

Human Rights Act Impact Assessment

1. Policy title and aims

Policy Title

Legal Aid - A Revised Framework for the Assessment of Legal Aid Costs Subject to Taxation

Policy Aims

The Department is consulting on proposals in relation to remuneration for solicitors and barristers in legally aided cases subject to taxation. The proposed revised arrangements will change:

- how fees are set;
- how some bills are submitted; and
- how bills are assessed.

In developing proposals, the Department has recognised existing arrangements for the determination of other legal aid fees have the benefit of offering transparency and being tried, tested and familiar to practitioners, and the public and scrutiny bodies alike. It is therefore proposed that hourly rates and fees be similarly set for solicitors and barristers acting in civil proceedings in the High Court, and for civil and criminal proceedings in the Court of Appeal. As with other fees, the new hourly rates will be specified in secondary legislation subject to the usual statutory and public consultative processes, economic appraisal, statutory impact assessments and Assembly scrutiny.

The new arrangements will retain the independent adjudicative function of the Taxing Master, albeit with some changes to how that function is exercised as the Master will be required to apply the hourly rates and fees specified by the Department to enable greater budgetary control, transparency and oversight.

2. Rights which the policy/proposal engage

Go through each of the rights detailed in the table below. For each one consider whether the policy/proposal engages the right; i.e. how the policy/proposal you are working on would involve the right. Explain how the right is engaged.

Please note that the rights have been abbreviated so you should see the relevant Article in the Guide referred to above for the full title and explanation of the right.

Right	Yes/No	Explanation
Article 2 Right to life	No	
Article 3 Prohibition of torture, inhuman and degrading treatment	No	
Article 4 Prohibition of slavery and forced labour	No	
Article 5 Right to liberty	No	
Article 6 Right to a fair trial	Yes	This legislative change is about making a new remuneration framework for the assessment and payment of legal fees in cases currently subject to taxation. Article 6 provides that those charged of a criminal offence have the right to defend themselves in person or through legal assistance of their own choosing or, if they do not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. While Article 6 does not expressly provide that legal aid must be provided for civil proceedings, there is case law (<i>Airey v Ireland</i>, <i>Steel & Morris v UK</i>) which provides that there is a right to legal assistance in civil matters if it is necessary for effective access to the courts. Legal aid is available for proceedings in which a person convicted of a criminal offence wishes to appeal the conviction, or sentence, or both of these. Legal aid is available for most proceeding types in the High Court, subject to a financial eligibility and merits test. Legal aid will remain available for these cases.

Right	Yes/No	Explanation
		Taxation Reform will change the way legal representatives are paid for High Court and criminal Court of Appeal cases, by setting remuneration rates to be used by the Taxing Master in legally aided cases. In non legally aided cases the rate will still be set by the Taxing Master. The rates set will be compatible with the provisions in the Access to Justice Order 2003 which requires the Department to have regard to: (a)the time and skill which the provision of services of the description to which the order relates requires; (b)the number and general level of competence of persons providing those services; (c)the cost to public funds of any provision made by the regulations; and (d)the need to secure value for money. While the right is engaged, it is not interfered with or limited as legal aid will remain available.
Article 7 No punishment without law	No	
Article 8 Right to respect for private and family life	No	
Article 9 Freedom of thought conscience and religion	No	
Article 10	No	

Right	Yes/No	Explanation
Freedom of expression		
Article 11 Freedom of assembly and association	No	
Article 12 Right to marry and found a family	No	
Article 13 Right to an Effective Remedy	No	
Article 14 Prohibition of discrimination	No	
Protocol 1, Article 1 Protection of Property	No	
Protocol 1, Article 2 Right to education	No	
Protocol 1, Article 3 Right to free elections	No	

If you have answered yes to any of these questions you must complete the rest of the proforma. If you have answered no to **all** of the questions, you may proceed to Question 9.

3. Rights which the policy/proposals interfere with or limits

Will the policy/proposal interfere with or limit any of the rights you identified as being engaged? If so, explain how the right is interfered with or limited.

You should note that interference could be a negative impact on a right or a failure to take positive action where this is required under the Article in question. For further guidance on which Articles require positive action, please consult the Guide.

Article	Interfered with or limited? Yes/No	What is the interference/limitation?
Article 6 Right to a fair trial	No	There is no interference or limitations on the Article 6 rights engaged.

4. Those affected by the interference/limitation

Identify who would be affected by the interference or limitation, e.g. sections of society or people with certain beliefs or opinions and explain how they could be affected.

It will help in identifying interferences or limitations to think about all the people who could be affected and seen as a victim within the Human Rights Act.

Who could be affected?	How could they be affected?
N/A	N/A

5. Legal basis for interference/limitation

Is there a law which allows you to interfere with or limit the rights identified in Question 4?

Any interference with or limitation on a Convention right must have a legal basis. You therefore need to establish whether there is a law which allows the proposed interference or limitation.

You may need legal advice to clarify this.

Relevant legislation:

N/A

Alternatively, the policy/proposal may involve the creation of a new law which allows for the interference or limitation. If this is the case, please detail and explain in the box below:

N/A

6. Purpose of the policy/proposal

Even if the interference or limitation in the policy/proposal is according to the law, there are further conditions which must be met. The purpose of the policy/proposal must pursue a legitimate aim or fall under one of the specific exception in the Article in question.

Consider each of the Articles which the policy/proposal will interfere with or limit, and for each one specify the exception or legitimate aim which allows the interference or limitation and explain why.

If you are unsure of the exceptions or legitimate aims which are applicable for the rights interfered with or limited by the policy/proposal you are working on, you should refer to the text of the Convention and the Guide.

Article	Exception / Limitation	Explanation
N/A	N/A	.

7. **Necessary in a democratic society**

Articles 8, 9, 10 and 11 specify that interferences or limitations must be necessary in a democratic society. If the policy/proposal interferes with or limits one of these rights, detail in the table below how the right is necessary in a democratic society i.e. does it fulfil a pressing social need?

You may need to speak to the Senior Responsible Officer for clarification of this.

Article affected	Explain why it is necessary in a democratic society
N/A	N/A

8. **Proportionality**

Any interference with or limitation on a Convention right must be proportionate, i.e. the policy/proposal must interfere with or limit a right no more than is absolutely necessary to achieve its aims. For each Article which the policy/proposal interferes with or limits, explain how the interference or limitation is proportionate.

For further information on proportionality, please consult the Guide.

Article affected	Explain why the interference / limitation is proportionate
N/A	N/A

9. Article 14 equality issues

Even if it does not interfere with or limit a right or freedom, could the policy/proposal result in people being treated differently in relation to any of the Convention rights? Article 14 does not allow discrimination in the exercise of any of the other Convention rights.

For further information on Article 14, please refer to the relevant pages in the Guide.

Convention Article affected	How are people treated differently?	Is this justifiable?
N/A	N/A	N/A

You should now have a clearer view about the policy/proposal and the possibility of it engaging or interfering with Convention rights and freedoms.

Please ensure the proforma is also signed by your Senior Responsible Officer and if there is any possible interference or limitation refer to your legal advisor for further action and advice.

Please tick the statement that applies, and sign below.

☐

a) The policy/proposal does not engage any Convention rights.

☒

b) The policy/proposal does engage one or more of the Convention rights but does not interfere with or limit it/them.

☐

c) The policy/proposal interferes with or limits one or more Convention rights and legal advice is being sought.

Countersign, hold copy with policy papers and refer to your legal advisor.

Signed by __N McCullough____ (Official)

Date __18/09/2026____ Grade ____SO____

Signed by Steven Allison

Date __12/10/2026____ Grade __G5__