

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (REMUNERATION) (AMENDMENT) (NO. 2)
REGULATIONS 2014

2014 No. 586

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 This instrument amends the Civil Legal Aid (Remuneration) Regulations 2013 (SI 2013/422) (the “Remuneration Regulations”). Specifically, it amends remuneration for family legal aid services in order to:

- provide for consequential changes to the family legal aid schemes as a result of the introduction of the new single Family Court; and
- reduce, by 10%, the fixed representation fees paid to solicitors in care proceedings, including the hourly rates which apply when the escape threshold has been reached in the fixed fee scheme.

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

3.1 None.

4. Legislative Context

4.1 This Statutory Instrument implements the proposals set out in “*Supporting the introduction of the single Family Court – Changes to the family legal aid remuneration schemes*”. It also implements the proposal to reduce the representation fees paid to solicitors in care proceedings and is therefore one of a number of Statutory Instruments which implement the legal aid reform proposals set out in the document “*Transforming Legal Aid: Next Steps*”.

4.2 The Remuneration Regulations make provision for the payment of remuneration by the Lord Chancellor to persons who provide civil legal services under arrangements for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). These amendments provide for changes to the Care Proceedings Graduated Fee Scheme¹, the Private Family Law Representation Scheme² and the Family Advocacy Scheme.³

¹ Table 2(c) and Table 9(a) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013

² Table 3(f), Table 3(g), Table 3(h) and Table 9(b) of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013

³ Table 1(a), Table 1(b), Table 2(a), Table 2(b) and Table 2(c) of Schedule 3 to the Civil Legal Aid (Remuneration) Regulations 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Crime and Courts Act 2013 establishes the concept of the new single Family Court which will become the national court for family proceedings in England and Wales. The new Family Court is expected to come into effect on 22 April 2014.

7.2 Given that family legal aid fee levels are currently based on existing tiers of court, the family legal aid schemes will need to be amended to reflect the new structure of the Family Court to ensure appropriate remuneration for the services provided. The reforms, confirmed in the response to the consultation "*Supporting the introduction of the single Family Court – Changes to the family legal aid remuneration schemes*", are intended to ensure that an appropriate mechanism for the payment of family legal aid services is in place in time for the implementation of the new Family Court.

7.3 The amendments made in Regulation 2 and the Schedule provide for the necessary consequential changes to the family legal aid schemes as a result of the introduction of the new single Family Court. These amendments will provide for remuneration in family proceedings on the basis of the person or court before whom proceedings are disposed or heard.

7.4 In addition, following the reforms set out in LASPO, the Government consulted on a further package of legal aid reform proposals in April 2013. The primary objective of this reform package was to bear down on the cost of legal aid to ensure that every aspect of expenditure was justified and that the public purse was achieving the best deal for the taxpayer. The *Transforming Legal Aid: Next Steps* document, published in September 2013, set out a number of reforms which the Government intended to make to legal aid provision under Part 1 of LASPO. These included the reduction in the representation fee payable to solicitors in public law family care proceedings.

7.5 The ongoing implementation of the Family Justice Review reform package is expected to reduce the unit cost of cases through tackling delay and streamlining court procedures, etc. For example, by avoiding unnecessary hearings and limiting the use of experts. As the fees paid to solicitors are generally fixed, the cost of dealing with fewer hearings or fewer experts does not automatically adjust to reflect any reduction in work required. The reduction in the level of fees therefore reflects the decreasing duration of cases in this area, the amount of work involved and the further efficiencies to be gained from wider Family Justice Review reforms.

7.6. Paragraphs 1(3), 2(2) and 2(4) of the Schedule provide for the changes necessary to implement the 10% reduction in remuneration for legal representation under

section 31 of the Children Act 1989 for care or supervision proceedings as set out in *Transforming Legal Aid: Next Steps*. Paragraph 1(3) of the Schedule amends the fixed fees in Table 2(c). It also corrects an error in the Remuneration Regulations relating to the fixed fee for a High Court (now referred to as “Judge of High Court Judge Level”) Joined Party case in the North. The Remuneration Regulations replaced the Community Legal Service (Funding) Order 2007, as amended, as part of the implementation of LASPO and the rates in the Funding Order were intended to be carried over without change into the Remuneration Regulations. The rate of £1062 was incorrectly transcribed as £1602, although the LAA has continued to pay the correct rate of £1062 (now set at £956 in these Regulations to reflect the 10% reduction). The 10% reduction also applies to the hourly rates paid for preparation and attendance, attendance at court, conference with counsel and travel and waiting time where the escape threshold has been reached in the fixed fee scheme. The rates which will be used to calculate this threshold, and the hourly rates which will then apply, are set out in a new table – Table 9(aa) – inserted by paragraph 2(4) of the Schedule.

7.7 This instrument also sets out, in Part 2, the transitional provisions that apply to the amendments made by paragraphs 1(3), 2(2) and 2(4) of the Schedule (i.e. the reduced fees). Regulation 3 provides that these amendments will not apply to:

- (a) applications for civil legal services made before this instrument comes into force;
- (b) applications for civil legal services made on or after the date on which this instrument comes into force, but which relate to the same case in which services have already been provided to the applicant as a result of an application made before this instrument comes into force (where the further application is for a different form of service which falls within the same variety of work as the earlier form of service);
- (c) applications for civil legal services made on or after the date on which this instrument comes into force, but which relate to a case in which Licensed Work has already been provided to the applicant as a result of an application made before this instrument comes into force (and the Director has decided that the certificate should cover both sets of proceedings).

7.8 Provision is also made to determine when different forms of application (e.g. for Licensed Work or emergency representation) will have been made before this instrument comes into force.

8. Consultation

8.1 The Government worked closely with the representative bodies of providers of family legal aid services to develop the proposals for consequential changes to the family legal aid schemes as a result of the introduction of the new single Family Court. The subsequent consultation “*Supporting the introduction of the single Family Court – Proposed changes to the Family legal aid remuneration schemes*” was published on 28 October and closed on 25 November 2013. The Government received 12 responses to its consultation, the majority of which were from representative bodies or providers of family legal aid services. The overwhelming majority of respondents supported the Government’s proposed changes to the

current family legal aid fee schemes. The Government has therefore taken the decision to proceed on the basis of the changes it proposed in its consultation document.

- 8.2 These consequential changes to the family legal aid payment schemes will ensure that an appropriate payment mechanism is in place to reflect the new structure that will exist in the new Family Court when it comes into effect. The changes are intended, as far as possible, to be cost-neutral and have little or no impact on legal aid recipients or those providing family legal aid services.
- 8.3 A detailed Government response to this consultation exercise is available at: <https://consult.justice.gov.uk/digital-communications/proposed-changes-family-legal-aid-remuneration>.
- 8.4 The consultation “*Transforming Legal Aid: Delivering a more credible and efficient system*” was published on 9 April 2013 and closed on 4 June 2013. Around 16,000 responses were received from representative bodies, practitioner and other organisations, individual members of the judiciary, members of the House of Commons and Lords, individual solicitors and barristers and members of the public. The Ministry of Justice held 14 stakeholder events throughout the consultation period.
- 8.5 The majority of responses did not support the Government’s original proposals for reform, although there was some support for particular measures. Some of the original proposals were modified in light of the comments received from respondents to the consultation to ensure their implementation was fully consistent with the Government’s wider objectives. The proposal to reduce the representation fee to solicitors in care proceedings remained unchanged to that originally consulted on. It is expected to deliver estimated savings of £20m per annum in steady state without impacting on clients.
- 8.6 The detailed response to this consultation exercise is available at https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/user_uploads/annex-b-response-to-consultation.pdf.
- 8.7 We have not, however, consulted specifically on this instrument.

9. Guidance

- 9.1 Guidance is not being prepared specifically on this instrument.

10. Impact

- 10.1 The consequential changes necessary to the family legal aid remuneration schemes as a result of the implementation of the new single Family Court aim to make no change to the fee income of providers. As a result, no impact assessment was prepared in respect of this policy.
- 10.2 The impacts of the Government's programme of legal aid reforms are set out in a series of Impact Assessments, which were updated following publication of "*Transforming Legal Aid: Next Steps*". These impact assessments are available at https://consult.justice.gov.uk/digital-/transforming-legal-aid-net-steps/consult_view. The reduction in the representation fee paid to solicitors in care proceedings is expected to deliver estimated savings of £20m per annum in steady state.
- 10.3 For the changes to the family legal aid scheme framework and the reduction in the representation fees to solicitors in care cases, there is no impact on business, charities or voluntary bodies, other than where it affects a contractual relationship between the Legal Aid Agency and those providing family legal aid services. An assessment was made of the impact of the reduction in representation fees paid to solicitors in care cases. This is contained in the impact assessment accompanying *Transforming Legal Aid: Next Steps*.
- 10.4 There is no impact on the public sector arising from the changes being made to the family legal aid remuneration schemes. For the reduction in representation fees paid to solicitors in care cases, an assessment was made and contained in the impact assessment accompanying *Transforming Legal Aid: Next Steps* but no impact is anticipated.

11. Regulating small business

- 11.1 The legislation applies to small business, only insofar as it affects the contractual relationship between the Legal Aid Agency and those providing family legal aid services.
- 11.2 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people.
- 11.3 The instrument does not impose any additional regulatory burdens on small firms.

12. Monitoring and review

- 12.1 The operation of and expenditure on the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency. The Ministry of Justice will conduct a post-implementation review of LASPO between 3-5 years after implementation. This review will consider the operation of the secondary legislation, including this instrument in so far as it reduces the level of remuneration to providers of legal aid services. The changes to the family legal aid scheme payment framework, which are necessary as a consequence of the implementation of the new Family Court, are designed to be cost neutral and have little or no impact on the current levels of remuneration. The Ministry of

Justice will, however, be monitoring the effectiveness of the changes in these Regulations as part of separate work on assessing the overall impact of the implementation of the Family Justice Review reform programme.

13. Contact

13.1 Any enquiries about the contents of this memorandum should be addressed to:

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