

**EXPLANATORY MEMORANDUM TO**  
**THE LEGAL AID (FINANCIAL RESOURCES AND CONTRIBUTION ORDERS)**  
**(AMENDMENT) REGULATIONS 2022**

**2022 No. 1376**

**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 This instrument makes changes to the civil and criminal legal aid means test schemes to ensure legal services are available to those most in need of support.

2.2 These Regulations amend the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, the Criminal Legal Aid (Financial Resources) Regulations 2013 and the Criminal Legal Aid (Contribution Orders) Regulations 2013 so that individuals who receive certain financial support from the government due to the cost of living crisis will not be required to use those resources to pay for legal services.

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

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

3.1 None

**4. Extent and Territorial Application**

4.1 The extent of this instrument is England and Wales.

4.2 This 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 Section 21(1) of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO') requires that for an individual to qualify for legal aid, they must meet certain financial eligibility criteria. This criteria is also referred to as 'means testing'. Section 21(2)(a) of Part 1 of LASPO gives the Lord Chancellor the power to make secondary legislation in relation to means testing.

6.2 Assessment of financial eligibility for legal aid requires a calculation of individuals' means. The exact financial assessment depends on whether civil or criminal legal support is required.

6.3 Two categories of financial resource may be assessed to determine eligibility: income (gross annual income and disposable annual income) and disposable capital assets

(e.g. savings). In each assessment, certain payments are not to be included in the calculation and these are known as ‘disregarded’ payments.

- 6.4 The different assessments and corresponding disregards are governed by regulations. Assessments for civil matters are set out in the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (‘Civil Means Regulations’). For criminal matters, The Criminal Legal Aid (Financial Resources) Regulations 2013 (‘Criminal Means Regulations’) and The Criminal Legal Aid (Contribution Orders) Regulations 2013 (‘Criminal Contributions Regulations’) are relevant depending on the nature of the legal aid provided.

#### Civil legal aid financial eligibility

- 6.5 The Civil Means Regulations define the means assessment for civil legal aid services. Payments which must be disregarded from the disposable and gross income resource calculations are set out in regulation 24 of The Civil Means Regulations and regulation 40 defines the disregards for disposable capital assessments.

#### Criminal legal aid financial eligibility

- 6.6 The Criminal Means Regulations set out the means assessment for criminal legal aid services. There are three types of service in the Criminal Means Regulations relevant to this instrument: Advice and Assistance (legal support prior to a court appearance), Magistrates’ legal representation (legal support at a lower criminal court hearing) and Crown Court legal representation (legal support at an upper criminal court hearing).

#### Advice and Assistance

- 6.7 The Criminal Means Regulations defines which financial resources should be calculated for an individual seeking Advice and Assistance services.
- 6.8 Deductions (disregards) which must be made when calculating disposable income are set out in regulation 11 of the Criminal Means Regulations and regulation 13 defines the mandatory deductions for the disposable capital calculation.

#### Magistrates’ legal representation

- 6.9 Regulation 18 of the Criminal Means Regulation defines the financial resources to be assessed for legal representation in Magistrates’ court proceedings. This is an income-only assessment, capital resources which may be held by the applicant are not considered. This is calculated by assessing gross income and where gross income falls between a given range, disposable income may then be assessed to determine the amount of financial contribution an individual may be asked to make towards their legal support, if they are convicted. Deductions are made as part of both the gross and disposable income calculations.

- 6.10 Regulation 20 and Regulation 21 of the Criminal Means Regulation set out, respectively, the payments which must be disregarded from the calculation of gross annual income and annual disposable income.

#### Crown Court representation

- 6.11 The Criminal Means Regulations and the Criminal Legal Aid (Contribution Orders) Regulations 2013 (‘Criminal Contributions Regulations’) define the type of legal support (Crown Court representation) for which the financial eligibility assessment must be carried out.

- 6.12 Regulation 33 of the Criminal Means Regulations and regulation 10 of the Criminal Contributions Regulations define the calculation of an individual's gross annual income. This calculation includes the deduction of specified payments, the payments listed are the same in both regulations.
- 6.13 Regulation 34 of the Criminal Means Regulations and regulation 11 of the Criminal Contributions Regulations define the calculation of an individual's disposable annual income. This calculation includes the deduction of specified payments, the payments listed are the same in both regulations.
- 6.14 If the defendant is convicted at the Crown Court, any outstanding legal aid costs may be recovered from disposable capital assets held by the individual. Regulation 28 of Criminal Contributions Regulations sets out how disposable capital assets are calculated, including the deductions to be made.

#### Cost of Living and Energy Support Payments

- 6.15 Since July 2022, the Government has been operating a number of schemes to provide financial support in response to the cost of living crisis under both the Energy Prices Act 2022 and the Social Security (Additional Payments) Act 2022.

## 7. Policy background

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

- 7.1 The legal aid means testing regulations are designed to provide legal aid to those who need it most and target support at the most vulnerable individuals. The current policy position is that payments should be disregarded from means assessments where they are intended for a specific purpose or to compensate for harm. This is because the Government considers that payments of this type are not destined to be used to pay for legal services.
- 7.2 Since 14 July 2022, the Government has provided financial support to individuals in response to the cost of living crisis. As the primary purpose of these schemes is to assist vulnerable individuals with energy payments, these payments are intended for a specific purpose. Other equivalent schemes, such as the Winter Fuel Allowance, are already disregarded from the legal aid means tests.
- 7.3 This instrument aligns the legal aid means tests with Government initiatives to support vulnerable individuals during the cost of living crisis to ensure that legal aid is available to those who need it.

### *What did any law do before the changes to be made by this instrument?*

- 7.4 Assessment of financial eligibility for legal aid requires a calculation of individuals' means. If these are above a given threshold, the applicant may not be eligible for legal aid or they may be asked to pay a financial contribution towards their legal support. When calculating an individuals' means, certain payments are currently excluded (disregarded) from the calculation.

### *Why is it being changed?*

- 7.5 To ensure that payments made to assist vulnerable individuals with the cost of living crisis are used for the intended purpose, these payments need to be disregarded from the means testing assessments. Without this amendment, these payments will be included as accessible financial resources and might either render individuals

ineligible for legal aid or mean that they will need to pay contributions for legal services.

- 7.6 Individuals who are receiving Government support as a result of the cost of living crisis are often the same people to whom legal aid support is targeted. It is important that the payments made under the Energy Prices Act 2022 and the Social Security (Additional Payments) Act 2022 do not reduce these individuals' eligibility for legal aid. Therefore, it is necessary to amend the means testing regulations and disregard these payments from financial resource assessments.

What will it now do?

- 7.7 This instrument amends the legal aid means tests to ensure consistent treatment of these payments across government. It will protect the money provided for its intended use (e.g. energy bills), by excluding it from calculations which assess resources available to pay for legal services.

**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 There are no plans for consolidation at this time.

**10. Consultation outcome**

- 10.1 There has been no formal policy consultation on this statutory instrument. The changes in this instrument are a result of Government policy to financially assist individuals during the cost of living crisis and are consistent with the approach taken to other similar types of direct payment.

**11. Guidance**

- 11.1 The Legal Aid Agency will issue guidance to providers on the new disregard for means testing assessments in advance of the changes coming into force via its website, as is usual practice.

**12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.  
12.2 There is no, or no significant, impact on the public sector.

**13. Regulating small business**

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

**14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is undertaken by the Ministry of Justice and the Legal Aid Agency, who together monitor the operation and expenditure of legal aid scheme.

**15. Contact**

- 15.1 Madeleine van Oss at the Ministry of Justice Telephone: +44 07971 517 296 or email: madeleine.vanoss@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 Lord Bellamy KC, Parliamentary Under Secretary at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.