EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (PROCEDURE) (AMENDMENT) REGULATIONS 2026

2026 No. 573

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. Declaration

2.1 Minister Sackman, Minister of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Lizzie Checkley, Joint Deputy Directors for Eligibility, Civil and Family Legal Aid Policy, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Natasha Stewart at the Ministry of Justice, email civil.legalaidpolicy@justice.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes technical amendments to the Civil Legal Aid (Procedure) Regulations 2012 ("the Procedure Regulations") to reverse certain changes made by The Criminal and Civil Legal Aid (Amendment) Regulations 2025 ("the 2025 Amendment Regulations"), which came into force on 27 June 2025. The effect is to restore elements of the Procedure Regulations to their position prior to the changes introduced by the 2025 Amendment Regulations on 27 June 2025.

4.2 The 2025 Amendment Regulations amended legal aid regulations to ensure the Legal Aid Agency (LAA) could continue to deliver its services following the cyber-attack on its online digital services[1]. These amendments included measures waiving civil income and capital contributions, as well as changes to enable greater delegation of civil decision-making and amendments to certain criminal legal aid processes. The 2025 Amendment Regulations did not include an end date but made clear that these measures were temporary and expected to be reversed once system recovery was sufficiently advanced.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

[1] See, for further context: the statement in Parliament of 19 May 2025 from Minister Sackman - https://hansard.parliament.uk/commons/2025-05-19/debates/C6B0C827-D166-4DF8-90AD-ECBDA4951D37/LegalAidAgencyCyber-SecurityIncident; and published guidance from the Legal Aid Agency on contingency measures and processes: https://www.gov.uk/guidance/legal-aid-agency-cyber-security-incident.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Following the cyber-attack affecting LAA digital services, the 2025 Amendment Regulations made amendments for a temporary period to existing regulations regarding civil and criminal legal aid to ensure the continued operation of legal aid. This instrument reverses some of these changes to the Procedure Regulations, restoring the position of those measures prior to 27 June 2025.

5.2 In relation to the Procedure Regulations, this instrument will:

5.2.1 Require the Director of Legal Aid Casework (DLAC) to revoke[2] an emergency representation determination when the individual is found not to be financially eligible for that form of legal aid on a full assessment of their resources, where currently the Director is only required to withdraw such determinations.

5.2.2 Require DLAC to send copies of certificates to individuals when the Director makes a determination that an individual qualifies for Licensed Work[3].

5.3 The requirement to revoke any emergency representation determination where the individual does not subsequently pass the means test, we have also put in a savings provision. This savings provision will mean that the current requirement to withdraw will continue to apply to any emergency representation determination made before the coming into force date of this instrument where, following the provision of further information or documents, DLAC determines that the individual is financially ineligible. This will ensure that those individuals granted emergency representation who, after 27 June 2025, were subject to extended costs and time limits under increased delegated LAA and provider authorisation, are not in effect retrospectively disadvantaged.

5.4 This instrument does not reverse all the changes made by the 2025 Amendment Regulations to the Procedure Regulations, the Crime Legal Aid (General) Regulations 2013, and the Criminal Legal Aid (Financial Resources) Regulations 2013, which enabled and supported DLAC to delegate some additional civil and criminal legal aid functions to legal aid providers. As part of recovery, these extended delegated functions were withdrawn on 1 October 2025 for criminal matters with a gradual withdrawal for civil matters from 1 December 2025. The delegation to make further determinations on cases where the LAA had made an initial determination in civil matters was withdrawn on 1 December 2025 and emergency representation time and costs limits have been gradually reducing from this date. There remain limited circumstances where providers can continue to withdraw a determination. These delegations were made through a separate operational process. These legislative changes which supported those delegations are being retained to preserve flexibility, to allow DLAC to delegate civil and criminal functions to legal aid providers through

[2] The distinction between revocation and withdrawal is broadly as follows: when the LAA revokes the funding certificate, any legal aid funds paid to the provider for work undertaken in the case would be reclaimed from the individual; in contrast, when the LAA withdraws the funding certificate, legal aid funding ceases from that point and the individual faces no liability to the LAA for the legal aid costs incurred in the case.

[3] In Licensed work, legal representation before a court is likely to be needed and responsibility for determining eligibility is usually undertaken by the Legal Aid Agency (LAA).

operational arrangements where necessary in future, avoiding the need to lay further instruments.

5.5 This instrument also does not reverse any changes to the Procedure Regulations or the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 relating to civil income and capital contributions. Further work is ongoing to determine the timing and approach to reinstating the requirement to pay civil income and capital contributions. The requirement to pay civil income and capital contributions will therefore not be reinstated through this instrument and will instead be addressed through a separate instrument in due course.

What was the previous policy, how is this different?

5.6 Prior to this instrument, the Procedure Regulations contained a provision which had the effect of requiring DLAC to withdraw (not revoke) any emergency representation determination in cases where the initial determination has been made on the basis of limited information, and later it is determined the individual does not pass the means test. Prior to this instrument DLAC was also not required to send copies of certificates to individuals when the Director made a determination that an individual qualified for Licensed Work. This instrument reverses these changes which were made by the 2025 Amendment Regulations to their position prior to the 27 June 2025. Those changes were expected to be temporary and were introduced to ensure business continuity following the cyber-attack on the LAA systems.

6. Legislative and Legal Context

How has the law changed?

6.1 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") requires the Lord Chancellor to secure that legal aid is made available in accordance with Part 1. Part 1 specifies that legal aid includes both civil legal aid and criminal legal aid. What is required to be secured is set out in sections 9 and 10 for civil legal aid. Section 12 of LASPO allows the making of provisions about the making and withdrawal of determinations under sections 9 and 10, and section 41 allows the making of savings provisions.

6.2 This instrument amends the Procedure Regulations, to require DLAC to revoke, rather than withdraw, any emergency representation determination where the initial determination was made on limited information and the individual is later found not to pass the means test, and to require DLAC to send copies of certificates to individuals when the Director determines that an individual qualifies for Licensed Work. The saving provision ensures that the current requirement to withdraw continues to apply to any emergency representation determination made before the date these Regulations come into force where, following the provision of further information or documents, the Director determines that the individual is financially ineligible.

Why was this approach taken to change the law?

6.3 Changes to legislation were made by the 2025 Amendment Regulations to enable the LAA to maintain its services following the cyber-attack. Operational recovery from this attack is now sufficiently advanced to allow some measures relating to determinations and certificates which were introduced by the 2025 Amendment Regulations to be reversed to their position before 27 June 2025. Changes to the Procedure Regulations is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no formal policy consultation on this instrument due to the technical nature of these changes which restores elements of the Procedure Regulations to their position prior to the changes introduced by the 2025 Amendment Regulations on 27 June 2025. However, both the LAA and the Ministry of Justice will continue to engage representative bodies to assist in understanding the impact of these operational changes.

8. Applicable Guidance

8.1 Following the cyber-attack, the LAA published, and regularly updates, guidance for providers on GOV.UK[4].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the estimated relatively low impact of these operational changes on the public sector. The measure is not a regulatory provision.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies because the legal aid changes in this instrument are expected to only affect legal aid service providers. The legislation impacts small or micro businesses to the extent that they are legal aid service providers.

9.3 There is no estimated cost for the full package of measures.

9.4 The measures in the SI are not expected to give rise to direct or indirect discrimination or other prohibited conduct under the Equality Act 2010.

9.5 Welsh Language Impact. The measures in this instrument would also affect legal aid services providers based in Wales. As the instrument reverts certain measures relating to determinations and certificates back to their previous position, before the 2025 Amendment Regulation made temporary changes on 27 June 2025, we expect no significant impacts.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Following implementation of this instrument, the Ministry of Justice and the LAA, working closely with representative bodies and providers, will continue to monitor the impact of these changes on the operation of the legal aid framework, as part of business continuity planning following the cyber-attack affecting LAA online digital services.

10.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Sackman has made the following statement: “It would not be appropriate in these

[4] See: https://www.gov.uk/guidance/legal-aid-agency-cyber-security-incident ; and https://www.gov.uk/guidance/legal-aid-agency-cyber-security-incident-frequently-asked-questions

circumstances to make provision for a statutory review of this instrument, as the measures in this instrument restore elements of the Procedure Regulations to their position prior to the changes introduced by the 2025 Amendment Regulations on 27 June 2025."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").