EXPLANATORY MEMORANDUM TO

THE CIVIL LEGAL AID (REMUNERATION) (AMENDMENT) REGULATIONS 2025

2025 No. 415

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

2.2 Claire Cooper and Lizzie Checkley, Joint Deputy Directors for legal aid policy at the Ministry of Justice, confirm that this Explanatory Memorandum meets the required standard.

3. Contact

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

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will make changes to Part 1, Schedule 1 to the Civil Legal Aid (Remuneration Regulations) 2013[1] (S.I. 2013/422) (the "Remuneration Regulations"). It will amend the Remuneration Regulations so that a standard fee of £208 with an escape fee threshold of £624 is payable for welfare benefits Controlled Work. In this context, Controlled Work for welfare benefits mainly includes legal help (that is, advice and assistance short of advocacy) at the Upper Tribunal and is available subject to the means and merits test.

4.2 This is consistent with the approach taken in other civil legal aid categories of law, such as housing and debt, clinical negligence, community care, and education, where an escape fee mechanism is already in place.

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.

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

[1] https://www.legislation.gov.uk/uksi/2013/422/contents

5. Policy Context

What is being done and why?

5.1 Legal aid is in scope for the welfare benefits category of law, as set out under paragraphs 8 ('appeals relating to welfare benefits') and 8a ('appeals relating to council tax reduction schemes') of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)[2].

5.2 For welfare benefits, legal aid for Controlled Work is available, subject to means and merits tests, for appeals on a point of law to the Upper Tribunal, Court of Appeal, and the Supreme Court. For a council tax reduction scheme, legal aid for Controlled work is available for appeals on a point of law relating to council tax reduction schemes in the High Court, Court of Appeal, and the Supreme Court. Legal representation is available for the Court of Appeal and Supreme Court. For welfare benefits Controlled Work, providers are paid a fixed fee of £208, with no escape fee. Legal representation for welfare benefits work is paid via hourly rates.

5.3 This instrument will introduce an escape fee mechanism for the £208 fixed fee for welfare benefits Controlled Work. The escape fee mechanism allows providers to claim hourly rates once the value of the time actually worked exceeds three times the fixed fee (the escape fee "threshold"). This allows for complex work to be paid more (compared to the fixed fee alone). Providers are also able to claim counsel fees as disbursements where the case 'escapes'. The escape fee mechanism will be available to cases started (meaning the date the application for legal aid is signed by the client) on or after 1 May 2025, the date this instrument comes into force.

5.4 This change in law will mean that the payment mechanism for welfare benefits Controlled Work is consistent with that for other civil legal aid categories of law where an escape fee is already available. This change should also support the sustainability of welfare benefits legal aid work and help ensure access to justice.

What was the previous policy, how is this different?

5.5 An escape fee mechanism for welfare benefits Controlled Work has generally not been available since the introduction of LASPO, when the scope of welfare benefits advice within legal aid was reduced. Various fixed fees have been payable for welfare benefits Controlled Work since 2013.

5.6 Between 2013 and 2018, some procurement areas held contracts which were paid a price competitive fixed fee with no escape fee mechanism. Remuneration was set at the level that individual providers bid for in their tenders to the Legal Aid Agency. Later, some legal aid providers signed up to the 2014 Standard Civil Contract (Welfare Benefits), under which welfare benefits work was paid a fixed fee of £208 with no escape fee mechanism3. This fixed fee was based on 2011/12 data and represented the national average cost of the limited volume of welfare benefits advice work remaining in the scope of legal aid following the implementation of LASPO.

5.7 Since 2014, further amendments have been made to the Remuneration Regulations to reflect that the £208 fixed fee at Table 7, with no escape fee mechanism, was payable for welfare benefits Controlled Work completed under the 20164, 20185 and 20246

[2] See paragraphs 8 and 8A of Schedule 1 of Part 1 of LASPO https://www.legislation.gov.uk/ukpga/2012/10/contents
[3] https://www.legislation.gov.uk/uksi/2014/7/contents/made
[4] https://www.legislation.gov.uk/uksi/2016/983/contents/made
[5] https://www.legislation.gov.uk/uksi/2022/1379/contents/made

Standard Civil Contracts. When the 2018 Standard Civil Contract first came into effect, the Remuneration Regulations were not amended to make express reference to the 2018 Standard Civil Contract. At this time, some providers were paid on the basis that their cases had escaped. This was corrected by the Immigration Interviews (Exceptions) and Remuneration) (Amendment) Regulations 20227, which came into force on the 1 April 2023.

5.8 This change is therefore a departure from previous policy as it introduces a standard escape fee mechanism for all welfare benefits Controlled Work. This is in line with other civil legal aid categories of law (such as housing, education, clinical negligence and community care) where an escape fee mechanism already applies.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the 2013 Remuneration Regulations, which have been amended previously from time to time. In relation to welfare benefits remuneration specifically and since 2014, these Remuneration Regulations have been amended at paragraph 2A of Schedule 1 each time that a new Standard Contract has been issued to providers, in order to reflect that a provider fee for this work would be under Table 7 of Schedule 1. Since this instrument removes paragraph 2A and Table 7 prospectively, it removes any future ongoing need to update the Remuneration Regulations in this way.

Why was this approach taken to change the law?

6.2 Changes to S.I. 2013/422 are the only possible approach to make the necessary amendments.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation was not undertaken because this instrument does not contain significant changes to legal aid. Additionally, in taking this approach, the following considerations were taken into account:

7.1.1 The proposed welfare benefits changes do not effect an increase in the standard fee claimed by providers. Rather, this change removes an anomaly and source of potential confusion where welfare benefit fees are currently set out in two tables in Part 1 of Schedule 1 of the Remuneration Regulations

7.1.2 The amendment introduces an escape fee mechanism for welfare benefits Controlled Work which is consistent with other civil legal aid categories of law where this mechanism already applies.

7.1.3 Welfare benefits legal aid providers tend to cover other civil legal aid categories of law, so they are already familiar with an escape fee mechanism.

7.1.4 It is unlikely that introducing the escape fee for welfare benefits Controlled Work is going to shift significant numbers of providers from other civil law categories, thereby impacting capacity in other areas or distortions in the civil legal aid market.

[6] https://www.legislation.gov.uk/uksi/2024/889/contents/made
[7] https://www.legislation.gov.uk/uksi/2022/1379/contents/made

8. Applicable Guidance

8.1 This legislation is not currently accompanied by guidance. Where necessary, the Legal Aid Agency will provide guidance to legal aid providers on the changes in this instrument. But, as indicated above, interested providers are likely to be already familiar with the escape fee mechanism.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 affect only a small cohort of legal aid providers who provide welfare benefits Controlled Work. The measure is not a regulatory provision.

9.3 The legislation impacts small or micro businesses to the extent that they are legal aid providers dealing with welfare benefits Controlled Work. These small and micro businesses are not exempted because the impact of this change is anticipated to be positive.

9.4 The impact on the public sector is in the form of an additional annual legal aid cost for welfare benefits Controlled Work estimated at around £6k.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Following implementation of these amendments the Ministry of Justice and the Legal Aid Agency will continue to monitor the impact of these changes on the legal aid scheme.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State at the Ministry of Justice, Sarah Sackman KC, has made the following statement: “It would not be appropriate in the circumstances to make provision for a statutory review of this instrument because of the low impact on business.”

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 Sarah Sackman KC, Minister of State, has made the following statement regarding Human Rights:

"In my view the provisions of The Civil Legal Aid (Remuneration) (Amendment) Regulations 2025 are compatible with the Convention rights."

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").