

EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (GENERAL) (AMENDMENT) REGULATIONS 2022

2022 No. 1370

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to make legal aid available in relation to the variation, renewal and discharge of Serious Violence Reduction Orders (“SVROs”), and appeals related to those proceedings.

3. Matters of special interest to Parliament

- 3.1 None.

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 Police, Crime, Sentencing, and Courts Act 2022 introduced SVROs. A SVRO is a civil order that can be made by the Court in respect of adults convicted of an offence where a bladed article or offensive weapon was used or was present.
- 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 these Regulations amends Regulation 9 of the 2013 Regulations to prescribe the following as “criminal proceedings”: i) proceedings under section 342H of the Sentencing Act 2020 which concern the variation, renewal and discharge of SVROs and ii) proceedings under section 342I which concern appeals related to those proceedings.

7. Policy background

- 7.1 This instrument enables legal aid to be made available for applications for variation, renewal, or discharge of a SVRO, and for appeals against SVROs. This is in line with the policy on legal aid for similar forms of civil orders made in relation to criminal offences.
- 7.2 SVROs provide the police with the power to stop and search a person subject to a SVRO to ascertain if they have a bladed article or offensive weapon with them and to detain them for the purpose of carrying out that search. Aimed at prolific, high-risk offenders and more vulnerable first-time offenders, SVROs are intended to deter offenders from carrying weapons again.
- 7.3 While SVROs will be a type of civil order, it will be for the criminal courts to decide whether an individual will be subject to a SVRO upon conviction. In addition, breach of a SVRO will constitute a criminal offence in its own right.
- 7.4 SVROs can only be made on conviction. Therefore, the making of the order is already within the scope of legal aid. The breach of a SVRO is a criminal offence, and therefore is also already within the scope of legal aid. However, applications for the variation, renewal, or discharge of, or appeals against, SVROs are not at present within the scope of legal aid.

8. European Union Withdrawal and Future Relationship

- 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 None.

10. Consultation outcome

- 10.1 As this instrument extends the provision of criminal legal aid, it was not considered necessary to undertake a consultation exercise.

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 has worked with relevant stakeholders to develop statutory guidance and support material in respect of SVROs. A draft of the statutory guidance can be found at [Serious Violence Reduction Orders: draft statutory guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90442/SVROs_draft_statutory_guidance.pdf).

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, or no significant, impact on the private or voluntary or public 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 Elliot Miller at the Ministry of Justice Telephone: 07469 579048 or email: elliott.miller@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Claire Cooper, Deputy Director for Legal Aid Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Freer at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

