

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL LEGAL AID (CORONAVIRUS, REMUNERATION)**  
**(AMENDMENT) REGULATIONS 2020**

**2020 No. 472**

**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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to amend the circumstances under which litigators and advocates, providing legal aid services under the Advocates' Graduated Fee Scheme and the Litigators' Graduated Fee Scheme, are able to receive hardship payments under The Criminal Legal Aid (Remuneration) Regulations 2013 ("the Remuneration Regulations"). This is specifically because of the impact COVID-19 has had on this profession and this instrument will provide greater access to payments for work done in cases of financial hardship.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 Regrettably, this instrument will breach the 21-day rule for laying in Parliament and will be laid on 30<sup>th</sup> April 2020 and come into force on 1<sup>st</sup> May 2020. This is emergency legislation in response to the coronavirus crisis where policy has had to be developed at fast past to respond to an emergent situation of delayed trials and how this affects the sustainability of the market. The changes required in this instrument could not have been predicated to lay in time to meet the 21-day rule. The instrument needs to come into force the day after making to allow the profession to access the hardship payments immediately for work done.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

- 6.1 This instrument is made in exercise of the Lord Chancellor's powers conferred by sections 2(3), 41(1) and (3) of Part 1 the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO").
- 6.2 Part 1 of LASPO governs the provision of legal aid. Section 2(3) allows the Lord Chancellor to make regulations about remuneration for those providing legal services.
- 6.3 The Remuneration Regulations provides for the remuneration of litigators and advocates in respect of advice, assistance and representation made available under sections 13, 15 and 16 of LASPO (i.e. criminal legal aid).
- 6.4 Regulation 21 of the Remuneration Regulations sets out the circumstances under which a litigator or advocate may apply for a hardship payment. This instrument amends regulation 21 of the Remuneration Regulations which provides the circumstances under which litigators and advocates may be paid hardship payments.
- 6.5 This instrument provides the following: –
  - a) the threshold at which a hardship payment may be made is reduced from the current amount of £5,000 to £450; and
  - b) the time that must pass before a practitioner is able to apply for a hardship payment is reduced from six months following instruction to one month following instruction.

## **7. Policy background**

- 7.1 This instrument will ensure litigators and advocates are able to claim hardship payments after one month and after completing £450 of work, where the final payment is not expected to be made within three months.
- 7.2 The coronavirus pandemic has had a significant impact on the criminal justice system and courts and this has led to a reduction in cases proceeding through the criminal justice system. This has had an impact on the income of criminal legal aid practitioners.
- 7.3 In order to pay for work done and help improve the cash flow of the profession, this amendment to the regulations will provide access to earlier payments in cases of financial hardship.
- 7.4 As we continue to respond to the effects of COVID-19 at pace, we will review the need for this instrument in six months' time.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 None.

## **10. Consultation outcome**

- 10.1 Whilst no public consultation was carried out because of the coronavirus pandemic and the impacts this continues to have on society at large, we did informally consult

with a range of stakeholders to seek their input on these changes. This instrument does not amount to any substantive shift in legal aid policy, rather it increases the availability of interim payments in the case of financial hardship.

## **11. Guidance**

- 11.1 The Legal Aid Agency will set out guidance to reflect the changes brought in by this statutory instrument, ensuring the process is clear to all and to include confirmation that there will be no requirement to provide evidence of hardship in order to receive payment at this time.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 A full impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sectors is foreseen.

## **13. Regulating small business**

- 13.1 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.

## **14. Monitoring & review**

- 14.1 The operation of and expenditure on the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency. We will review the need for this amendment in 6 months.

## **15. Contact**

- 15.1 Leonard Leslie at the Ministry of Justice (Telephone: 07889 413518 or email: [Leonard.Leslie@justice.gov.uk](mailto:Leonard.Leslie@justice.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 Jelena Lentzos, Deputy Director for Legal Aid, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alex Chalk MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.