

EXPLANATORY MEMORANDUM TO
THE CRIMINAL LEGAL AID (STANDARD CRIME CONTRACT) (AMENDMENT)
REGULATIONS 2017

2017 No. 311

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 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 criminal legal aid services.

2.2 The instrument makes two other minor changes. It provides for an upper limit for payment to providers in respect of work done in connection with proceedings that are designated as criminal proceedings at the High Court, Family Court or County Court (regulation 3(5)(d)) and it clarifies the arrangements for payment for advocacy assistance in the magistrates’ court in relation to new hearings relating to police bail that will arise upon commencement of Chapter 1 of Part 4 of the Policing and Crime Act 2017 (regulation 3(5)(c)).

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 This entire instrument applies only to England and Wales.

3.3 In the view of the Ministry of Justice, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.4 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 provision of legal aid is governed by a combination of contracts between the Lord Chancellor and the providers of legal aid. These contracts interrelate with LASPO and the secondary legislation made under it, by cross-referencing relevant legislation under particular sections of the contract. Similarly, the secondary legislation made under LASPO refers to particular contracts by reference to the title of each standard

form of contract. This means that as new standard forms of contracts are adopted, the legislation must be updated to make sure that it makes reference to the relevant contractual arrangements.

- 4.2 These regulations amend the Criminal Legal Aid (General) Regulations 2013 (the “General Regulations”), the Criminal Legal Aid (Remuneration) Regulations 2013 (the “Remuneration Regulations”) and the Criminal Legal Aid (Financial Resources) Regulations 2013 to refer to the new 2017 Standard Crime Contract (“the 2017 Contract”) in place of the 2010 Standard Crime Contract (the “2010 Contract”).

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 set out in Section 3 under “Other matters of interest to the House of Commons”.

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 In order to deliver legal aid services in England and Wales, legal aid providers must hold a contract with the Lord Chancellor, governing the commercial relationship between the Legal Aid Agency (“the LAA”) and legal aid providers. Criminal legal aid work is currently carried out by providers under the 2010 Contract. The 2010 Contract is due to come to an end at 23:59pm on 31 March 2017, at which point the provision of work for this category in those areas will cease to be delivered under that contract. On 1 April 2017 the 2017 Contract will come into force, which will govern the provision of advice, assistance and representation delivered by criminal legal aid providers in England and Wales. The 2017 Contract will not change the provision of services.
- 7.2 The 2017 Contract largely mirrors the 2010 Contract, but provisions have been added that:
- put in place measures to address quality issues (such as enhancing supervisor requirements, requiring clients to be consulted on the choice of advocate and retaining the power to introduce a requirement for specific panel membership during the course of the contract);
 - strengthen peer review activity – conducting at least one peer review for Crime providers within the lifetime of the contract. This will link directly to LAA regular Contract Management activity and will enable us to consider contract sanctions (including contract termination) earlier;
 - introduce mandatory digital working for legal aid solicitors within the Criminal Justice System; and
 - introduce new contract terms designed to tackle ‘ghost’ solicitors, who may be registered to firms but who carry out little or no Duty Solicitor work, but result in more slots being allocated to firms.

- 7.3 This instrument replaces references to the 2010 Contract with references to the 2017 Contract in the relevant Regulations.
- 7.4 Paragraph 7 of Schedule 4 to the Remuneration Regulations provides the rates of remuneration for legal aid work done in connection with proceedings to which section 14(h) of LASPO applies. This includes proceedings that the Lord Chancellor has prescribed as “criminal” for legal aid purposes using his powers in Regulation 9 of the General Regulations, such as certain proceedings for contempt of court. Legal aid work done in connection with these proceedings in the Crown Court is subject to an upper payment limit of £1,368.75 (paragraph 7(1) of Schedule 4), but no equivalent upper limit is currently prescribed when these proceedings arise in the High Court, Family Court or County Court (the magistrates’ court is dealt with separately under paragraph 5). Fee limits are a standard control mechanism regarding the management of legal aid expenditure. We believe the absence of a fee limit in respect of paragraph 7(2) was an unintended omission when the upper limit was introduced and, for the sake of consistency, this instrument provides the same upper payment limit for such proceedings in these courts. These proceedings are thought to arise relatively infrequently and in certain cases the provider may apply to the LAA to have the upper limit lifted in an individual case.
- 7.5 This instrument also clarifies the legal aid payment arrangements for advocacy assistance in the magistrates’ court in connection with new hearings relating to police bail that are introduced by Chapter 1 of Part 4 of the Policing and Crime Act 2017. The new hearings will allow individuals to contest an extension of the initial period of pre-charge police bail and are believed to be substantially similar to applications to vary the conditions of pre-charge police bail currently remunerated under paragraph 3(4) of Schedule 4 to the Remuneration Regulations. The legal aid work that will be required in connection with these hearings can already be carried out under the General Regulations and the 2017 Contract but this amendment makes clear that the applicable rate of remuneration is that specified in paragraph 3(4) of Schedule 4.

Consolidation

- 7.6 There are no current plans to consolidate criminal legal aid secondary legislation.

8. Consultation outcome

The LAA has formally consulted with the professional bodies that represent criminal legal aid providers in relation to the 2017 Contract. As part of this formal consultation exercise, and in the context of the draft provisions governing advocacy assistance, the representative bodies requested clarification about payment arrangements in respect of the new police bail hearings. This instrument addresses that request.

9. Guidance

- 9.1 Guidance is not being prepared specifically on this instrument on the basis that it makes only minor and technical changes.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 This instrument applies to small business only insofar as they affect the contractual relationship between the LAA and providers of legal aid services.
- 11.2 As this instrument does not have an impact on business, 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 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 Stephen Gascoigne at the Ministry of Justice Telephone: 01562 514 666 or email: Stephen.gascoigne@justice.gsi.gov.uk can answer any queries regarding the instrument.