

EXPLANATORY MEMORANDUM TO
THE CRIMINAL LEGAL AID (FINANCIAL RESOURCES) REGULATIONS
2013

2013 No. 471

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 These Regulations set out the circumstances in which individuals are to be financially eligible for legal aid in criminal proceedings. Their general effect is to replicate, in the new context created by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, the effect of the Criminal Defence Service (Financial Eligibility) Regulations 2006 (S.I.2006/2492) and relevant parts of the Criminal Defence Service (General) (No 2) Regulations 2001(S.I.2001/1437). There is no change in the underlying policy.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This is one of a number of statutory instruments which implement Part 1 of the LASPO Act. These instruments will be laid in time for Part 1 of the Act to come into force on 1 April 2013.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Act gives effect to the Government's policy position on Legal Aid. The Government considers that those who are accused of criminal offences should be able to benefit from publicly funded legal advice, assistance or representation when they cannot afford to pay for their own advice, assistance or representation, if the interests of justice require it. Therefore the policy intention for criminal legal aid is unchanged from that set out in the Access to Justice Act 1999.

7.2 These Regulations substantially replicate the effect of the secondary legislation made under the Access to Justice Act 1999. They set out the circumstances in which individuals are to be financially eligible for advice and assistance and for representation in criminal proceedings.

7.3 These Regulations make different provision depending on whether the legal aid is required is advice and assistance or representation. Some forms of advice and assistance, and representation in some kinds of proceedings (such as, generally, representation in the Crown Court), are made available regardless of an individual's financial resources. Circumstances also are specified in which individuals are to be deemed financially eligible (or "passported"), for example where they are receiving certain income-related welfare benefits.

7.4 These Regulations make detailed provision for the assessment of an individual's financial resources for the purpose of determining their financial eligibility for legal aid. There are provisions for aggregating the resources of an individual with those of another person, such as a partner or child, and for treating resources of which individuals have deprived themselves as the individual's resources. There are also provisions for reassessment of the individual's income or capital or renewal of an application, for example where there has been an administrative error or change of circumstances. An individual who has been refused representation on grounds of financial eligibility may apply to the Director for a review on the grounds that the individual does not have sufficient means to pay for the cost of legal assistance. The Director may require individuals to furnish documentary evidence and there is a duty on individuals to report relevant changes in their circumstances that may affect their financial eligibility for legal aid.

8. Consultation outcome

8.1 The consultation 'Proposals for the reform of legal aid in England and Wales' was published on 15 November 2010 and closed on 14 February 2011. The Government concluded that: "those who are accused of criminal offences should be able to benefit from publicly funded legal assistance when they cannot afford to pay for their own representation, if the interests of justice require it. We do not therefore consider that it is appropriate to restrict further legal aid in criminal cases."

8.2 The proposals consulted on as part of this exercise were therefore largely aimed at reforming civil legal aid. The only reform proposals in respect of criminal legal aid were changes to remuneration, which were implemented in October 2011. A detailed Government response to this consultation exercise is available on the MoJ Website at www.justice.gov.uk/consultations/legal-aid-reform.

8.3 We have not consulted on the Criminal Legal Aid (Financial Resources) Regulations 2013.

9. Guidance

9.1 Guidance is not being prepared specifically for this instrument. A programme of training and guidance is being prepared by the Legal Services Commission to support the transition to the new arrangements. This will be made available to legal aid providers ahead of the commencement of the Act on 1 April 2013.

10. Impact

10.1 The impacts of the Government's programme of legal aid reform are set out in an Impact Assessment, which was updated following the Act receiving Royal Assent. This is available at:

www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information.

An Impact Assessment has not been prepared specifically for this instrument.

10.2 There is no impact on business, charities or voluntary bodies.

10.3 There is no impact on the public sector arising from this instrument beyond those accounted for in the Royal Assent Impact Assessment.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Ministry of Justice will conduct a post-implementation review of the LASPO Act between three to five years after implementation.

13. Contact

Simon MacCulloch at the Ministry of Justice (tel: 020 3334 6074 or email: Simon.MacCulloch@justice.gsi.gov.uk) can answer any queries regarding the instrument.