

EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (GENERAL) (AMENDMENT) REGULATIONS 2024

2024 No. 58

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 stand-alone applications, variation, renewal, extension and discharge of Serious Disruption Prevention Orders (“SDPOs”), and appeals related to those proceedings.

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 This instrument extends to 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 Public Order Act 2023 introduces SDPOs. An SDPO is a civil order which can specify necessary prohibitions and requirements on individuals to prevent serious disruption.
- 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’ courts and Crown Court, 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. an application for a SDPO under section 21 of the Public Order Act 2023;
 - ii. an application for renewal, variation and discharge of a SDPO under section 28 of the Public Order Act 2023;

- iii. an appeal against an order made under section 29 of the Public Order Act 2023, other than an appeal against an order made on conviction.

7. Policy background

- 7.1 This instrument enables legal aid to be made available for stand-alone applications, variation, renewal, extension and discharge of SDPOs, and for appeals against SDPOs. This is in line with the policy on legal aid for similar forms of civil orders .
- 7.2 SDPOs are designed to help curtail the activities of the most prolific offenders who consistently break the law, endanger themselves and others, and disrupt the public in the name of protest.
- 7.3 SDPOs provide the courts with the power to impose, on conviction, necessary prohibitions and requirements on individuals to prevent serious disruption. The court must consider it necessary to make the SDPO for one of the following objectives:
 - i. to prevent them from committing a protest-related offence or a protest-related breach of an injunction;
 - ii. to prevent them from carrying out activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals or to an organisation, in England and Wales;
 - iii. to prevent them from causing or contributing to the commission by any other person of a protest- related offence or a protest-related breach of an injunction, or the carrying out by any other person of activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales; and
 - iv. to protect two or more individuals, or an organisation, in England and Wales, from the risk of serious disruption arising from a protest-related offence, a protest-related breach of an injunction, or activities related to a protest.

A court may impose any prohibition or requirement it deems necessary to meet the above objectives.

- 7.4 While SDPOs are a type of civil order, it will be for the criminal courts to decide whether an individual will be subject to a SDPO upon conviction. In addition, breach of a SDPO will constitute a criminal offence.
- 7.5 The making of a SDPO on conviction is already within the scope of legal aid by virtue of section 14(b) of LASPO. Additionally, the breach of a SDPO is a criminal offence, and therefore is already within the scope of legal aid under section 14(a) of LASPO. However, stand-alone applications by the police, applications for the variation, renewal, or discharge of SDPOs, as well as appeals against SDPOs, other than those made on conviction, 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 or implement any future relationship agreement with the European Union.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 As this instrument does not make significant changes in 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 SDPOs. A draft of the statutory guidance can be found at <https://www.gov.uk/government/publications/serious-disruption-prevention-orders>

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.
- 12.4 The Home Office assumes that 42 SDPOs will be issued per year. If all of these were to be appealed and the SDPOs remain as prescribed proceedings, 50% would likely be funded under legal aid.

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 Joseph Drew, Senior Policy Advisor in Criminal Legal Aid Policy at the Ministry of Justice, can be contacted with any queries regarding this instrument. Email: joseph.drew@justice.gov.uk.
- 15.2 Lizzie Checkley, Deputy Director for Legal Aid Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Mike Freer MP, Parliamentary Under Secretary of State for the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.