

EXPLANATORY MEMORANDUM TO
THE CRIMINAL LEGAL AID (CONTRIBUTION ORDERS) (AMENDMENT)
REGULATIONS 2013

2013 No. 2792

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 Criminal Legal Aid (Contribution Orders) (Amendment) Regulations 2013 make amendments to the Criminal Legal Aid (Contribution Orders) Regulations 2013 (S.I. 2013/483) (“the Contribution Orders Regulations”) that are consequential to the introduction of a financial eligibility threshold for applications for legal aid in the Crown Court. These regulations are made under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”).

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 legal aid reform proposals set out in the document: *Transforming Legal Aid: Next Steps*. This instrument implements, in conjunction with the Criminal Legal Aid (Financial Resources) (Amendment) Regulations 2013 (S.I. 2013/2791), the Criminal Legal Aid (General) (Amendment) Regulations 2013 (S.I. 2013/2790) and the Costs in Criminal Cases (General) (Amendment) (No.2) Regulations 2013 (S.I. 2013/2830) a financial eligibility threshold for legal aid in the Crown Court. We will also bring forward draft regulations which will amend section 16A of the Prosecution of Offences Act 1985 to make provision for acquitted Crown Court defendants who have been assessed as financially ineligible for criminal legal aid in certain Crown Court proceedings to receive a payment out of central funds in respect of legal costs incurred by them in respect of those proceedings.

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 Following on from the reforms set out in LASPO, the Government consulted on a package of reform proposals. The primary objective of the reform package is to bear down on the cost of legal aid, ensuring that every aspect of expenditure is justified and that we are getting the best deal for the taxpayer. Unless the legal aid scheme is targeted at the persons and cases where funding is most needed, it will not command public confidence or be credible.

7.2 *Transforming Legal Aid: Next Steps* sets out a number of reforms which the Government intends to make under Part 1 of LASPO. One of the reforms set out in *Transforming Legal Aid: Next Steps* is a financial eligibility threshold in the Crown Court.

7.3 This instrument makes amendments to the Contribution Orders Regulations that are consequential to the introduction of a financial eligibility threshold in the Crown Court. The introduction of the threshold will mean that defendants with an annual disposable household income of £37,500 or more are no longer automatically provided with legal aid in specified Crown Court proceedings. There will be a review mechanism to ensure that those individuals whose annual disposable income falls above that threshold but who really cannot pay their defence costs privately are able to be represented in court.

7.4 Regulation 4 makes an amendment to regulation 6 of the Contribution Orders Regulations to make clear that Part 2 of those Regulations must be applied where the Director of Legal Aid Casework (“the Director”) has made a determination under section 21(1) of LASPO that an individual is eligible for legal aid in relation to Crown Court proceedings. Regulation 5 amends regulation 7 of the Contribution Orders Regulations to reflect that not all applicants for legal aid in the Crown Court are financially eligible as was the case under the unamended Contribution Orders Regulations, and that documentary evidence would only be required for financially eligible individuals. Amendments are also made to align the effective date for the start of the request for documentary evidence with the introduction of the financial eligibility threshold and the point at which a determination is made under Part 4 of the Criminal Legal Aid (Financial Resources) (Amendment) Regulations 2013. Regulation 6 makes an amendment to regulation 8(1) of the Contribution Orders Regulations to reflect that the calculation of gross annual income and disposable household income set out in regulations 10 and 11 of the Contribution Orders Regulations must only be applied to individuals who have been assessed as financially eligible by the Director, as opposed to all applicants for legal aid in Crown Court proceedings. Regulation 7 makes linguistic changes to regulations 17, 25(c) and 34 of the Contribution Orders Regulations.

7.5 Regulation 8 sets out the transitional arrangements for the application of these Regulations. The provision states that applications for representation in criminal proceedings which are made before 27th January 2014 will be considered in accordance with the unamended Contribution Orders Regulations, (and will not therefore be subject to the financial eligibility threshold). Applications will be considered made when the application form is signed and dated by the individual. This

provides clarity for the individual on which financial eligibility rules will apply to their application.

8. Consultation outcome

8.1 The consultation '*Transforming Legal Aid: Delivering a more credible and efficient system*' was published on 9th April 2013 and closed on 4th June 2013. Around 16,000 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. The Ministry of Justice held 14 stakeholder events throughout the consultation period.

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 to ensure their implementation is fully consistent with Government's wider objectives, for example:

- the proposals on prison law have been amended to ensure criminal legal aid remains available for all proceedings before the Parole Board in which it has the power to direct release, as opposed to all cases that engage Article 5.4 of the European Convention on Human Rights (ECHR). Sentence calculation cases where the date of release is disputed will also be retained.
- the residence test was revised to include exceptions for certain cases which broadly relate to an individual's liberty, where the individual is particularly vulnerable or where the case relates to the protection of children.
- changes to expert fees will proceed, subject to retaining the rates payable to experts in those areas where recent increases have been made to address market supply issues. Fees payable to interpreters in London will be retained and the reduction in rates payable to interpreters outside London will be limited to ensure these do not fall below rates paid by CPS.

8.3 A detailed Government response to the consultation exercise is available at https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/user_uploads/annex-b-response-to-consultation.pdf

8.4 We have not consulted on the Criminal Legal Aid (Contribution Orders) (Amendment) Regulations 2013.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. A programme of training and guidance for providers is being prepared by the Legal Aid Agency to support the transition to the new arrangements.

10. Impact

10.1 The impacts of the Government's programme of legal aid reforms are set out in a series of Impact Assessments, which were updated following publication of *Transforming Legal Aid: Next Steps*. These impact assessments are available at https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/consult_view An Impact Assessment has not been prepared specifically for this instrument.

10.2 There is no impact on business, charities or voluntary bodies other than where it affects a contractual relationship between the Legal Aid Agency and providers of legal aid services or the payment arrangements for barristers, which has been assessed as part of the above Impact Assessments.

10.3 There is no impact on the public sector arising from this instrument beyond those accounted for in the Impact Assessments.

11. Regulation of small businesses

11.1 The legislation applies to small business only insofar as it affects the contractual relationship between the Legal Aid Agency and providers of legal aid services or the payment arrangements for barristers.

11.2 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people.

11.3 The instrument does not impose any additional regulatory burdens on small firms.

12. Monitoring and review

12.1 The operation of and expenditure on the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency. The Ministry of Justice will conduct a post-implementation review of LASPO between three to five years after implementation. This review will also consider the operation of the secondary legislation, including this SI.

13. Contact

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