

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL LEGAL AID (PRESCRIBED TYPES OF POLLUTION OF THE**  
**ENVIRONMENT) REGULATIONS 2012**

**2012 No. 2687**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Civil Legal Aid (Prescribed Types of Pollution of the Environment) Regulations 2012 prescribe the types of pollution of the environment for which civil legal services may be available when an injunction is sought in a claim in private nuisance arising from such types of pollution..

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 This is one of a number of statutory instruments which implement Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”). These instruments will be laid in time for the Act to come into force on 1 April 2013. This particular instrument is one that prescribes the types of pollution of the environment for which civil legal services may be available in relation to injunctions in respect of nuisance arising from such types of pollution, under paragraph 42(1) (environmental pollution) of Part 1 of Schedule 1 to the Act.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

**6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

7.1 The Act gives effect to the Government’s policy position on Legal Aid. The Government believes that legal aid has expanded far beyond its original intentions and is available for a wide range of issues, many of which need not be resolved through the courts. Irrespective of the current economic situation, a wide ranging programme of

reform is required to ensure that legal aid is targeted to those who need it most, for the most serious cases in which legal advice and representation is justified.

7.2 The Act sets out what services can and cannot be funded by through civil legal aid in Schedule 1. Paragraph 42 of the Schedule provides that civil legal services in relation to injunctions in respect of nuisance arising from prescribed types of pollution of the environment can be funded. These regulations set out the “prescribed types” of pollution referred to in the Act.

## **8. Consultation outcome**

8.1 The consultation ‘Proposals for the reform of legal aid in England and Wales’ was published on 15 November 2010 and closed on 14 February 2011. Over 5,000 responses were received from representative bodies, practitioner and other organisations, individual members of the judiciary, members of the House of Commons and Lords, individual solicitors and barristers and members of the public.

8.2 The majority of responses did not support the Government’s original proposals for reform, although there was some support for particular measures. Some of the original proposals were modified in light of the comments received from consultees. Most changes widened access to legal aid for certain types of case compared to the original proposals, for example an expansion of the criteria to qualify for legal aid in a private family law case involving domestic violence. However, other changes further limited access to legal aid, such as removing funding for certain immigration and asylum judicial reviews where there has been an appeal or judicial review to a tribunal or court on the same issue or a substantially similar issue within a period of one year.

8.3 A detailed Government response to the consultation exercise is available on the MoJ Website at [www.justice.gov.uk/consultations/legal-aid-reform](http://www.justice.gov.uk/consultations/legal-aid-reform)

8.4 We have not consulted on the Civil Legal Aid (Prescribed Types of Pollution of the Environment) Regulations 2012.

## **9. Guidance**

9.1 Guidance is not being prepared specifically on this instrument. A programme of training and guidance is being prepared by the Legal Services Commission to support the transition to the new arrangements. This will be made available to legal aid providers ahead of the commencement of the Act on 1 April 2013.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is unchanged from the current position as we expect a similar number of legal aid cases relating to pollution of the environment under the Act as we fund under existing arrangements.

10.3 The impacts of the Government's programme of legal aid reform are set out in an Impact Assessment, which was updated following the Act receiving Royal Assent. This is available at <http://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information>. An Impact Assessment has not been prepared specifically for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Ministry of Justice will conduct a post-implementation review of the Act between three to five years after implementation. This review will also consider the operation of the secondary legislation.

## **13. Contact**

David Stokes at the Ministry of Justice (Tel: 020 3334 4281 or email: [David.Stokes@justice.gsi.gov.uk](mailto:David.Stokes@justice.gsi.gov.uk)) can answer any queries regarding the instrument.