EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (GENERAL) (AMENDMENT) REGULATIONS 2026

2026 No. 955

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 MP, Minister of State for Courts and Legal Services, can confirm that this Explanatory Memorandum meets the required standard.

2.2 Alison Samedi, Deputy Director for Legal Aid Strategy and Criminal Legal Aid Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Joseph Drew, Senior Policy Advisor in Criminal Legal Aid Policy at the Ministry of Justice, can be contacted with any queries regarding this instrument.
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Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to make legal aid available in relation to various orders and amendments introduced by the Border Security, Asylum and Immigration Act 2025 ("BSAI Act") and the Crime and Policing Act 2026 ("C&P Act"). These measures are: Serious Crime Prevention Orders ("SCPOs"), Stalking Protection Orders ("SPOs"), Child Criminal Exploitation Prevention Orders ("CCEPOs") and Youth Diversion Orders ("YDOs").

Where does the legislation extend to, and apply?

4.2 This instrument extends to England and Wales.

4.3 The territorial application of this instrument is England and Wales.

5. Policy Context

What is being done and why?

5.1 The Home Office has introduced certain measures and amendments within the BSAI Act and the C&P Act, which upon commencement would not be within the scope of legal aid. We are bringing into the scope of criminal legal aid the amendment in section 59 of the BSAI Act that enables the courts to make an SCPO on acquittal, and the amendments in section 128 and 129 of the C&P Act that provides for the courts, of their volition, to be able to impose SPOs on both conviction and acquittal. Alongside this, we are bringing the CCEPOs and YDOs, new orders introduced by various sections of the C&P Act, within the scope of criminal legal aid.

5.2 This is in line with the policy on legal aid for similar forms of civil orders, such as Serious Disruption Prevention Orders, and ensures that individuals issued with SCPOs, SPOs, CCEPOs and YDOs are able to access legally-aided support.

5.3 To do so, this Instrument amends Regulation 9 of the Criminal Legal Aid (General) Regulations 2013 (SI 2013/9) (the "General Regulations") to prescribe the above measures as criminal proceedings.

5.4 There are various factors that guide a decision on whether to class a measure as criminal proceedings, such as: the courts involved; who will be able to apply for the order; precedent for similar measures; and the penalty for a breach. These factors determine what type of provider is likely to become involved in the matter and therefore whether the order should be classed as criminal proceedings and brought into the scope of criminal legal aid.

5.5 Being classed as 'criminal proceedings' allows for proceedings that are not criminal offences, such as parenting orders, to be seen as criminal proceedings in a legal aid sense and therefore be eligible for criminal legal aid funding. The orders in this measure can all be issued in the criminal courts and the penalty for a breach of these orders is a criminal offence. Criminal legal aid practitioners are more likely to be involved in defending cases involving these measures, and as such, we are using this instrument to prescribe them as criminal proceedings. This will ease the administrative burden on legal aid providers and the Legal Aid Agency

What was the previous policy, how is this different?

Serious Crime Prevention Orders

5.6 SCPOs are provided for under Part 1 of the Serious Crime Act 2007. They are civil preventative orders which impose tailored prohibitions, restrictions, and requirements on a person for a period of up to five years to prevent or disrupt their involvement in serious crime.

5.7 SCPOs as they stand are currently in scope within criminal legal aid. This is within a narrow scope that provides for SCPOs that are granted by the Crown Court.

5.8 The BSAI Act 2025 amends the Serious Crime Act 2007 to enable the Crown Court to also make an SCPO on acquittal following an application from the Crown Prosecution Service or the Serious Fraud Office. Without amending the General Regulations, SCPOs made on acquittal will not be in the scope of criminal legal aid.

Stalking Protection Orders

5.9 SPOs were introduced by the Stalking Protection Act 2019. This gave the police the power to apply to a magistrates' court for an SPO where an individual poses a risk in relation to stalking, regardless of whether they have been convicted.

5.10 The C&P Act provides for the courts to be able to impose SPOs on both conviction and acquittal of their own volition, without requiring a police application. This will bring SPOs into line with similar civil orders, for example, Sexual Harm Prevention Orders. Without amending the General Regulations, SPOs made by the courts of their own volition on conviction and acquittal will not be in the scope of criminal legal aid.

Child Criminal Exploitation Prevention Orders

5.11 CCEPOs are new civil orders introduced by the C&P Act that aim to prevent Child Criminal Exploitation conduct before it occurs or prevent it from re-occurring.

Without amending the General Regulations, CCEPOs made on application will not be in the scope of criminal legal aid.

Youth Diversion Orders

5.12 YDOs are new civil orders introduced by the C&P Act to disrupt those aged 10 to 21 years old who are involved in terrorism-related activity, and divert them from the wider criminal justice system, including prosecution. Without amending the General Regulations, YDOs will not be in the scope of criminal legal aid.

6. Legislative and Legal Context

How has the law changed?

6.1 This SI amends Regulation 9 of the 2013 General Regulations. Precise commencement dates of some of the measures have not yet been settled on by the Home Office, as such this instrument has been drafted with conditional commencement provisions to ensure that legal aid is made available when the relevant commencement order comes into force.

6.2 Regulation 2(4) prescribes SCPOs made by the Crown Court in proceedings in relation to a person who is acquitted of an offence, or where a person's appeal has been successful against conviction, as "criminal proceedings". This will mean that criminal legal aid will be available to defendants who have been issued with an SCPO when they have been acquitted or have successfully appealed against their conviction.

6.3 Regulation 2(5) prescribes SPOs issued under section 2A of the Stalking Protection Act 2019 in relation to a person who is acquitted of a stalking offence, or appeals against orders made on conviction, as "criminal proceedings", and therefore make criminal legal aid available to people responding to these orders in these circumstances.

6.4 Regulation 2(2) prescribes CCEPOs and interim CCEPOs as "criminal proceedings". This will bring the associated stand-alone applications for variation or discharge and appeals against CCEPOs into scope of criminal legal aid.

6.5 Regulation 2(3) prescribes YDOs and interim YDOs as "criminal proceedings". This will bring the associated stand-alone applications for variation, renewal, or discharge and appeals against YDOs into scope of criminal legal aid.

6.6 These Regulations and the SCPO measure will come into force on 1 October 2026. The other measures will come into force on the date on which the relevant legislation has been commenced by Home Office.

Why was this approach taken to change the law?

6.7 This was the only way to introduce these measures into the General Regulations and ensure that those issued with the orders referred to within this instrument would be eligible for legal aid. This is in line with the policy on legal aid for similar forms of civil orders, such as Serious Disruption Prevention Orders, which were previously brought into the scope of criminal legal aid.

6.8 Criminal legal aid was seen as more appropriate than civil legal aid due to the criminal legal aid practitioners being more likely to be involved in cases involving these measures and therefore more likely to have the required expertise to represent claimants. This will ease the administrative burden on legal aid providers and the Legal Aid Agency.

7. Consultation

Summary of consultation outcome and methodology

7.1 As this instrument does not make significant changes in the provision of criminal legal aid, it was not considered necessary to undertake a consultation exercise.

8. Applicable Guidance

8.1 Guidance will be set out in the Criminal Legal Aid Manual at Annex I[1] and in the Criminal Bills Assessment Manual at Annex A.[2]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary or public sectors is foreseen.

SCPOs

9.2 The Home Office estimates there will an additional 4 to 12 SCPOs per year, with a central estimate of 8. Including Interim SCPOs, this number rises to between 4 and 22, with a central estimate of 12 per year. It is expected that combined with other measures in the BSAI Act 2025, such as electronic tagging, there will be an additional 2 to 10 breaches per year. This would lead to an annual legal aid cost of between £4,900 and £19,800 per year with a central estimate of £12,700 per year. This will be funded by the Home Office.

SPOs

9.3 It is expected that there will be an increase in the issuance of SPOs, yet it is unclear how many of these new SPOs would have been a restraining order prior to implementation of the amendments in the C&P Act. The potential reduction in the number of restraining orders issued may lead to a reduction in prison places per year. This is due to the breach of a restraining order having a lower breach rate and lower custody rate compared to the breach of an SPO.

9.4 Legal aid costs were identified for SPOs, however this was offset against potential savings in the courts, prisons and probation. The net effect is that additional costs will not be incurred as a result of the policy.

CCEPOs

9.5 The Home Office estimates 19 CCEPOs will be issued per year as a central estimate, with 0 to 8 breaches (a central estimate of 2 breaches), which would lead to a legal aid cost of around £3,600 under the central scenario (with an estimated range of £200 to £14,600). This will be funded by Home Office.

YDOs

9.6 The Home Offices estimate there will be 50 YDOs per year as a central estimate, with approximately 14 breaches. This would lead to a legal aid cost of around £27,500, which will be funded by the Home Office.

[1] https://assets.publishing.service.gov.uk/media/6a672e3c3b40a3e9013dba5d/criminal_legal_aid_manual.pdf
[2] https://assets.publishing.service.gov.uk/media/6862739bb466cce1bb1219fc/Criminal_Bills_Assessment_Manual.pdf

Impact on businesses, charities and voluntary bodies

9.7 Legal aid is out of the 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

9.8 There is no, or no significant, impact on the public sector, aside from the costs as detailed above.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The operation of and expenditure on the legal aid scheme is continually monitored, and the Ministry of Justice and the Legal Aid Agency will continue to review the supply of legal aid on an ongoing basis and gather evidence on market capacity, including through the CLAAB and initiatives such as provider surveys. This approach allows flexibility to respond to emerging issues without committing to automatic adjustments. We will work closely with Home Office to monitor the implementation of the orders contained within this Instrument.

10.2

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 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").