EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT) REGULATIONS 2024

2024 No. 1163

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 Alexander, Minister of State (Courts and Legal Services) at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 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.

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 bring into force the policies outlined in the Government Response to the Crime Lower Consultation. This will apply an uplift to the lowest police station fees outside London and within London. It will create a separate Youth Court fee scheme with an additional fee for serious cases. Additionally, it will introduce police station travel time remuneration for schemes with fewer than two providers and the Isle of Wight (IoW), as well as to providers from neighbouring schemes for work done within those scheme areas.

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 In January 2024, a Crime Lower Consultation was published, which invited views on criminal legal aid proposals for increasing fees for police station and Youth Court work. This was part of a response to the Criminal Legal Aid Independent Review (CLAIR), published in 2021. The changes implemented by this instrument represent an investment of £24 million into criminal legal aid, to support early engagement.

5.2 This instrument implements uplifts for all but the highest non-London and London police station fees. This is with the aim of phasing out different rates in the existing schemes, also referred to as harmonisation. This instrument will reduce some of the existing variation, particularly between neighbouring police station fee schemes.

5.3 In reference to the Youth Court, this instrument establishes a separate fee scheme, with an increase in fees for the most serious cases. These cases include indictable only and most triable either way offences. Targeting the funding in this way helps to reduce the disparity between the Youth and Crown Courts by prioritising cases which would be paid at Crown Court rates if the defendant were an adult. We have treated one summary offence as falling within the serious category, and one triable either way offence as falling within the summary offence category for the purposes of respectively applying and disapplying the new enhanced fixed fee, to allow the new fees to be consistent with the current fee scheme. The offences are proceedings relating to triable either way offences which must be tried in a magistrates' court in accordance with section 22 of the Magistrates' Court Act 1980 (certain offences triable either way to be tried summarily if the value involved is small). The aim of the new Youth Court fee scheme is to better reflect the gravity of Youth Court cases and the greater impact on a child's life if they are convicted.

5.4 This instrument also introduces police station travel time remuneration for duty schemes with less than two providers and also the IoW, as well as for providers from neighbouring schemes who do work within those scheme areas. The IoW scheme is unique as it is the only scheme where it is not possible to drive to and from neighbouring schemes.

What was the previous policy, how is this different?

5.5 Under the previous police station fee schemes, police station fixed fees varied by geographic area ('scheme'), with 245 different fees across England and Wales. These were set in 2008 based on the average cost of a case in that area at that time. This policy moves towards phasing out the different rates, or harmonising, police station fees, including 199 out of the 245 fee schemes.

5.6 Youth Court fees are based on the magistrates' fee scheme, operating on a standard fee model. We are introducing higher fees for the most serious youth court cases to uplift standard fee levels.

5.7 The existing arrangements for the police station attendance fixed fee scheme includes travel time as part of the fixed fee, which means that providers from neighbouring schemes may be less likely to pick up cases in the areas with capacity challenges due to the travel time involved.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument will amend the Criminal Legal Aid (Remuneration) Regulations 2013 to apply an uplift to the lowest police station fees outside London and within London areas. It will also create a separate Youth Court fee scheme with higher fees for serious cases. Additionally, it will introduce police station travel time remuneration for schemes with fewer than two providers and the IoW, as well as for providers from neighbouring schemes who do work within those scheme areas.

6.2 In the magistrates' court Categories 1A, 1B and 2 determine the appropriate legal aid fee for a case, as set out in the Criminal Legal Aid (Remuneration) Regulations 2013. Category 1A refers to non-contested either-way cases, category 1B refers to non-

contested summary only cases and category 2 refers to contested trials. This instrument makes minor technical changes. It makes amendments to provide that low value shoplifting and triable either way deferred sentences will be treated as 1A and summary deferred sentences as 1B. It also clarifies that proceedings under s 22 Magistrates' Court Act 1980 get a category 2 fee in circumstances where other cases would.

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 Following on from the previous government's response to the CLAIR consultation, the Crime Lower Consultation ran from the 29th of January 2024 to the 28th of March 2024. This consulted on how allocated funding would be distributed amongst the police station and the Youth Court fee schemes.

7.2 We received a total of 38 responses, including from representative bodies, solicitors, and advocates.

7.3 Regarding the changes to the police station fee scheme, the majority of respondents favoured uplifting both the non-London and the London fee schemes, though similarly some raised concerns around the level of funding.

7.4 Overall, respondents welcomed the proposal to introduce a separate Youth Court fee scheme, and generally agreed with the additional fees proposal. Some raised concerns about the need for specialist training, whilst others felt the fee increases were insufficient.

7.5 In the consultation responses, a number made reference to the challenges some providers experienced in travelling long journeys to police stations, and how this time was not adequately remunerated. Following further consideration, this instrument implements payment for police station travel in a small number of schemes across the country.

7.6 The minor technical amendments set out in paragraph 6.2 were not subject to consultation.

8. Applicable Guidance

8.1 The Legal Aid Agency will issue guidance to legal aid providers.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is increased fees for police station and youth court legal aid work.

9.3 The legislation does impact small or micro businesses.

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.

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. As such, we will monitor the impact of the changes in this instrument from immediately after implementation.

10.2 The instrument does not include a statutory review clause.

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").