EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT) (AMENDMENT) REGULATIONS 2022

2022 No. 1010

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to correct a number of errors made in the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 ("the Amending Regulations").

2.2 It amends some fees paid for work done in the Court of Appeal, which will be contained in Schedule 3 of the Criminal Legal Aid (Remuneration) Regulations 2013 ("the Remuneration Regulations") when the Amending Regulations come into force on 30th September 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regrettably, this instrument will breach the 21-day rule for laying in Parliament and will be laid on 29th September 2022 and come into force on the same day. The changes made by this instrument make urgent corrections to errors identified in the Amending Regulations in advance of them coming into force on 30th September.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument is made in exercise of the Lord Chancellor's powers conferred by sections 2(3), 41(1)(a) and (b), (2)(a) and (b) in Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO").

6.2 Part 1 of LASPO relates to the provision of legal aid. Section 2(3) empowers the Lord Chancellor to make regulations about remuneration for those providing services under arrangements made under LASPO.

6.3 The Remuneration Regulations provide for the remuneration of litigators and advocates in respect of advice, assistance and representation made available under sections 13, 15 and 16 of LASPO (i.e. criminal legal aid).

6.4 Regulation 6 and Schedule 3 make provision in respect of the fees payable for proceedings in the Court of Appeal.

7. Policy background

What is being done and why?

7.1 This instrument amends some errors in the Amending Regulations.

7.2 Following the publication of the Criminal Legal Aid Independent Review the Government consulted on proposals to increase fees. Following careful consideration of the consultation responses, the Amending Regulations introduced a 15% increase in most criminal legal aid fees, including for the Court of Appeal. This instrument corrects four fees which have erroneously not been increased by 15%.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 On 15th March 2022 the Government published its response to the Criminal Legal Aid Independent Review and consulted on proposals to take forward fee increases and wider reforms of the criminal justice system. The Government's Interim Response was published on 20th July 2022, which announced the Government's decision to introduce a 15% increase in most criminal legal aid fees. A full response to all the consultation proposals will be published in the autumn.

10.2 We received a total of 203 responses, mainly from solicitors, advocates and representative bodies. Overall respondents welcomed an increase in fees and although many felt the increase was insufficient, they felt it should come into force as quickly as possible.

11. Guidance

11.1 The Legal Aid Agency will set out guidance to reflect the changes brought in by this statutory instrument, ensuring the process is clear for litigators and advocates who are providing legal aid services prior to it coming into force.

12. Impact

12.1 The impact on business, charities or voluntary bodies is an increase in criminal legal aid fees.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment was submitted with the Amending Regulations and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 Legal aid is out of 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.

14. Monitoring & review

14.1 The operation of and expenditure on the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency. As such, we will monitor the impact of this scheme immediately after implementation.

15. Contact

15.1 James MacMillan at the Ministry of Justice Telephone: 07542 945 596 or email: James.macmillan2@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lizzie Checkley, Deputy Director for Legal Aid Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Johnson at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.