

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (FINANCIAL RESOURCES AND PAYMENT FOR
SERVICES) (AMENDMENT) REGULATIONS 2014

2014 No. 812

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 amends the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (SI 2013/480) (the “Financial Resources Regulations”). Specifically, it amends the financial eligibility criteria in relation to:
 - Mediation Information and Assessment meetings (MIAM); and
 - Mediation in relation to the Convention on the Civil Aspects of International Child Abduction which was signed at the Hague on 25th October 1980 (the “1980 Hague Convention”).
3. **Matters of special interest to the Joint committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (‘The Act’) establishes the availability of and qualifying criteria for civil legal aid. Legal aid funding is available, in certain circumstances, for mediation in family disputes, subject to specified criteria being met.
 - 4.2 The Financial Resources Regulations set out financial eligibility criteria which must be satisfied before civil legal aid is provided. Regulation 5 of the Resources Regulations sets out a number of circumstances in which legal aid will be provided without reference to an individual’s financial resources. This instrument adds to these exemptions.
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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Act removed, in general terms, legal aid for private family proceedings. Legal aid for mediation remains available (subject to means and merits tests), in line with the Government's policy to encourage alternatives to court for resolving disputes.
- 7.2 The planned introduction of a statutory MIAM in April 2014 as part of the Children and Families Act 2014 places a legal obligation on an applicant to attend a MIAM to consider mediation before being able to issue court proceedings in certain private family law matters (certain children and financial disputes), unless exemptions apply – such as in cases of domestic violence. The respondent is also expected to attend a MIAM, but there are no levers at the pre-proceedings stage by which the respondent (as the passive party) can be compelled to attend in the same way as the applicant.
- 7.3 In order to encourage uptake of mediation, it has been government policy and the Legal Aid Agency's current practice to pay the costs arising from a MIAM for all participants in cases where only one is financially eligible for legal aid. Financially ineligible parties would be expected to pay their share of any mediation sessions thereafter. In order that the policy is sufficiently clear and on a transparent statutory basis, for the introduction of the statutory MIAM, these amending regulations place this exception to the general provisions on financial eligibility within the Financial Resources Regulations.
- 7.4 These amending regulations also address a disparity between the financial tests for legal representation and family mediation in relation to 1980 Hague Convention cases relating to international child abduction. The Convention requires that applicants in proceedings are to be provided with legal advice and assistance regardless of their means or the merits of the case. Under the existing scheme under the Act, legal aid can only be provided for family mediation in these cases where the applicant meets the financial eligibility criteria whereas legal representation is already provided without reference to the applicant's financial resources. The effect of these amendments is that legal aid for family mediation in 1980 Hague Convention cases will now be provided without a requirement to determine the applicant's financial eligibility.

8. Consultation outcome

- 8.1 The amendment to the financial eligibility criteria relating to MIAMs is simply a clarificatory measure, not a new policy. On that basis, no consultation is required.
- 8.2 The change to the financial eligibility criteria relating the 1980 Hague Convention cases was discussed with the representatives of the mediation industry and child abduction campaigning organisations. As this small change is entirely in line with existing Government policy regarding mediation, formal consultation was not considered necessary.
- 8.3 We have not consulted specifically on this instrument.

9. Guidance

- 9.1 The Legal Aid Agency will provide contracted mediation services with a briefing on this instrument to ensure that the effect is understood.

10. Impact

- 10.1 The amendment to the financial eligibility criteria for MIAMs is clarifactory and causes no additional impact.
- 10.2 Only a small number of 1980 Hague Convention cases will be suitable for mediation. Due to the low volumes involved, this change is expected to have negligible aggregate impact on the public sector; providers of mediation and legal services; and applicants in 1980 Hague Convention cases.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to small business, only insofar as it affects the contractual relationship between the Legal Aid Agency and those providing mediation services.
- 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 3-5 years after implementation. This review will consider the operation of implementing secondary legislation.

13. Contact

- 13.1 Any enquiries about the contents of this memorandum should be addressed to:

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