EXPLANATORY MEMORANDUM TO

THE CRIMINAL LEGAL AID (REMUNERATION) (AMENDMENT) REGULATIONS 2026

2026 No. 106

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. Joseph Drew at the Ministry of Justice (email: joseph.drew@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 second 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 instrument will establish a fixed ratio of 65:75:100 between guilty plea, cracked trial, and trial basic fees under the Litigators' Graduated Fee Scheme ("LGFS"); uplift the basic fees for the lowest paying offences under the LGFS; and uplift fees for appeals work not covered by the first tranche of policy changes, by 10%.

Where does the legislation extend to, and apply?

4.2. The extent of this instrument (that is, the jurisdictions 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 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. The Ministry of Justice and the Legal Aid Agency continue to monitor the supply of legal aid services across England and Wales and take operational steps where necessary to address emerging market pressures.

5.4. This instrument will amend the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I.2013/435) ('the Remuneration Regulations') so that criminal legal aid providers will receive higher fees by establishing a fixed ratio of 65:75:100 between guilty plea, cracked trial, and trial basic fees under the LGFS; uplift the basic fees for the lowest paying offences under the LGFS; and uplift fees for appeals work not covered by the first tranche of policies by 10%.

What was the previous policy, how is this different?

5.5. Regarding the establishment of a fixed ratio of 65:75:100 between guilty plea, cracked trial, and trial basic fees under the LGFS, there was previously no consistent relativity between basic fees across offences, as the fees were set in 2008 based on the average cost of a case at the time.

5.6. The uplifts to basic fees and appeals reflect fee uplifts committed to in the response to the 2025 consultation; there are no structural changes.

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 the Criminal Legal Aid: Proposals for Solicitor Fee Scheme Reform consultation. It will establish a fixed ratio of 65:75:100 between guilty plea, cracked trial, and trial basic fees under the LGFS; uplift the basic fees for the lowest paying offences under the LGFS (offence types E, F, G, H & I); and uplift fees for appeals work not covered by the first tranche of policies by 10%: litigator fees for appeal against sentence or conviction from a magistrates' court, representation on an appeal by way of case stated in the High Court and Assigned Counsel for representation in the High Court on an appeal by way of case stated.

Why was this approach taken to change the law?

6.2. 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 set out the proposals which would be taken forward in its response to the consultation, which is available online[1].

7.3. Regarding the proposal to implement a fixed ratio, 43% of respondents were in favour of the proposed ratio, whilst 11% disagreed and 14% answered with 'maybe'. For those who were in favour, comments were made that the proposal will ensure fees better reflect the work carried out in the earlier stages of a case and that harmonising fees through the ratio will make the fees simpler and easier to understand. Around one quarter of those respondents who were in favour of the proposal also commented that additional funding is required. Of those who did not agree with the proposal, 83% stated this was due to the level of funding being proposed, with some respondents suggesting that fee increases should be awarded annually and that they should be linked to inflation.

7.4. Other key themes in the responses to this question included suggestions to amend the structure of the ratio so that the cracked trial basic fee was raised to either 95% or 100% of a trial basic fee. Respondents outlined that this would better reflect the amount and complexity of the work required for a trial that cracks.

7.5. The Government acknowledges the request for inflation-linked annual rises to fees but concluded the proposed level of investment to be sufficient to advance the aim of supporting the sustainability of the criminal legal aid solicitor market. However, the Government reiterated its intention for continued collaboration with stakeholders, including the CLAAB, to monitor sustainability. Regarding calls to further increase the cracked trial basic fee, the Government concluded that the proposed rate (75% of the trial fee) strikes a balance between paying an appropriate rate for the work required of a cracked case and not disincentivising the earlier consideration of a case before the plea and trial preparation hearing.

7.6. Regarding the proposal to uplift the basic fees for the lowest paying offences under the LGFS, 58% of respondents were in favour of the proposal to raise the trial basic fee for Offence Types E, F, G, H and I by around one third, whilst 13% disagreed and 7% answered with 'maybe'. For those who were in favour, comments were made that the proposal would ensure fees for these offences better reflect the work required. All respondents who did not agree with the proposal outlined that this was due to the level of funding being proposed, with respondents calling for greater investment. Suggestions included increasing the trial basic fees being consulted on by 50%, instead of by around a third, and that all basic fees should be increased. In particular, some respondents outlined their view that a minimum fee for Crown Court work of £1,000 should be introduced to reflect the work and expertise these cases require. The Government acknowledged calls for increased investment; however, it concluded the proposed level of investment to be sufficient to advance the aim of supporting the sustainability of the criminal legal aid solicitor market.

7.7. 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

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

the consultation and recommended that the fees should be increased, warning that without funding providers may stop offering the service.

7.8. An uplift to appeals was not part of the original consultation; however, 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.

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 Consultation Response, which is available online.[2]

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. It is estimated that the LGFS measures will cost the legal aid fund £10m (incl. VAT) per annum in steady state under the central scenario. All of the uplifts on appeals, including those implemented in the December 2025[3] statutory instrument, are estimated to cost £0.2m (incl. VAT) per annum in steady state. The figures could be higher or lower than estimated depending on case mix and court hearing schedules. The Impact Assessment mentioned in paragraph 9.1 details the calculations and assumptions underlying these calculations.

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.

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

[3] The Criminal Legal Aid (General and Remuneration) (Amendment) Regulations 2025 https://www.legislation.gov.uk/uksi/2025/1251/made

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").