

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL AND CRIMINAL LEGAL AID (FINANCIAL ELIGIBILITY AND CONTRIBUTIONS) (AMENDMENT) REGULATIONS 2016**

**2016 No. 708**

**1. Introduction**

- 1.1 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 purpose of the instrument is to amend the relevant civil and criminal legal aid financial eligibility regulations to incorporate changes to the benefit system introduced under the Welfare Reform Act 2012 (“the 2012 Act”) and the Welfare Reform (Northern Ireland) Order 2015 (the “Northern Ireland Order”). The amendments replicate the arrangements in place for the older benefits and thus make sure that those in receipt of these new benefits are not disadvantaged. The instrument also takes account of the new Welsh Independent Living Grant introduced by the Welsh Government.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The 2012 Act made changes to the benefits system in England and Wales and similar changes are being made in respect of the Northern Irish benefits system by the Northern Ireland Order. The purpose of this instrument is to ensure that payments made under these benefit systems are treated appropriately under the civil and criminal legal aid legislation.
- 4.2 Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”) governs the provision of legal aid. Section 21 governs the assessment of an individual’s financial eligibility for legal aid and section 23 governs the assessment of an individual’s liability to make a financial contribution towards the costs. Part 1 of the Access to Justice Act 1999 (“AJA”) governs the provision of legal aid for cases predating LASPO.
- 4.3 Regulations made under LASPO and AJA (together the “financial eligibility and contributions regulations”) make provision as to how certain benefit payments are treated for the purposes of assessing financial eligibility and the individual’s liability to make a contribution.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is 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**

### *What is being done and why*

- 7.1 Under LASPO and AJA, recipients of certain benefits are entitled to legal aid without paying any contributions (subject to a merits test and, in civil cases, a capital test). Persons not in receipt of those benefits are subject to an income level assessment. In accordance with the financial eligibility and contributions regulations, certain benefit payments are disregarded for the purposes of the income level assessment.
- 7.2 In April 2013, the 2012 Act came into force. Job Seekers' Allowance, Employment Support Allowance, Income Support, Housing Benefit, Working Tax Credits and Child Tax Credits were replaced by Universal Credit and Disability Living Allowance was replaced by Personal Independence Payments (PIPs). The new benefits are being rolled out gradually across the country. At that time, Universal Credit was added to the list of qualifying benefits that allow recipients to be entitled to receipt of legal aid without paying contributions and PIPs were added to the list of benefit payments to be disregarded for the purposes of the income level assessment. PIPs and Universal Credit are now being introduced in Northern Ireland by the Northern Ireland Order. This instrument amends the financial eligibility and contributions regulations to ensure that recipients of PIPs and Universal Credit in Northern Ireland are treated in the same way as their English and Welsh counterparts if they make a legal aid application in England and Wales.
- 7.3 Payments on Account of Benefit (PABs) were introduced for England and Wales in April 2013 and will be introduced in Northern Ireland in September 2016. PABs replace crisis loans and budgeting loans payable from the social fund. Payments from the social fund in England and Wales and Northern Ireland are included in the list of payments to be disregarded for the purposes of the income level assessment. Under the current practice of the Legal Aid Agency, PABs are not taken into account when assessing financial eligibility for legal aid. This instrument amends the financial eligibility and contributions regulations to make this position clear.
- 7.4 Payments under the Universal Credit (Transitional Provisions) Regulations 2014 were introduced from June 2014. Similar provisions will be introduced in Northern Ireland in September 2016. They are payments for those claimants who are migrating from other benefits and credits to Universal Credit because of a change in circumstances. They are similar to the Universal Credit (new claims) Advances which are a form of PAB. This instrument amends the financial eligibility and contributions regulations to ensure that these payments are disregarded for the purposes of the income level assessment in the same way as PABs.
- 7.5 The UK-wide independent Living Fund (ILF) was closed on 1 July 2015. Local authorities in England are now responsible for care provision, with each authority

having received a monetary transfer from the ILF. The Welsh Independent Living Grant (WILG) was introduced by the Welsh Government from March 2016 and replaces the ILF for people in Wales. This instrument amends the financial eligibility and contributions regulations to ensure that payments from the WILG are disregarded for the purposes of the income level assessment in the same way as payments from the ILF.

### ***Consolidation***

7.6 The Department does not intend to consolidate the relevant legislation at this time.

## **8. Consultation outcome**

8.1 We have not consulted on this instrument as there is no material change to the means test. The instrument simply amends the existing legislation in order to ensure that recipients of the new benefits are not disadvantaged as compared to recipients of the benefits they are designed to replace.

## **9. Guidance**

9.1 Guidance has not been produced for this instrument. There is no material change to the process of carrying out income level assessments. The instrument simply amends the existing legislation in order to ensure that recipients of the new benefits are not disadvantaged as compared to recipients of the benefits they are designed to replace.

## **10. Impact**

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

10.2 The impact on the public sector is negligible.

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

## **11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

12.1 This instrument forms part of the legal aid system and will be monitored as part of the ongoing monitoring of legal aid expenditure.

## **13. Contact**

13.1 Bridget Doherty at the Ministry of Justice (telephone: 020 3334 4222 or email: [bridget.doherty@justice.gsi.gov.uk](mailto:bridget.doherty@justice.gsi.gov.uk)) can answer any queries regarding the instrument.