EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT) REGULATIONS 2014

2014 No. 415

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2014 make provision for the reduction of litigators' fees by 8.75% in cases in the Crown Court (other than Very High Cost Cases), in the Court of Appeal, and in other cases covered by the Standard Crime Contract, such as magistrates' court cases, police station attendance and Parole Board cases. These Regulations are made under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the Act").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This is one of several statutory instruments which implement the legal aid reform proposals set out in the Government's response to the *Transforming Legal Aid: Next Steps* consultation, published on 27th February 2014. The Criminal Legal Aid (Remuneration) Regulations 2013 (SI 2013/435) ("the 2013 Regulations") make provision for the remuneration of advice, assistance and representation made available under sections 13,15 and 16 of the Act, which came into force on 1st April 2012.

4.2 This instrument amends the 2013 Regulations to implement reductions to litigators' fees. This instrument comes into force on 20th March 2014.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 Following the reforms set out in the Act, the Government consulted on a package of proposals to continue to bear down on the cost of legal aid, to ensure that

the Government is getting the best deal for the taxpayer and that the system commands public confidence.

7.2 *Transforming Legal Aid: Next Steps*, published in September 2013, set out a number of legal aid reforms and also contained a further consultation in relation to the procurement of criminal legal aid services and on advocacy fee reforms. The Government's response to the further consultation *Transforming Legal Aid: Next Steps* was published on 27th February 2014 and set out the decisions taken in relation to the procurement of criminal legal aid services and advocacy fee reforms.

7.3 The new criminal legal aid contracts will commence in spring 2015. As set out in the Government's response to *Transforming Legal Aid: Next Steps,* an overall reduction for all fees in scope of the current 2010 Standard Crime Contract is to be implemented by two successive reductions of 8.75%. Such an approach will enable the Ministry of Justice to begin realising necessary savings and help providers to adapt through a more gradual reduction in fees over the course of the extended period preceding the start date of the new contracts. It will have the added benefit of encouraging providers to explore the opportunities for the level of market consolidation necessary to ensure sustainable services in the longer term. A phased implementation of the proposed fee reduction, beginning with an 8.75% interim cut, strikes the appropriate balance of delivering initial savings and mitigating the risk of a single, substantial drop in prices while incentivising change.

7.4 This instrument implements the first of those reductions. The second reduction (relative to current fee levels and against the proposed new remuneration arrangements) will be made upon commencement of the new contracts in spring 2015.

7.5 Regulation 2(2) and Schedule 1 amend the 2013 Regulations in relation to remuneration relating to the litigators' graduated fee scheme, the funding scheme for litigators in the Crown Court other than Very High Cost Cases.

7.6 Regulation 2(3) and Schedule 2 amend the 2013 Regulations in relation to remuneration relating to proceedings in the Court of Appeal.

7.7 Regulation 2(4) and Schedule 3 amend the 2013 Regulations in relation to remuneration relating to fees for certain categories of work which the Standard Crime Contract applies, namely:-

- Police Station Advice and Assistance,
- Advice and Assistance, including Advocacy Assistance on a warrant of further detention,
- Advocacy Assistance for Armed Forces custody hearings,
- Advocacy Assistance in connection with applications to vary police bail conditions,
- Advice and Assistance and Advocacy Assistance by a court Duty Solicitor and Advocacy Assistance at the virtual court,
- Free standing Advice and Assistance,
- Own client work,
- representation in the magistrates' court,

- representation in prescribed proceedings, including those in the High Court or a county court,
- Advice and Assistance on an appeal against conviction or sentence or an application to the Criminal Cases Review Commission,
- representation on an appeal by way of case stated,
- representation in the Crown Court on an appeal from the magistrates' court in prescribed proceedings,
- Advice and Assistance in Prison Law Cases,
- Payment for Assigned Counsel.

7.8 Regulation 3 sets out the transitional arrangements which apply to the amendments, providing that the reductions apply to matters in which a determination about whether a person qualifies for criminal legal aid 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 Act is made on or after the coming into force date.

8. Consultation outcome

8.1 The consultation '*Transforming Legal Aid: Next Steps'* was published on 5th September 2013 and closed on 1st November 2013. Around 3,000 responses were received from representative bodies, practitioner and other organisations, individual members of the judiciary, members of the House of Commons and Lords, individual solicitors and barristers and members of the public. Respondents did not generally support a reduction in fees.

8.2 A detailed Government response to the further consultation exercise is available at https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps.

8.3 We have not consulted on the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2014.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. A programme of training and guidance for legal aid practitioners is being prepared by the Legal Aid Agency to support the transition to the new arrangements.

10. Impact

10.1 The impacts of the Government's programme of legal aid reforms are set out in a series of Impact Assessments, which were updated following publication of the Government's response to the consultation *Transforming Legal Aid: Next Steps*. These impact assessments are available at https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps. An Impact Assessment has not been prepared specifically for this instrument.

10.2 There is no impact on business, charities or voluntary bodies other than where it affects a contractual relationship between the Legal Aid Agency and providers of legal aid services, which has been assessed as part of the above Impact Assessments.

10.3 There is no impact on the public sector arising from this instrument beyond those accounted for in the Impact Assessments.

11. Regulation of small businesses

11.1 The legislation applies to small business only insofar as it affects the contractual relationship between the Legal Aid Agency and providers of legal aid services.

11.2 MoJ has not taken any specific steps to minimise the impact of the requirements on firms employing up to 20 people.

12. Monitoring and review

12.1 The operation of and expenditure on the legal aid scheme is continually monitored by the MoJ and the LAA. The Ministry of Justice will conduct a review, starting within a year of service commencement, to evaluate the delivery of litigation services, including the effect of the fixed fee mechanisms as an appropriate measure of ongoing remuneration of the work. This review will also consider the operation of the secondary legislation, including this instrument.

13. Contact

David Carter at the Ministry of Justice (Tel: 020 3334 4211 or email: David.Carter@justice.gsi.gov.uk) can answer any queries regarding the instrument.