

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT) (NO.2)**  
**REGULATIONS 2022**

**2022 No. 1267**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to apply a 15% uplift to certain fees payable under the Advocates' Graduated Fee Scheme ("AGFS") and the Litigators' Graduated Fee Scheme ("LGFS") through the Criminal Legal Aid (Remuneration) Regulations 2013 ("the Remuneration Regulations"). Following the amendments, the uplift will apply to those Crown Court cases where a representation order was granted for advocates on or after 31 December 2018 but before 17 September 2020 and to litigators for representation orders dated on or after 1 April 2016 but before 17 September 2020, and where the main hearing (as defined in the Remuneration Regulations) takes place after the coming into force of this instrument.
- 2.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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

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

- 3.1 None.
- 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 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)(a) and (b), (2)(a) and (b) and 3(c) in Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO").

- 6.2 Part 1 of LASPO relates to the provision of legal aid. Section 2(3) empowers the Lord Chancellor to make regulations about remuneration for those providing services under arrangements made under LASPO.
- 6.3 The Remuneration Regulations provide 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 The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (“the 2022 Regulations”) amended the Remuneration Regulations to apply an increase of 15% to various fees, including some fees payable under the AGFS and the LGFS. These increases applied to matters where a representation order was granted after the coming into force of the 2022 Regulations.
- 6.5 The 2022 Regulations were subsequently amended by:
- the Criminal Legal Aid (Remuneration) (Amendment) (Amendment) Regulations 2022, which corrected minor errors; and
  - the Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No.2) Regulations 2022, which extended the fee increases to AGFS and LGFS cases where a representation order was granted on or after 17 September 2020 but before 30 September 2022 and where a main hearing takes place on or after 31 October 2022.

## **7. Policy background**

- 7.1 The fee uplifts implemented by this instrument have been agreed as part of the overall response to the Criminal Legal Aid Independent Review (CLAIR).
- 7.2 This instrument applies the increases implemented by the 2022 Regulations to those cases where a representation order was granted in respect of AGFS advocates on or after 31 December 2018 but before 17 September 2020 and in respect of LGFS for representation orders dated on or after 1 April 2016 but before 17 September 2020, and where the main hearing takes place on or after 23 December 2022. Cases in the AGFS or LGFS with representation orders granted on or after 17 September 2020 and before 30 September 2022, and with a main hearing on or after 31 October 2022, were brought within scope through the Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022.
- 7.3 This instrument further widens the scope of the LGFS and AGFS fee increases to include the vast majority of remaining existing cases in the Crown Court backlog.
- 7.4 This is part of a wider package of proposals announced by the government on the response to CLAIR, including through discussions with stakeholders (including the CBA) in the light of the ending of strike action by criminal barristers.

## **8. European Union Withdrawal and Future Relationship**

- 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 On 15 March 2022, the Government published its response to the Criminal Legal Aid Independent Review and consulted on proposals to take forward fee increases and wider reforms of the criminal justice system. The interim response to consultation was published alongside the laying of the 2022 instrument.
- 10.2 Following further discussions with stakeholders, and as part of the overall response to the consultation, this instrument applies the increases implemented by the 2022 Regulations to further cases in the Crown Court backlog where the main hearing takes place on or after 23 December 2022. A full response to all the consultation proposals was published on 30 November 2022.
- 10.3 We received a total of 203 responses, mainly from solicitors, advocates and representative bodies. Overall respondents welcomed an increase in fees and, although many felt the increase was insufficient, they felt it should come into force as quickly as possible and apply to cases in the Crown Court backlog.

## **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 for litigators and advocates who are providing legal aid services prior to it coming into force.

## **12. Impact**

- 12.1 It is estimated that this measure will cost the legal aid fund £0.8m in total in the central scenario. Of this, it is estimated that £0.6m will go to AGFS and £0.2m for LGFS. It has also been estimated that, of this £0.8m, £0.3m will go to solicitors' firms and £0.5m to criminal barristers. The figures could be higher or lower than estimated depending on case mix and court hearing schedules.
- 12.2 Clients will still have access to the same criminal legal aid services as they do now, provided the interests of justice and means tests are satisfied. However, where defendants facing trial proceedings in the Crown Court are currently required to pay contributions, the amount of contributions might change, depending on their income and capital. Given the lack of available data, we have been unable to undertake detailed analysis of the impacts on clients; however, these are likely to be limited.
- 12.3 An Impact Assessment was published on 30 November 2022 alongside our Response to our consultation following the Independent Review of Criminal Legal Aid.

## **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. As such, we will monitor the impact of this scheme immediately after implementation.

**15. Contact**

- 15.1 James MacMillan at the Ministry of Justice Telephone: 07542 945 596 or email: [James.macmillan2@justice.gov.uk](mailto:James.macmillan2@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Claire Cooper, Deputy Director for Legal Aid Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Freer at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.