

EXPLANATORY MEMORANDUM TO
THE CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT)
REGULATIONS 2022

2022 No. 848

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 The Advocates' Graduated Fee Scheme ("AGFS") is the fee scheme through which criminal defence advocates are paid for carrying out publicly funded work in the Crown Court and the Litigators' Graduated Fee Scheme ("LGFS") is the fee scheme through which criminal litigators are paid for carrying out public funded work in the Crown Court.

2.2 The purpose of this instrument is to increase fees paid under the AGFS and certain fees paid under the LGFS, contained in Schedules 1 and 2 of the Criminal Legal Aid (Remuneration) Regulations 2013 ("the Remuneration Regulations"). It increases fees paid for the Court of Appeal, contained in Schedule 3 and the fees paid to litigators in Very High Cost Cases contained in schedule 6. It also increases fees relating to claims for fees for certain categories of work to which the Standard Crime Contract applies contained in Schedule 4 of the Remuneration Regulations, principally police station advice and assistance and representation in the magistrates' courts. It also increases fees and rates for experts set out in Schedule 5. It also corrects a reference to the Criminal Justice Act 1988 within Schedule 2

3. Matters of special interest to Parliament

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 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)(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. In this context we mean criminal legal aid services.
- 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 Regulations 4, 5, 23 and 24 of the Remuneration Regulations set out the circumstances under which a litigator or advocate can make a claim for fees under the AGFS and LGFS. Schedules 1 and 2 of the Remunerations make provision in respect of the fees payable under these regulations for the AGFS and LGFS respectively.
- 6.5 Regulation 6 and Schedule 3 make provision in respect of the fees payable for proceedings in the Court of Appeal.
- 6.6 Regulation 8 and Schedule 4 make provision in respect of the fees payable for certain categories of work to which the Standard Crime Contract applies, mainly police station advice and assistance and magistrates' court representation.
- 6.7 Regulation 12A and Schedule 6 make provision in respect of the fees payable for Very High Cost Cases (VHCCs).
- 6.8 Regulation 16 and Schedule 5 make provision in respect of the fees and rates payable for expert services.

7. Policy background

- 7.1 This instrument will ensure litigators and advocates will be more fairly paid for the work they do and represents part of the Government's response to the Criminal Legal Aid Independent Review. The instrument will come into force on 30 September 2022 and apply to cases where a determination is made on or after that date under section 13 (advice and assistance for individuals in custody), section 15 (advice and assistance for criminal proceedings) or section 16 (representation for criminal proceedings) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. It will apply to VHCCs signed after 30 September and to any Task List in existing VHCC's agreed after 30 September 2022.
- 7.2 At the beginning of 2019, the Ministry of Justice decided to undertake a comprehensive review into the criminal legal aid fee schemes and wider criminal legal aid market, aiming to reform the system holistically to ensure work done was fairly remunerated, that the provider market was flexible and delivered value for money for the taxpayer and that the legal aid system supports an effective and efficient criminal justice system.
- 7.3 The Criminal Legal Aid Independent Review was conducted by the then Sir Christopher Bellamy QC (now Lord Bellamy QC), who published his review and recommendations in December 2021. On 15 March the Government published its response to the review and consulted on proposals to take forward fee increases and wider reforms of the criminal justice system.
- 7.4 Following careful consideration of the consultation responses, this instrument will increase the following by 15%:
 - all police station advice and assistance fees;

- all magistrates' court fees;
- fees for litigators in Very High Cost Cases;
- some elements of the Crown Court LGFS fees (basic fees, fixed fees and hourly rates);
- all Crown Court AGFS fees;
- all expert fees;
- other criminal legal aid fees, such as free-standing advice and assistance, Court of Appeal and Criminal Cases Review Commission; and
- where they arise, the thresholds for escape fees and limits on work that can be done without LAA authorisation.

7.5 This instrument also abolishes the fixed fee currently paid in either-way cases where the defendant elects for Crown Court trial in a case the magistrates think is suitable for summary trial, but subsequently changes their plea to guilty in the Crown Court. In future these cases will be paid the graduated fee for a guilty plea or cracked trial, as appropriate.

7.6 This instrument also corrects a reference to the Criminal Justice Act 1988 within Schedule 2.

7.7 Alongside this instrument we will also amend the Standard Crime Contract 2022 to expand the scope of payments to solicitors for work on pre-charge engagement carried out in line with the Attorney General's Guidelines on Disclosure.

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 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 will be published alongside the laying of this instrument. A full response to all the consultation proposals will be published in the autumn.

10.2 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.

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 The impact on business, charities or voluntary bodies is an increase in criminal legal aid fees. There are also some other impacts as a result of our policy proposals. Where defendants facing trial proceedings in the Crown Court are currently required to pay contributions, the amount of contributions may change. As our proposals will result in an overall increase in AGFS and LGFS spend, the total value of contributions from legal aid clients could increase. Although the data we have available is limited and as such we are unable to provide a detailed analysis on the impacts on clients, in 2018-19 only 9% of Crown Court defendants were required to pay an income contribution and in many of these cases, these contributions did not meet the full defence costs of the case and as such, the client's income contributions would not be affected by any increase in fees. However, we have consulted on changes to the means test and that those changes, if implemented, may to mitigate any increase in contributions
- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.
- 12.4 For the LAA an increase in annual cost to the Legal Aid fund is expected to be £97m - £115m. This figure comprises increased funding for advocates and litigators. We also expect additional LAA administration costs as a result of our changes, including a one-off cost of £1.2m and ongoing annual costs of £0.7m.

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 recognise the need for sustained and constructive dialogue with the profession to ensure the changes detailed in this document have the desired intention. As such, we will monitor the impact of this scheme immediately after implementation.
- 14.2 We also consulted on setting up an advisory board to advise the Lord Chancellor at regular intervals on the arrangements for the delivery of criminal legal aid. We will set out our response to that proposal in our full response to consultation in the autumn.

15. Contact

- 15.1 James MacMillan at the Ministry of Justice Telephone: 07542 945 596 or email: James.macmillan2@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 Minister Dines at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.