

## EXPLANATORY MEMORANDUM TO

### THE CRIMINAL LEGAL AID (GENERAL) (AMENDMENT) REGULATIONS 2020

#### 2020 No. 8

#### 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 To make legal aid available in relation to the making, varying, discharging, renewing and appealing of Stalking Protection Orders (SPOs) and interim SPOs (subject to the means and merits tests).
- 2.2 Under the Stalking Protection Act 2019 (SPA), a chief officer of police will be able to apply for a SPO or interim SPO to be issued in respect of a person in certain circumstances. This instrument will make legal aid available (subject to the means and interests of justice tests) to:
- a person against whom the order is intended to be made, in proceedings concerning the making of an order;
  - a person subject to an order, in proceedings to appeal against it, vary it, renew it or discharge it.

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

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

- 3.1 Regrettably, this instrument is being laid less than 21 days prior to coming into force on 20 January 2020, at the same time as the commencement order for the Stalking Protection Act 2019. This is to ensure there is no gap in criminal legal aid provision on commencement of the SPA.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

#### 5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 The SPA obtained Royal Assent on 15 March 2019 and makes provision for SPOs and interim SPOs; civil orders designed to protect victims from risk associated with stalking. The Home Office will be bringing the provisions in the SPA into force on 20 January 2020 by commencement order. This instrument will make legal aid available for SPO and interim SPO proceedings when the SPA comes into force.
- 6.2 Under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) legal aid for representation in criminal proceedings is available to individuals appearing before the Magistrates' and Crown Courts, subject to the means test and interests of justice test (Crown Court trials are deemed to automatically satisfy this test).
- 6.3 The Criminal Legal Aid (General) Regulations 2013 (SI 2013/9) (the 2013 Regulations) make provision for determinations in relation to whether the individual qualifies for criminal legal aid. Regulation 9 of the 2013 Regulations prescribes certain proceedings as 'criminal proceedings' for the purposes of Part 1 of LASPO.
- 6.4 Regulation 2 of this instrument amends Regulation 9 of the 2013 Regulations to prescribe proceedings under sections 1, 4, 5 and 7 of the SPA in relation to SPOs and interim SPOs as criminal proceedings. This will make legal aid available (subject to the means and interests of justice tests) for a person against whom an SPO (or interim SPO) is intended to be issued and for a person already subject to an SPO (or interim SPO) in proceedings to appeal against it, vary it, renew it or discharge it. Under the SPA, breach of an SPO and failure to comply with the notification requirements under SPA or providing false information constitute a criminal offence and these are criminal proceedings for which legal aid is already available under LASPO subject to the means and interests of justice tests.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument will make legal aid available in relation to the making, varying, discharging, renewing and appealing of SPOs and interim SPOs for the subject of the SPO (subject to the means and interests of justice tests).
- 7.2 SPOs are similar to a number of other civil orders, for example Drinking Banning Orders, Violent Offender Orders and Sexual Risk Orders. There is a long policy history of having made legal aid available to a person against whom a similar civil order is sought in the magistrates' court, and for a person already subject to such an order in proceedings to appeal against it, apply to vary it, challenge its renewal or apply to discharge it.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 There have been other changes to the 2013 Regulations, but there are currently no plans to consolidate these Regulations.

## **10. Consultation outcome**

- 10.1 No public consultation was carried out as these changes do not amount to any substantive shift in legal aid policy.

## **11. Guidance**

- 11.1 The Legal Aid Agency will update its existing published guidance to reflect the changes brought in by this statutory instrument. The guidance is used by both providers and Legal Aid Agency caseworkers.
- 11.2 The Home Office will in due course be providing statutory guidance on Stalking Protection Orders to the police, under section 12 of the SPA. This will contain a section on the ability for defendants to apply for legal aid in relation to SPO proceedings.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 A full impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen.

## **13. Regulating small business**

- 13.1 Legal aid is out of scope of the regulatory agenda. It is excluded by section 22(4)(c) of the Small Business Enterprise and Employment Act 2015 on the grounds that it relates to ‘the giving of grants or other financial assistance by or on behalf of a public authority’. The measure does not require Reducing Regulation Committee or Regulatory Policy Committee clearance.

## **14. Monitoring & review**

- 14.1 The operation of and expenditure on the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency.

## **15. Contact**

- 15.1 Oliver Shaw at the Ministry of Justice (Telephone: 07976 439562 or email: [oliver.shaw@justice.gov.uk](mailto:oliver.shaw@justice.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 Jelena Lentzos, Deputy Director for Legal Aid, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Wendy Morton MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.