EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (PROCEDURE) (AMENDMENT) REGULATIONS 2014

2014 No. 814

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 (Procedure) Regulations 2013 (SI 2013/3098) (the "Procedure Regulations"). Specifically, it amends regulations 33 and 34 which deal with evidence demonstrating a risk of domestic violence or child abuse for the purposes of accessing legal aid in private family law cases.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act") removed, in general terms, private family law cases from the scope of legal aid. An exception was made where there had been, or was a risk of, domestic violence or, in private children cases, there was a risk of child abuse. The types of evidence that are accepted to demonstrate either domestic violence or child abuse (and thereby qualify for legal aid) are set out at regulations 33 and 34 of the Procedure Regulations.

4.2 During debate on the Procedure Regulations (Hansard: 27 Mar 2013: Column 1116) the Government committed to conduct an early review of the operation of the evidence requirements to access legal aid in a private family law case. This followed concerns expressed that the evidence, in relation to domestic violence in particular, would be too restrictive.

4.3 This Statutory Instrument expands the types of evidence, and amends some of the current forms of evidence, following that review.

5. Territorial Extent and Application

5.1 This instrument applies to 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

7.1 The Act established a new scheme for legal aid. The reformed system is intended to refocus limited public resources on to those cases that need it most: in general terms those where there was a threat to life or liberty or where there was a risk of serious harm or homelessness. The new scheme came into force on 1st April 2013.

7.2 As part of the reforms, private family law was generally removed from scope. However, an exception was made for cases where there had been, or was a risk of, domestic violence and, in private children cases, where there was a risk of child abuse. In relation to domestic violence, the intention was to ensure that victims were not required to face their abusers in court whilst unrepresented, and to ensure the integrity of the scheme so as not to be open to abuse. The types of evidence that would be accepted as demonstrating either domestic violence or child abuse was agreed during the passage of the Act, and given effect via regulations 33 and 34 of the Procedure Regulations.

7.3 Following implementation of the new evidence requirements, the Government has conducted an early review of the way in which it has been operating. The result of this was that while there was no evidence at this early stage of implementation that fundamental change was necessary, feedback indicated that certain forms of evidence could be simplified or clarified to make them easier to access. There were also additional forms of evidence presented that had similar qualities, in terms of establishing domestic violence or the risk of domestic violence, whilst maintaining the integrity of the scheme, as existing forms. On the basis that a wider range of evidence types will make legal aid more accessible for victims of domestic violence, we have expanded the acceptable forms.

7.4 This instrument amends the way in which evidence from a health professional, including referrals from a health professional, can be provided in order to ensure that an individual is more readily able to access evidence of domestic violence. In particular, the expansion is intended to mitigate against potential charges made by GPs for providing evidence. The provisions allow for psychologists to provide evidence, provides that where a referral has been made by a health professional to a domestic violence specialist service then that service may provide evidence and removes the requirement for a health professional to state that they had no reason to believe that the condition presented with was not caused by domestic violence. They also clarify that the examination should be conducted in person.

7.5 The regulations also provide for additional forms of evidence in relation to criminal or civil proceedings. These are where the other party in the case is on police bail for a domestic violence offence, where the other party has been bound over in relation to a domestic violence offence or where a Domestic Violence Protection Notice or Order has been issued against the other party. For the former two, these were suggested during the review and fitted well with our policy intent. The latter was implemented nationally by the Home Office from 8 March 2014 as an additional type of domestic violence protective order. Equivalent provision is made for evidencing child abuse in relation to police bail.

7.6 In addition, the acceptable evidence of a stay at a domestic violence refuge has been expanded. Firstly, the regulations allow for exclusion from a refuge due to a lack of available accommodation to act as a form of evidence. This removes the potential that someone, through no fault of their own, is unable to access a refuge, and is then subsequently unable to provide the necessary evidence for access to legal aid. Secondly, it removes the requirement for a stay in the refuge to be for at least 24 hours, which seeks to make this particular type of evidence more accessible to women.

7.7 Finally, the regulations simplify how evidence from a Multi-Agency Risk Assessment Conference is accessed by allowing for any member to provide a letter and clarifying that the evidence need not explicitly state that a victim was a high risk victim of domestic violence.

8. Consultation outcome

8.1 Ministry of Justice officials have met and spoken to a number of organisations in developing these regulations, both during the development stage and as policy had been finalised. These included representatives of those providing evidence, victims and legal aid providers.

8.2 We have not, however, consulted specifically on this instrument.

9. Guidance

9.1 Guidance was originally produced about the evidence requirements by the Ministry of Justice (for applicants) and the Legal Aid Agency (for caseworkers and legal aid providers) at the implementation of the scheme in April 2013 (the guidance for applicants can be accessed at http://www.justice.gov.uk/legal-aid-for-private-family-matters). This is being updated to take account of the expanded and amended types of evidence and will set out what is required in respect of each type of evidence, and the process for acquiring any given piece of evidence. We will also provide template letters for both applicants and those providing evidence in order to ensure a consistent approach.

10. Impact

10.1 The amendments to the scheme are not envisaged to make a significant impact on those providing evidence or on the Legal Aid Agency or legal aid providers. As such, no impact assessment was prepared in support of this Statutory Instrument.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

11.2 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people.

11.3 The instrument does not impose any additional regulatory burdens on small firms.

12. Monitoring and review

12.1 The Government has committed to continued monitoring of the operation of the evidence requirements as the scheme continues to bed in. This will include on-going discussion with stakeholders, as well as reviewing the data provided by the Legal Aid Agency in relation to the number and form of applications. Where issues arise, we will consider what actions are necessary.

12.2 More generally, the Ministry of Justice will conduct a post-implementation review of the Act between 3-5 years after implementation. This review will consider the operation of the secondary legislation, including the Procedure Regulations.

13. Contact

13.1 Any enquiries about the contents of this memorandum should be addressed to:

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