

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (PROCEDURE, REMUNERATION AND STATUTORY
CHARGE) (AMENDMENT) REGULATIONS 2018

2018 No. 803

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 two new contracts to govern relations between the Lord Chancellor and providers of legal aid, known as the 2018 Standard Civil Contract and the 2018 CLA Contract (the 2018 Civil Legal Advice Contract, which governs the provision of remote legal services in certain categories).
- 2.2 The amendments will ensure that existing procedures for applications for legal aid, and remuneration to legal aid providers, apply in relation to work carried out under the 2018 Standard Civil Contract and 2018 CLA Contract; and that certain cases are categorised as Licensed rather than Controlled work.

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 the negative 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 LASPO; regulations made under it; and contracts between the Lord Chancellor and providers. The regulations refer to the contracts, so when the Lord Chancellor enters into new contractual arrangements, the references need to be updated.
- 4.2 These Regulations amend the Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098) (“the Procedure Regulations”), the Civil Legal Aid (Remuneration) Regulations 2013 (SI 2013/422) (“the Remuneration Regulations”), and the Civil Legal Aid (Statutory Charge) Regulations 2013 (SI 2013/503) (“the Statutory Charge Regulations”). The amendments ensure that each of these instruments refer to the new 2018 Standard Civil Contract and 2018 CLA Contract.
- 4.3 The Procedure Regulations make provision about the making and withdrawal of determinations that an individual qualifies for civil legal services under section 9 and 10 of LASPO.

- 4.4 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.
- 4.5 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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 In order to deliver legal aid services, legal aid providers must hold a contract with the Lord Chancellor. Prior to 1 September 2018, legally aided face-to-face work was carried out by providers under the 2010, 2013, 2014, 2015, and 2016 Standard Civil Contracts. These contracts will end on 31 August 2018. On 1 September 2018 a new Standard Civil Contract will come into force, which will govern the provision of face-to-face work by legal aid providers.
- 7.2 Similarly, prior to 1 September 2018, telephone legal aid work was carried out by providers under the 2013 CLA Contract. This contract will end on 31 August 2018 for Family, Housing and Debt and some Discrimination providers. On 1 September 2018 a new CLA Contract will come into force, which will govern the provision of telephone advice by legal aid providers in these categories of law.
- 7.3 The 2018 Standard Civil Contract will govern the underlying commercial relationship between the Legal Aid Agency (LAA) and legal aid providers. It will set out the rules which all civil legal aid providers must abide by when delivering civil legal services in England and Wales.
- 7.4 These Regulations also make a further amendment which changes the way that immigration and asylum work in the Upper Tribunal is categorised.
- 7.5 The 2018 Standard Civil Contract has been tendered on the basis that immigration and asylum work in the Upper Tribunal will be categorised as Licensed Work. This brings immigration work in the Upper Tribunal in line with the way legal aid provision is generally governed in Upper Tribunal proceedings. Licensed Work requires providers to submit an application for approval by the LAA. The Procedure Regulations categorise immigration and asylum work in the Upper Tribunal as Controlled Work so this needs to be amended to reflect the 2018 Standard Civil Contract.
- 7.6 Transitional provisions have been included in the regulations to ensure that the change does not apply to cases started before 1 September 2018. This includes cases that

begin before 1 September as ‘legal help’ but which go on to require legal representation in the Upper Tribunal.

8. Consultation outcome

- 8.1 The Government has not consulted on the Civil Legal Aid (Procedure, Remuneration and Statutory Charge) (Amendment) Regulations 2018 as the Regulations make amendments which are consequential on the adoption of the 2018 Standard Civil Contract and 2018 CLA Contract.
- 8.2 The LAA has consulted bodies that represent legal aid providers in relation to the 2018 Standard Civil Contract.

9. Guidance

- 9.1 Guidance is not being prepared specifically on this instrument because it does not implement a change in policy. The instrument makes only minor and technical changes.

10. Impact

- 10.1 The impacts of the Government’s programme of legal aid reform implemented through the Act are set out in an Impact Assessment which was updated following the Act receiving Royal Assent. This is available at 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 since it is foreseen to have no notable impact.

11. Regulating small business

- 11.1 Legal aid is out of scope of the regulatory agenda. It is excluded by section 22(4)(c) of the Small Business Enterprise and Employment Act 2015 on the grounds that it relates to ‘the giving of grants or other financial assistance by or on behalf of a public authority’. The measure does not require Reducing Regulation Committee or Regulatory Policy Committee clearance.

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 LAA.

13. Contact

- 13.1 Jasmine Spencer at the Ministry of Justice, telephone: 07542944606 or email: jasmine.spencer@justice.gov.uk can answer any queries regarding the instrument.