

**EXPLANATORY MEMORANDUM TO
THE LEGAL AID (INFORMATION ABOUT FINANCIAL RESOURCES)
REGULATIONS 2013**

2013 No. 628

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 provision in relation to requests for information by the Director of Legal Aid Casework (“the Director”) to the Department of Work and Pensions, Her Majesty’s Revenue and Customs (“HMRC”), the Department for Social Development in Northern Ireland and the Department of Finance and Personnel in Northern Ireland (“relevant Northern Ireland Departments”) in order to facilitate decisions about an individual’s financial resources for the purpose of legal aid available under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”). The instrument prescribes additional information that may be requested from a relevant Northern Ireland Department and HMRC and makes provision in relation to an individual’s benefit status. If the individual is in receipt of a benefit prescribed in this instrument, the Director may request information about the benefit, including the amount the individual is receiving.

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 for the Act 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

The Minister of State for Justice, Lord McNally has made the following statement regarding Human Rights:

In my view the provisions of the Legal Aid (Information about Financial Resources) Regulations 2013 are compatible with the Convention Rights.

7. Policy background

7.1 The Act gives effect to the Government's policy position on Legal Aid. The Government believes that legal aid has expanded far beyond its original intentions and is available for a wide range of issues, many of which need not be resolved through the courts. Irrespective of the current economic situation, a wide ranging programme of reform is required to ensure that legal aid is targeted to those who need it most, for the most serious cases in which legal advice and representation is justified.

7.2 Having accurate information about the financial resources of an individual who is applying for, or in receipt of, legal aid is an important part of ensuring that only those eligible for legal aid receive it, and that those liable to contribute to the cost of their legal representation do so.

7.3 Section 22 of the Act provides a statutory gateway for the Director or other named person to ask for information from the Secretary of State for Work and Pensions, a relevant Northern Ireland Department or HMRC about an individual's financial resources for the purposes of criminal or civil legal aid. Information may only be requested under section 22 for the purposes of facilitating a determination about an individual's financial resources for the purpose of legal aid available under Part 1 of the Act, for example, a determination that an individual is financially eligible for legal aid, or is liable to make a contribution toward the cost of their representation.

7.4 Section 22 specifies the types of information that the Director may request. The regulations set out further types of information that may be requested. These include information about tax credits and child benefit held by the relevant Northern Ireland Departments and HMRC, as well as information about the individual's income chargeable to income tax and whether the individual is a director of a company, trades with one or more persons, has a profession or is in a business partnership.

7.5 The regulations also prescribe benefits which the Director may request information about if an individual is in receipt of them. Where an individual is in receipt of a prescribed benefit, an information request may ask for the disclosure

of the amount of a prescribed benefit an individual is receiving, and where the benefit consists of a number of elements, what those elements are and how much the individual is receiving in respect of each element of the benefit. Information about prescribed benefits is used to determine an individual's eligibility for, or liability to make a contribution toward, legal aid.

8. 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. Over 5,000 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.

8.2 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 consultees.

8.3 A detailed Government response to the consultation exercise is available on the MoJ Website at: www.justice.gov.uk/consultations/legal-aid-reform.

8.4 We have not consulted on the Legal Aid (Information about Financial Resources) Regulations 2013.

9. Guidance

9.1 Guidance is not being prepared specifically on 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 business.

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

Samantha Toyn at the Ministry of Justice Tel: 020 3334 4285 or email samantha.toyn@justice.gsi.gov.uk who can answer any queries regarding the instrument.