

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (PROCEDURE, REMUNERATION AND
STATUTORY CHARGE) (AMENDMENT) REGULATIONS 2014

2014 No. 1824

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 This instrument makes amendments to regulations made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”), which are needed because of the introduction of a new contract to govern relations between the Lord Chancellor and providers of legal aid, known as the 2014 Standard Civil Contract.

2.2 The amendments will ensure that existing procedures for applications for legal aid, and remuneration to legal aid providers, apply in relation to work carried out under the 2014 Standard Civil Contract; and that certain costs are excepted from the charge on costs payable to a legally aided individual.

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

3.1 None.

4. Legislative Context

4.1 The provision of legal aid is governed by a combination of contracts between the Lord Chancellor and the providers of legal aid, and LASPO and the regulations made under it. The secondary legislation made under LASPO refers to the contracts. This means that as new standard forms of contracts are adopted, the legislation must be updated to ensure that it makes reference to the relevant contractual arrangements.

4.2 These Regulations amend the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098) (“the Procedure Regulations”), the Civil Legal Aid (Remuneration) Regulations 2013 (SI 2013/422) (“the Remuneration Regulations”), and the Civil Legal Aid (Statutory Charge) Regulations 2013 (SI 2013/503) (“the Statutory Charge Regulations”). The amendments ensure that each of these instruments refer to the new 2014 Standard Civil Contract.

4.3 The Procedure Regulations make provision about the making and withdrawal of determinations that an individual qualifies for civil legal services under section 9 and 10 of LASPO.

4.4 The Remuneration Regulations make provision about the payment by the Lord Chancellor to persons who provide civil legal services under arrangements made for the purpose of Part 1 of LASPO.

4.5 The Statutory Charge Regulations make provision about the statutory charge which arises over money and other property preserved or recovered by a legally aided party in civil proceedings and over costs payable to the legally aided party by another party to the 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 In order to deliver legal aid services, legal aid providers must hold a contract with the Lord Chancellor. Prior to 1 August 2014, legally aided Mental Health and Community Care Work was carried out by providers under the 2010 Standard Civil Contract. This contract will end on 31 July 2014. On 1 August 2014 a new 2014 Standard Civil Contract (largely based on the 2013 Standard Civil Contract) will come into force, which will govern the provision of face-to-face work by legal aid providers in the areas of Mental Health and Community Care.

7.2 The 2014 Standard Civil Contract will govern the underlying commercial relationship between the Legal Aid Agency (LAA) and legal aid providers. It will set out the rules which all civil legal aid providers must abide by when delivering civil legal services in England and Wales in relation to mental health and community care matters as described in the 2014 Category Definitions. The Category Definitions form part of the 2014 Standard Civil Contract and can be found here: <http://www.justice.gov.uk/downloads/legal-aid/tenders/2014-category-definitions.pdf>

7.3 These Regulations also make a further amendment to the Statutory Charge Regulations to make reference to the 2014 Standard Civil Contract (Welfare Benefits), which came into force on 1 February 2014. The necessary amendment was not made at the time that contract came into effect.

7.4 As with the 2014 Standard Civil Contract, the 2014 Standard Civil Contract (Welfare Benefits) sets out the rules which all civil legal aid providers must abide by when delivering civil legal services in the North and the South West and Wales within the procurement areas governed under this contract in relation to welfare benefits (under paragraphs 8 and 8a of Part 1 of Schedule 1 to LASPO).

8. Consultation outcome

8.1 The Government have not consulted on the Civil Legal Aid (Procedure, Remuneration and Statutory Charge) (Amendment) Regulations 2014 as the Regulations make amendments which are consequential on the adoption of the 2014 Standard Civil Contract and have the effect of preserving the current legal effect.

8.2 The LAA has consulted bodies that represent legal aid providers in the field of Mental Health and Community Care in relation to the 2014 Standard Civil Contract.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument on the basis that this instrument will not implement a change in policy. The instrument makes only minor and technical changes.

10. Impact

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

10.2 There is no impact on the public sector arising from this instrument.

10.3 An Impact Assessment has not been prepared specifically for this instrument.

11. Regulating small business

11.1 The Regulations apply to small business only insofar as they affect the contractual relationship between the Legal Aid Agency and providers of legal aid services.

11.2 As this instrument does not have an impact on business, the Ministry of Justice has not taken any specific steps to minimise the impact of the instrument on firms employing up to 20 people. The instrument does not impose any additional regulatory burdens on small firms.

12. Monitoring & 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 made under LASPO, including this instrument.

13. Contact

13.1 Walton Edwards at Civil Legal Aid, Scope the Ministry of Justice (tel: 020 3334 2275 or email: Walton.edwards@justice.gsi.gov.uk) can answer any queries regarding the instrument.