

**EXPLANATORY MEMORANDUM TO THE CRIMINAL LEGAL AID (GENERAL)  
(AMENDMENT) REGULATIONS 2015**

**2015 No. 326**

**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 Criminal Legal Aid (General) (Amendment) Regulations 2015 make amendments to the Criminal Legal Aid (General) Regulations 2013 (S.I. 2013/9) (“the General Regulations”) to reflect the introduction of new powers to tackle anti-social behaviour and orders to prevent sexual harm under the Anti-Social Behaviour, Crime and Policing Act 2014 (“the ASBCPA”). These regulations are made under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”).

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

3.1 None.

**4. Legislative Context**

4.1 Part 1 LASPO governs the provision of legal aid. Section 14 LASPO and regulation 9 of the General Regulations govern the criminal proceedings for which advice, assistance and representation are to be available. This instrument makes consequential changes to regulation 9 of the General Regulations resulting from new or amended proceedings under Parts 1, 2, 4 and 9 of the ASBCPA.

4.2 The Ministry of Justice is simultaneously bringing forward an instrument that implements the proposals set out in the document ‘*Anti-Social Behaviour, Crime and Policing Act 2014: Changes to remuneration for legal aid services*’. This instrument will amend the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/435) and Civil Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/422) to make provision for remuneration for work undertaken in respect of injunctions under Part 1 of the ASBCPA and related parenting orders (the Civil and Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015).

**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 ASBCPA introduces a number of new orders and injunctions that relate to anti-social behaviour and the prevention of sexual harm. The ASBCPA received Royal Assent on 13 March 2014. The following orders are those for which the MoJ consider it is appropriate for criminal legal aid to be available

### 7.2 Injunctions under Part 1 of the ASBCPA

7.2.1 These injunctions aim to replace ASBOs on application, intervention orders, drinking banning orders and ASBIs. Part 1 injunctions are civil orders and will be heard in the County Court for over 18s and the youth court for under 18s, with appeals going to the County Court or High Court, and Crown Court respectively. Breach will be punishable as contempt of court, or may be used as mandatory grounds for possession in housing-related injunctions. Parenting orders may be given where a Part 1 injunction has been made in respect of an under 18, as is currently the case for ASBOs on application. The ASBCPA amended Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to bring Part 1 injunctions within scope of civil legal aid. Part 1 injunctions on application, variation, discharge or appeal are in scope of the civil scheme. Breach is in scope of the criminal scheme by virtue of regulation 9(v) of the General Regulations.

7.2.2 As applications for Part 1 injunctions (including for variation, discharge and appeal) are in scope of the civil legal aid scheme this instrument removes sub-paragraphs (d) and (e) in regulation 9 of the General Regulations that bring ASBOs on application, intervention orders and drinking banning orders on application in scope of the criminal legal aid scheme. This includes removing provisions in relation to parenting orders made following an ASBO on application (regulation 9(f)).

### 7.3 Criminal Behaviour Orders (CBOs)

7.3.1 These orders (under Part 2 ASBCPA) replace ASBOs made on conviction and drinking banning orders made on conviction. CBOs on conviction are incidental to the main criminal proceedings and so will be in scope of criminal legal aid by virtue of s.14(a) LASPO.

7.3.2 A parenting order made in respect of a CBO (made where the offender is under 18) would not be incidental to the main criminal proceedings. In order to ensure criminal legal aid is available, subject to means and merits, in such circumstances this instrument prescribes such parenting orders as criminal for the purposes of legal aid (regulation 2(3)). This maintains the status quo (proceedings incidental to a parenting order made in relation to an ASBO on conviction are prescribed as criminal proceedings by regulation 9(f) of the General Regulations).

### 7.4 Closure orders

7.4.1 These orders (under ss.80-84 ASBCPA) consolidate a number of existing closure powers related to licensed and non-licensed premises which are causing, or are likely to cause, anti-social behaviour (such as s.2 of the Anti-Social Behaviour Act 2003 relating to premises where Class A drugs

have been used unlawfully). Closure orders under s.2 of the Anti-Social Behaviour Act 2003 are heard in the magistrates' courts and are the only closure orders prescribed as criminal proceedings in the General Regulations.

7.4.2 In order to maintain the status quo as far as possible, this instrument prescribes closure orders made on the grounds that a person has engaged in or is likely to engage in behaviour that constitutes a criminal offence as criminal for the purposes of legal aid. This goes beyond the current provision in the General Regulations in relation to closure orders. As s.80(5)(a) ASBCPA provides for closure orders in respect of criminal behaviour, not specifically Class A drugs (as was previously the case under the Anti-Social Behaviour act 2003), maintaining the status quo precisely would be problematic. It is highly likely there would be significant operational issues, as it is unlikely the grounds on an application would be sufficiently clear for a criminal legal aid provider to determine at the outset of proceedings whether Class A drugs were involved or not). This instrument therefore prescribes closure orders in respect of criminal behaviour generally as "criminal proceedings".

7.5 Sexual harm prevention orders (and interim orders)

7.5.1 These orders replace provisions under the Sexual Offences Act 2003 in relation to sexual offences prevention orders (and interim orders) and foreign travel orders. A parenting order may be made in relation to sexual harm prevention orders if the order is made in respect of an under 18. These proceedings are currently prescribed as criminal in regulation 9 (n) and (o) of the General Regulations.

7.5.2 This instrument substitutes references for sexual offences prevention orders (and interim orders) and foreign travel orders with references to sexual harm prevention orders (and interim orders) in regulation 9 (n) of the General Regulations (regulation 2(4) of this instrument) to prescribe sexual harm prevention orders (and interim orders) as criminal for the purposes of legal aid. As a parenting order may also be made where a sexual harm prevention order is made in respect of an under 18 this instrument also amends the General Regulations to bring these proceedings in scope of criminal legal aid (regulation 2(3)).

7.6 Sexual risk orders (and interim orders)

7.6.1 These orders replace provisions under the Sexual Offences Act 2003 in relation to risk of sexual harm orders (and interim orders). Risk of sexual harm orders (and interim orders) are prescribed as criminal proceedings in regulation 9(p) of the General regulations.

7.6.2 This instrument substitutes references to risk of sexual harm orders (and interim orders) with references to sexual risk orders (and interim orders) to prescribe sexual risk orders (and interim orders) as criminal for the purposes of legal aid (regulation 2(5)).

7.7 The transitional provisions set out that the amendments do not apply to determinations made in respect of those proceedings specified in regulation 3(2) of this instrument, i.e. those that are removed, substituted or amended by

regulation 2. As a result criminal legal aid will remain available for those proceedings for which it was previously available (i.e. on-going proceedings under the provisions amended by the ASBCPA). The transitional provisions in relation to ASBCPA provisions are set out in that Act. Specifically, those in relation: to Part 1 injunctions are at s.21; to CBOs at s.33; to closure orders at s.93; and to orders to prevent sexual harm at s.114.

## **8. Consultation outcome**

8.1 The Ministry of Justice has not consulted on the Criminal Legal Aid (General) (Amendment) Regulations 2015. The Home Office published a consultation on the proposals contained in the ASBCPA ('More Effective Responses to Anti-Social Behaviour') on 7 February 2011, and responded in 'Putting Victims First: More Effective Responses to Anti-Social Behaviour' on 22 May 2012.

## **9. Guidance**

9.1 Guidance is not being prepared specifically on this instrument. A programme of training is being prepared by the Legal Aid Agency for providers and caseworkers to support the transition to the new arrangements.

## **10. Impact**

10.1 An Impact Assessment has not been prepared specifically for this instrument as the Ministry of Justice is aiming to replicate the status quo as far as possible.

10.2 The Ministry of Justice expects the volume of the above orders under the ASBCPA to be broadly in line with the volumes of existing orders.

## **11. Regulation of small businesses**

11.1 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people.

11.2 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.

## **13. Contact**

Simon Denison at the MoJ (Tel: 020 3334 5618 or email: [simon.denison@justice.gsi.gov.uk](mailto:simon.denison@justice.gsi.gov.uk)) can answer any queries regarding the instrument.