

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (REMUNERATION) (AMENDMENT) (CORONAVIRUS)
REGULATIONS 2020

2020 No. 515

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 (Remuneration) Regulations 2013 (“the Remuneration Regulations”).

2.2 It introduces two new standard fees which are payable for asylum and immigration (non-asylum) cases which are appealing to the First-tier Tribunal (Immigration and Asylum Chamber) and are using the online procedure created by Her Majesty’s Courts and Tribunal Service (HMCTS).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 The Remuneration Regulations make provision for remuneration by the Lord Chancellor to persons who provide civil legal services for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”).

6.2 The fees and rates for civil legal services are set out in Schedule 1 of the Remuneration Regulations. Part 1 sets out the standard and graduated fees. This instrument amends Part 1 of Schedule 1 to the Remuneration Regulations by introducing two new standard fees for immigration (non-asylum) and asylum appeals that use the online procedure.

- 6.3 The fees and rates set out in the Remuneration Regulations are subject to the definitions and payment schemes contained in the contracts made between the Lord Chancellor and a provider of civil legal services under Part 1 of LASPO. The relevant contract for present purposes is the 2018 Standard Civil Contract (“the contract”), and the detailed remuneration provisions are contained in the contract Specification (Immigration and Asylum) (“the specification”).
- 6.4 The specification sets out the rules for the Immigration and Asylum fee schemes, which refers to Schedule 1 to the Remuneration Regulations in relation to the actual fees, hourly rates and escape thresholds. The contract and the specification are publicly available at the following link:
<https://www.gov.uk/government/publications/standard-civil-contract-2018>.

7. Policy background

What is being done and why?

- 7.1 The Remuneration Regulations set the fees and rates payable to legal aid providers who have a contract with Lord Chancellor. The fees and rates are set at levels so as to remunerate legal aid providers for the work they do as part of their legal aid contract. Changes to fees and rates cannot be made without a statutory instrument.
- 7.2 This amendment amends the Remuneration Regulations to introduce two new fixed fees for asylum and immigration (non-asylum) cases appealing to the First-tier Tribunal (Immigration and Asylum Chamber) and who are using the online procedure created by HMCTS.
- 7.3 As part of the HMCTS Reform Programme, HMCTS are digitising the First-tier Tribunal (Immigration and Asylum Chamber). They have created an end-to-end online procedure, whereby appeals are submitted digitally and progress via this procedure from initial application to hearing. The online procedure involves active case management of an appeal by a Tribunal Caseworker, and requires additional preparation to help cases to be resolved at an earlier point in the appeal journey, where it is appropriate for them to be so.
- 7.4 The Coronavirus pandemic has brought forward the digitisation of the First-tier Tribunal (Immigration and Asylum Chamber) to ensure that the tribunal can continue to function. The online procedure is now mandatory for asylum and immigration (non-asylum) appeals unless it is agreed with the tribunal that it is not possible to do so. All appeals that utilise the online procedure will be eligible for the relevant new fees.
- 7.5 In 2018-19 there were approximately 6,000 legally-aided asylum appeals and 200 legally-aided immigration appeals paid by standard fees a year.

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 There are no plans to consolidate the Remuneration Regulations at this time.

10. Consultation outcome

- 10.1 All legal aid providers have signed the 2018 Standard Civil Contract, which sets out the contractual requirements of the legal aid providers and the Legal Aid Agency, who are responsible for the operational elements of the legal aid scheme.
- 10.2 Paragraph 13.10 of the 2018 Standard Civil Contract says that consultation is required with the Contract Consultative Bodies (the Legal Aid Practitioners' Group, the Law Society, the Advice Services Alliance and Bar Council) for any change to the Contract. This consultation will have taken place by the time the SI comes into force.
- 10.3 No further, formal, consultation has taken place.

11. Guidance

- 11.1 The Legal Aid Agency will update its guidance to legal aid providers on claiming for work to reflect the new fees stemming from this amendment via its website, as is usual practice.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is confined to the Legal Aid Agency and Ministry of Justice. The decision to change the fee scheme for these specific appeal cases that use the online procedure will lead to increased remuneration for legal aid providers. The contractual elements of this will be managed by the Legal Aid Agency, with guidance being provided to all relevant providers.
- 12.3 An Impact Assessment has not been prepared for this instrument because it falls below the threshold required for producing one, and the impact on businesses is limited to those legal aid providers who hold a legal aid contract in asylum and immigration law.
- 12.4 This amendment seeks to ensure that legal aid providers are remunerated for their work. The Department estimates that this will cost an additional £680,000 per year, based on volumes of asylum and immigration (non-asylum) appeals from the past two years. Applications for legal aid are, however, reflective of demand, and so this amount could rise to £930,000 per year if volumes were similar to those seen after the 2015 European migrant crisis, which resulted in increased applications for legal aid.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.
- 13.2 The legislation applies to small businesses only insofar as it affects specific operational arrangements, as set out in operational guidance, of the Legal Aid Agency and providers of legal aid services.

14. Monitoring & review

- 14.1 The operation and expenditure of the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency.

15. Contact

- 15.1 Abi Marx at the Ministry of Justice. Telephone: 07976766336 or email: abigail.marx@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jelena Lentzos, Deputy Director for Legal Aid Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alex Chalk MP, Parliamentary Under Secretary of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.