

EXPLANATORY MEMORANDUM TO
THE CIVIL AND CRIMINAL LEGAL AID (REMUNERATION)
(AMENDMENT) REGULATIONS 2015

2015 No. 325

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 this instrument**
 - 2.1 This instrument amends the Civil Legal Aid (Remuneration) Regulations 2013 (the “Civil Remuneration Regulations”) and the Criminal Legal Aid (Remuneration) Regulations (the “Criminal Remuneration Regulations”) to reflect new powers to tackle anti-social behaviour under the Anti-Social Behaviour, Crime and Policing Act 2014 (ASBCPA). These Regulations make provision for remuneration by the Lord Chancellor to persons who provide civil or criminal legal aid services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).
 - 2.2 This instrument also makes an additional amendment to the Criminal Remuneration Regulations to provide for an amendment made by section 176 ASBCPA. This amends section 22(A) of the Magistrates Court Act 1980 to include the offence of low-value shoplifting, which is triable only summarily unless the accused elects to be tried in the Crown Court. The amendment to the Criminal Remuneration Regulation seeks to provide for appropriate remuneration in relevant proceedings in the magistrates’ court.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative context**
 - 4.1 This Statutory Instrument implements consequential changes to the Civil and Criminal Remuneration Regulations resulting from the commencement of Part 1 of the ASBCPA. Part 1 ASBCPA introduces new anti-social behaviour powers that replace Anti-Social Behaviour Orders (ASBOs) made on application and intervention orders under the Crime and Disorder Act 1998, Anti-Social Behaviour Injunctions (ASBIs) under the Housing Act 1996 and drinking banning orders made on application under the Violent Crime Reduction Act 2006. Part 1 ASBCPA also provides that Parenting Orders under s8 of the Crime and Disorder Act 1998 can also be given where a Part 1 ASBCPA anti-social behaviour injunction has been made against an individual under the age of 18.
 - 4.2 Schedule 1 to LASPO sets out the matters for which civil legal aid is to be made available (the scope of the civil legal aid scheme), subject to means and merits tests. The ASBCPA amends paragraph 36 of Part 1 to Schedule 1 of LASPO by designating injunctions under Part 1 ASBCPA as civil for

the purposes of legal aid (except on breach). Breach of an injunction will be punishable as contempt, which because of the potential sanction brings it within scope of criminal legal aid pursuant to regulation 9(v) of the Criminal Legal Aid (General) Regulations 2013. This means that changes are necessary to the Civil and Criminal Remuneration Regulations to ensure that remuneration is made at the appropriate level for those providing legal services on injunctions under Part 1 ASBCPA.

- 4.3 Section 176 ASBCPA also inserts section 22(A) in the Magistrates' Court Act 1980, creating the offence of "low-value shoplifting" and rendering it triable only summarily unless the accused elects trial in the Crown Court. This Statutory Instrument amends the Criminal Remuneration Regulations to provide the appropriate level of remuneration in relevant proceedings.
- 4.4 A separate Statutory Instrument is also being made simultaneously with this instrument to make amendments to the Criminal Legal Aid (General) Regulations 2013 (S.I 2013/9) to reflect the introduction of the new powers on anti-social behaviour and orders to prevent sexual harm under the ASBCPA (The Criminal Legal Aid (General) (Amendment) Regulations 2015). These regulations are also made under Part 1 of LASPO.

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 ASBCPA introduces a number of new injunctions and orders, including a series of orders to prevent sexual harm, criminal behaviour orders and injunctions under Part 1 all of which require legal aid. The ASBCPA received Royal Assent on 13 March 2014.
- 7.2 On implementation of Part 1 ASBCPA, the Part 1 injunction will replace ASBIs, ASBOs and several other tools designed to deal with anti-social behaviour. The changes required to the Civil and Criminal Regulations as a result of the coming into force of Part 1 ASBCPA concern the levels of remuneration that will apply in proceedings relating to the application, appeal or breach of a Part 1 injunction (or related parenting order under the Crime and Disorder Act 1998, as amended by ASBCPA). The changes made by this instrument are intended to retain, as far as possible, similar levels of remuneration to that payable now for legal aid services provided in anti-social behaviour proceedings. This instrument therefore makes necessary amendments to the Civil and Criminal Remuneration Regulations as a result of the coming into force of Part 1 ASBCPA.
- 7.3 In addition, this instrument:

- applies regulation 8 and Schedule 4 of the Criminal Remuneration Regulations to proceedings which take place in the County Court (this relates to contempt proceedings, including breach of an injunction under Part 1 ASBCPA, on the basis that both matters fall within the scope of the criminal legal aid scheme);
- amends the table of offences at Part 7, Schedule 1 to the Criminal Remuneration Regulations to update that table in respect of offences introduced or amended by the ASBCPA (regulation 3(3)); and
- corrects the heading of the table in paragraph 7(1) of Schedule 4 so that it refers to the Crown Court (regulation 3(8)(b) of this instrument).

7.4 The amendments made by regulation 3(3) do not apply to determinations for advice and assistance or representation for criminal proceedings relating to a breach of an anti-social behaviour order under section 1(10) of the Crime and Disorder Act 1998 (c. 37) or a breach of a sex offender order under section 2(8) of that Act for which criminal legal aid will continue to remain available.

7.5 An amendment is also made to paragraph 5(3) of Schedule 4 to the Criminal Remuneration Regulations) for representation in low value shoplifting matters where a guilty plea is submitted in the magistrates' court (as well as for proceedings which are discontinued or withdrawn, where the prosecution offer no evidence or which result in bind over). Section 176 of ASBCPA amended the Magistrates' Court Act 1980 to create a new offence of low-value shoplifting which is summary-only unless the defendant elects trial in the Crown Court. As a result, a lower fee applies to these proceedings under the regulations as they stand.

7.6 To reinstate the fee otherwise applicable to proceedings in which the defendant may elect trial in the Crown Court, regulation 3(6)(c) of this instrument provides for the higher, Category 1A fee (set out in the table following paragraph 5(2) of the Criminal Remuneration Regulations) to apply to relevant low-value shoplifting proceedings.

7.7 Regulation 4(3) provides that the amendments made by regulation 3(6)(c) apply to the determination of claims for payment on or after 23 March 2015.

8. Consultation outcome

8.1 The Government worked with the professional representative bodies of the legal profession in developing proposals for consequential changes to the civil and criminal remuneration schemes as a result of the coming into force of Part 1 of the ASBCPA. The subsequent consultation "*Anti-Social Behaviour Crime & Policing Act 1014: Consequential changes to remuneration for legal aid services*" was published on 10 November and closed on 1 December 2014. The Government received 18 responses to its consultation, the majority of which were from representative bodies or providers of legal aid services.

8.2 Respondents generally agreed with the proposals for remuneration of applications and appeals of Part 1 injunctions but a number of respondents disagreed with the proposal to remunerate breach proceedings under the criminal fee scheme and considered that the work should not be limited to providers holding a crime contract. Having considered the responses, the Government agreed that civil providers should be able to undertake breach proceedings pursuant to individual case contracts and amended its proposal for the payment of travel and waiting for breach proceedings but proceeded with the remainder of the proposals. A detailed Government response to this consultation exercise is available at:
<https://consult.justice.gov.uk/digital-communications/changes-to-remuneration-for-legal-aid-services/results/asbcpa-consultation-response.pdf>.

8.3 The Government has not, however, consulted specifically on this instrument.

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 new arrangements.

10. Impact

10.1 A full impact assessment on the effect on the costs of business and the voluntary sector of the policy implemented by this instrument for injunctions under Part 1 of the ASBCPA was produced with the Government's response to consultation, *Anti-Social Behaviour Crime & Policing Act 2014: Changes to remuneration for legal aid services*. This is available at <https://consult.justice.gov.uk/digital-communications/changes-to-remuneration-for-legal-aid-services>. A full impact assessment of the policy implemented by Regulation 3(6)(c) (relating to low-value shoplifting) has not been produced for this instrument, as no impact on the private or voluntary sectors is foreseen.

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.

10.3 There is no impact on the public sector arising from 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 legal aid services or the payment arrangements for advocates.

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.

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.

13. Contact

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

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