

# Delaying the inevitable?

Does the government's new schedule for legal aid reform provide hope or just delay? **Carol Storer** reports



- Does delay to legal aid reform signal that the government has concerns over LASPO Bill?
- New timetable still provides challenges.

The government has announced a delay in implementing the legal aid reforms. Does this mean that it has concerns over the passage of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill? Or is it simply a sensible scheduling decision?

Originally, the government hoped to bring in the cuts in civil categories next October. However, the LASPO Bill will only become an Act at the earliest in March 2012, assuming it is passed in some shape or form. The Ministry of Justice refers to family and civil contracts being offered in April 2013.

Current civil contracts would have to be terminated early. Civil non-family contracts are due to expire in November 2013, while the new family (and family with housing) contracts start in February 2012 and expire in November 2013. If the government cannot meet the civil timetable, it can let the contracts continue to November rather than terminate early.

The Bill is now in the Lords. At the Second Reading debate a significant number of Lords and Baronesses spoke out against various proposals in the Bill. The Committee stage starts next week and will last for several days spreading out over the early months of 2012.

Once the legislation has finished going through Parliament, the Legal Services Commission (LSC) will have to work on its implementation. It will require considerable thought.

Taking one example, the government proposes that clients will access four areas through a mandatory telephone gateway: special educational needs; discrimination; debt where the client's home is at immediate risk; and community care. Careful thought needs to be given to how the phone line operates, what publicity is given to it, how to train the operators, when the phone operator refers the client to a specialist phone adviser and when to a face to face adviser. Some community care providers have expressed concerns

that prospective clients may have difficulty ringing the phone line to seek advice about, for example, staff in a care home or a family member. How will the person on the phone be able to tell if the client is talking freely?

The LSC has limited resources and it would not seem sensible to devise lots of options just in case the Bill is passed with clauses intact, modified or deleted.

Des Hudson, chief executive of the Law Society, astutely flagged up that the new timetable is still challenging.

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## Creating a new agency

The LSC will be replaced by a new executive agency. The six-month delay in effecting this means that the start date of the new agency will coincide with the start date of the new contracts.

Is there an argument for saying that the new agency should be formed earlier to preside over the transition? Presumably staff in place at the LSC will be transferred to the new agency so the operational issues will not be affected.

Of course, the question remains as to how the Bill will deal with the question of independent decision-making once a government-run agency is deciding who will be given legal aid to sue the government.

Some practitioners will see the six-month delay as helpful because it will give them more time to prepare for the changes while others will feel that constant delays make it impossible to plan properly.

Lord Bach, the shadow justice minister in the House of Lords and former legal aid minister was clear: “I am not impressed by this delay. I hope that those who are about to be killed off by the Bill are not impressed either. It merely puts off

the date of execution by six months. The result will be the same.”

## Crime

As regards criminal reforms, the government was expected to bring out its consultation on competitive price tendering this month. Instead, the consultation has been delayed. The government announced: “We plan to begin these discussions in early 2013 once the key components of our legal aid reform package, the regulatory changes

allowing alternative business structures, and the introduction of the quality assurance scheme for advocates have had time to bed down.”

Some commentators have interpreted this delay as an indication that the tendering will never happen, not only because of resistance, but because designing the tender is extremely difficult (particularly with unsuccessful lawyers having a considerable incentive to challenge the process). Some have seen it as a problem for those wishing to innovate and who support the move away from administratively set prices. Existing providers may be worried that the delay enables alternative business structures to be in a position to compete.

## Conclusion

For civil and criminal practitioners what odds would you give on the current civil timetable being adhered to and the crime consultation coming out in 2013? Evens anyone? NLJ

**Carol Storer** is director of the Legal Aid Practitioners Group.

E-mail: [carol.storer@lapg.co.uk](mailto:carol.storer@lapg.co.uk)

Website: [www.lapg.co.uk](http://www.lapg.co.uk)