

**EXPLANATORY MEMORANDUM TO
THE COSTS IN CRIMINAL CASES (GENERAL) (AMENDMENT) (NO. 2)
REGULATIONS 2013**

2013 No. 2830

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 Costs in Criminal Cases (General) (Amendment) (No. 2) Regulations 2013 make amendments to the Costs in Criminal Cases (General) Regulations 1986 (S.I. 1986/1335) (“the Costs in Criminal Cases Regulations”), which make provision for the determination of costs that are to be paid out of central funds pursuant to a defence costs order made under Part 2 of the Prosecution of Offences Act 1985 (“POA”). The amendments are made in consequence of the introduction of a financial eligibility threshold for legal aid in Crown Court proceedings, and set out the rates at which payments out of central funds in respect of costs properly incurred in such proceedings are to be calculated.

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 (Contribution Orders) (Amendment) Regulations 2013 (S.I. 2013/2792) and the Criminal Legal Aid (General) (Amendment) Regulations 2013 (S.I. 2013/2790) a financial eligibility threshold for legal aid in the Crown Court. We will also bring forward draft regulations which will amend section 16A of POA 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 Costs in Criminal Cases Regulations which are consequential to the implementation of the proposal to introduce 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 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 Under Part 2 of POA, a defendant who is acquitted in a Crown Court trial is not currently able to recover the legal costs incurred in respect of those proceedings. Draft regulations will be brought forward that make a specific exception to this rule by amending section 16A of POA to enable acquitted defendants who have been determined to be financially ineligible for legal aid in certain Crown Court proceedings to receive a payment out of central funds in respect of those proceedings. The amendments to the Costs in Criminal Cases Regulations made by this instrument provide that the amount payable out of central funds in such circumstances must be calculated in accordance with rates or scales that are prescribed by the Lord Chancellor under regulation 7(7) of the Costs in Criminal Cases Regulations. The payments that may be made out of central funds are capped at the relevant legal aid remuneration rates.

8. Consultation outcome

8.1 The consultation '*Transforming Legal Aid: Delivering a more credible and efficient system*' was published on 9 April 2013 and closed on 4 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 Costs in Criminal Cases (General) (Amendment) (No. 2) 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

Simon Denison at the Ministry of Justice (Tel: 020 3334 5618 or email: simon.denison@justice.gsi.gov.uk) can answer any queries regarding the instrument.