

**EXPLANATORY MEMORANDUM TO
THE CIVIL AND CRIMINAL LEGAL AID (AMENDMENT) (NO. 2)
REGULATIONS 2015**

No. 1678

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 civil legal aid, known as the 2015 Standard Civil Contract.

2.2 The amendments will ensure that existing procedures for applications for civil legal aid, and remuneration to legal aid providers, apply in relation to work carried out under the 2015 Standard Civil Contract; and that existing exceptions from the statutory charge on costs payable to a legally aided individual by another party to the proceedings also apply in cases under that contract.

2.3 This instrument also makes amendments to regulations governing the provision and remuneration of criminal legal aid, which are needed as a result of (a) the abolition of committal and transfer proceedings, and (b) the introduction of new case management provisions in the Criminal Procedure Rules 2015.

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

3.1 None.

4. **Legislative Context**

(a) Civil legal aid

4.1 The provision of legal aid is governed by a combination of contracts between the Lord Chancellor and the providers of legal aid (the “Civil Legal Aid Contracts”), LASPO and the secondary legislation made under LASPO. It is often necessary or appropriate for the secondary legislation made under LASPO to refer to the Civil Legal Aid Contracts. This means that as new contracts are entered into, the legislation must be updated to ensure that it makes reference to the relevant contractual arrangements.

4.2 This instrument amends the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098) (“the Procedure Regulations”), the Civil Legal Aid (Remuneration) Regulations 2013 (SI 2013/422) (“the Civil 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 2015 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 sections 9 and 10 of LASPO, and, among other things, require applicants for civil legal services to specify the applicable category of work for which they are applying, as described in the Civil Legal Aid Contracts.

4.4 The Civil 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, and include reference to the Civil Legal Aid Contracts governing the provision of civil legal services for which remuneration is made.

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, and includes an exception for certain costs set out in the Civil Legal Aid Contracts.

(b) Criminal legal aid

4.6 This instrument amends the regulations governing the provision and remuneration of advice, assistance and representation made available under sections 13, 15 or 16 of LASPO (criminal legal aid) consequential to various changes in criminal procedure.

4.7 From 5 October 2015, the Criminal Procedure Rules 2015 (S.I. 2015/1490 (L.18)) introduce new case management procedures (among other things). These are discussed in more detail in section 7 below. This instrument amends the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/435) (“the Criminal Remuneration Regulations”), which make provision about the payment by the Lord Chancellor to persons who provide criminal legal aid, and the Criminal Remuneration Amendment Regulations (which amend the Criminal Remuneration Regulations), consequential to the changes to case management practice in the Crown Court.

4.8 This instrument also makes consequential amendments to the Criminal Legal Aid (General) Regulations 2013 (S.I. 2013/9), the Criminal Remuneration Regulations, the Criminal Legal Aid (Contribution Orders) Regulations 2013 (S.I. 2013/483), the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 (S.I. 2013/614) and the Criminal Remuneration Amendment Regulations. These amendments are necessary in consequence of the repeal of proceedings for the committal or transfer of cases to the Crown Court for trial by Part 4 of Schedule 37 to the

Criminal Justice Act 2003 (c. 44). The repeal took effect on 30 August 2013 but given the length of time it takes for criminal proceedings which commenced before that date (and so may have involved committal or transfer) conclude, it was not thought appropriate to remove the references to committal or transfer at the time the repeal took effect.

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

(a) Civil legal aid

7.1 In order to deliver legal aid services in England and Wales, legal aid providers must hold a contract with the Lord Chancellor, governing the underlying commercial relationship between the Legal Aid Agency (LAA) and legal aid providers. Legally aided work in relation to the civil legal aid categories of Actions Against the Police etc., Clinical Negligence and Public Law is currently carried out by providers under the 2010 Standard Civil Contract. The provision of work for these categories will cease to be delivered under that contract from 23.59pm on the 31 October 2015. On 1 November 2015 a new 2015 Standard Civil Contract will come into force, which will govern the provision of face-to-face work by legal aid providers in the categories of Action Against the Police etc., Clinical Negligence and Public Law.

(b) Criminal legal aid

7.2 The Criminal Procedure Rules 2015 (“2015 Rules”), which come into force on 5 October 2015, are in part intended to implement certain recommendations made by the Rt Hon Sir Brian Leveson in the *Review of Efficiency in Criminal Proceedings* published on 23 January 2015. The 2015 Rules include new provisions in relation to case management, which are designed to make the procedure swifter and more efficient. In particular, there will no longer be a “plea and case management hearing” (PCMH) in every Crown Court case sent for trial. Instead, there will be a new hearing - a “plea and trial preparation hearing (PTPH)” – which will take place sooner than the PCMH does currently. It is intended that this hearing will be the only hearing needed before the trial in most cases, but provision has been made for a “further case management hearing” if required. The Criminal Remuneration Regulations currently rely on the occurrence and/or outcome of the PCMH in determining remuneration. This is relevant, for example, in determining whether a case is treated as a guilty plea or a cracked trial (which provides

greater remuneration). The aim of the amendments made by this instrument is, so far as possible, to maintain the effect of the Criminal Remuneration Regulations, notwithstanding the change to procedure. To do this, this instrument replaces most references to PCMH with references to the occurrence or result of “the first hearing at which the assisted person enters a plea”. This reflects the fact that for purposes of remuneration under the Criminal Remuneration Regulations, it is the type of plea which is relevant, not the name of the hearing at which it is entered. No change is made to the fees that are payable under the Criminal Remuneration Regulations.

7.3 This instrument also omits references to the plea and case management questionnaire in the Criminal Remuneration Regulations. In the past, it was possible for plea and case management to be done on paper rather than at a hearing, but the questionnaire was rarely, if ever, used. References to it are therefore being omitted as it no longer applies, subject to savings to enable payment in any case in which it was used.

7.4 Amendments to various regulations are necessary in consequence of the repeal of proceedings for the committal or transfer of cases to the Crown Court for trial by Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), which came into force in different criminal justice areas at different times, but was fully implemented on 30 August 2013.

7.5 To enable payment for any outstanding proceedings, regulation 10(1) provides that the amendments consequential to the repeal of proceedings for committal or transfer do not apply to proceedings which were committed or transferred to the Crown Court for trial. Regulation 10(2) provides that the amendments relating to the preparation and filing of a plea and case management questionnaire do not apply to proceedings in which the questionnaire was filed.

8. Consultation outcome

8.1 The Government have not consulted on this instrument as the amendments it makes are consequential in nature and seek to preserve the current legal effect of the regulations.

8.2 The LAA has consulted bodies that represent legal aid providers in the field of Action Against the Police etc., Clinical Negligence and Public Law in relation to the 2015 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 consequential changes.

10. Impact

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

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

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

11. Regulating small business

11.1 This instrument applies to small business only insofar as it affects the relationship between the Legal Aid Agency and providers of legal aid services.

11.2 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirement 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 Ministry of Justice and the Legal Aid Agency continually monitor the operation of, and expenditure on, the legal aid scheme

13. Contact

(a) Civil legal aid

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 civil provisions of this instrument.

(b) Criminal legal aid

13.2 David Carter at Criminal Legal Aid, the Ministry of Justice (Tel: 020 3334 4211 or email David.Carter@justice.gsi.gov.uk) can answer any queries regarding the criminal provisions of this instrument.