who deliver civil legal services and criminal legal aid the Legal Services Agency (the Agency) has been working to continue to deliver our core services. The Agency has continued to process advice and assistance applications and deal with all emergency applications. It also delivered £7.64m of payments during March. The Agency will continue to apply its resources in these core operational areas and has approximately 5 weeks of bills which it will continue to process. Further processing is also possible if appropriate action is taken to attach barristers and respond to outstanding queries as there is circa £2.49m payments currently under query with suppliers.
- 1.6. However, given the scale and potential duration of the current crisis the Department is consulting on the terms of a potential additional Interim Payment Scheme (IPS).
- 1.7. The IPS is intended to operate alongside the various schemes announced by HM Treasury and the NI Executive. Given the urgency of the current situation and to provide certainty to practitioners, with the agreement of the Law Society and Bar Council this consultation exercise is limited to one working week.

Responses will then be collated and evaluated before the IPS is finalised and a post consultation report prepared.

2. PURPOSE OF THE CONSULTATION

- 2.1. The Department is conscious that civil legal services and criminal legal aid is delivered through a network of local providers. In 2017/18 the Agency made payments to 466 firms of solicitors. In 2019 the Law Society reports there were 475 firms, while the Barrett Contracting Report published earlier this year indicated that firms were spread across 74 geographical locations, with a presence in 36 of the 40 largest settlements by population in Northern Ireland. This means that there is an extensive network of solicitors providing access points throughout the jurisdiction and also providing employment to support staff in all of these locations. The Contracting Report indicated that approximately 200 of these firms received over 80% of their income from legal aid.
- 2.2. In 2017/18 the Agency made payments to 576 barristers. The Bar Council reports that there are 672 barristers at the independent Bar. The Young Bar accounts for 26% of barristers. The Contracting Report indicates that while some barristers tend to specialise in Legal Aid work, the vast majority of barristers undertake some work paid for by Legal Aid.
- 2.3. The Department considered relying on the Special Payments Policy but is concerned that this approach, even with modifications, could not operate with the necessary pace, simplicity or certainty which is required in the current environment. The Department concluded that a bespoke, LAMS supported, IPS might be required in the prevailing circumstances.
- 2.4. The Department sees an IPS as a potentially important contribution to supporting the maintenance of a network of providers and barristers who assist individuals in seeking access to justice. An IPS is also proposed as many of the suppliers have a significant reliance on legal aid and there will be few cases which will be concluded in the incoming weeks which can be submitted for payment. The Department recognises the importance of cashflow in the current circumstances.

Underpinning Principles

- 2.5. In developing proposals for an IPS the Department proposes the following principles:
- (a) it sits alongside all other forms of relief which are available to suppliers with the expectation that all suppliers will seek to utilise the existing relief schemes wherever possible;
 - (b) that an application for an interim payment will be taken to denote the financial pressure experienced by practitioners;
 - (c) at the commencement and throughout the IPS, certificates must be in place, for 3 months before an application may be submitted;
 - (d) the submission of claims must be controlled to ensure that suppliers do not experience critical delay in receiving some benefit from the scheme as any other form of targeting or prioritising will bring considerable delay;
 - (e) simplicity of claiming and processing through LAMS, based on a set table of interim fees for specified types of cases in dropdown boxes;
 - (f) safeguarding public funds from overpayment by setting interim fees at a level which balances providing support while minimising the need for recoupment and overpayment action;
 - (g) cases shall only be eligible if there has not been an interim payment made previously in respect of professional fees as only one interim payment per case, per supplier will be authorised;
 - (h) in seeking an interim payment each supplier will have expressly accepted the terms of the IPS including acceptance of recoupment at the earliest opportunity, including for example when a case transfers to another supplier or the case concludes or if a supplier subsequently obtains an interim payment under any of the Department of Justice Directions (No. 1 to No. 4 inclusive) of 2017;
 - (i) solicitors seeking an interim payment must have expressly confirmed in their request that they have attached barristers instructed in the case;
 - (j) interim payments under Article 6(10) and (11) of the Civil Legal Services (Remuneration) Order (NI) 2015 will be administered under the Scheme. The only difference the Scheme makes to those arrangements is the introduction of a set fee for counsel in respect of High Court proceedings.

This change has been made to align this area with the general approach of having set fees;

- (k) interim claims for disbursements are unaffected by any IPS;
- (l) the provisions of any IPS payments will not be subject to statutory redetermination and appeals provisions; and
- (m) the LSA's Special Payments Policy, Annex E, has been modified to reflect the introduction of the Scheme and will continue to operate as a measure of last resort, but it would be expected that applications under the IPS would have been made in the first instance.

2.6. This consultation seeks views on both the need to introduce a scheme and the guiding principles of any IPS, the proposed approach and the fees. In particular the consultation seeks views on the proposals to ensure that all suppliers can benefit from the IPS arrangements in a timely manner by controlling the flow of claims as in keeping with the Agency's standing policy it will assess requests for interim payments in strict date of submission order

2.7. The consultation also seeks views on measures to safeguard public funds from over-payment, a transfer of legal representatives or in the event of a number of suppliers ceasing to offer services.

3. RESPONDING TO THE CONSULTATION

- 3.1. The Department invites views on any issues raised by this consultation document including the accompanying impact screenings. Please submit your response to this consultation to:

Email: john.bradley@justice-ni.x.gsi.gov.uk

Tel: 07913 123 340

Text phone: 028 9052 7668

- 3.2. Responses must be received by **21 April 2020**.

4. Purpose of the proposed Direction to the LSA

- 4.1. The Department has prepared a draft Direction that would authorise the Legal Services Agency to introduce the scheme.
- 4.2. The draft Direction, Annex A, seeks to provide the necessary authority to the Agency, to impose necessary controls to protect public funds, and to allow the necessary flexibility to allow the Agency to manage the implementation of the scheme.

Q1. Do you agree that there is a need for an interim payment scheme? If not please suggest any alternative approaches.

Q2. Do you agree with the underpinning principles for the scheme? If not please explain your objections.

Q3. Do you agree with the approach the Department is proposing to take in the draft Direction, and the degree of discretion afforded to the Legal Services Agency in respect of the proposed scheme?

Q4. Do you have any comments on the content of the draft Direction?

5. Operation of the proposed scheme

- 5.1. In keeping with the terms of the draft Ministerial Direction, the Director of Legal Aid Casework has developed a draft Scheme, Annex B.
- 5.2. The draft Scheme reflects the principles set out in Section 2 of this document and indicates how the Director envisages the Scheme operating.
- 5.3. It is proposed that the existing interim payment arrangements for Representation Higher courts under Article 6(10) and (11) of the Civil Legal Services (Remuneration) Order (NI) 2015 will be administered under the Scheme. This is intended to produce consistency of approach and to simplify the administrative processing of these claims. The existing fees payable under Article 6(10) have been adopted as part of the Scheme. The exception to this is the fees payable to counsel for non-family proceedings in the High Court. The existing arrangements for counsel involve the assessment of fees which are marked. As this will cause delay in submitting and processing claims, it is proposed that counsel should claim the £200 for these cases, being the same fee currently payable to counsel for family matters.
- 5.4. Views are sought on the proposed Scheme and its operation.

- Q5. Do you agree with the approach of having a limited number of fees as set out at Annex B to simplify the application and processing requirements? If you do not agree please explain your objections.**
- Q6. Do you agree with the fees set out at Appendix 1 to Annex B which are designed to minimise the need for future recoupments? If you do not agree please explain your objections.**
- Q7. Do you agree that firms of solicitors and barristers should be limited in the number of applications they can submit in one day to ensure that all suppliers' applications are given equal weight? If you do not agree please explain your objections.**
- Q8. Do you agree with the 3 month qualifying period proposed? If you do not agree please explain your objections.**
- Q9. Do you agree with the recoupment arrangements? If you do not agree please explain your objections?**
- Q10. Do you agree with the sunset provisions and the mechanisms to extend and terminate the scheme? If you do not agree please explain your objections?**
- Q11. Do you agree that interim fees under Article 6(10) of the 2015 Order should be processed under the Scheme and that a fee of £200 should be set for counsel in non-family cases in the High Court? If you do not agree please explain your objections?**
- Q12. Do you have any other comments?**

6. IMPACT ASSESSMENTS

- 6.1. The DOJ has completed screening exercises for the equality, rural needs, regulatory, human rights, and privacy impact of the proposed scheme.
- 6.2. In respect of each impact, the policy has been screened out
- 6.3. These decisions will be reviewed following the completion of the consultation exercise, taking account of any additional evidence received. The reports of the screening exercises are appended to the consultation document.

Q13. Do you have any comment on the impact screening conducted by the Department?

7. NEXT STEPS

- 7.1. Following the consultation exercise, the draft proposals will be finalised and taken forward as appropriate.
- 7.2. Subject to views, it is anticipated the Scheme will be launched the week commencing 27 April 2020 once the terms of the Scheme are approved.

ANNEX A – Proposed Direction to the LSA



DIRECTION GIVEN UNDER THE LEGAL AID AND CORONERS' COURTS ACT (NORTHERN IRELAND) 2014

Direction No. 2 of 2020

COVID-19 INTERIM PAYMENT SCHEME FOR LEGAL AID SUPPLIERS (“the Scheme”)

1. The Department of Justice makes this direction pursuant to section 3(1) of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 that, subject to paragraphs 2 to 10 below, the Director of Legal Aid Casework, (“the Director”) shall be authorised to:
 - (a) introduce a scheme permitting interim payments of professional fees to suppliers with a full criminal aid certificate or a civil certificate which has not been limited, revoked or discharged. This scheme shall be referred to as the Covid-19 Interim Payment Scheme for Legal Aid Suppliers (“the Scheme”);
 - (b) prescribe and publish the eligibility conditions for the Scheme, the terms under which an interim payment may be made and the fees payable;

- (c) assess any application submitted in accordance with the Scheme and the terms and conditions for applications; and
- (d) make an interim payment to the supplier in the amount prescribed in the Scheme when an application is approved. This interim payment can be made before the conclusion of the proceedings to which the criminal aid certificate or civil certificate refers.

2. For the purposes of this Direction

“supplier” means a Solicitor or Counsel;

“professional fees” means remuneration payable to a supplier for work done. It does not include disbursements, court fees, travelling time, mileage, expenses, witness expenses and any other out of pocket expenses or outlays incurred by the supplier.

3. The Scheme shall permit the interim payment of professional fees only. The Scheme shall not be used for, and applications shall not be accepted under the Scheme in respect of, interim claims for disbursements, court fees, travelling time, mileage, witness expenses and any other out of pocket expenses or outlay incurred by the supplier.
4. No application for an interim payment shall be accepted under the Scheme in respect of:
- (a) a “Certificate of Exceptionality” granted under the Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 (“the 2009 Rules”) or the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 (“the 2005 Rules”); or
 - (b) a case funded under Article 10A of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or Article 12A of the Access to Justice (Northern Ireland) Order 2003.
5. No application for an interim payment shall be accepted under the Scheme if there has been a previous interim payment of professional fees, or any application for an interim payment is pending, for a particular case, under the;

- (a) Legal Services Agency Northern Ireland Special Payments Policy;
- (b) The interim payment provisions of Article 6(10) and (11) of the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 (“the 2015 Regulations”);
- (c) Department of Justice Direction No.1, No.2, No.3 or No. 4, of 2017; or
- (d) the Scheme.

6. The Scheme may prescribe any other proceedings or matters which are not eligible for an interim payment.

7. The Scheme shall make provision for the recoupment at the earliest available opportunity of the interim payments made under the Scheme, where appropriate, from the supplier. The Scheme shall allow for readjustments on determinations following claims made at the conclusion of cases to take account of any interim payment made. The Scheme may allow for the reimbursement of an amount from a supplier where they cease to trade or become insolvent in respect for any interim payment made.

8. The Scheme will not be subject to the statutory redetermination and appeals provisions as set out in the 2005 Rules, the 2009 Rules or the 2015 Regulations.

9. Any decision made by the Director in connection with the Scheme shall be final and not subject to an appeal.

10. The Scheme shall expire three months after its commencement date, but may be extended, subject to the agreement of the Department of Justice and the Department of Finance for such a period as the Director considers necessary up to a maximum of a further three months. The maximum possible duration of the Scheme is therefore six months. During any such extended period, the Director shall keep the operation of the Scheme under review and subject to providing a two week period of notice may terminate the Scheme at any time during the extended period.

Signed:.....

Minister of Justice

Date:.....

Covid-19 Interim Payment Scheme

Pursuant to Ministerial Direction No. 2 of 2020, the Director of Legal Aid Casework hereby prescribes a Covid-19 Interim Payments Scheme for Legal Aid Suppliers.

Scope of the Scheme

1. The Scheme is open to all solicitors and barristers (suppliers) registered on LAMS who deliver Civil Legal Services and Criminal Legal Aid.
2. Unless otherwise stated, the Scheme covers all proceedings within the scope of Civil Legal Services and Criminal Legal Aid as set out at Appendix 1.
3. Proceedings which are not covered by the Scheme are:
 - Advice and Assistance under Schedule 2 to the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015;
 - Representation Higher Courts cases for Bail Applications;
 - Proceedings have been withdrawn, abandoned or discontinued;
 - Proceedings which have otherwise concluded;
 - Fine Default Hearings;
 - Any Youth Conference case;
 - Any Sexual Offence Order application; and
 - Any Violent Offence Order application.

Qualification Period

4. Suppliers can only apply for an interim payment under the Scheme for a case in which they have held a full legal certificate for three months. The qualification period will be kept under review and may be varied in the future.
5. Any applications submitted which do not meet the qualifying period will be rejected.

Qualification Conditions

6. All applications must be made on LAMS.
7. All applications must be in respect of the appropriate fee in Appendix 1 to reflect the case type and must be submitted under the relevant "Covid-19 Interim Fee" code on LAMS.
8. Applications can only be made for cases which have not previously received an payment, nor is any application pending for professional fees under:
 - the Special Payments Policy;
 - the interim payments provisions of Article 6(10) and (11) of The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015;

- the Department of Justice Direction No. 1, No. 2, No. 3, or No. 4, of 2017; or
 - the Covid-19 Interim Payment Scheme.
9. The application under the Scheme cannot include any other fees for disbursements, court attendance, court fees, travelling time, mileage, expenses, witness expenses and any other out of pocket expenses or outlays incurred by the supplier. Disbursements can be claimed under existing provisions and in the usual manner but cannot be claimed as part of an application under the Scheme.
10. Initially any firm of Solicitor supplier and Barrister supplier will be limited to 5 applications per day. This condition exists to ensure that each supplier can have their application considered in a reasonable timescale, as the Agency will process all applications in strict chronological order. The Agency would expect to increase the daily limit to 20 applications after two weeks. This condition will be kept under review and any variation will be notified to suppliers.
11. In submitting an application under the Scheme, suppliers must include the following declarations:
- Solicitors and Barristers
“I confirm that in making this application I accept the terms of the Scheme, including my consent to any recoupment being made directly from my payments as soon as possible and that if I am no longer doing legal aid work, to pay any recoupment directly to the LSA within one week of notification. I confirm I have made no previous interim payment(s) of professional fees nor is any such application pending in respect of this case.”
 - Solicitors
“I confirm that I have attached all barristers instructed in this case on LAMS”
or

“I confirm that I have requested that the barristers instructed in this case should be attached on LAMS and have uploaded my request” or

“I confirm that there are no barristers to be attached to this case.”
12. Any applications submitted which do not meet the qualifying conditions will be rejected.

Determination of Applications

Criminal Cases

13. The existence of a criminal legal aid certificate which meets the qualifying period and an application which meets the qualifying conditions will be sufficient to enable the Agency to approve the application and process the payment through LAMS. No supporting evidence is required.
14. If the qualification period or any of the qualifying conditions are not met the Agency will reject the application. Suppliers can submit a new application when the qualifying period and conditions are met.

Civil Cases

15. Subject to the supplier having:
- a Representation Lower or Higher courts certificate which meets the qualifying period;
 - uploaded material to demonstrate that the case is progressing, whether court orders, applications issued, sample inter party correspondence to demonstrate evidence of engagement between the parties; and
 - an application which meets the qualifying conditions
- the Agency will approve the application and process the payment through LAMS.
16. If the application is in respect of Family Care Centre cases, the Article 2 fee set out in Appendix 1 must be claimed unless the supplier can upload a Court Order to authorise to the Article 3 fee set out in Appendix 1.
17. In respect of other civil legal services applications suppliers should upload evidence to indicate that:
- a petition for Divorce has been lodged;
 - a Civil Bill or Notice of Intention to Defend has been lodged;
 - a Writ has been lodged; and
 - an application has been made to the First-Tier Tribunals and Upper Tribunal in Asylum and Immigration Proceedings.
18. If the qualification period or any of the qualifying conditions are not met the Agency will reject the application. Suppliers can submit a new application when the qualifying period and conditions are met.

Other Scenarios

19. Under the Scheme the following principles will be applied:
- if more than one certificate exists for the same case, only one interim fee can be claimed for the case;
 - if a case would normally attract an additional percentage fee to reflect a number of defendants or related proceedings, only one interim fee can be claimed, with no percentage uplift; and
 - any set of circumstances which would result in payment of a fee other than the appropriate case fee set out in Appendix 1 will result in the payment of the relevant case fee set out in Appendix 1.
20. In any other circumstances, the Director of Legal Aid Casework or a nominated deputy will determine whether an interim payment is payable.

Appeals

21. There is no appeal against a refusal of an application under the Scheme, nor of the determination of a fee payable under Appendix 1. The statutory provisions in respect of redeterminations and appeals do not apply to the Scheme.

Additional Fees

22. If following the disposal of a case in which an interim payment under the Scheme has been made, the Agency determines that additional fees are payable, the full disposal fees will be paid with the interim fee being recouped.

Readjustments

23. When a case which received an interim payment under the Scheme is:
- disposed of;
 - the supplier which received the payment no longer has carriage of the case;
 - if the supplier obtains a subsequent interim payment under another provision or Direction

the value of the interim payment under the Scheme will be deducted from the final payment, or the subsequent interim payment as appropriate, made to the recipient of the interim payment.

24. Suppliers who have received an interim fee under the Scheme must declare the interim payment when they submit their final claim upon the disposal of the case. The Agency will deduct the interim payment from the final payment or recoup from other payments to the supplier if the final payment is less than the interim payment. Suppliers must also ensure that if a case is settled after an interim payment is made and there is no further claim against the fund, the cost of the interim payment be repaid to the Agency.
25. If following the payment of an interim payment a client transfers to another firm of solicitors (or a different barrister is instructed) the following procedures must be adhered to:
- in criminal cases the original solicitor must submit a report on case and make the appropriate claim. If a recoupment falls to be made, this will be processed and will be recovered from the next available payment to that supplier;
 - in Representation Lower cases the original solicitor must present their bill once the transfer has been completed. If a recoupment is necessary it will be recovered from the next available payment to that supplier;
 - in Representation Higher cases if following the transfer between suppliers;
 - o the original solicitor's bill is subject to taxation, the recoupment will be deducted upon processing of the taxation certificate;
 - o the case is withdrawn, abandoned or discontinued the original solicitor must submit a report and if a recoupment is required it shall be recovered as part of the final payment
26. If following the payment of an interim fee a supplier ceases to practice, for whatever reason, a report of case must be submitted by an authorised individual. If the work undertaken exceeds the value of the interim payment, the balance due will be paid to an authorised individual. If the assessment results in a recoupment the Agency will recoup from known future payments or will seek to be reimbursed by the authorised individual.

27. If in any circumstances a recoupment cannot be collected through legal aid payments, it is a condition of utilising this scheme that suppliers undertake to repay the sum directly to the Agency within one week of a demand from the Agency. Failure to discharge an amount due under the Scheme shall result in civil enforcement proceedings against the supplier.

Variations

28. As part of the administration of the Scheme, the Director may at any time reduce the qualifying period to attract an interim payment under the Scheme and may vary any conditions which the Scheme prescribes.

Sunset Clause

29. The Scheme shall run for three months from its commencement date. After two months the Director of Legal Aid Casework (the Director) shall consider whether the scheme should end as planned or if a further extension, of up to a maximum three months duration, is appropriate.
30. If the Director concludes that the Scheme should not be extended, he will provide two weeks notice that the scheme will end in keeping with this terms of paragraph 5.22. If the Director concludes that the Scheme should be extended, and subject to approval from the Department of Justice and Department of Finance, the Scheme may be extended by such a period as the Director considers appropriate up to a maximum of a further three months.
31. If the Director exercises his discretion to extend the operation of the Scheme, the Director shall keep under review the operation of the Scheme and at any time provide a two week notice period of the termination of the Scheme.

Paul Andrews

Director of Legal Aid Casework

[Date]

COVID – 19 : LSA Interim Payment Scheme			
1. <u>Criminal Legal Aid</u>			
Court Venue	Solicitors	Barristers	Notes
Extradition	£106	£106	For all representatives, for all case types
Magistrates' Courts	£130	£137.50	For all representatives, for all case types and irrespective of disposal types.
	£65	£65	Breach and Arrest warrants
Criminal Appeals to the County Court	£72.50	£25	For all representatives, for all case types and irrespective of disposal types.
Crown Court	£456.50	£308.50	For all representatives, for all case types and irrespective of disposal types.
Court of Criminal Appeal / Supreme	N/A	N/A	Payable on taxation
2. <u>Civil Legal Services</u>			
Level of Services	Solicitors	Barristers	Notes
Advice & Assistance	N/A	-	No interim fee, claims should be submitted in the usual manner
Representation Lower Courts	£105	£76.25	For all representatives, for all case types.
Representation High Courts : FCC / County Court			
Article 2	£116	£76.25	For all representatives, for all case types.
Article 3	£675	£125	For all representatives, for all case types.
Divorce & Ancillary Relief	£300	£200	For all representatives, for all case types.
Civil Bills	£172		For all representatives, for all case types.
Representation High Courts : High Court			
Bails	N/A	N/A	Standard fee applies
Divorce & Ancillary Relief	£300	£200	For all representatives, for all case types. No payment on limited certificate.
All other HC Actions	£1,500	£200	For all representatives, for all case types for full certificate.
	£250		Where a limited certificate was followed by a full certificate

	£200		Solicitors costs in Bankruptcy
Withdrawn / Abandoned or Discontinued Cases	N/A	N/A	Submitted for full assessment
First Tier and Upper Tribunal	£87.50	N/A	
Court of Appeal / Supreme Court	N/A	N/A	Payable on taxation

ANNEX C

Reports of Impact Screening Exercises Outcome of Screening Exercise.

IMPACT ASSESSMENT / APPRAISAL	FULL ASSESSMENT / APPRAISAL REQUIRED		REASON
	Yes	No	
SOCIAL IMPACTS			
Crime		X	No Impact
Community Safety & Victims		X	No impact
Equality		X	No Impact
Health		X	No impact
Human Rights		X	No impact
Rural		X	No impact
Social Inclusion		X	No impact
ECONOMIC IMPACTS			
Economic Appraisal		X	No impact
Economic Assessment		X	No impact
Regulatory		X	No impact
Legal Aid		X	Business case assesses impact
State Aid		X	No impact
ENVIRONMENTAL IMPACTS			
Environmental		X	No impact
Strategic Environmental		X	No impact
SUSTAINABLE DEVELOPMENT IMPACT		X	No impact

Details of screening is available upon request.

ANNEX D – Consultation Questions

- Q1. Do you agree that there is a need for an interim payment scheme? If not please suggest any alternative approaches.**
- Q2. Do you agree with the underpinning principles for the scheme? If not please your objections.**
- Q3. Do you agree with the approach the Department is proposing to take in the draft Direction, and the degree of discretion afforded to the Legal Services Agency in respect of the proposed scheme?**
- Q4. Do you have any comments on the content of the draft Direction?**
- Q5. Do you agree with the approach of having a limited number of fees as set out at Annex B to simplify the application and processing requirements? If you do not agree please explain your objections.**
- Q6. Do you agree with the fees set out at Appendix 1 to Annex B which are designed to minimise the need for future recoupments? If you do not agree please explain your objections.**
- Q7. Do you agree that firms of solicitors and barristers should be limited in the number of applications they can submit in one day to ensure that all suppliers' applications are given equal weight? If you do not agree please explain your objections.**
- Q8. Do you agree with the 3 month qualifying period proposed? If you do not agree please explain your objections.**
- Q9. Do you agree with the recoupment arrangements – if you do not agree please explain your objections?**
- Q10. Do you agree with the sunset provisions and the mechanisms to extend and terminate the scheme? If you do not agree please explain your objections?**
- Q11. Do you agree that interim fees under Article 6(10) of the 2015 Order should be processed under the Scheme and that a fee of £200 should be set for counsel in non-family cases in the High Court? If you do not agree please explain your objections?**
- Q12. Do you have any other comments?**
- Q13. Do you have any comment on the impact screening?**

Special Payments Policy

Application during the Covid-19 Period

1. Background

1.1 The aim of this document is to set out how the policy relating to Special Payments to legal service providers will be applied during the Covid-19 crisis and while the Interim Payment Scheme (IPS) is in operation. It covers:

- General Principles
- Eligibility Criteria
- Making a Claim
- Other Factors Relating to Special Payments
- Action Required by Provider if Special Payment is Approved
- Recording and Approvals of Special Payments

2. General Principles

2.1 The Legal Services Agency Northern Ireland (“the Agency”) will consider applications for Special Payments submitted by providers of legal aid services (suppliers) who are deemed to be in severe financial hardship. The purpose is to provide one-off temporary financial assistance to providers in an effective manner. Such payments will only be considered if suppliers have fully utilised the IPS.

2.2 A Special Payment should normally only be made as a last resort and not considered to be an alternative to normal cash-flow management facilities routinely available to service providers, such as bank overdrafts.

2.3 In the current circumstances the Agency will expect all suppliers to have submitted claims under the IPS before a Special Payments application is submitted. The Agency would also expect suppliers to provide evidence that they have sought to avail of other relevant interim relief measures established in response to the Covid-19 crisis.

2.4 Applications under the IPS, like normal bills submitted, will be processed in strict order of date receipt. Suppliers should recognise this when submitting an application for a Special Payment as the Agency will not consider a second application made within a 12 month time period unless there are exceptional circumstances.

2.5 Special Payment applications will be processed in a confidential manner. However, if the Agency considers that a Special Payment is merited a recommendation to make a payment will be submitted to the Department of Justice (DoJ) for independent endorsement.

2.6 Payments will be made on a strictly one-off basis and each case will be considered on its individual merits.

2.7 If a Special Payment is approved, the sum payable will take into account any payment already made under the IPS. If a case receives a payment under the Special Payments policy in advance of the IPS, then no payment under the IPS will be entertained at a future date.

3. Eligibility Criteria

3.1 In order to qualify for a Hardship payment, the legal services provider will be required to have lodged a claim(s) with the Agency for assessment. Additionally, the service provider's account within LAMS should not be in debit. Where recoupments are due, these will be deducted from the value of the Hardship Payment.

3.2 The submitted certificate(s) against which the Hardship Payment is claimed should have been outstanding for a period of at least four months from the time the claim was received by the Agency. In addition, the Agency would expect requests for Hardship Payments are being made against properly completed requests for payment.

3.3 In wholly exceptional circumstances, and **only** where it can be demonstrated that significant work has been completed but a claim cannot be lodged, a percentage of the value of the work completed may be paid out, subject to compelling evidence.

4. Making a Claim

4.1 A Special Payments Application Form (see Annex B for solicitor claims and Annex C for counsel claims) outlining the details of the special payment claim should be submitted by the legal services provider to enquiries@lasni.gov.uk and marked for the attention of the Director of Operations of the Agency.

4.2 The form should detail the certificate numbers to which the claim relates and provide details of the extent and nature of the severe financial hardship being experienced by the service provider. It is the responsibility of the practitioner to ensure their records are accurate and that claims which have already been paid, including under the IPS, are **not** included in the application. Pending claims under the IPS must also be highlighted.

4.3 Independent third party evidence of severe financial hardship must accompany the application form. This must be in the form of current bank statement(s) and a copy of the overdraft facility letter issued to the service provider by a bank and may be supplemented by correspondence, as well as any other information considered relevant by the service provider in support of their application. Supporting documentation must also be provided to indicate that suppliers are seeking to secure assistance under the various Covid-19 relief schemes. The Agency reserves the right to confirm or query information provided in support of an application.

4.4 All claims will be paid inclusive of VAT provided the legal practitioner is VAT registered.

4.5 The Agency will treat all information and documentation received in absolute confidence.

4.6 The Chief Executive and another Director will review the application form and investigate the merits of the special payment claim by considering the supporting evidence. **Any conflict of interest, either real or perceived, will be declared at this stage of the process. Should there be any such declaration, then another Director will be appointed to consider and review the application.**

4.7 If the Chief Executive and Director are satisfied that the criteria for a special payment have been satisfied, they will determine the level of payment they are content to approve.

This will take into account any payments made under the IPS and will seek to safeguard the public purse from any loss.

4.8 The supplier will be notified if the Chief Executive and the Director are not satisfied that the criteria for a special payment have been met. For the sake of transparency, the DoJ will also receive a copy of all unsuccessful requests.

5. Other Factors Relating to Special Payments

5.1 There is no automatic right of a legal service provider to a special payment. A special payment should be regarded as *exceptional* and not as a routine method used to manage cash by the service provider.

5.2 The approval of a special payment is entirely discretionary and no right of appeal exists. All applications will be considered on a case by case basis.

5.3 The Agency reserves the right to make the special payment in instalments or to authorise a lesser amount than initially requested by the legal service provider. The Agency will take its decision on the facts of the case as presented. Generally the Agency will assess the special payment as a series of interims against each outstanding case that meets the criteria, paying no more in each instance than protects the fund from overpayment.

5.4 Every effort will be made to deal with special payment requests expeditiously, but the Agency and the DoJ will only process applications in a timescale which ensures that the applications are well grounded. As the Agency has a lead time between requesting and receiving endorsement from its sponsor body, there may be a delay in the processing of the payment.

5.5 The Agency accepts no responsibility for the implications of the decision to grant or refuse a request for a special payment, to either the legal service provider or any third party.

6. Action Required by Provider if Special Payment is Approved

6.1 If a request for a Hardship Payment, submitted under Paragraph 3.2 above, is based on requests already submitted to the Agency there is no further action for the provider.

6.2 If a request for a Hardship payment, submitted under Paragraph 3.3 above, is based on a case in which a request for payment has not been submitted, the provider will be required to submit the full report on case as and when the case has concluded. Any payments made under the Hardship Payments policy will be deducted as appropriate.

7. Recording and Approvals of Special Payments

7.1 All special payments requests should be made by suppliers for the attention of the Director of Operations on preset templates (Annex B and C) to enquiries@lasni.gov.uk. These are logged on the basis of date of receipt by the LSA Business Support Unit (BSU) in order that a central record of all requests can be maintained.

7.2 The request will be forwarded to the Director of Operations and the LSA Payments Team for the merits of the request to be considered and the scope for appropriate interim payments to be determined.

7.3 The Payments Team will prepare a report for consideration between the Chief Executive and the Director of Operations.

7.4 Where the Chief Executive and Director of Operations are satisfied that the case has been made for a special payment they will determine the sum payable and request the Head of Payment to finalise their report for external approval. If not satisfied the application will be rejected and the Director of Operations will write to the provider.

7.5 The application, together with supporting evidence and correspondence, will be forwarded to the Grade 5 Head of Enabling Access to Justice Division within the DoJ, by the BSU, for independent endorsement of the decision to process claims outside of strict chronological order.

Annex A Internal Special Payment Application Procedures

A.1 A Special Payment Application Form, (see Annex B for Solicitor Claims and Annex C for Counsel Claims), outlining the details of the special payment claim should be submitted by the legal services provider and addressed to the Director of Operations of the Agency. Applications should be submitted to: enquiries@lasni.gov.uk.

A.2 The form details the certificate numbers to which the claim relates and provides details of the extent and nature of the severe financial hardship being experienced by the service provider. Additional cases cannot be added to the application at a later date. Details of payments, including outstanding requests under the IPS should be included.

A.3 Independent third party evidence of severe financial hardship must accompany the application form. This **must** be in the form of current bank statement(s), a copy of the overdraft facility letter issued to the service provider by a bank and may be supplemented by correspondence, or any other information considered relevant by the service provider in support of their claim. Supporting documentation must also be provided to indicate that suppliers are seeking to secure assistance under the various Covid-19 relief schemes. The Agency reserves the right to confirm or query information provided in support of an application.

A.4 The Chief Executive and a Director will review the application form and investigate the merits of the special payment claim, satisfying themselves that the outstanding unpaid certificates have a value in excess of the amount of the payment being claimed. The Chief Executive and the Director will have to declare that they have no conflict of interest in considering the application. If a conflict of interest exists, the application will be considered by another Director.

A.5 The Chief Executive will forward the application, supporting evidence and the Agency's decision to the DoJ for independent endorsement. To ensure transparency, the Chief Executive will also furnish the DoJ with copies of any applications in which the Chief Executive and the Director are not satisfied that the criteria for a special payment have been met.

A.6 On receipt of confirmation from the DoJ endorsing the decision of the Chief Executive and the Director, the Chief Executive will arrange for all documentation supporting the claim to be collated and placed on file and copies passed to the Head of Payment Services.

A.7 The Chief Executive will then write to the legal service provider indicating whether the claim has been approved or declined, copying all correspondence to the Director of Operations.

A.8 The Head of Payment Services will arrange for the approved requests for payment to be extracted and processed for payment outside the normal processing mechanisms. Any claims in which additional information is required will be disregarded as part of the special payment request. When assessed, the requests for payment will be authorised against the certificate numbers previously agreed.

A.9 The Head of Payment Services will arrange for the payment to be made and the correspondence filed on the special payments file. The special payments register will also be updated by the Finance branch.

A.10 All claims will be paid inclusive of VAT where the legal practitioner is VAT registered.

A.11 The special payments register is sent to the DoJ on a quarterly basis in order that these payments may be independently monitored. The Board of the Agency will also have visibility of the register.

A.12 Details of all special payment requests and decisions thereon will be notified to the Board of the Agency on a regular basis. Specific details of the payments will not be recorded in this report.

A.13 All special payments will reflect any interim payment(s) already authorised under the IPS or otherwise in respect of a Certificate.

Annex B Special Payment Application Form - Solicitor

Please ensure that all sections of this form are fully completed. Failure to do so will result in the form being returned to you and may delay payment of fees.

Special Payment Claim

Solicitor Reference No:	Name and address of Solicitor:
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Primary Certificate number(s) to which this special payment relates. (Please continue on separate sheet if necessary). This MUST include applications and payments under IPS for these cases:	Name of certificate applicant(s):
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Date of registration of longest outstanding claim to which claim relates:	Special Payment value claimed (incl VAT) (£):
	Total face value of claims to which claim relates (incl VAT) (£):

Please justify fully *why* a special payment claim is being submitted. Please note that special payments will only be authorised in *exceptional* circumstances. This should detail the extent and nature of the severe financial hardship being experienced by the legal service provider. (Please continue on separate sheet if necessary):

Please detail the independent third party evidence of severe financial hardship that accompanies this form. This must be in the form of bank statement(s), a copy of the overdraft facility letter issued to the service provider by a bank and may be supplemented by correspondence, and any other information considered relevant by the legal service provider in support of their special payment claim. Supporting documentation must also be provided to indicate that suppliers are seeking to secure assistance under the various Covid-19 relief schemes.

Signature of Solicitor _____

Date _____

Annex C Special Payment Application Form – Counsel

Please ensure that all sections of this form are fully completed. Failure to do so will result in the form being returned to you and may delay payment of fees.

Special Payment Claim fees.

Counsel Reference No:	Name and address of Counsel:
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Primary Certificate number(s) to which this special payment request relates. (Please continue on separate sheet if necessary) This MUST include applications and payments under IPS for these cases:	Name of certificate applicant(s):
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Date of registration of longest outstanding claim to which claim relates:	Special Payment value claimed (incl VAT) (£):
	Total face value of claims to which claim relates (incl VAT) (£):

Please justify fully *why* a special payment claim is being submitted. Please note that special payments will only be authorised in *exceptional* circumstances. This should detail the extent and nature of the severe financial hardship being experienced by the service provider. (Please continue on separate sheet if necessary):

Please detail the independent third party evidence of severe financial hardship that accompanies this form. This must be in the form of bank statement(s), a copy of the overdraft facility letter issued to the service provider by a bank and may be supplemented by correspondence, and any other information considered relevant by the legal service provider in support of their hardship payment claim. Supporting documentation must also be provided to indicate that suppliers are seeking to secure assistance under the various Covid-19 relief schemes.

Signature of Counsel _____

Date _____