

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (REMUNERATION AND STATUTORY CHARGE)
(AMENDMENT) REGULATIONS 2016

2016 No. 983

1. Introduction

- 1.1 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 makes amendments to regulations made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”), which are needed because of the introduction of a new contract to govern relations between the Lord Chancellor and providers of legal aid in the category of Welfare Benefits, known as the 2016 Standard Civil Contract (Welfare Benefits).
- 2.2 The amendments will ensure that remuneration to legal aid providers for the Welfare Benefits category of law apply in relation to work carried out under the 2016 Standard Civil Contract (Welfare Benefits); and that certain costs are excepted from the charge on costs payable to a legally aided individual.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The provision of legal aid is governed by a combination of contracts between the Lord Chancellor and the providers of legal aid, LASPO and the secondary legislation made under it. The secondary legislation made under LASPO refers to the contracts by reference to the title of each standard form of contract. This means that as new standard forms of contracts are adopted, the legislation must be updated to make sure that it makes reference to the relevant contractual arrangements.
- 4.2 These regulations amend the Civil Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/422) (“the Remuneration Regulations”) and the Civil Legal Aid (Statutory Charge) Regulations 2013 (S.I. 2013/503) (“the Statutory Charge Regulations”). The amendments ensure that each of these Regulations refer to the new 2016 Standard Civil Contract (Welfare Benefits).
- 4.3 The Remuneration Regulations make provision about the payment by the Lord Chancellor to persons who provide civil legal services under arrangements made for the purpose of Part 1 of LASPO.

- 4.4 The Statutory Charge Regulations make provision about the statutory charge which arises over money and other property preserved, or recovered by a legally aided party, in civil proceedings and over costs payable to the legally aided party by another party to the proceedings.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
5.2 The territorial application of this instrument is 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 In order to deliver legal aid services in England and Wales, legal aid providers must hold a contract with the Lord Chancellor, governing the commercial relationship between the Legal Aid Agency (“the LAA”) and legal aid providers. Legally aided work in relation to the civil legal aid category of Welfare Benefits in the North and the South West and Wales procurement areas is currently carried out by providers under the 2014 Standard Civil Contract (Welfare Benefits). The 2014 Contract is due to come to an end at 23:59pm on 31 October 2016, at which point the provision of work for this category in those areas will cease to be delivered under that Contract. On 1 November 2016 a new 2016 Standard Civil Contract (Welfare Benefits) will come into force, which will govern the provision of face-to-face and remote advice delivered by legal aid providers in the category of Welfare Benefits in the North and the South West and Wales procurement areas. This new contract will not change the provision of services under this category in those procurement areas.
- 7.2 Provision of these services in other regions in England & Wales – namely London and the South East and the Midlands and the East - is covered by the 2013 Standard Civil Contract (Welfare Benefits). Both the 2013 and 2016 Contracts will be set to expire on 31 March 2018, with the intention being to align them under one Contract together with all other civil legal aid categories.
- 7.3 An amendment made by the Civil and Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015 (S.I. 2015/325) added the 2010 Standard Civil Contract to the definition of “relevant contract” in the Remuneration Regulations. This, together with other amendments under that instrument, was to enable work done under crime contracts in relation to injunctions under Part 1 of the Anti-Social, Behaviour, Crime and Policing Act 2014 to be remunerated under the Remuneration Regulations. This instrument adds a definition for the 2010 Standard Crime Contract to the Remuneration Regulations, for consistency with the approach adopted for other legal aid contracts referred to in those Regulations.

8. Consultation outcome

- 8.1 The Government have not consulted on this instrument as the amendments it makes are consequential on the adoption of the 2016 Standard Civil Contract (Welfare Benefits) and seek to preserve the current legal effect of the regulations.

8.2 The LAA has consulted bodies that represent legal aid providers in the field of Welfare Benefits work in relation to the 2016 Standard Civil Contract (Welfare Benefits).

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument on the basis that this instrument will not implement a change in policy. The instrument makes only minor and technical changes that ensure that the current legal effect of the regulations is not affected by the adoption of the 2016 Standard Civil Contract (Welfare Benefits).

10. Impact

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

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 This instrument applies to small business only insofar as they affect the contractual relationship between the LAA and providers of legal aid services.

11.2 As this instrument does not have an impact on business, the Ministry of Justice has not taken any specific steps to minimise the impact of the requirement on firms employing up to 20 people. The instrument does not impose any additional regulatory burdens on small firms.

12. Monitoring & 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.

13. Contact

13.1 Olga Kostiw at Civil Legal Aid, Scope and Eligibility, the Ministry of Justice
Telephone: 0203 334 6400 or email: Olga.Kostiw@justice.gsi.gov.uk can answer any queries regarding the instrument.