

**EXPLANATORY MEMORANDUM TO**  
**THE LEGAL AID (DISCLOSURE OF INFORMATION) REGULATIONS 2013**

**2013 No. 457**

**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 Legal Aid (Disclosure of Information) Regulations 2013 make provision for the disclosure of certain privileged information to the Lord Chancellor and the Director of Legal Aid Casework (“the Director”) by those providing services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”). Provision is also made to prevent the disclosure of certain information relating to an applicant for criminal legal aid for the purposes of the investigation or prosecution of offences.

**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 Act. These instruments will be laid in time for the Act to come into force on 1 April 2013.

**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 Regulations make provision to ensure that any privilege arising out of the relationship between a provider of services and a recipient of legal aid does not prevent the provider from disclosing information about the recipient or the legal services they receive to the Lord Chancellor or the Director for the purpose of enabling them to carry out their functions under Part 1 of LASPO (regulation 3). Regulation 4 prevents the Lord Chancellor and the Director from disclosing information which relates to the defence of an applicant for legal aid which may be used for the purposes of the investigation or prosecution of that individual.

## **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 The Legal Aid (Disclosure of Information) Regulations 2013.

## **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 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-](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.

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

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

## **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**

Joe Parsons at the Ministry of Justice (tel: 020 3334 2979 email: Joe.Parsons@justice.gsi.gov.uk) can answer any queries regarding the instrument.