

EXPLANATORY MEMORANDUM TO

THE PROHIBITION OF CROSS-EXAMINATION IN PERSON (FEES OF COURT-APPOINTED QUALIFIED LEGAL REPRESENTATIVES) (AMENDMENT) REGULATIONS 2023

2023 No. 1319

1. Introduction

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

2. Purpose of the instrument

- 2.1 Sections 65 and 66 of the Domestic Abuse Act 2021 operate in family and civil proceedings to prohibit cross-examination in person between a party and a witness in specified circumstances, including where there is evidence of domestic abuse between them. Where the prohibition applies, a qualified legal representative (QLR) may be appointed by the court to cross-examine a witness on behalf of the prohibited party and will be paid out of central funds for the work undertaken. The Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022 (S.I. 2022/567) (“the Fee Scheme Regulations”) provide the remunerative framework for the QLR scheme, including the fixed fees payable for the advocacy services provided. This negative Statutory Instrument amends the Fee Scheme Regulations, to now make provision for the payment of certain other costs that have been incurred by a QLR in connection with their appointment, including travel, accommodation and subsistence expenses.

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 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 existing Fee Scheme Regulations were made as part of the implementation of Part 5 of the Domestic Abuse Act 2021 (c. 17) and provide the remunerative framework for the QLR scheme. As a result of further policy work and a planned expansion of the remunerative framework, the Fee Scheme Regulations require updating, via this instrument, to make new provision for the payment of other types of costs.

7. Policy background

What is being done and why?

- 7.1 The QLR fee scheme is being extended to make provision for the payment of certain costs, including travel expenses, to enhance the remuneration package that QLRs receive for the important work that they do. We have heard feedback from stakeholders including QLRs, legal professional bodies and court staff that the current lack of provision for travel expenses is a disincentive for accepting a court appointment that would require a QLR to travel outside of their local area.
- 7.2 This is contributing to difficulties appointing QLRs in certain areas.
- 7.3 Ultimately, we want to support QLRs to accept court appointments and adequately compensate QLRs for the work they undertake. This is in recognition of the important part that QLRs play in maintaining the fairness of the proceedings where it appears to the court that allowing cross-examination in person would be likely to affect the quality of the witness' evidence or is likely to cause either the party or the witness significant distress and it would not be contrary to the interests of justice to give such a direction.
- 7.4 We believe that paying travel expenses and other reasonable costs incurred in connection with their appointment will encourage more QLRs to sign up to the register and accept appointments.

Explanations

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

- 7.5 The existing Fee Scheme Regulations makes provision for payment of certain fixed fees for the advocacy services provided in civil and family proceedings. Whilst the fees were set at such a level to reflect the time a QLR might spend travelling and waiting, there was no separate provision for the cost of travel or accommodation to be paid separately (as a disbursement).

Why is it being changed?

- 7.6 The Fee Scheme Regulations are being amended to provide that a QLR will, in addition to the various fixed fees, be paid certain costs incurred in connection with their appointment by the court, to include travel, accommodation and subsistence expenses (subject to an eligibility threshold and maximum cap amounts). This will improve the remuneration of the QLR scheme and help to address implementation challenges. The payment of travel and other expenses should promote more willingness to accept QLR appointments and result in better recruitment and retention.

What will it now do?

- 7.7 A QLR will be able to claim reimbursement of certain costs, subject to a maximum cap, where the amount incurred is properly evidenced.
- 7.8 In recognition of the desire for transparency and simplicity, a QLR will not be able to claim or recover any costs that exceed the specified maximum rate payable for that category (even where properly incurred).
- 7.9 QLRs will now be able to claim reimbursement of incurred travel costs when required to travel to a court that is not local to them (defined as being at least 10 miles from their usual office or chambers).

- 7.10 QLRs will also be able to claim reimbursement of incurred accommodation costs when required to travel to a court at least 100 miles from their usual office or chambers for a one day hearing, or at least 50 miles for a multiple day hearing.
- 7.11 Air travel is not payable under this travel expense policy.
- 7.12 First class travel will only be paid if the ticket purchased was cheaper than the equivalent standard class ticket.
- 7.13 An overnight subsistence allowance may also be paid (in respect of an evening meal but excluding the purchase of alcohol) in addition to overnight accommodation costs.

<i>Category of costs claimed</i>	<i>Maximum rate payable</i>
(a) Vehicle mileage	£0.45 per mile
(b) Public transport	£180 per journey
(c) Overnight accommodation	£100 per night
(d) Overnight subsistence allowance	£21 per night
(e) Other out of pocket expenses	£40 per day

- 7.14 These proposed changes to the remunerative framework will provide QLRs with a fair and transparent basis for claiming certain costs that were incurred in connection with their appointment by the court.

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 of the legislation.

10. Consultation outcome

- 10.1 The department engaged with professionals, representative bodies for legal professionals and members of the Family Procedure Rule Committee to understand implementation challenges with the QLR scheme. The department has also engaged with individuals who have already undertaken, or are planning to undertake, work as a QLR, whose comments were considered in the development of the policy. For example, stakeholders consistently raised that overnight expenses should be included within the expenses policy, to improve the uptake of QLR cases. During the focus groups, participants also raised the importance of including other out of pocket expenses within the expenses policy, so that it was possible to claim items such as car parking.

11. Guidance

- 11.1 Guidance for this policy will be available from 2 January here <https://www.gov.uk/guidance/qualified-legal-representative-claiming-guidance>

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. We estimate the new expenses policy could cost up to £450,000 per year. The costs for this scheme will be covered by existing budgets under central funds.
- 12.3 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private, public or voluntary sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

- 14.1 This legislation will be reviewed periodically.

15. Contact

- 15.1 Sarah Roskrow at the Ministry of Justice Telephone: 07926066264 or email: sarah.roskrow@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alex Davis, Deputy Director for Rape, Serious Sexual Offences and Domestic Abuse Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Farris at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.