EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (GENERAL AND REMUNERATION) (AMENDMENT) REGULATIONS 2025

2025 No. 1251

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

2.2. Alison Samedi, Deputy Director for Criminal Legal Aid, at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1. Oliver Shaw at the Ministry of Justice (telephone: 07549 937081 or email: oliver.shaw@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. The purpose of this instrument is primarily to bring into force a first tranche of policies outlined in the Government Response to the Criminal Legal Aid: proposals for solicitor fee scheme reform (2025) consultation ("the Consultation Response"). This will harmonise the fixed fee for all police station schemes at £320 (excluding VAT) and harmonise the escape fee threshold for all police station schemes at £650 (excluding VAT); uplift magistrates' court fees by 10%, including Youth Court fees; uplift prison law fees by 24% and uplift fees for certain appeals work by 10%.

4.2. In addition to the above, this instrument will make provision related to the payment of litigators' fees at less than or more than the prescribed rates and provide for interim payments for litigators in certain circumstances. This instrument will also bring Parole Board proceedings referred to the High Court into scope of criminal legal aid.

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.

5. Policy Context

What is being done and why?

5.1. The consultation paper 'Criminal Legal Aid: Proposals for Solicitor Fee Scheme Reform' was published on 9 May 2025. It invited written responses on proposals to increase fees for criminal legal aid solicitors, covering work carried out by legal aid providers at police stations, in magistrates' courts, in the Crown Court and in prisons.

5.2. This followed an announcement by the Lord Chancellor in December 2024 of an additional investment for criminal legal aid solicitor fee schemes to increase the total funding available for solicitor fees by 12%, bringing the overall uplift in funding for solicitor fees since the Criminal Legal Aid Independent Review (CLAIR) to 24%. This increase in funding will deliver up to £92 million a year once the proposals are fully implemented in steady state.

5.3. This additional funding is designed to support the sustainability of the criminal legal aid solicitor market. Strengthening the sector for the future is fundamental to ensuring the criminal justice system can operate effectively and efficiently.

5.4. This instrument will amend the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I.2013/435) ('the Remuneration Regulations') to harmonise the fixed fee for all police station schemes at £320 (excluding VAT) and harmonise the escape fee threshold for all police station schemes at £650 (excluding VAT); uplift magistrates' court fees by 10%, including Youth Court fees; uplift prison law fees by 24% and uplift fees for certain appeals work by 10%.

5.5. This instrument adds two provisions into Schedule 4 of the Remuneration Regulations. These provisions set out the mechanism for the payment of fees to a litigator at less than or more than the prescribed rate for representation in a magistrates' court; in the youth court; in proceedings relating to an injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014; and in proceedings prescribed as criminal proceedings under section 14 of the Act in the High Court, the family court or county court. This aligns with the 2025 Standard Crime Contract. Amendments have also been made to the Remuneration Regulations to provide that certain Upper Limits may be extended upon application in accordance with the 2025 Standard Crime Contract.

5.6. This instrument removes regulation 17A(3) of the Remuneration Regulations, which has prohibited litigators from making a claim for an interim payment in relation to a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

5.7. This instrument will also amend the Criminal Legal Aid (General) Regulations 2013 (S.I. 2013/9) ('the General Regulations') to bring Parole Board proceedings referred to the High Court into the scope of criminal legal aid. Sections 61 and 62 of the Victims and Prisoners Act 2024 introduced section 32ZAA of the Crime (Sentences) Act 1997 and section 256AZBA of the Criminal Justice Act 2003 respectively, which enable the Secretary of State to direct the Parole Board to refer a release decision to the High Court in certain circumstances. This instrument will provide for those proceedings to be treated as criminal proceedings for the purposes of legal aid.

What was the previous policy, how is this different?

5.8. Regarding the harmonisation of police station fixed fees and escape fee thresholds across all police station schemes, police station fixed fees and escape fee thresholds previously varied by geographic area ('scheme'), with 245 different schemes across

England and Wales. These were set in 2008 based on the average cost of a case in that area at that time. Following the 2024 Crime Lower Consultation, around 80% of the schemes in London and outside London were increased to the same level. This was a first step towards harmonisation – phasing out geographic variation. This policy completes the harmonisation process.

5.9. Regarding the provisions for the payment of fees to a litigator at less than or more than the prescribed rate, there was previously no explicit provision in the Remuneration Regulations to pay fees at less than or more than the prescribed rate.

5.10. Regarding the removal of the prohibition of interim payments for litigators in certain circumstances, until 2022, the Remuneration Regulations prescribed a fixed fee to both litigators and advocates in triable either way cases in which the defendant elected for the case to be heard in the Crown Court but where a magistrates' court considered the case to be suitable for summary trial, and which resulted in a guilty plea in the Crown Court. The fixed fee was less than the usual graduated fee for a guilty plea and fixed at a level broadly in line with what the case would have been paid had it remained in a magistrates' court. The rationale for the fixed fee was to discourage Crown Court election in known guilty pleas, however following CLAIR, the fixed fees were removed on the basis that it may penalise providers for the behaviour of their clients. The normal graduated fee for a guilty plea is now payable in these cases. However, a related provision in the Remuneration Regulations (Regulation 17A(3)) to prohibit interim payments for solicitors in triable either way cases where the defendant elected for the case to be heard in the Crown Court but where a magistrates' court considered the case to be suitable for a summary trial, in order to avoid a potential overpayment, was not removed. As the potential overpayment issue Regulation 17A(3) was designed to address now no longer exists, this instrument will remove the prohibition in Regulation 17A(3).

5.11. Regarding proceedings in the High Court concerning a release decision of the Parole Board, the power of the Secretary of State to refer release decisions to the High Court was introduced by the Victims and Prisoners Act 2024. As a new power, these proceedings were not previously within the scope of criminal legal aid. This instrument will enable those proceedings to be treated as criminal proceedings for the purposes of legal aid.

6. Legislative and Legal Context

How has the law changed?

6.1. This instrument amends the Remuneration Regulations to uplift certain fees for criminal legal aid solicitors following consultation. It will harmonise the fixed fee for all police station schemes at £320 (excluding VAT) and harmonise the escape fee threshold for all police station schemes at £650 (excluding VAT); uplift magistrates' court fees by 10%, including Youth Court fees; uplift prison law fees by 24% and uplift fees for certain appeals work by 10% (litigators' fees for proceedings in the Court of Appeal, advice and assistance on an appeal against conviction or sentence or an application to the Criminal Cases Review Commission, and representation in the Crown Court on an appeal from a magistrates' court in proceedings prescribed as criminal proceedings under section 14(h) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act')).

6.2. This instrument adds two provisions into Schedule 4 of the Remuneration Regulations. They make provision for the payment of fees to a litigator at less than or more than the prescribed rate for representation in a magistrates' court; in the youth court; in proceedings relating to an injunction under Part 1 of the Anti-social

Behaviour, Crime and Policing Act 2014; and in proceedings prescribed as criminal proceedings under section 14 of the Act in the High Court, the family court or county court. Amendments have also been made to provide that certain Upper Limits may be extended upon application in accordance with the 2025 Standard Crime Contract.

6.3. This instrument also removes regulation 17A(3) of the Remuneration Regulations, which has prohibited litigators from making a claim for an interim payment in relation to a case committed or sent for trial to the Crown Court on the election of a defendant where a magistrates' court has determined the case to be suitable for summary trial.

6.4. These Regulations apply to services provided following a determination made on an application for services under section 13 (advice and assistance for individuals in custody), 15 (advice and assistance for criminal proceedings) or 16 (representation for criminal proceedings) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on or after 22 December 2025.

6.5. Finally, this instrument amends regulation 9 of the General Regulations to specify proceedings in the High Court concerning a release decision of the Parole Board referred under section 32ZAA of the Crime (Sentences) Act 1997 or section 256AZBA of the Criminal Justice Act 2003 as criminal proceedings for the purposes of section 14(h) of the Act. This provision will come into force on 31 December 2025.

Why was this approach taken to change the law?

6.6. This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1. The consultation paper 'Criminal Legal Aid: Proposals for Solicitor Fee Scheme Reform' was published on 9 May 2025. It invited written responses on proposals to increase fees for criminal legal aid solicitors, covering work carried out by legal aid providers at police stations, in magistrates' courts, in the Crown Court and in prisons. It sought views through the consultation from anyone with an interest in criminal legal aid in England and Wales, including, but not limited to, members of the criminal defence profession and their representative bodies, police station staff, defendants, academics, and others involved in the criminal justice system. A sub-group of the Criminal Legal Aid Advisory Board (CLAAB), consisting of solicitors' representative groups also discussed and provided feedback on the consultation proposals.

7.2. The consultation period closed on 4 July 2025. A total of 214 responses were received, and a detailed analysis and assessment of the responses was conducted. Following careful consideration of all responses and wider evidence provided by stakeholders, the Government has settled on the following proposals. Further details can be found in the Government's response to the consultation 'Criminal Legal Aid: proposals for solicitor fee scheme reform', which is available online[1].

7.3. Regarding the proposal to harmonise police station fees, while the majority of respondents agreed with the proposal, several voiced concerns with the proposed escape fee threshold. Following consideration of respondents' concerns, the Government decided to reduce the escape fee threshold from the proposed £960 to £650.

7.4. Regarding the proposal to uplift all magistrates' court fees, 48% of respondents agreed with the proposal while 26% of respondents disagreed. 8% of respondents did

[1] https://www.gov.uk/government/consultations/criminal-legal-aid-proposals-for-solicitor-fee-scheme-reform

not answer the question. Those who were in favour thought this proposal would be a welcome increase. Reasons given for this included that the uplift would pay more reasonably for work done and may help attract new people into the profession. Of those who disagreed with the proposal, almost all did so due to the belief that the proposed 10% uplift was not high enough, nor reflective of the difficulty of, and expectations of time spent on, magistrates' court work.

7.5. 46% of respondents agreed with the proposal to increase prison law fees by 24% while 4% of respondents disagreed with the proposal, and 5% did not answer. A total of 41% of respondents selected 'don't know' in response to the question. Of the percentage of those who answered, 'don't know', 21% commented that they did not practice prison law. For those who were in favour, comments were made that this uplift was welcome, much needed and overdue. Some respondents used this question to discuss the increased complexity of prison law work, and to note that there has not been an uplift in fees for a long time in this area.

7.6. 20% of respondents to the consultation commented that appeals would benefit from a fee uplift. Appeals were also raised in a litigators' subgroup of CLAAB held in June 2025. All CLAAB subgroup members agreed that appeals should have been part of the consultation and recommended that the fees should be increased, warning that without funding providers may stop offering the service due to its uneconomic nature.

7.7. Following the consultation feedback, the Government decided an increase to the relevant solicitor fees for these areas of work by 10% would be consistent with the rationale underpinning the magistrates' court fee scheme uplift. It would also help to promote the sustainability of the firms who undertake this type of work.

7.8. Proposals regarding the Litigators' Graduated Fee Scheme were also consulted upon. The Government intends to implement these proposals as soon as is operationally possible.

7.9. We did not consider that a consultation was necessary in relation to the three remaining amendments. First, regarding the payment of fees to a litigator of less than or more than the prescribed rate, these provisions align with the 2025 Standard Crime Contract. Secondly, the removal of regulation 17A(3) of the Remuneration Regulations removes a prohibition on interim payments which is now obsolete. Finally, the Victims and Prisoners Act 2024 introduced new powers for the Secretary of State to refer release decisions of the Parole Board to the High Court. All current matters before the Parole Board that might affect the length of time a prisoner spends in prison are already within scope of criminal legal aid. For consistency, this instrument brings these proceedings at the High Court into scope of criminal legal aid.

8. Applicable Guidance

8.1. Guidance is not required.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1. A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is produced with the Government's response to the consultation 'Criminal Legal Aid: proposals for solicitor fee scheme reform', which is available online[2].

[2] https://www.gov.uk/government/consultations/criminal-legal-aid-proposals-for-solicitor-fee-scheme-reform

Impact on businesses, charities and voluntary bodies

9.2. 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.

9.3. There is no, or no significant, impact on the public sector.

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 by the Ministry of Justice and the Legal Aid Agency.

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 the 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").