

Working **together** for
fairness, justice and **safety**

Department of Justice

Improving Value and Impact by Reforming Merits and Scope Response Questionnaire



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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Have Your Say

The Department wishes to hear from legal practitioners, representative bodies, advice organisations, voluntary and community sector organisations, public bodies, service users and members of the public. Responses to this consultation will play a vital role in shaping future legal aid policy and ensuring that any reforms remain consistent with the principles of access to justice, fairness, proportionality and value for money. The Department particularly welcomes evidence-based responses, including relevant research, data, operational experience, case examples and professional insight, to help assess the potential impact of the proposals and ensure that legal aid continues to support those most in need while remaining financially sustainable. The Department also welcomes contributions from individuals with lived experience of domestic abuse, Article 8 Children Order proceedings and the legal aid system, recognising that these experiences provide valuable insight into how the proposed reforms may affect access to justice and the protection of vulnerable people. Responses are encouraged from support organisations, advocacy groups, advice services, community and voluntary organisations, and others working directly with affected individuals and families, whose expertise and experience can assist the Department in evaluating the likely impact of the proposals and identifying any unintended consequences.

If you would like to meet with the policy team to discuss these reforms, please email:

CLAR@justice-ni.gov.uk.

Responding to our consultation

Public Consultation: Improving Impact and Value for Money through Reform of Legal Aid Scope, Merits

The public consultation on the policy proposals will run for a **period of eight weeks, from Monday 26 October 2026 to 12.00 pm on Monday 21 December 2026**.

We would welcome your views and invite you to respond to the consultation through the online Citizen Space platform using the details provided below.

Citizen Space via QR Code	To access the public consultation, simply scan the Citizen Space QR code using your smartphone camera and follow the link that appears.	
Citizen Space via link	https://consultations.nidirect.gov.uk/doj/enabling-access-to-justice-reform-programme-public	
Department of Justice Website	Consultations Department of Justice	

If you are unable to respond using our online consultation facility, you can access hard copy consultation documents on the Department of Justice website, through the Citizen Space link above, or by writing to:

Civil Legal Aid Reform Branch
Enabling Access to Justice Division
Department of Justice
Block 5, Knockview Buildings
Stormont Estate, BELFAST

or by email to: clar@justice-ni.gov.uk

The Department of Justice recognises that some responses may be informed by personal experiences of harm, abuse or trauma. If you choose to share your experiences, please avoid including names, addresses or other identifying details about yourself or others. Any personal data provided will be processed in accordance with data protection legislation and, where appropriate, anonymised before publication or wider circulation. We encourage respondents to share only the information they are comfortable disclosing. We are also inviting organisations that support victims and survivors, including Women's Aid, the Men's Advisory Project and other relevant support organisations, to respond to this consultation. If you would prefer not to provide details of your experiences directly, you may wish to share your views through one of these organisations as part of their consultation response.

Public Consultation on Impact Assessments: Improving Impact and Value for Money through Reform of Legal Aid Scope, Merits

The public consultation on the impact assessments will run for a period of **12 weeks from Monday 26 October 2026 to 12.00 pm on 22 January 2027** (please note this date range has been adjusted to accommodate Christmas holiday dates).

We would welcome your views and invite you to respond to the impact assessments through the online Citizen Space platform using the details provided below.

Citizen Space via QR Code	To access the public consultation, simply scan the Citizen Space QR code using your smartphone camera and follow the link that appears.	
Citizen Space via link	https://consultations.nidirect.gov.uk/doj/enabling-access-to-justice-reform-programme-public/	

About you

Q1. Are you responding as:

(Required)

- ☐ A member of the public.
- ☐ An individual with lived experience of domestic abuse.
- ☐ An organisation supporting someone with lived experience of domestic abuse.
- ☐ A community or voluntary organisation.
- ☐ A community or voluntary organisation providing free legal services.
- ☐ A public sector organisation.
- ☐ An academic or researcher.
- ☐ Member of a Regulatory Body – The Law Society of Northern Ireland.
- ☐ Member of a Regulatory Body – The Bar of Northern Ireland.
- ☐ A member of the Judiciary.
- ☐ A legal practitioner (either currently or previously practising).

Q2. If you are responding on behalf of an organisation, we would be grateful if you could provide your name, organisation, and email address. The Department may publish responses received, however, where responses are received from a respondent submitting an individual response, these will be anonymised and no personal data will be published. *Please note providing this information is voluntary.*

Name:	
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Organisation:	
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Email address:	
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Consultation Questions

To support consideration of the proposed reform, the Department has included a draft Direction setting out how the proposal would be implemented in practice. Respondents are invited to provide their views on the proposed provisions, including whether they are sufficiently clear, proportionate and effective in achieving the intended policy outcomes.

Respondents are invited to answer as many or as few questions as they wish, and there is no requirement to provide a response to every question. Respondents, particular those representing the legal profession, are encouraged to share any relevant evidence, case examples, or other information that may support their response and help inform the development of future policy. All contributions will be carefully considered to ensure that any changes to the legal aid system are fair, proportionate, and reflective of the needs of those who rely on it.

Section1: Funding of Repeat Children Order proceedings

Reform Opportunity 1: The Department proposes introducing a direction establishing a new limb of the legal aid merits test in respect of applications relating to orders under Article 8 of the Children (Northern Ireland) Order 1995. The proposed criterion would enable legal aid to be refused for repeat applications where a recent order is already in force, subject to appropriate safeguards and exemptions.

The Department of Justice recognises that family circumstances can change and that court intervention will continue to be necessary in some cases. Accordingly, the proposed reform includes a series of exemptions and safeguards to ensure that access to justice is preserved where there are genuine welfare, safety or safeguarding concerns. These mitigations are intended to protect vulnerable parties, maintain appropriate judicial oversight, support compliance with human rights and equality obligations, and ensure that legal aid continues to be available where a further application is necessary and proportionate.

Draft Direction No X of 202X

For the avoidance of doubt, this Direction is currently in draft form and is provided solely to facilitate public consultation. Its provisions are not operative and should not be relied upon as representing the final position of the Department of Justice. The Direction remains subject to Ministerial clearance and may be revised, amended, or withdrawn prior to formal issue.

Legal Services for Proceedings under Article 8 of the Children Order (Northern Ireland) 1995

1. The Director of Legal Aid Casework is directed, when applying Regulation 37 or Regulation 43 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015 (as applicable), to have regard to the provisions of this Direction in determining applications for representation in proceedings under Article 8 of the Children (Northern Ireland) Order 1995 where there has been a previous final determination relating to the same child or children within the preceding [X] years.

Direction

2. This Direction seeks to discourage unnecessary or unmeritorious repeat proceedings involving the same child or children, recognising the potential adverse impact of repetitive litigation on children and families, the consumption of court and public resources, and the potential for such proceedings to be used as a means of coercive control, harassment or litigation abuse.
3. In determining whether Civil Legal Services should be granted in proceedings under Article 8 of the Children Order (Northern Ireland) 1995, the Director shall have regard to:
 - a. the need to prevent the use of legal aid to facilitate coercive control, harassment, intimidation, financial abuse, or other forms of litigation abuse through the repeated or unnecessary initiation or continuation of proceedings, while ensuring that funding remains available where the proceedings are necessary to safeguard or promote the welfare of a child;
 - b. promoting the welfare of children, ensuring that publicly funded services are directed towards applications raising a genuine and material issue affecting the child's welfare, protecting vulnerable applicants, and ensuring the effective and proportionate use of public funds; and

- c. whether the proposed proceedings appear to represent a genuine attempt to address a material change in circumstances since the previous final determination which is relevant to the welfare of the child and of sufficient significance to justify further court intervention, or whether the proceedings are primarily directed towards re-litigating issues that have already been determined by the court. For the purposes of this Direction, a material change in circumstances means a change that is more than temporary, minor or foreseeable in nature and can affect the appropriateness of the existing Order or arrangements.
- 4. This Direction applies to applications for Civil Legal Services made on or after [INSERT DATE]. Civil Legal Services for a new application under Article 8 of the Children Order (Northern Ireland) 1995 concerning the same child or children shall not normally be granted where the applicant seeks substantially the same order within [three/X] years of the final determination of previous proceedings relating to that child or children, unless the Director is satisfied that one or more of the exceptions set out in paragraph 6 applies.

Exceptions

- 5. Funding may nevertheless be granted where the Director is satisfied that one or more of the following circumstances exists, that the circumstance relied upon is relevant to the relief sought, and that it is sufficiently material to justify the use of public funds for further proceedings:
 - a. evidence of a material change in circumstances since the making of the previous Order affecting the appropriateness of the arrangements currently in place. Such changes may include, but are not limited to
 - i. evidence of credible safeguarding concerns relating to the child's welfare, health or safety;
 - ii. evidence of new allegations of domestic abuse, coercive control or litigation abuse; or

- iii. sustained non-compliance with an existing Court determination making further court intervention necessary.

For the avoidance of doubt, the existence of one or more of the circumstances set out above shall not of itself justify the grant of funding. The Director must be satisfied that the circumstances relied upon is relevant to the relief sought and is of sufficient significance to warrant further proceedings.

- 6. For the purposes of this Direction a breach or non-compliance with an existing order may include, but not limited to, where:
 - a. residence arrangements are not being honoured;
 - b. there are repeated breaches of court orders, including contact; or
 - c. where enforcement action is required.

Evidence

- 7. Applicants seeking to rely upon an exception should provide such evidence as is reasonably available in support of the exception relied upon, which may include but not limited to court orders, police reports, correspondence from statutory agencies or third sector agencies (such as Women's Aid or Men's Advisory Project), or medical information. For the purposes of this Direction, decision-makers may have regard to the evidential criteria applied in determining eligibility for the domestic abuse waiver under section 28 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 and the associated Department of Justice and LSANI guidance.

Assessment

- 8. In applying this Direction, the Director shall have regard to the overriding principle that the welfare of the child is the court's paramount consideration. Nothing in this Direction requires the Director to determine disputed facts or issues which are properly matters for judicial determination.

Residual Discretion

9. Nothing in this Direction shall prevent the Director from granting civil legal services where the Director is satisfied that further proceedings are necessary to safeguard or promote the welfare of the child, notwithstanding that the application would otherwise fall within the scope of this Direction.

Review

10. The Department of Justice shall keep the operation of this Direction under review, having regard to its effectiveness in focusing legal aid resources on cases that meet the merits criteria, maintaining access to justice, and securing value for money. The first such review shall be completed within three years of the commencement of this Direction.

Q3: Do you agree that legal aid should generally be unavailable for repeat Article 8 Children Order applications where a recent order is already in place in relation to the same child?

Yes ☐ No ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q4: In your view, to what extent do repeated applications contribute to:

- unnecessary litigation?
- pressure on court resources?
- emotional harm to children?
- post-separation abuse or coercive control?

Please submit your response below, including any evidence, research, operational experience, or other information that supports your position:

Q5: Do you agree that the proposed exemptions and safeguards provide appropriate protection for individuals who have a genuine need to bring a further application relating to an Article 8 Children Order within a specified period?

Yes ☐ No ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q6: Do you agree legal aid should remain available where there has been a material change in circumstances and, if so, what changes should qualify?

Yes ☐ No ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information:

Q7: What safeguarding concerns should justify the continued availability of legal aid funding, and are there any additional circumstances that should be recognised within the proposed exception?

Q8: Do the proposed exceptions relating to domestic abuse, coercive control and litigation abuse appropriately identify the circumstances in which legal aid funding should remain available?

Yes ☐ No ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information:

Q9: Do the proposed vulnerability exceptions appropriately identify the circumstances in which legal aid funding should remain available?

Yes ☐ No ☐ Unsure ☐

Please explain your view and identify any additional categories of vulnerability that should be recognised.

Q10: What are your views on the proposed reforms to limit legal aid funding for repeat Children Order proceedings? In your response, please consider the extent to which the proposals balance the efficient use of legal aid resources with access to justice, provide any relevant evidence or examples of their potential impact, and identify any alternative approaches that may better achieve these objectives.

Q11: Do you foresee any unintended consequences arising from the proposed reform in relation to:

- children's rights;
- equality of access to justice;
- victims and survivors of domestic abuse; or
- persons with protected characteristics.

Yes ☐ No ☐ Unsure ☐

Please provide details of any such impacts, including any evidence or examples, that support your response:

Q12: Under existing legislation, the court may direct that a person must obtain permission from the court before making further applications of a specified type in relation to a child. This power can be used where the court considers additional oversight of future applications to be necessary. To what extent do you consider the court's existing power to require permission for further applications to be an effective means of managing repeat applications?

Very Effective ☐ Somewhat Effective ☐ Neither effective/ineffective ☐

Somewhat effective ☐ Very ineffective ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position.

Q13. Please provide your views on whether the proposed evidential requirements are reasonable and proportionate?

Yes ☐ No ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position.

Q14. Please provide your views on whether the residual discretion available to the Director provides an adequate safeguard against unfair outcomes?

Yes ☐ No ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position.

Q15. Please provide your views on whether the proposed Direction is likely to:

- a. reduce unnecessary repeat litigation;**
- b. encourage compliance with existing Children Orders;**
- c. protect children and vulnerable individuals; and**
- d. ensure the effective use of legal aid resources?**

Q16. Are there any aspects of the draft Direction that you consider unclear, impractical, or likely to give rise to unintended consequences?

Q17. Do you have any other comments on the draft Direction?

Section 2: Funding of judicial review proceedings

Reform Opportunity 2:

- 1) Restriction of funding for repeat Judicial Reviews. Legal aid may be refused where the applicant seeks to relitigate issues that have already been determined by a court or tribunal and where there has been no material change in circumstances or new evidence.
- 2) Requirement to exhaust alternative remedies. Legal aid may not be available where an applicant has not first pursued an available review, appeal, complaint, tribunal or statutory remedy.
- 3) Restricting legal aid funding for judicial review challenges primarily concerned with resource allocation. Legal aid may not be available for applications where the principal purpose of the judicial review is to challenge how public resources are allocated rather than the legality of a decision-making process.
- 4) Potential introduction of a composite, or fixed, fee for Stage I judicial review stage.

‘Draft Direction No. X of 2027

For the avoidance of doubt, this Direction is currently in draft form and is provided solely to facilitate public consultation. Its provisions are not operative and should not be relied upon as representing the final position of the Department of Justice. The Direction remains subject to Ministerial clearance and may be revised, amended, or withdrawn prior to formal issue.

Citation and Application

1. This Direction applies to applications for Civil Legal Services for representation for the purpose of seeking leave (permission) from the High Court to apply for judicial review. In determining whether such services should be granted, the Director of Legal Aid Casework shall have regard to this Direction issued under Regulation 43 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015.

Purpose

2. The purpose of this Direction is to:
 - a. prevent legal aid funding for an application for leave to apply for judicial review on matters that have previously been determined by a court, tribunal or other competent decision-making authority;

- b. prevent legal aid funding for an application for leave to apply for judicial review where an effective and appropriate alternative remedy is available; and
- c. promote the efficient use of legal aid resources by ensuring that funding is not provided for proceedings that have little prospect of achieving a direct, personal and material benefit to the applicant; and
- d. prevent public funds from being used to support repetitive, duplicative or otherwise unnecessary litigation.

Previously litigated matters

- 3. Funding shall normally be refused where the Director is satisfied that the application substantially raises issues which have already been determined by a court, tribunal or other competent decision-making authority, whether in proceedings brought by:
 - a. the applicant; or
 - b. another person, organisation, group member or representative, where the proposed application raises the same or substantially the same, challenge in respect of the same decision, policy, act or omission.

Alternative Remedies

- 4. Funding shall normally be refused where an effective and appropriate alternative remedy is available, unless the applicant demonstrates that:
 - a. the alternative remedy has been exhausted or pursued as far as is reasonably practicable;
 - b. the alternative remedy is incapable of providing an effective remedy in the circumstances of the case;
 - c. the matter is urgent or pursuing the alternative remedy would likely result in unreasonable prejudice; or
 - d. exceptional circumstances justify immediate recourse to judicial review.

Exceptions

5. Paragraphs 3 and 4 shall not apply where the Director is satisfied that:
- a. there has been a material change in facts, circumstances or law since the previous determination, or
 - b. the proposed proceedings raise a materially different issue that was not determined in the earlier proceedings.

Evidence

6. Applicants seeking Civil Legal Services for leave to apply for judicial review proceedings shall provide such information, evidence and documentation as the Director may need to determine whether the application satisfies this Direction, including evidence that:
- a. the matter has not previously been the subject of unsuccessful litigation by the applicant or, where relevant, another person raising the same or substantially the same challenge in respect of the same decision, policy, act or omission.
 - a. no effective and appropriate alternative remedy is available or that any such remedy has been exhausted, is inadequate, or cannot reasonably be pursued in the circumstances; and;
 - b. no effective and appropriate alternative remedy is available or has been unreasonably refused, exhausted or abandoned; and
 - c. the proposed proceedings disclose a reasonably arguable ground for judicial review.

Residual Discretion

7. Nothing in this Direction shall displace the Director's obligations under the relevant legal aid legislation.

Review

8. The Department of Justice shall keep the operation of this Direction under review, having regard to its effectiveness in focusing legal aid resources on cases that meet the merits criteria, maintaining access to justice, and securing value for money. The first review shall be completed within three years of the commencement of this Direction.

Q18. Do you agree that legal aid should generally be unavailable where a Judicial Review seeks to relitigate matters already determined by a court or tribunal?

Yes ☐ No ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q19. Do you agree that legal aid should generally be unavailable for judicial review proceedings where alternative review, appeal or complaints mechanisms have not been exhausted?

Yes ☐ No ☐ Unsure ☐

If so, what exceptions, if any, should apply to this principle? Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q20. In your view, what constitutes an adequate alternative remedy?

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q21. What are your views on restricting legal aid funding for judicial review proceedings that primarily challenge the allocation or prioritisation of public resources? In your response, please consider any potential impacts on accountability, transparency, and access to justice.

Q22. Do you support the introduction of a fixed or composite fee for Stage I Judicial Review proceedings?

Yes ☐ No ☐ Unsure ☐

If you support the introduction of a fixed or composite fee, what fee level or fee structure would be appropriate and why? Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q23. What impact, if any, might the introduction of a fixed or composite fee have on access to justice, quality of representation, case preparation, expenditure predictability, or other relevant factors?

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q24. Should any categories of judicial review continue to receive special protection, such as cases involving:

- children;
- liberty;
- health and social care;
- asylum and immigration; or
- human rights.

Are there any other categories that should receive special protection? Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q25. What, if any, additional measures could improve value for money without restricting access to justice?

Q26. Do you consider that the proposed exceptions to the restriction on funding for previously litigated matters are sufficiently clear and appropriate? Please explain our response, providing any evidence or other information as appropriate.

Q27. The draft Direction proposes that legal aid should generally be unavailable unless alternative remedies have been exhausted, subject to specified exceptions. Do you consider that the proposed exceptions and evidential requirements are sufficiently clear and workable in practice? Please explain your answer and any additional factors that should be considered, including any evidence or other information supporting your response.

Q28. To what extent do you consider that the proposed Direction strikes an appropriate balance between maintaining access to justice and ensuring the effective and proportionate use of legal aid resources? Please provide any evidence or other information in support of your response.

Q29. The draft Direction requires applicants to provide evidence demonstrating that the relevant conditions and exceptions are met. Please provide your views on what proposed evidential requirements you consider to be reasonable and proportionate.

Q30. Please provide your views on whether any aspect of the draft Direction could give rise to unintended consequences for applicants, public authorities, or the administration of justice.

Q31. Respondents are invited to provide any other comments on the draft Direction, including observations on its drafting, operation, clarity, and likely effectiveness in achieving its intended policy objectives.

Section 3: Access to legal services based on Applicant Eligibility

Reform Opportunity 3:

- 1) A new limb to the merits test to refuse any application for legal aid where there is no evidence of a direct, personal and material benefit to the applicant or their family.
- 2) Restriction of access to legal services for Ordinary Civil Bills for harassment where alternative protective orders are available (such as non-molestation or other protective order).

'Direction No. X of 2027

For the avoidance of doubt, this Direction is currently in draft form and is provided solely to facilitate public consultation. Its provisions are not operative and should not be relied upon as representing the final position of the Department of Justice. The Direction remains subject to Ministerial clearance and may be revised, amended, or withdrawn prior to formal issue.

Civil Legal Services: Requirement for a Direct, Personal and Material Benefit

Citation and Application

9. The Director of Legal Aid Casework is Directed to apply Regulation 37 or, as applicable, Regulation 43 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015 in accordance with the provisions below, in respect of applications for representation.

Direction

10. Civil legal services shall not be granted:
 - a. unless the Director is satisfied that the proceedings are likely to secure a direct, personal and material benefit to the applicant or to a member of the applicant's immediate family;

- b. in determining whether civil legal services should be granted, the Director shall have particular regard to whether an alternative remedy, for which legal aid may be available, offers a more effective or proportionate means of securing protection, preventing further harassment, or mitigating any identified risk. This may include, but is not limited to, applications for Non-Molestation Orders or other protective orders in cases involving harassment, abuse, stalking or similar conduct; or
- c. where, having regard to the availability of alternative remedies, the likely costs of the proceedings are disproportionate to the additional benefit likely to be secured by the applicant.

11. For the purposes of this Direction, the term ‘immediate family’ means:

- a. a spouse or civil partner who, due to disability, illness, vulnerability or other personal circumstances, could not reasonably be expected to make or manage an application for civil legal services independently; or
- b. a biological or adopted child, or a child of whom they have parental responsibility (below the age of 18).

The definition is intended to ensure that, while benefits accruing to minor children may be taken into account, adult family members will generally be expected to seek civil legal services in their own right unless particular circumstances prevent them from doing so.

Evidence

12. The applicant must provide such information and supporting evidence as the Director considers reasonably necessary to demonstrate that the proceedings are likely to secure a direct, personal and material benefit:
- a. the nature and extent of the benefit relied upon must be capable of being identified by reference to the facts and circumstances of the case;

- b. where reliance is placed upon a risk to personal safety, personal welfare, living circumstances or family life, the Director may have regard to any relevant evidence, including but not limited to court documents, police records, medical evidence, reports from statutory agencies, correspondence, witness statements, or other supporting material; and
- c. the absence of particular documentary evidence shall not, of itself, prevent the Director from being satisfied that the requirement is met where, having regard to all the circumstances of the case, there is sufficient evidence that the proceedings are likely to secure a direct, personal and material benefit.

Assessment

- 13. For the purposes of this Direction, a direct, personal and material benefit means a benefit which is identifiable, specific to the applicant or a member of the applicant's immediate family, and capable of affecting the legal rights, financial position, personal safety, personal welfare, living circumstances or family life.
- 14. A direct, personal and material benefit may include, but not be limited to, proceedings concerning:
 - a. the protection of the applicant, or a member of the applicant's immediate family, from violence, abuse, harassment, stalking or other conduct giving rise to a risk of physical or psychological harm;
 - b. the care, welfare, residence or contact arrangements of a child where the proceedings are capable of materially affecting the family life, legal rights, responsibilities or welfare of the applicant or a member of the applicant's immediate family;
 - c. risk to the applicant's home, occupation of residential property, living arrangements, or risk of homelessness;
 - d. access to community care, disability support, health treatment or social services;
 - e. immigration, asylum or citizenship decisions affecting the applicant or an immediate family member; or

- f. a challenge to a public authority decision where the outcome may materially affect the legal rights, obligations or living circumstances of the applicant or an immediate family member.

15. The requirement would not normally be satisfied where the proceedings are brought:

- a. solely to establish a point of legal principle, precedent or interpretation, without any practical consequence for the legal rights, financial position, personal security, welfare or living circumstances of the applicant or the applicant's immediate family;
- b. primarily in the wider public interest without any identifiable personal benefit to the applicant or their immediate family;
- c. to challenge a policy affecting the public generally where the applicant cannot demonstrate a specific and identifiable impact on themselves or their immediate family

unless the Director is satisfied that the proceedings are nevertheless likely to secure a direct, personal and material benefit having regard to all the circumstances of the case.

Exceptions

16. Paragraph 2 shall not apply, or shall apply with appropriate flexibility, where:

- a. refusal of legal aid would create a real risk of substantial injustice;
- b. significant welfare, safeguarding or human rights considerations arise;
- c. no effective alternative remedy exists; or
- d. the applicant is particularly vulnerable.

Review

17. The Department of Justice shall keep the operation of this Direction under review, having regard to its effectiveness in focusing legal aid resources on cases that meet the merits criteria, maintaining access to justice, and securing value for money. The first such review shall be completed within three years of the commencement of this Direction.

Q32: What are your views on requiring applicants to demonstrate a likely direct, personal and material benefit before legal aid is granted?

Q33: What types of benefit should be taken into account when assessing this requirement?

Please indicate whether any of the following should be considered:

- Financial benefit
- Protection from harm
- Child welfare outcomes
- Access to services
- Preservation of liberty
- Protection of rights
- Other (please specify)

Q34: For the purposes of this Direction, the term ‘immediate family’ means:

- a spouse or civil partner who, due to disability, illness, vulnerability or other personal circumstances, could not reasonably be expected to make or manage an application for civil legal services independently; or
- a biological or adopted child, or a child of whom they have parental responsibility (below the age of 18).

The definition is intended to ensure that, while benefits accruing to minor children may be taken into account, adult family members will generally be expected to seek civil legal services in their own right unless particular circumstances prevent them from doing so.

Q35. Are there circumstances where legal aid should remain available even where a direct material and proportionate benefit to the applicant is difficult to

demonstrate?

Yes ☐ No ☐ Unsure ☐

Please set out the reasons for your response, including any evidence, research, operational experience, or other information that supports your position:

Q36: Individuals seeking protection through a Non-Molestation Order may continue to access legal aid, which is generally available without a merits assessment, ensuring protection remains accessible to those at risk of abuse or harassment. What are your views on restricting legal aid funding for Ordinary Civil Bill harassment proceedings where an effective and appropriate alternative remedy is already available such as a non-molestation order or other protective order.

Q37: Are there any risks associated with this proposal that the Department should consider, and how might those risks be mitigated?

Yes ☐ No ☐ Unsure ☐

Please explain the reasons for your answer and provide any evidence, examples, or experience that supports your view.

Q38. Do you consider the proposed test for establishing a direct, personal and material benefit is sufficiently clear and capable of consistent application in practice?

Q39. The draft Direction proposes a definition of direct, personal and material benefit and provides examples of proceedings that may satisfy this requirement. Do you consider the definition of direct, personal and material benefit and provides examples of proceedings that may satisfy this requirement. Do you consider the

definition and examples to be clear, comprehensive and appropriate? Please identify any additional examples that should be included.

Yes ☐ No ☐ Unsure ☐

- Q40.** The draft Direction provides that the requirement would not normally be satisfied where proceedings are brought solely to establish a point of principle, primarily in the wider public interest, or to challenge a policy affecting the public generally without a specific and identifiable impact on the applicant or their immediate family. Please provide your views on this approach.

- Q41.** The draft Direction proposes that legal aid should not normally be granted for Ordinary Civil Bill proceedings for harassment where an effective and appropriate alternative remedy is available, such as a Non-Molestation Order or other protective order. Please provide your views on this proposal.

- Q42.** Do you consider the exceptions contained within the draft Direction to be sufficiently clear and appropriate to safeguard access to justice? Please explain your answer, providing any evidence or other information to support your response.

Yes ☐ No ☐ Unsure ☐

- Q43.** To what extent do you consider that the proposed Direction strikes an appropriate balance between maintaining access to justice and ensuring the effective and proportionate use of legal aid resources? Please provide any evidence or other

information to support your response.

Q44. Please provide your views on whether any aspect of the draft Direction could give rise to unintended consequences or practical difficulties in its application.

Q45. Respondents are invited to provide any other comments on the draft Direction, including observations on its drafting, operation, clarity and likely effectiveness in achieving its intended policy objectives.

Section 4: Impact of Proposed Reforms on Access to Justice

Q46. Having considered the proposed reforms as a whole, what are your views on the overall package of legal aid reforms?

Q47. What are your views on the principle that legal aid funding should be focused on cases where the likely benefit to the applicant is proportionate to the public expenditure incurred?

Q48. What factors should be taken into account when assessing whether a case represents a proportionate use of legal aid funding?

Q49. Taking the proposed reforms as a whole, do you consider that sufficient safeguards exist to protect vulnerable applicants, including child victims and survivors of domestic abuse and persons with disabilities?

Yes ☐ No ☐ Unsure ☐

Please explain the reasons for your answer and provide any evidence, examples, or experience that supports your view.

Q50. Please identify any groups that may be disproportionately affected by these proposals and explain why

Q51. What impact, if any, do you believe the proposed reforms would have on access to justice?

Q52. Looking across all the proposed reforms, are there any unintended consequences that the Department of Justice should consider? If so, please provide any evidence, examples or operational experience below.

Q53. Please outline below any additional exemptions, safeguards, or mitigating measures that the Department of Justice should consider to ensure that the proposed reforms operate fairly and effectively.

Q54. The Department of Justice proposes that each draft Direction should be reviewed within three years of its commencement to assess its effectiveness in targeting legal aid resources towards cases that meet the merits criteria, maintaining access to justice, and securing value for money. Do you agree that a three-year review period is appropriate? Please provide reasons for your answer, including any evidence, research, operational experience, or other information that supports your response.

Privacy Notice – Consultations (DoJ)

Data Controller Name:	Department of Justice (DoJ)
Email:	ejdconsultations@justice-ni.gov.uk
Data Protection Officer Name:	DoJ Data Protection Officer
Telephone:	(028) 90378617
Email:	DataProtectionOfficer@justice-ni.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the [Data Protection Act \(DPA\)](#) and the [EU General Data Protection Regulation \(GDPR\)](#). The Department of Justice (DoJ) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We will publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding. If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1)(e) of the GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2)(g) of the GDPR, in the exercise of the function of the department, and to monitor equality.

How will your information be used and shared?

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

How long will we keep your information?

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [DoJ Retention & Disposal Schedule](#).

What are your rights?

- You have the right to obtain confirmation that your data is being [processed, and access to your personal data](#);
- You are entitled to have personal data [rectified if it is inaccurate or incomplete](#);
- You have a right to have personal data [erased and to prevent processing](#), in specific circumstances;
- You have the right [to 'block' or suppress processing](#) of personal data, in specific circumstances;
- You have the right to [data portability](#), in specific circumstances;
- You have the right to [object to the processing](#), in specific circumstances; and
- You have rights in relation to [automated decision making and profiling](#).

How to complain if you are not happy with how we process your personal information

If you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF or casework@ico.org.uk