

Title: Introduction of Statutory Registration Scheme for all Providers of Publicly Funded Legal Services in Northern Ireland	Regulatory Impact Assessment (RIA)	
	Date: February 2017	
	Type of measure: New policy	
Lead department or agency: Department of Justice	Stage: Final	
	Source of intervention: Domestic NI	
Other departments or agencies:	Contact details: Mark McGuicken	
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Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum)
 Expenditure on legal aid represents a significant element of the Department of Justice's (the Department) budget. The Department is responsible for delivering arrangements to ensure that those who receive public funding for the delivery of legal services provide the appropriate level and quality of service to their clients and the public. A number of external reports have been critical of the Department's oversight of this expenditure and the Department is therefore introducing a Statutory Registration Scheme (the Scheme) for all providers of publicly funded legal services in Northern Ireland which will assist the Legal Services Agency (the Agency) to provide assurance of propriety and regularity in the use of public funds.

What are the policy objectives and the intended effects? (7 lines maximum)
 The Scheme will improve assurance on the use of public funding by providing the Agency with powers to access and audit the records of legal aid practitioners, set standards to be met and allow sanctions to be imposed where those are not met. All practitioners wishing to avail of legal aid funding must register under the Scheme and sign up to a Code of Practice. In addition all those registered must commit to a minimum standard of service delivery and record keeping; submit to routine audits of compliance; and will be subject to sanctions for non-compliance, which could lead to exclusion from undertaking legal aid work. The Scheme must be self-financing and therefore all those registering to provide publicly funded legal services will be required to pay a fee as set by the Agency.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum)
Option 1: Do Nothing: This option reflects the current position and in effect would mean that the scheme would not be introduced.
Option 2: Introduce a voluntary Registration Scheme for all publicly funded legal service providers. The administration of such a limited scheme does not meet one of the key objectives and is not considered a viable option. This option has not been shortlisted.
Option 3: Introduce a Statutory Registration Scheme in phases. All solicitors and barristers will be required to register with the Agency and comply with specific requirements to provide publicly funded legal services. This will enable the Agency to assess the quality of service provision on a statutory basis. This is the preferred option.
Option 4: Introduce Statutory Registration Scheme in full. It is envisaged that this option will entail development of quality assurance mechanisms which may include peer reviews. This option will require extensive research over an extended period and may increase costs. This option has not been shortlisted.

Will the policy be reviewed? Yes	If applicable, set review date: Twice during year one and once annually during years two and three.
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Cost of Preferred (or more likely) Option		
Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
Approximately £0.7m per annum	£ 0 per annum	

Does Implementation go beyond minimum EU requirements?		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
Are any of these organisations in scope?	Micro Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Small Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Medium Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
		Large Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: _____ Date: _____

ECONOMIC ASSESSMENT (Option 3)

Costs (£m)	Total Transitional (Policy) (constant price)		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
		Years		
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate			£700k per annum	

Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines
The Agency will incur some initial set-up costs to prepare for and resource the Scheme Administrator (Grade 7) in addition to the IT costs and initial recruitment and training for staff and the legal profession. Once implemented the full costs of running the scheme will be recovered from the profession.
Legal profession will incur costs to register to the Scheme.

Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines
Legal profession: Resource time in preparing and applying for registration and self-certification of compliance. Also staff time involved in introducing or becoming familiar with the Codes of Practice and any new policies or procedures required to be evidenced under the Scheme and in providing access to such evidence as may be required during compliance audits. **Regulatory Bodies:** central information sharing on behalf of their members, as required.

Benefits (£m)	Total Transitional (Policy) (constant price)		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
		Years		
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines

Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines
Clients – the Scheme will provide clients with reassurance that the quality of legal representation provided by the suppliers is monitored and evaluated through the scheme.
The Agency – the Scheme will ensure that standards are being met in accordance with Codes of Practice and verify that payments have been made for properly completed work.
Public – the scheme will enhance public confidence in the delivery of publicly funded legal services.

Key Assumptions, Sensitivities, Risks Maximum 5 lines
Key Assumptions – a minimum of 75% of suppliers will registers to the Scheme.
Potential risks - Insufficient number of providers register to undertake legal aid cases.
 Providers unable to evidence minimum quality standards in Codes of Practice.
 Scheme administration is cost prohibitive and cumbersome; or fails to achieve full cost recovery.

BUSINESS ASSESSMENT (Option)

Direct Impact on business (Equivalent Annual) £m				
Costs:	Benefits:	Net:		

Cross Border Issues (Option)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines
 All other UK and ROI jurisdictions have mandatory professional registration schemes but differ in scope, procedures and costs. These schemes focus on salaried or contracted providers, do not include barristers and vary in detail from desk-top audits to peer reviews. These may be free to those registered as in Scotland or carry charges as in England & Wales

Evidence Base

There is discretion for departments and organisations as to how to set out the evidence base. It is however desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing), with reference to the evidence base to support the option selection;
- Monetised and non-monetised costs and benefits of each option (including administrative burden);
- Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach);
- Risks and assumptions;
- Direct costs and benefits to business;
- Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

Problem under consideration

1. It is important that those who receive public funding for the delivery of legal services should provide the appropriate level, and quality, of service to their clients and to the public purse. The proposals under consideration will help to ensure that the necessary controls are established to provide these assurances, to both the public and government. These proposals are not intended to supersede the roles of the professional bodies which regulate the work of the legal profession, nor should they be seen as being critical of legal practitioners. The proposals are complementary to the roles of the Law Society and Bar Council and these changes are essential in further instilling public confidence in the legal aid system and ensuring the necessary propriety and regularity for public expenditure that is expected across all aspects of government.
2. Spend on legal aid represents a significant portion of the budget for the Department of Justice (the Department). Over the last five years the cash spend on legal aid has been:

Year	2011/12	2012/13	2013/14	2014/15	2015/16
Cost (£m)	107	107	105	111	96 ¹

3. The Department has been delivering a programme of reform to legal aid which has been ongoing for number of years. The focus of the reforms to date has been on cost reduction initiatives, for example, the introduction of standard fees and reform to the levels of representation, both in the criminal and civil courts. This programme of work continues.

¹ Information obtained from the Legal Services Agency NI Management Information Systems

4. A number of external reports have however been critical of the Department's oversight of this expenditure and in particular the lack of a suitable mechanism to ensure the representation paid for by the public purse is of a suitably high standard.

Rationale for intervention

5. The Northern Ireland Audit office (NIAO) report in to Managing Legal Aid², published in June 2016, was critical of the delay in introducing a Registration Scheme. The Public Accounts Committee (PAC) has also been highly critical of the delay in implementing the Scheme. The PAC Report³, published in January 2017, recommended that the Department advance the reform of legal aid, focusing on the establishment of a statutory registration scheme for all providers of publicly funded legal services.
6. The Law Society and the Bar Council are the regulatory bodies for solicitors and barristers respectively, as well as being the professional organisations representing the interests of the two branches of the profession. As regulators, they are concerned with issues such as entry qualifications and routes into the profession, codes of conduct and practice standards, accreditation, post qualification training and development, and handling complaints and discipline.
7. Where professional bodies have a dual role of regulation and representation, this raises the possibility of, at least, the perception of a conflict of interests. It is not sufficient for a procurer of legal services on behalf of the public to rely solely on an external regulatory regime to ensure quality and value for money in provision of services. Therefore, to address this risk, it is imperative to introduce a mechanism to enable the Legal Services Agency Northern Ireland (the Agency) to have independent oversight of the provision of publicly funded legal services.
8. The Department is therefore introducing a statutory Registration Scheme (the Scheme) for all providers of publicly funded legal services, which will assist the Agency to provide assurance of propriety and regularity in the use of public funds.
9. The Scheme's focus is primarily on quality of client and customer care, administrative arrangements and the proper recording of work and outcomes. It also provides the Agency with statutory powers to have access to premises and files and to undertake

² <https://www.niauditoffice.gov.uk/publication/managing-legal-aid>

³ <http://www.niassembly.gov.uk/globalassets/committee-blocks/pac/pac-reports/report-on-managing-legal-aid.pdf>

audits of compliance and carry out customer-focussed surveys of clients to ensure that providers are complying with the requirements. In addition, the Scheme will introduce statutory powers to sanction providers where these standards are not achieved or complied with.

Policy objectives

10. The Scheme would help to provide the necessary assurance on the use of public funding by ensuring that all those registered to provide publicly funded legal services:
 - i. sign up to a Code of Practice;
 - ii. commit to a minimum standard of service delivery and record keeping;
 - iii. facilitate audits and compliance visits; and
 - iv. are subject to sanctions for non-compliance.

11. The Scheme will have the following specific objectives:
 - i. To introduce systems to assess and evidence accountability for publicly funded legal services that are:
 - proportionate and risk based; and
 - do not add disproportionately to costs and administration of the Agency for service providers.

 - ii. To commence legislation necessary to achieve a statutory basis for quality assurance which provides for the registration of those eligible to provide legal aided services and the powers required by the Agency to access information to ensure compliance and to sanction where this is not achieved.

 - iii. To introduce a Code of Practice which will define the conditions for registration, and the required minimum standards of professional conduct, customer service, and systems of administration.

12. The Agency will develop a cost effective and unobtrusive process for conducting file checks and audits on samples of files to ensure that standards are being met in accordance with the Code of Practice, and in parallel, to verify that payments have been properly made for completed work (thus enhancing assurance on fraud prevention). This will involve all legal aid service providers being reviewed in line with a risk-based

approach. It is expected that the Agency will publish its audit strategy at the start of each year together with details of planned compliance visits to solicitors firms provided quarterly, with barristers having been given notice that any associated work on files audited will be recorded for them as individuals. In addition to this a small number of thematic reviews will be carried out where management information or complaints suggest a need for a review.

13. The Department is undertaking a targeted consultation with the legal profession on the draft Regulations necessary to implement the Scheme, the fee charging methodology necessary to achieve full cost recovery, and sanctions to be applied where non-compliance is found.
14. The first phase will commence with initial registration and self-certification of providers' compliance with policies and procedures, fee collection, together with the commencement of audit and compliance visits, powers to sanction those not meeting the requirements and the establishment of a Registration Scheme Panel to consider any request to review sanction decisions from suppliers.
15. The Department and Agency will continue to engage with key stakeholders to agree the necessary protocols and guidance, and to refine future policy issues regarding education / training, and quality assurance through peer reviews as further phases are progressed. These will be the subject of future targeted consultation, where appropriate, prior to operational implementation.

Options

Option 1: Do Nothing

16. This is not a viable option. The NIAO Comptroller and Auditor General, both Access to Justice Review Reports, the Public Accounts Committee and the Criminal Justice Inspectorate Northern Ireland have all strongly endorsed the view that the Agency should establish independent mechanisms so that they are able to demonstrate quality and value for money in provision of publicly funded legal services.

Option 1 has not been shortlisted.

Option 2: Introduce a voluntary Registration Scheme

17. While it may be possible to encourage some providers to comply with the requirements on a voluntary basis, the Agency would not have statutory powers to compel audits, evidence compliance, or impose sanctions for non-compliance; nor would it be able to refuse authorisation for legal aid to a provider who chose not to register voluntarily. The administration of such a limited voluntary scheme, for little or no assurance in relation to the public funds expended on legal aid each year, does not meet the key objectives and is not considered a viable option.

Option 2 has not been shortlisted.

Option 3: Introduce a Statutory Registration Scheme in phases

18. It had initially been envisaged that the Scheme would have been introduced in three phases, commencing with initial registration and self-certification of compliance with policies and procedures. A second phase was intended to introduce compliance audits and a range of sanctions and quality assurance of customer service; this stage was also to include the introduction of education and support for the profession. The final stage being the introduction of quality assurance mechanisms to assess the quality of advocacy.
19. Since this initial plan was considered the Department has progressed many of the elements envisaged in Phase 1 and 2 and now intends to introduce these aspects immediately. The Scheme will be developed further with a second Phase which will include:
- the development of an education and support programme relevant to legal aid; and
 - quality assurance mechanisms, which may include peer reviews.
20. All solicitors and barristers, whether in private practice or working in the voluntary sector, will therefore be required to register with the Agency in order to continue to provide publicly funded legal services. Fundamentally, the Scheme will enable the Agency to assess the provision of publicly funded legal services on a statutory basis as well as enhance accountability controls and provide assurance to the Accounting Officer. Moreover, the Scheme will provide the Agency with the power to preclude providers who fail to meet or maintain requisite standards, and achieve full cost recovery.

Option 3 has been shortlisted.

Option 4: Introduce a Statutory Registration Scheme in full

21. The scope of the Scheme includes future consideration of advocacy assurance in accordance with the Access to Justice Review recommendation that the scheme should be *'extended on a proportionate basis to include standards of service relating to the quality of advice and representation.'* The Report also noted *'some reservations about the potential cost of a comprehensive review scheme in Northern Ireland but suggest that the Law Society engages with the Legal Services Commission (now the Agency) on how a scheme might be piloted alongside the audit responsibilities of the Commission'*.⁴
22. It is envisaged that quality assurance mechanisms will be developed to include advocacy, and may include peer reviews in due course. However, this aspect will require extensive research over an extended period, and may significantly increase costs, which could be a cause for challenge by the profession from whom they would be recovered. Given the compelling drivers and general acceptance of the administrative aspects of the proposals, it is not acceptable that implementation should be delayed further to include quality of advice and representation at this stage.

Option 4 has not been shortlisted.

Monetised cost of each option

Option 1: Do Nothing

23. This option would not give rise to any compliance costs.

Option 3: Introduce a Statutory Registration Scheme in phases

24. It is envisaged that the cost of introducing the Scheme will cost approximately £700k per annum. Annex A provides a detailed breakdown of these costs. In accordance with Managing Public Money in NI (MPMNI) Guidance, the costs of running the Scheme must be recovered in full. The Agency has estimated the resources needed to introduce and manage the Scheme, and these costs must be recovered from those registering; a fee charging methodology has been developed to recover the running costs.

⁴ Paragraph 6.23 http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/Documents/Access%20to%20Justice%20Review%20Northern%20Ireland%20-%20The%20Report/Access%20to%20Justice%20Review%20FINAL%20REPORT.pdf

25. This Option would also give rise to set-up costs for the Agency as a Registration Scheme Administrator would have to be appointed to develop operational practices to support the policy intent. These initial costs have not been included in the full cost recovery model as they do not relate to direct delivery of the Scheme and will be absorbed by the Department.
26. Information Technology costs to establish the Scheme will not be recovered from the profession. These data requirements form an integral part of the Agency's Digital Transformation Project and as such the costs cannot be separately isolated to the Scheme.
27. There are no major investment costs for a typical business expected with these proposals. Access to the registration portal will be web based, and many of the policies and procedures are required by the Regulatory bodies. It is not possible to quantify the exact cost impact of this option as it will vary depending on the business within any solicitor's firm or individual barrister and the proportion / nature of legal aid business they may undertake.

Monetised benefits of each option

Option 1: Do Nothing

28. This option would not give rise to any monetary benefits.

Option 3: Introduce a Statutory Registration Scheme in phases

29. This option would have the benefit of introducing fee collection to achieve full cost recovery.

Impact tests

30. A separate Impact Assessment Screening has been completed to assess the overall impacts.

Non-monetised cost of each option

Option 1: Do Nothing

31. To do nothing would fail to meet the recommendations of the Access to Justice Review 2011 and 2015, the NIAO Comptroller and Auditor General, the Public Accounts Committee and Criminal Justice Inspection Northern Ireland. Under the current legislation the Agency can require a Solicitor to submit legal aid files on request but has no power to inspect files in a Solicitor's office. There are no established minimum standards or requirements against which service providers can be evaluated, and no powers to exclude a provider from undertaking legal aid work (except in extreme circumstances such as criminal conviction / fraud investigations).

Option 3: Introduce a Statutory Registration Scheme in phases

32. The phased introduction will involve resource time in preparing and applying for registration and self-certification of compliance, mainly for compliance partners, who must gather all necessary evidence on behalf of the solicitor's firm. Also staff time involved in introducing or becoming familiar with the Codes of Practice and any new policies or procedures required to be evidenced under the Scheme and in providing access to such evidence as may be required during compliance audits.
33. The Regulatory Bodies (Law Society and Bar Library) will also invest time in developing protocols, developing relevant CPD training courses and sharing centrally held information, on behalf of their members, as required.

Non-monetised benefit of each option

Option 1: Do Nothing

34. There would no non-monetised benefits of this option.

Option 3: Introduce a Statutory Registration Scheme in phases

35. It is envisaged that the non-monetary, non-quantifiable benefits would be as follows:

Clients – the Scheme will ensure clients have access to legal aid service providers whom are monitored and evaluated through the Scheme against defined standards. The Scheme will also enable clients of publicly funded legal services to assume a more prominent role in the evaluation of service provision through, for example customer surveys.

Quality assurance – the Scheme will ensure that standards are being met in accordance with the Code of Practice and verify that payments have been made for properly completed work.

Audit and Compliance – the Scheme will provide the Agency with a regulatory oversight function to protect public monies and improve governance and accountability.

Risk sharing – the Scheme will create a risk sharing environment between the Agency and the legal profession's regulatory bodies and all providers of publicly funded legal services.

Working relationships – the Scheme will strengthen existing relationships between the Agency, the legal profession's regulatory bodies and all providers of publicly funded legal services.

Recognition – the Agency will develop a mechanism to facilitate, promote and communicate best practice in the delivery of publicly funded legal aid services and agree information sharing protocols with regulatory bodies for the legal profession.

Sanctions – the Scheme will enable the Agency to impose sanctions and exclude providers who do not deliver against specified minimum standards.

Counter-fraud – the Scheme will enhance assurance on fraud detection and prevention.

Provider Information – the Scheme requires all registered providers to update and forward any relevant changes to the Agency. The Agency will maintain its records based on the information provided. This would also provide an opportunity to collect Section 75 Equality data and geographic spread of publicly funded legal services. The Scheme will also enhance the Agency’s Management Information function to enable the identification of trends, permit greater analysis and monitor policy impact.

Education and Support – the legal profession will benefit from the education and support available to them on issues relevant to the provision of legal aid.

Rationale and evidence that justify the level of analysis used in the RIA

36. The Department sought evidence of any impact during the public consultation held in 2013. The majority of evidence required to consider impact in general, and mitigation in detail, should be in the possession of the regulatory bodies representing the legal profession. To date this has not been provided for consideration.

37. The Department has sought to find evidence to assess regulatory and equality impact from the existing sources including:

- NI Census 2011
- Inter Departmental Business Register (IDBR)⁵
- Access to Justice Review reports (1 and 2)
- Bar of NI website
- Law Society NI website
- Survey – Barristers Working Lives (last produced by Bar Standards Board for England & Wales 2013) ;
- Recent written responses made to previous legal aid reform consultations within NI by, or on behalf of, the legal profession;
- Registration schemes in place in other jurisdictions – update reports

38. The Department has also sourced management information in the form of reports extracted from the Agency’s financial and management information systems. These have been of use in developing options to try to mitigate fee distribution throughout various elements of the legal profession, and to some extent to plot the location of solicitors practices; however we have found no data to evidence the proportion of legal aid income within the varying business models.

⁵ Tables produced by Economic and Labour Market Statistics Branch (ELMSB) within NISRA.

39. This Policy will help to address the lack of section 75 equality data currently gathered by the Agency. Therefore, it does not appear to impact negatively on any Section 75 Groups or on any multiple identity Section 75 grouping as it applies to all those who may choose to register to continue to undertake legal aid work.
40. The Department welcomes any information or views during the targeted Consultation period that may assist the assessment of any future or potential impacts. The Department may conduct future targeted consultations if required, and will review this policy if public information becomes available in relation to the Section 75 composition of the legal practitioners from their regulatory bodies.

Risks and assumptions

41. A number of risks and corresponding assumptions, associated with introducing the Scheme in phases have been identified as follows:

Insufficient providers register to undertake legal aid casework – the introduction of the Scheme is not intended to exclude any provider from continuing to undertake publicly funded representation. The underlying purpose of the Scheme is to put in place arrangements to ensure that those who receive public funding for the delivery of legal services provide the appropriate level and quality of service to their clients and the public purse. In developing the Scheme the Department has made the assumption that a minimum of 80% of current suppliers will continue to provide representation under the Scheme. This impact has been further assessed on the Impact Assessment Screening documentation.

Providers unable to evidence minimum quality standards in Code of Practice – in progressing the Scheme the Department has specifically sought not to increase the administrative burden on solicitors and barristers. As such, the Code of Practice has been developed to reflect the current minimum standards required by the Law Society and Bar Council and therefore all providers should already be able to provide evidence of compliance.

Scheme administration is cost prohibitive / cumbersome – the information technology being developed to introduce the Scheme will allow all practitioners to upload the necessary documentation directly from their offices. The Agency will continue to develop information sharing protocols with regulatory bodies to ensure that, where applicable, information is shared between the bodies. As the Scheme becomes established the

administrative requirements will be further refined to ensure that the impact on suppliers is minimal.

Management Information requirements not met – the Scheme will allow for the collection of additional data in relation to the numbers of individual solicitors and barristers undertaking legal aid representation. The computer system is being developed specifically to collect data which is currently not available which will assist the Agency in delivering its Section 75 obligations. As the information technology is finalised applications for legal aid will be processed on-line and real-time data, in relation to assessment of applications, approvals, payments etc, will be available to suppliers.

Direct costs and benefits to business

42. These proposals will affect solicitors and barristers carrying out legally aided work in civil and criminal matters in Northern Ireland. Those who register will be required to demonstrate compliance with the requirements as defined in the Code of Practice. It is envisaged that the biggest change for practitioners will be to administrative procedures and that a small financial impact may be felt by the proposals outlined in the general approach to registration fee charges and audit charges.
43. The costs associated with the Scheme would be proportional to the number of service providers who choose to continue to supply publicly funded legal services, and the estimated resource required to administer the Scheme and to audit and report on compliance.
44. The Department, through the Agency, is responsible for the administration of the legal aid scheme. The Department and the Agency must ensure that the scheme is properly administered and improves governance and accountability of publicly funded legal services as per the Audit and Compliance Framework. With the exception of the initial set up costs which would be incurred the Scheme should be self-financing and cost neutral.
45. The Scheme will ensure clients have access to legal aid service providers whom are monitored and evaluated through the Scheme against defined standards. The Scheme will also enable clients of publicly funded legal services to assume a more prominent role in the evaluation of service provision through, for example, customer surveys. The Scheme will ensure that standards are being met in accordance with the Code of Practice and verify that payments have been made for properly completed work.