EXPLANATORY MEMORANDUM TO

THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (LEGAL AID: ANTI-SOCIAL BEHAVIOUR AND PREVENTION AND INVESTIGATION MEASURES) (MISCELLANEOUS AMENDMENTS) ORDER 2026

2026 No. 861

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Baroness Levitt KC, Parliamentary Under-Secretary of State and Lords Minister at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Lizzie Checkley / Jonny Fitzpatrick, Joint Deputy Directors for Eligibility, Civil and Family Legal Aid Policy, at the Ministry of Justice confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Adam Cripps at the Ministry of Justice, Telephone: 07835414169 or email; civil.legalaidpolicy@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 This is a technical Instrument, the purpose of which is to ensure that civil legal aid is available for new anti-social behaviour orders in the same way that it is currently available for the orders they replace. It also ensures consistency across the legal aid Regulations for two national security civil measures and removes some existing ambiguities.

4.2 This Instrument amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) to extend civil legal aid to three new civil behaviour orders introduced by the Crime and Policing Act 2026. These are: Respect Orders, Youth Injunctions and Housing Injunctions. These replace or modify elements of the existing Anti-social Behaviour Injunction (ASBI) regime under the Anti-social Behaviour, Crime and Policing Act 2014 (ASBCP Act) for which civil legal aid is currently available. This Instrument makes new provisions in order to ensure that civil legal services are available for individuals who are subject to these new orders, aligning legal aid legislation with the new statutory framework and maintaining continuity of legal aid coverage for equivalent anti-social behaviour injunctions.

4.3 This Instrument also amends the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 ("the Means Regulations") and the Civil Legal Aid (Merits Criteria) Regulations 2013 ("the Merits Regulations") to provide clarity about arrangements for Terrorism Prevention and Investigation Measures (TPIMs). TPIMs are civil measures imposed by the Home Secretary which aim to prevent or restrict an individual's involvement in terrorism-related activities. Some ambiguity exists in the current drafting of both Means and Merits Regulations about TPIMs, which this Instrument remedies.

4.4 Finally, this Instrument amends the Means and Merits Regulations in order to ensure that the legal aid framework which applies to TPIMs is duplicated for State Threats Prevention and Investigation Measures (STPIMs). STPIMs are civil orders designed to prevent and disrupt individuals who are involved in hostile state threat activity and are similar in their structure and impact to TPIMs. Given this similarity, these amendments are made to ensure consistency between legal aid arrangements for the two civil measures.

Where does the legislation extend to, and apply?

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

4.6 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?

Respect Orders, Youth Injunctions and Housing Injunctions

5.1 Currently civil legal aid is available (subject to means- and merits-testing) for individuals who are subject to an application for, or proceedings relating to, an ASBI made under the ASBCP Act.

5.2 Respect Orders are a new civil behaviour order introduced by the Crime and Policing Act 2026 which amends the ASBCP Act to replace and strengthen aspects of the existing ASBI framework for adults.

5.3 Respect Orders, made under new section A1 of the amended ASBCP Act, are designed to provide stronger, more enforceable tools for tackling adult anti-social behaviour. They retain the preventative and positive-requirement functions of ASBIs, but breaches become criminal offences with automatic powers of arrest. They therefore represent a modified continuation of an existing civil injunction regime already within the scope of legal aid.

5.4 This Instrument therefore amends LASPO to provide in-scope legal aid for Respect Order proceedings. It ensures that there is continuity of legal aid provision as the underlying statutory order is replaced, preventing gaps in access to justice for individuals who are subject to these new measures and ensuring consistency for legal aid providers. It reflects the Government's policy that civil injunctions relating to anti-social behaviour should continue to be eligible for civil legal aid, as they carry significant implications for individuals' rights.

5.5 In addition to the creation of Respect Orders, the Crime and Policing Act 2026 introduces Youth Injunctions and Housing Injunctions to replace the previous ASBI regime.

5.6 Youth Injunctions replace ASBIs for children aged 10–17 pursuant to an amended section 1 of the ASBCP Act. They aim to address harmful or disruptive behaviour among young people via supportive, preventative and rehabilitative requirements.

5.7 Youth Injunctions are not new in policy terms but rather are a reconfiguration of ASBIs for youths. LASPO is therefore updated explicitly to refer to Youth Injunctions so that the same legal aid entitlements continue.

5.8 Housing Injunctions are newly created via section 1A of the ASBCP Act and address anti-social behaviour linked to housing-related conduct for adults aged 18 and above. Without amendment, they would fall outside the scope of LASPO despite being functionally equivalent to an ASBI in housing contexts.

5.9 This Instrument amends LASPO to include Housing Injunctions in the scope of legal aid. This maintains the longstanding policy position that anti-social behaviour injunctions should be eligible for civil legal aid, as they carry significant implications for individuals' rights and housing security.

TPIMs

5.10 TPIM proceedings are currently within scope of civil legal aid. However, legal aid is provided under two different sections of the legislation: paragraph 45, Part 1 of Schedule 1 of LASPO (*Terrorism prevention and investigation measures etc*) and paragraph 19, Part 1 of Schedule 1 (*Judicial review*). Paragraph 45 provides legal aid in relation to a TPIM notice. This covers advice to those subject to such an order. Paragraph 19 provides legal aid for TPIM proceedings such as review hearings and appeals, because the court determines these matters by applying judicial review principles.

5.11 Legal aid for advice (called "legal help") in relation to TPIM notices is non-means-tested. However, legal aid for TPIM proceedings that fall under paragraph 19 is subject to the means-test, because the means-test applies to judicial review proceedings. This Instrument makes an amendment to the Means Regulations to clarify the position and remove any ambiguity in the current drafting.

5.12 Clarifying amendments are also made to the Merits Regulations to address a similar ambiguity as to the forms of legal aid services available for TPIM proceedings. Part 3 of the Merits Regulations specifies that where a person qualifies for legal aid, the types of legal aid service provided must be those considered most appropriate for the type of legal issue; it goes on to specify those considered not appropriate for particular types of legal issue. Forms of legal services may include legal help, help at court, family help, family mediation, help with family mediation, legal representation (which may be investigative representation or full representation) and other legal services (which may be instructing an advocate, preparing to provide advocacy or advocacy). At present, the Merits Regulations specify that help at court and investigative representation are not appropriate services for the TPIM proceedings set out in paragraph 45, Part 1 of Schedule 1. This creates uncertainty as to whether this also applies to those TPIM proceedings that fall within paragraph 19. This Instrument makes new provision to clarify that help at court and investigative representation are not appropriate services for all proceedings in relation to a TPIM notice, thereby including those proceedings that fall under both paragraph 45 and paragraph 19.

STPIMs

5.13 STPIMs were introduced and brought into scope of civil legal aid by the National Security Act 2023. They are restrictive measures, comparable in nature and impact to

TPIMs. They can constrain an individual's liberty, associations, movement and digital activity. Strong legal safeguards are therefore required in order to ensure fairness, accountability and compliance with human rights obligations.

5.14 Given the close similarity between the two types of national security measures, we consider that the same approach to means- and merits-testing that applies to TPIMs should also apply to STPIMs. This will ensure legal aid is available to individuals to understand and challenge the imposition or extension of an STPIM, particularly where sensitive or closed evidence is relied upon, so that they can quickly access advice on the restrictions placed on them. This will maintain the consistency of the legal aid framework.

What was the previous policy, how is this different?

Respect Orders, Youth Injunctions and Housing Injunctions

5.15 Legal aid is available for ASBIs, subject to the standard means and merits tests. This reflects the longstanding policy that individuals facing civil behaviour orders with potentially significant consequences should have access to publicly-funded legal assistance to understand and participate effectively in proceedings, subject to the relevant means and merits tests.

5.16 Making these amendments to LASPO maintains consistency with this existing policy position following the creation of new injunctions to address anti-social behaviour (Respect Orders, Youth Injunctions and Housing Injunctions) in the Crime and Policing Act 2026.

TPIMs

5.17 TPIMs, which were introduced by the Terrorism Prevention and Investigation Measures Act 2011, are in scope of civil legal aid services. Legal aid in relation to TPIM notices primarily falls under paragraph 45, Part 1 of Schedule 1 of LASPO.

5.18 LASPO (paragraph 18, Part 2 of Schedule 1) specifies that proceedings in which the court applies judicial review principles are considered judicial reviews for the purposes of civil legal aid. This includes TPIM review hearings and appeals, which are determined by the court applying judicial review principles. This means legal aid provision for these proceedings falls under paragraph 19, Part 1 of Schedule 1 to LASPO (*Judicial review*). Legal representation for judicial reviews is means-tested.

5.19 However, the Means Regulations currently include a reference to legal representation for an individual who is the subject of a TPIM being non-means-tested. This creates an ambiguity about which position applies. This Instrument amends the Means Regulations to remove this ambiguity, making clear that legal help in relation to a TPIM notice is non-means-tested and legal representation for TPIM proceedings *is* means-tested.

5.20 Similarly, the Merits Regulations specify help at court and investigative representation as legal aid services which are not appropriate for TPIM proceedings. However, the Regulations refer only to paragraph 45, Part 1 of Schedule 1, LASPO. This creates an ambiguity as to whether the provision includes those TPIM proceedings that apply judicial review principles and, therefore, fall under paragraph 19. This Instrument clarifies that the exclusion of these services as not being appropriate applies to all TPIM proceedings.

STPIMs

5.21 Currently no exemptions to means-testing apply to STPIMs. This approach is not consistent with that taken for TPIMs, where legal help is available on a non-means-tested basis. To remedy this, this Instrument provides non-means-tested legal help for STPIMs. Legal representation for STPIM review hearings and appeals remains subject to means-testing, duplicating the provision for TPIMs. In addition, this Instrument amends the Merits Regulations to specify that help at court and investigative representation are not appropriate legal aid services for STPIMs, aligning with the arrangements for TPIMs. Aligning the means- and merits-testing arrangements for STPIMs with those for TPIM, ensures that a consistent approach is taken for these two very similar measures.

6. Legislative and Legal Context

Respect Orders, Youth Injunctions and Housing Injunctions

How has the law changed?

6.1 The Crime and Policing Act 2026 introduces new statutory orders -Respect Orders- through an amendment to insert section A1 of the ASBCP Act. These replace the adult ASBI framework described in paragraph 5.1 above. This Instrument therefore inserts a new paragraph 35A into Part 1 of Schedule 1 of LASPO in order to ensure that Respect Orders are expressly brought within scope of civil legal aid.

6.2 The Crime and Policing Act 2026 replaces the youth component of ASBIs with a dedicated Youth Injunction regime under an amended section 1, paragraph 36 of the ASBCP Act. These injunctions sit within a revised statutory structure and continue automatically to fall under the LASPO provision that applied to ASBIs. However, LASPO requires updating fully to represent the conditions in the ASBCP Act. This Instrument therefore amends paragraph 36, Part 1 of Schedule 1 of LASPO to extend civil legal aid coverage to Youth Injunctions.

6.3 The Crime and Policing Act 2026 also creates a new statutory category, Housing Injunctions, under section 1A of the ASBCP Act. These address housing-related anti-social behaviour separately from the general injunctions previously delivered through section 1. Because section 1A did not exist, Housing Injunctions fall outside the LASPO paragraph applicable to ASBIs. Therefore, this Instrument further amends paragraph 36, Part 1 of Schedule 1 of LASPO to bring these injunctions explicitly into scope of civil legal aid.

6.4 These amendments are made whilst preserving legal aid provision in relation to ASBIs made before, and continuing after, the new section 1 of the ASBCP Act comes into force.

Why was this approach taken to change the law?

6.5 To ensure that in-scope civil legal aid funding is available to those eligible under the new measures being introduced by the Crime and Policing Act 2026, matters have to be provided for in Part 1 of Schedule 1 of LASPO. This is, therefore, the only way of making the necessary changes.

TPIMs

How has the law changed?

6.6 The wording of Regulation 5(1)(l) of the Means Regulations is amended so as to clarify that legal help is available without a means-test for individuals subject to a TPIM notice. Reference to legal representation being non-means-tested (for those subject to a TPIM notice) is removed. This is because, in practice, legal representation in TPIM review and appeals hearings is means-tested as these proceedings are treated as judicial reviews for the purposes of civil legal aid.

6.7 In addition, a new Regulation 22A of the Merits Regulations is inserted in order to provide a comprehensive statement that help at court and investigative representation are not appropriate services for proceedings in relation to a TPIM notice. This rectifies the ambiguity that previously existed for those TPIM proceedings that are heard under judicial review principles (see paragraph 5.12 for additional detail).

6.8 The amendments made in this Instrument therefore enshrine in legislation the position on means- and merits-testing for TPIMs that is in operation in practice.

Why was this approach taken to change the law?

6.9 Implementing these provisions ensures that the legal aid scheme operates consistently and coherently for TPIMs. Amending the Means and Merits Regulations is the way to make these changes.

STPIMs

How has the law changed?

6.10 This Instrument makes amendments to Regulation 5 of the Means Regulations in order to provide that non-means-tested legal help is available to an individual who is the proposed subject of STPIM measures. It also applies to STPIMs the exclusion of help at court and investigative representation as appropriate legal aid services through amendment to Regulation 22 of the Merits Regulations, in order to replicate the TPIM framework.

Why was this approach taken to change the law?

6.11 In order to ensure that legal aid arrangements for STPIMs duplicate those for TPIMs, both the Means and Merits Regulations have to be amended.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has been no formal policy consultation on this statutory Instrument. These amendments do not represent a change in Government policy, but rather ensure that legal aid eligibility keeps up with changes to wider Government policy and legislation.

8. Applicable Guidance

8.1 Accompanying guidance setting out the changes introduced by this Instrument will be updated by the Legal Aid Agency in order to support the implementation of these changes coming into force.

8.2 Revisions to address the amendments made by this Instrument will also be made to the 2024 Standard Civil Contract.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment on the ASB measures has been submitted by the Home Office and published on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies, because the legal aid changes in this Order are expected to affect only those legal services providers that cover civil and criminal proceedings. The legislation affects small or micro businesses only to the extent that they are legal services providers dealing with civil and criminal proceedings. These small and micro businesses are not exempted, because the impact will be a positive one, given that the legislation makes legal aid funds available for the civil and criminal courts matters covered by this Instrument.

9.3 It is unlikely that the amendments proposed will result in a substantial increase in legal aid applications and therefore the costs to the legal aid fund will be negligible. This is because Respect Orders, Housing Injunctions and Youth Injunctions replace something that is already in scope, so additional costs are not anticipated. The expected number of STPIMs is also very small, so the cost of non-means-testing will be negligible. For TPIMs, this is a clarifying measure only and will not affect volume.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Following implementation of these amendments, the Ministry of Justice and the Legal Aid Agency will monitor the impact of these changes on the legal aid scheme.

10.2 This Instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Parliamentary Under Secretary of State and Lords Minister at the Ministry of Justice Baroness Levitt KC, has made the following statement: “It would not be appropriate in the circumstances to make provision for a statutory review of this Instrument because of the relatively low impact on business.”

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The amendments relating to TPIMs and STPIMs will come into force on the day after the date on which the SI is made. The amendments in relation to Respect Orders, Youth and Housing Injunctions will come into force on the day when the relevant provisions of the Crime and Policing Act 2026, which introduce these orders, are brought into force. In reaching this view, consideration has been given as to whether this appears to give those affected by the provisions a reasonable chance to adapt to the changes required, having particular regard to:

a) whether the new law imposes duties on people that are significantly more onerous than before,

b) requires them to adopt different patterns of behaviour, and

c) the Government's view that there is a pressing need for the legislation to come into force as soon as possible.

12. European Convention on Human Rights

12.1 The Minister of State has made the following statement regarding Human Rights:

"In my view the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Anti-social Behaviour and Prevention and Investigation Measures) (Miscellaneous Amendments) Order 2026 are compatible with Convention rights."

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").