

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL LEGAL AID (REMUNERATION) REGULATIONS 2013**

**2013 No. 435**

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 The Criminal Legal Aid (Remuneration) Regulations 2013 make provision about the payment of fees to persons who provide criminal legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”).

**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 Act. These instruments will be laid in time 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.

7.2 Section 2(3) of the Act provides that the Lord Chancellor may, in regulations, make provision about the payment of remuneration by the Lord Chancellor to persons who provide services under arrangements made for the purposes of Part 1 of the Act. These Regulations exercise that power in relation to criminal legal aid.

7.3 These Regulations set out the procedures for litigators, advocates and experts to make claims in respect of various types of criminal legal aid work, and the fees to be

allowed. The Regulations substantially replicate the Criminal Defence Service (Funding) Order 2007 (S.I. 2007/1174) (“the 2007 Order”), as amended a number of times between 2007 and 2012. The only substantive change is that the rates for certain types of work that were previously contained in the 2010 Standard Crime Contract between the Legal Services Commission and providers are now contained in a new Schedule 4 inserted by regulation 8.

7.4 Schedule 1 effectively replicates Schedule 1 to the 2007 Order, and contains the rates for advocates in the Crown Court

7.5 Schedule 2 effectively replicates Schedule 2 to the 2007 Order, and contains the rates for litigators in the Crown Court.

7.6 Schedule 3 effectively replicates Schedule 3 to the 2007 Order, and contains the rates for litigators and advocates in the Court of Appeal.

7.7 Schedule 4 is a new Schedule containing the rates for various types of work which are contained in the existing 2010 Standard Crime Contract between the Legal Services Commission and providers, such as police station attendance, proceedings in a magistrates’ court and certain other work to which the 2010 Standard Crime Contract applies.

7.8 Schedule 5 effectively replicates Schedule 5 to the 2007 Order, and contains the rates for experts.

## **7. 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 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](http://www.justice.gov.uk/consultations/legal-aid-reform).

8.3 We have not consulted on the Criminal Legal Aid (Remuneration) 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 <http://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 businesses.

## **12. Monitoring & review**

12.1 The Ministry of Justice will conduct a post-implementation review of the Act between three to five years after implementation. This review will also consider the operation of the secondary legislation.

## **13. Contact**

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