EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT) (NO. 2) REGULATIONS 2026

2026 No. 744

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 Elliot Miller at the Ministry of Justice can be contacted by email at the following address with any queries regarding the instrument: Elliot.Miller@Justice.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will amend the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I.2013/435) ('the Remuneration Regulations'), to extend eligibility for wasted preparation fees for criminal advocates by reducing the minimum trial length threshold from five days to two days; expand eligibility for the additional preparation fee so that it is available in cases that conclude by way of guilty plea, in addition to trials and cracked trials; and increase the additional preparation fee from £62 to £81 (plus VAT) per case.

Where does the legislation extend to, and apply?

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

4.3 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 policy changes contained in this instrument include: extending eligibility for wasted preparation fees for criminal advocates by reducing the minimum trial length threshold from five days to two days (the fee that remunerates advocates in circumstances where the advocate has committed time in good faith to preparation but is then required to return the brief for reasons beyond their control); expanding the number of cases in which the additional preparation fee (the fee for advocates to recognise where the advocate is required to conduct an activity which goes beyond the

usual preparatory workload of a case) can be claimed; and increasing the additional preparation fee.

5.2 The policy intention underpinning the changes to the wasted preparation fee is to better reflect the work undertaken by advocates in preparing cases, including those where the original advocate is unable to attend trial, and is informed by extensive engagement with the sector. By reducing the minimum trial length threshold from five days to two days, the measure broadens eligibility so that the fee can be claimed on more cases, thereby ensuring that advocates are appropriately remunerated for their preparation work, and encouraging early and thorough preparation across a wider range of cases.

5.3 The policy intention of the changes to the additional preparation fee is to encourage early engagement and appropriate case resolution. Extending the availability of the fee to cases that conclude by guilty plea ensures that advocates are remunerated for preparatory work across a wider range of case outcomes. The increase in the fee level is intended to better reflect the volume and nature of work undertaken by advocates, informed by feedback from the sector and extensive engagement with the Criminal Legal Aid Advisory Board (CLAAB). As the fee is available across all cases, these changes will benefit advocates irrespective of offence type or seniority, thereby supporting the overall sustainability of the profession.

What was the previous policy, how is this different?

5.4 A new fixed fee for additional preparation and wasted preparation was introduced in 2023 as part of the Government's overall response to the Criminal Legal Aid Independent Review (CLAIR).

5.5 These fees were introduced in recognition of both the work on preparation for ineffective trials and the increase of the scope and volume of written and audio-visual material work requirements.

5.6 Under current regulations, additional preparation fees are only claimable for trial or cracked trial cases. The measures contained in this instrument will expand eligibility for the additional preparation fee, so that it is also claimable in cases that conclude by way of a guilty plea.

5.7 A fixed fee of £62 (plus VAT) per case, payable to the trial advocate for such preparation, was introduced in 2023. This instrument increases that fee to £81 (plus VAT) per case. This represents a substantial increase to the fee.

5.8 Currently, advocates are eligible for the wasted preparation fee if the trial length is five days or over. The measure contained in this instrument will reduce the trial day threshold for wasted preparation from five days to two days.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends paragraphs 18 and 18A of Schedule 1 to the Remuneration Regulations to extend eligibility for wasted preparation fees by reducing the minimum trial length threshold from five days to two days; expand eligibility for the additional preparation fee so that it is available in cases that conclude by way of guilty plea, in addition to trials and cracked trials; and increase the additional preparation fee from £62 to £81 (plus VAT) per case.

6.2 The amendments to the Remuneration Regulations apply to services made available pursuant to a determination made on or after 28 July 2026.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 The measures implemented by this instrument are informed by extensive engagement with relevant stakeholders, including representatives of the criminal Bar and the CLAAB. These changes are limited in scope and reflect policy positions that have been developed through sustained stakeholder engagement.

7.2 In light of this, the Government does not intend to consult further on these specific measures.

8. Applicable Guidance

8.1 The Legal Aid Agency will publish updated Crown Court Fee Guidance, which references the criteria and value of the additional preparation fee, and how to claim it.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument.

9.2 Under the policy changes to the wasted preparation fee, it is estimated that there will be an additional 100 to 150 claims, assuming the same proportion of trials claim the fee under the revised two-day threshold. Assuming that these additional claims will have a similar cost as the median claim value for trials of 10 days or fewer it is estimated that the policy change will cost around £0.2m incl. VAT per year in steady state (with a lower and upper bound of £0.1m and £0.3m respectively).

9.3 Under the policy changes to the additional preparation fee, it is estimated that a further 24,300 claims will become eligible from expanding the fee to guilty pleas. In addition, all trials, cracked trials, and guilty pleas will attract the increased additional preparation fee (around 69,000 cases). Taken together, the expansion in eligibility and increase in fee rate is estimated to cost around £3.3m incl. VAT per year in steady state (with a lower and upper bound of £3.0m and £3.9m respectively).

Impact on businesses, charities and voluntary bodies

9.4 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.

9.5 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.

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").