

**EXPLANATORY MEMORANDUM TO**  
**THE CIVIL LEGAL AID (IMMIGRATION INTERVIEWS) (EXCEPTIONS)**  
**(AMENDMENT) REGULATIONS 2017**

**2017 No. 192**

**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 amends The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012 (“the Immigration Interview Regulations”). Legal aid is not, as a general rule, available for a legal representative to attend an asylum interview with their client. The Immigration Interview Regulations provides an exception for clients detained at specified locations. These locations were described by reference to the First Tier Tribunal’s Fast Track Rules. The Fast Track Rules were quashed by the Court and are no longer in force. The amendment reinstates the locations by describing them directly.

**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 Immigration Interview Regulations sets out exceptions to the general rule that legal aid is not available for a legal representative to attend an asylum interview with their client. They allow for legally aided representation at the asylum interview for clients detained at a location where their asylum application may be ‘fast tracked’ and dealt with more quickly than would otherwise be the case.
- 4.2 Regulation 4(a)(i) of the Immigration Interview Regulations describes the relevant locations by reference to places of detention specified in Schedule 2 to the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (“the 2005 Rules”). The 2005 Rules were replaced by the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (“the 2014 Rules”).
- 4.3 In June 2015 the High Court quashed the Schedule to the 2014 Rules in the case of *R (on the application of Detention Action v First-tier Tribunal (Immigration and Asylum) and others*. The judgment was upheld by the Court of Appeal. As a result regulation 4(a)(i) of the Immigration Interview Regulations refers to legislation that no longer has effect.

- 4.4 The changes made by this instrument will remove the reference in regulation 4(a)(i) to the quashed Fast Track Rules, and replace it with wording specifying the locations directly.

## **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**

### *What is being done and why*

- 7.1 The aim of the Immigration Interview Regulations is to ensure that legal aid for asylum interviews is targeted to those who need it most, for the most serious cases in which legal advice is justified. It also provides for the availability of legal aid in certain exceptions designed to protect particularly vulnerable clients.
- 7.2 The Immigration Interview Regulations allows for attendance by a legal provider to be funded through civil legal aid if the individual is detained at a location where their asylum application may be ‘fast tracked’ and dealt with more quickly than would otherwise be the case. The locations are the Immigration Removal Centres at Colnbrook, Harmondsworth and Yarl’s Wood. These locations are described by a cross reference to Schedule 2 of the 2005 Rules. Schedule 2 was replaced by the Schedule to the 2014 Rules.
- 7.3 The High Court’s decision in 2015 to quash the Schedule to the 2014 Rules means that the reference to the Schedule currently sitting within the Immigration Interview Regulations no longer works. This amendment will remove the reference and provide legal certainty for the Legal Aid Agency’s (‘LAA’) ability to make payments to providers attending asylum interviews conducted at the relevant locations, namely: Colnbrook, Harmondsworth and Yarl’s Wood.
- 7.4 Since the judgment, the Home Office has operated a scheme at Colnbrook, Harmondsworth and Yarl’s Wood for expediting asylum applications. As an expedited process has been maintained it is appropriate to maintain legal aid for attendance at asylum interviews in the three locations.
- 7.5 Transitional arrangements are not necessary for these changes as they provide clarity for arrangements already in place. Legal service providers attending asylum interviews are paid a fixed fee that is unaffected by this change.

### *Consolidation*

- 7.6 No previous changes have been made to the Immigration Interview Regulations therefore the government has no current plans to consolidate.

## **8. Consultation outcome**

- 8.1 There was no consultation undertaken for this instrument. The amendments made in this instrument are necessary to provide legislative clarity to existing arrangements.

- 8.2 Given this, and that this instrument is in line with the policy approach taken for cases subject to an expedited asylum procedure as originally made, the Government do not consider that consultation is necessary before making this change. The Government will however monitor the impact of changes as part of ongoing monitoring of legal aid expenditure.
- 8.3 In 2016 the Government launched a consultation on proposals to expedite appeals by Immigration detainees. The consultation sought views on policy proposals to introduce an expedited appeals process for those detained in an Immigration Removal Centre or prison who were appealing an immigration decision. The government will consider if any further changes to the Immigration Interview Regulations are necessary in light of the response to this consultation. .

## **9. Guidance**

- 9.1 No specific guidance on this amendment will be issued.

## **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 The Regulations do not impose any additional regulatory burdens on small firms.
- 11.2 The legislation applies to small business only insofar as it affects the contractual relationship between the LAA and providers of legal aid services
- 11.3 The Ministry of Justice has not taken any specific steps to minimise the impact of these amendments on firms employing up to 20 people.

## **12. Monitoring & review**

- 12.1 The operation of and expenditure of the legal aid scheme is continually monitored by the Ministry of Justice and the LAA.
- 12.2 The Government will consider if any further amendments are necessary following the publication of a response to the consultation on proposals to expedite appeals by Immigration detainees.

## **13. Contact**

- 13.1 Olga Kostiw at the Ministry of Justice Telephone: 020 3334 6400 or email: [Olga.Kostiw@justice.gsi.gov.uk](mailto:Olga.Kostiw@justice.gsi.gov.uk) can answer any queries regarding the instrument.