EXPLANATORY MEMORANDUM TO

THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (AMENDMENT OF SCHEDULE 1: INJUNCTIONS TO PREVENT GANG-RELATED VIOLENCE) ORDER 2014

2014 No. [DRAFT]

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 This Order amends Schedule 1 to the Legal Aid Sentencing and Punishment of Offenders Act 2012 ("LASPO") in order to ensure that civil legal aid will remain available for advocacy for under 18s in respect of injunctions to prevent gang-related violence, where hearings are held in a youth court. Such hearings are currently heard in the county court. This will maintain the existing position regarding the availability of legal aid in such cases.

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

3.1 None.

4. Legislative Context

4.1 Schedule 1 to LASPO sets out the matters on which civil legal aid is available (the scope of the civil legal aid scheme). This is subject to the exclusions at parts 2 and 3 of the Schedule (certain services and advocacy respectively), and the provisions on interpretation in Part 4 of the Schedule.

4.2 In Autumn 2014, section 18 of the Crime and Courts Act 2013 ("the 2013 Act") is intended to be commenced. This will amend Part 4 of the Policing and Crime Act 2009. The effect will be that proceedings relating to gang-related injunctions which concern persons under the age of 18 will be heard in a specialist magistrates' court known as the youth Court and not in a county court, which is where they are heard currently. Although section 18 of the Crime and Courts Act 2013 has yet to come into force, this Order allows for advocacy for gang-related injunctions in the youth court to be available in good time for the implementation of section 18.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary-Under Secretary of State for Justice, Shailesh Vara, has made the following statement regarding Human Rights:

In my view the provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1: injunctions to prevent gang-related violence) Order 2014 are compatible with the European Convention on Human Rights (ECHR).

7. Policy background

7.1 Civil legal aid is available for injunctions under Part 4 of the Policing and Crime Act 2009 (POCA) (injunctions to prevent gang-related violence) by virtue of paragraph 38 of Part 1 of Schedule 1 to LASPO. This is subject to the general exclusion at Part 3 of Schedule 1 for advocacy. However, Part 3 of Schedule 1 sets out a number of exceptions to that general exclusion, including advocacy for all proceedings before the High Court or a county court. Applications for gang-related injunctions are currently made to the High Court or a county court. Therefore, under LASPO civil legal aid is available to applicants (subject to a means and merits test) for advocacy in these proceedings.

7.2 Section 18 of the Crime and Courts Act 2013 amends part 4 of POCA to provide that, where a respondent is under 18, a youth court will have jurisdiction to grant gang-related injunctions. The change of venue to a youth court for under-18s reflects the Government's view that a youth court is a more suitable place for proceedings to be conducted which involve a child. The youth court is a type of magistrates' court, designed in a child and youth-sensitive way. Legal aid for advocacy for proceedings before a magistrates' court is generally excluded from the scope of the civil legal aid scheme by virtue of Part 3 of Schedule 1 to LASPO.

7.3 The Government recognises that restrictions may be placed upon a person's liberty as a result of an injunction to prevent gang-related violence. Breach of an injunction can lead to contempt of court proceedings which, for 14 to 17 year olds, can result in a supervision order or a detention order being made under the Crime and Security Act 2010. The Government therefore considers that legal aid should remain available for advocacy in proceedings in respect of injunctions to prevent gang-related violence for under 18s, notwithstanding the change of venue.

8. Consultation outcome

8.1 We have not consulted on the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1: injunctions to prevent gang-related violence) Order 2014. The Order makes a minor change to LASPO to maintain the current availability of civil legal aid.

9. Guidance

9.1 Guidance is not being prepared specifically for this instrument on the basis that this instrument will not implement a change in policy, but is designed to maintain the status quo regarding access to legal aid for certain types of advocacy.

10. Impact

10.1 The impact on business, charities or voluntary bodies from this instrument is expected to be minimal. The instrument ensures that civil legal aid will remain available for advocacy in proceedings involving under 18s in respect of an injunction to prevent gang-related violence. Legal aid practitioners currently conducting the work will continue to be able to do so as a result of this Order with remuneration arrangements remaining unchanged.

10.2 The impact on the public sector from this instrument is expected to be minimal. The order maintains the existing availability of civil legal aid.

10.3 An Impact Assessment has not been prepared for this instrument as it makes only a minor change to LASPO to maintain the existing availability of civil legal aid.

11. Regulating small business

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 The Ministry of Justice has not taken any specific steps to minimise the impact of the requirement on firms employing up to 20 people.

12. Monitoring & review

12.1 The operation of and expenditure on the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency. The Ministry of Justice will conduct a post-implementation review of LASPO between three to five years after implementation. This review will also consider the operation of the secondary legislation, including this SI.

13. Contact

13.1 Chris Rant at the Ministry of Justice (Tel: 020 3334 6095 or email chris.rant1@justice.gsi.gov.uk) can answer any queries regarding the instrument.