

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL LEGAL AID (REMUNERATION ETC.) (AMENDMENT)
REGULATIONS 2015**

2015 No. 1369

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 reduce fees with effect from 1st July 2015 for criminal litigation services funded by legal aid. They also introduce fixed fees for litigators in certain Crown Court cases, and for legal aid providers undertaking police station and magistrates' court work, together with consequential amendments and clarifications, with effect from 11th January 2016.

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

3.1 None.

4. Legislative Context

4.1 This is one of several statutory instruments which implement the legal aid reform proposals set out in the previous administration's response to the *Transforming Legal Aid: Next Steps* consultation, published on 27th February 2014. The Criminal Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/435) ("the Criminal Remuneration Regulations") make provision for the remuneration of criminal legal aid services made available under sections 13 (advice and assistance for individuals in custody), 15 (advice and assistance for criminal proceedings) and 16 (representation in criminal proceedings) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act"), which came into force on 1st April 2013. This instrument amends the Criminal Remuneration Regulations (and makes consequential amendments to three other instruments).

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 Following the reforms made by the Act, the previous administration consulted on a package of proposals to continue to reduce the cost of legal aid.

7.2 *Transforming Legal Aid: Next Steps*, published on 5th September 2013, proposed a number of legal aid reforms including changes to the way in which criminal legal aid services are procured and a reduction in the fees for criminal legal aid services. The response to *Transforming Legal Aid: Next Steps*, *Transforming Legal Aid - Next Steps: Government Response* (“the Next Steps Response”) was published on 27th February 2014 and set out the decisions taken in relation to the procurement of criminal legal aid services and fee reduction for criminal legal aid services.

7.3 As set out in the Next Steps Response, these regulations introduce a further fee reduction for work done under a criminal legal aid contract (paragraph 73 of the Next Steps Response). This follows an 8.75% reduction in March 2014 (SI. 2014/415), making a total reduction of 17.5% from April 2013 figures. The Government considers that there is a continuing need to bear down on the cost of legal aid, to ensure that we are getting the best deal for the taxpayer, and that the system continues to command the confidence of the public, particularly in light of the continuing financial challenge faced by all Government departments.

7.4 The phased introduction of the fee reduction is intended to mitigate its impact while enabling realisation of necessary savings. The second fee reduction will only apply to new cases starting on or after 1 July 2015 and will therefore take a period of time to impact on the legal aid income of providers.

7.5 In addition, the Government believes that the current remuneration mechanism for criminal legal aid services is overly complex and administratively burdensome and proposes to introduce fixed fees as far as is reasonably practicable. These regulations introduce fixed fees for Crown Court litigation in cases with fewer than 501 pages of prosecution evidence (“PPE”) (paragraph 49 of the Next Steps Response), for police station work (paragraph 49 of the response) and magistrates’ court work (paragraph 46 of the response). The new fixed fee schemes are being introduced for services under the new criminal legal aid contracts governing criminal litigation services from 11th January 2016. The new fixed fee scheme for Crown Court litigation in cases with fewer than 501 PPE is based on three variables, namely the class of offence, the number of PPE (in five bands of 100 PPE from 0 to 500 PPE), and case type (guilty plea, cracked trial or trial). The existing graduated fee scheme, which pays a fee based on the actual number of PPE, is being retained for cases with more than 500 pages of evidence, because their potential length and complexity mean that their inclusion in a fixed fee scheme would require a more complex or sophisticated model to accommodate the greater degree of variation in these cases. The new fixed fee structure for police station simplifies the fee scheme by replacing the 245 existing fees with two fixed fees depending on whether the work is conducted in London or outside London. The fixed fees for magistrates’ court work simplify the fee scheme by introducing a single standard fee (depending on case type), regardless of location.

8. Consultation outcome

8.1 The public consultation '*Transforming Legal Aid: Next Steps*' was published on 5th September 2013 and closed on 1st November 2013. This consultation was for less than 12 weeks because it followed on from an earlier consultation, '*Transforming legal aid: delivering a more credible and efficient system*', which ran from 9 April 2013 to 4 June 2013. During this time we also engaged with representative bodies of the legal professions, particularly the Law Society. Around 3,000 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. Most respondents did not support a reduction in fees.

8.2 Respondents were generally supportive of fixed fees, but raised various issues, including a concern that one national fee (with no variation) in relation to police station work would mean that legal aid providers in London would face greater losses than those undertaking police station work outside London. Concerns were also raised that in the absence of an "escape" mechanism for police station work, the proposed policy would have the effect of paying the lowest hourly rate for the most serious crimes, where a greater amount of time may be spent advising at the police station. Also, concerns were raised about the removal of different fees for different case types (trial, cracked trial, guilty plea etc.) in magistrates' court and Crown Court cases.

8.3 A detailed Government response to the further consultation exercise is available at <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps>

8.4 The concerns referred to above were addressed by modifying the proposals in relation to police station fixed fees (paragraphs 89 and 90 of Annex B to *Transforming Legal Aid – Next Steps: Government Response*), magistrates' court fixed fees (paragraph 91) and Crown Court fixed fees (paragraph 92).

8.5 We have not consulted on the Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. A programme of training and guidance for legal aid practitioners is being prepared by the Legal Aid Agency to support the transition to the new arrangements.

10. Impact

10.1 The impacts of these legal aid reforms are set out in a series of Impact Assessments, which were updated following publication of the previous administration's response to the consultation *Transforming Legal Aid: Next Steps*. These impact assessments are available at <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps>. An updated Impact Assessment has been prepared for Part 2 of this instrument, which is available at legislation.gov.uk.

Legal aid providers are expected to experience a decrease in fee revenue of £55m per annum in steady state. This, however, is set against the opportunities we are attempting to create in terms of economies of scale and other efficiencies.

10.2 As set out in paragraph 40 of the Impact Assessment entitled *Transforming Legal Aid – Next Steps: Government Response, Procurement of Criminal Legal Aid Services – Impact Assessment*, the extent to which there would be a financial impact (positive or negative) on providers from introducing a fixed fee scheme will depend entirely on the case mix each provider is allocated. However the introduction of two fees for police station work (one for London, and one for outside London), fixed fees which vary by case type for both magistrates' court work Crown Court litigation should mitigate the extent of impact by minimising the gains or losses in revenue compared to the current scheme whilst still simplifying the system.

10.3 There is no impact on business, charities or voluntary bodies other than where it affects a contractual relationship between the Legal Aid Agency and providers of legal aid services, which has been assessed as part of the above Impact Assessments.

10.4 There is no impact on the public sector arising from this instrument beyond those accounted for in the Impact Assessments.

11. Regulation of small businesses

11.1 The legislation applies to small business only insofar as it affects the contractual relationship between the Legal Aid Agency and providers of legal aid services.

11.2 MoJ 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. A review will be undertaken by an individual independent of Government to assess the impact of the litigators' fee reduction and the dual contracting model on the access to justice and the quality of litigation and advocacy provision. This review will commence in July 2016.

13. Contact

David Carter at the Ministry of Justice (Tel: 020 3334 4211 or email: David.Carter@justice.gsi.gov.uk) can answer any queries regarding the instrument.