EXPLANATORY MEMORANDUM TO

THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (LEGAL AID: DOMESTIC ABUSE) (MISCELLANEOUS AMENDMENTS) ORDER 2025

2025 No. 611

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, Minister of State at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Lizzie Checkley / Claire Cooper, 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 Natasha Stewart at the Ministry of Justice, Telephone: 07583681412 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 instrument amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and legal aid regulations[1] in relation to the provision of legal aid for certain domestic abuse related matters in order to reflect some changes in wider legislation relating to victims of domestic abuse, including the enactment of the Domestic Abuse Act 2021 (DA Act) and several updates to Home Office Immigration Rules.

4.2 The Home Office provides a route to settlement for individuals (and their dependent children) whose leave to remain in the United Kingdom (UK) was based on their partner/spouse's immigration status and whose relationship has broken down as a result of domestic abuse. The first purpose of this instrument is to amend the provision of civil legal services for victims of domestic abuse in LASPO to reflect the updated requirements now set out in the Immigration Rules Appendix Victim of Domestic Abuse (VDA) and as amended from time to time.

4.3 Secondly this instrument amends the domestic abuse evidential requirements (Schedule 1, regulation 33 of the 2012 Civil Legal Aid (Procedure) Regulations) for private family

[1] Civil Legal Aid (Procedure) Regulations 2012; Civil Legal Aid (Merits Criteria) Regulations 2013; Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013; Civil Legal Aid (Costs) Regulations 2013; Civil Legal Aid (Statutory Charge) Regulations 2013; Criminal Legal Aid (General) Regulations 2013.

law legal aid applications to allow medical evidence from overseas appropriate health professionals to be accepted for private family applications.

4.4 Thirdly, the instrument updates and amends some terminology used in LASPO and related regulations, to reflect the language and, in some regards, broader concept of 'domestic abuse' as used by the DA Act. In particular, the DA Act uses the central term 'domestic abuse', rather than 'domestic violence' recognising abuse extends beyond physical violence. It explicitly identifies 'economic abuse' as a form of this behaviour which is broader than 'financial abuse', and explicitly references behaviour directed at a third individual (e.g., the victim's child) as a form of abuse.

4.5 Fourthly, the purpose of this instrument is to complement orders made in 2023 and 2024. These orders have already made provision for bringing legal aid into scope for victims, third parties and those subject to orders in relation to Domestic Abuse Protection Orders (DAPOs) and provision for those subject to Domestic Abuse Protection Notices (DAPNs)[2]. This instrument further amends LASPO and the Criminal Legal Aid (General) Regulations 2013 to bring other aspects of Part 3 of the DA Act in relation to DAPOs and DAPNs within scope of civil or criminal legal aid.

Where does the legislation extend to, and apply?

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

4.7 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?

Immigration legal aid for victims of domestic abuse

5.1 Under LASPO, legal aid is available to victims of domestic abuse that are eligible to apply for leave to remain in the UK under the Immigration Rules, subject to the victim meeting the standard means and merits tests.

5.2 The Immigration Rules set out the rules for entering and remaining in the UK. The Appendix VDA covers people who have entered and remained in the UK based on their partner/spouse's immigration status, but who then lose that status if their relationship breaks down due to domestic abuse. The Appendix VDA is the route by which victims can apply for indefinite leave to remain, independent of their partner's status, ensuring they can escape the abusive relationship without having to leave or be removed from the UK as a result.

5.3 There have been several changes to the Appendix VDA route since 2012, for instance, victims of domestic abuse, who have been abandoned overseas, may now apply for entry clearance on the Appendix VDA route before they arrive in the UK.

5.4 The changes in this instrument will amend Paragraph 28 of Schedule 1 of LASPO to make legal aid available for those eligible to apply for leave to enter or remain in the UK under the current requirements of the Immigration Rules, which are set out in Appendix VDA (subject to the means and merits test). This will ensure that all victims of domestic abuse should be able to access legal aid for advice to assist with an

[2]S.I. 2023/150 (https://www.legislation.gov.uk/uksi/2023/150/contents/made) and S.I. 2024/715 (https://www.legislation.gov.uk/uksi/2024/715/contents/made).[3]
https://www.gov.uk/government/consultations/domestic-abuse-bill-consultation

application for leave to enter or remain under the Appendix VDA and if there are changes made to Appendix VDA in future.

5.5 Consequently, this instrument amends paragraph 20 of Schedule 1 of the Civil Legal Aid (Procedure) Regulations 2012 to accept a Home Office letter confirming leave to enter the UK as a victim of domestic abuse as supporting evidence for legal aid applications. This change is made to accommodate those applying for leave to enter under the new out of country immigration route allowed under Appendix VDA.

Evidence requirements for victims of domestic abuse

5.6 Legal aid is available to individuals in some private family law matters, such as child arrangements, financial remedy and divorce proceedings, if that individual is a victim of domestic abuse, or at risk of abuse (subject to means and merits tests). To access legal aid as the victim of domestic abuse, an individual needs to provide evidence of that abuse. Acceptable forms of evidence are set out in secondary legislation.

5.7 Currently, legal aid is available for individuals located overseas who have proceedings taking place in England and Wales and some forms of overseas evidence are already accepted as evidence of domestic abuse, including evidence of an arrest or police caution abroad.

5.8 The Government wishes to allow additional forms of overseas evidence to be used for the granting of legal aid. In relation to medical evidence as evidence of abuse, the instrument will amend provision to allow medical/related evidence provided from overseas. It will allow legal aid applicants to provide evidence of abuse from overseas where the report has been made there by an 'appropriate health professional' licensed and registered in that country.

5.9 This instrument therefore amends paragraph 22 of Schedule 1 of the Civil Legal Aid (Procedure) Regulations 2012 (c) to provide that an appropriate overseas health professional can submit supporting evidence for the purposes of a legal aid application.

Replacing 'domestic violence' with 'domestic abuse', 'financial' with 'economic' and amending terminology describing behaviours captured by the term 'domestic abuse'.

5.10 LASPO uses the term 'domestic violence' to describe 'any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other'. References to 'domestic violence' can be found in regulations associated with LASPO, specifically the Civil Legal Aid (Procedure) Regulations 2012, the Civil Legal Aid (Merits Criteria) Regulations 2013 as well as the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, the Civil Legal Aid (Costs) Regulations 2013 and the Civil Legal Aid (Statutory Charge) Regulations 2013.

5.11 Since the introduction of LASPO in 2013, terminology across Government has moved away from 'domestic violence' and towards 'domestic abuse', to explicitly recognise that perpetrators use more than just physical violence to harm an individual. Most recently, the previous Government introduced the DA Act, defining 'domestic abuse' as being 'physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse, psychological emotional or other abuse.'

5.12 The inclusion of the term 'economic abuse' in this definition, rather than 'financial abuse', also reflects a shift in recent years to explicitly acknowledge that abuse goes beyond interfering with money and finances to include economic resources more

broadly, such as things that money can buy. Examples include housing, possessions and clothing.

5.13 The DA Act's definition further notes that domestic abuse may include behaviour 'towards' an individual despite the fact that it consists of conduct directed at another person. For example, the abuser may direct behaviour towards a child in the household, in order to facilitate or perpetuate the abuse of her or his partner.

5.14 While LASPO recognises that abuse extends beyond physical violence in its definition and that it can be directed at third parties, the intention is to update LASPO terminology to align with that used in the DA Act. Therefore, this instrument will amend LASPO and associated regulations to replace references of 'domestic violence' with 'domestic abuse', references of 'financial' abuse with 'economic' abuse and amending the definition to reflect abuse directed towards another individual.

Domestic abuse protection notices and orders

5.15 This Order complements the changes under SI 2023/150 and SI 2024/715. Those SIs made provision for civil and criminal legal aid, subject to means and merits tests, including for advocacy, for many proceedings under Part 3 of the DA Act. By way of background, Part 3 of the DA Act legislated for a new police-issued DAPN and court-issued civil DAPO to streamline protective orders for domestic abuse victims. The aim of the DAPN is to provide immediate, short-term protection to a domestic abuse victim, whereas the DAPO provides flexible, longer-term protection. The DAPO, which brings together the strongest elements of existing orders, is intended to be the "go-to" order for all cases of domestic abuse, and will be available in the High Court and family, county and criminal courts. Breach of a DAPO can be a criminal offence but breach of a DAPN is not; the individual against whom a DAPN or DAPO is made can be arrested for breach of the DAPN or DAPO.

5.16 SI 2023/150, now in force, brought DAPOs into scope of legal aid: article 4 of SI 2023/150 amended paragraph 11 of Part 1 of Schedule 1 of LASPO to explicitly provide that civil legal aid is available for DAPOs to both victims and the person who is the subject of the DAPO application or proceedings (thus ensuring consistency with other types of protective injunctions, such as non-molestation orders, and between Magistrates' courts, Family Court, High Court and County Court, where DAPOs can be issued). It also inserted sub-paragraph (3A) into that paragraph 11 (family homes and domestic violence) of Part 1 of Schedule 1 of LASPO in relation to exclusions about advocacy, set out at Parts 2 and 3 of that Schedule (the exclusions refer to legal services that are not in scope of LASPO).

5.17 SI 2024/715 amended Part 3 of Schedule 1 to LASPO to expand the scope of legal aid. This amendment allows civil legal services, under paragraph 11(1A) in Part 1 of that Schedule, to include advocacy for DAPO proceedings in the magistrates' courts and the Crown Court. This applies to cases originating from a police-led application for a DAPO and for the individual against whom a DAPO is sought or has been made. However, the changes implemented to LASPO by those SIs did not go far enough to implement the full policy intention that legal aid is available, subject to means and merits tests, for victims and individuals who are parties to DAPO proceedings and for those subject to DAPNs. This Order makes further provision for legal aid as follows:

5.18 Criminal legal aid for the person (P) who is the subject of the DAPO application for proceedings in relation to breach of DAPN hearings under s.26(2)(b) DA Act. In these s.26(2)(b) DA Act proceedings, P may be brought before the court for the breach of DAPN at the same time as the initial DAPO application hearing; the DAPO hearing

may be adjourned and the DAPN breach heard. In addition, there may be a subsequent hearing for breach of bail conditions for that DAPN. Currently, civil legal aid is available for P in relation to proceedings under s.26(2)(b) DA Act for breach of DAPN. However, to be consistent with the criminal legal aid already in scope for P in s.26(2)(a) DA Act breach of DAPN hearings (which do not involve a DAPO application hearing at the same time), this SI will bring criminal legal aid in scope for P in all proceedings related to a breach of DAPN under s.26(2) DA Act (save where they are arrested for this breach and have secured civil legal aid for the s.26(2) hearing prior to this instrument coming into force).

5.19 Civil legal aid for the Victim (V) (and a third party where they were the person to make the s.28 application in relation to that DAPO) in an application for a warrant for P's arrest (for breach of the DAPO) under s.40 DA Act (where the breach is enforced as a civil rather as a criminal offence).

5.20 Civil legal aid for the victim, or and a third party where they were the person to make the s.28 application, for contempt of court proceedings that may flow from a breach of the domestic abuse protection order.

5.21 Legal aid for variation/discharge of a DAPO when the decision is made by the court of its own motion under s.44(2)(b) of the DA Act rather than pursuant to an application under s.44(2)(a). Legal aid is brought in scope for P, V and the third party who applied for the s.28 DAPO.

5.22 Civil legal aid for V in an appeal by P of a DAPO, made by the court of its own motion in criminal proceedings, under s.46(3) DA Act and criminal legal aid for P.

5.23 Civil legal aid for V in an appeal by P of a variation of a DAPO, where the variation is made by the court of its own motion in applicable criminal proceedings, under s.46(4) DA Act and criminal legal aid for P.

5.24 Civil legal aid for P and V in appeals against variation/discharge of a DAPO where the decision to vary/discharge is made by the court of its own motion in criminal proceedings (where s.46(4) does not apply) or civil proceedings under s. 46(5) DA Act.

What was the previous policy, how is this different?

5.25 In April 2013, LASPO reformed the scope of legal aid. It had the stated aim of ensuring that legal aid was targeted at those who need it most, for the most serious cases in which publicly funded legal advice or representation is justified. As part of this aim, it was intended that legal aid should remain available to victims of domestic abuse.

5.26 Since LASPO came into effect, there have been changes in legislation relating to victims of domestic abuse, including the enactment of the DA Act and several updates to the Home Office Immigration Rules.

5.27 Following these wider legislative changes, we have identified areas where we consider amendments to LASPO, and associated amendments to civil and criminal legal aid regulations, are needed for legal aid to continue to be appropriately available for victims of domestic abuse. These amendments are intended to ensure existing policy continues to be delivered. No victims of domestic abuse will lose entitlement to legal aid as a result of these changes.

5.28 In relation to DAPNs and DAPOs: there has been no change in policy regarding this legal aid provision since SI 2023/150 or SI 2024/715. The changes made by this Order are both technical and complement the changes made by the two Orders before it and address unintended gaps in provision. In relation to proceedings for breach of DAPN under s.26(2)(b) DA Act, this instrument will make criminal legal aid available (instead

of civil legal aid which is currently available by virtue of legal aid provision for the associated DAPO application). This is to align legal aid provision with s.26(2)(a) hearings and to provide criminal legal aid to respondents subjected to a bail hearing. This ensures that the same associated means and interest of justice tests apply under both types of s.26(2) hearings, therefore giving respondents the same likelihood of accessing legal aid.

6. Legislative and Legal Context

7. Immigration legal aid for victims of domestic abuse

How has the law changed?

7.1 This instrument is being made to align the provision of civil legal services for victims of domestic abuse with the updated requirements set out in the Immigration Rules Appendix VDA, and as may be further amended from time to time. It amends paragraph 28 of Schedule 1 of LASPO which brings individuals who have entered and remained in the UK based on their partner/spouse's immigration status and whose relationship has permanently broken down with that person because they were a victim of domestic abuse, into scope and eligible to apply for legal aid for their leave to enter or indefinite leave to remain in the UK. It ensures that LASPO makes legal aid available to all those who may apply under the Appendix VDA requirements.

Why was this approach taken to change the law?

7.2 This approach is taken to update relevant legislation to ensure that legal aid is available to victims of domestic abuse who require civil legal aid services to apply under Appendix VDA requirements for leave to enter or indefinite leave to remain in the UK.

Evidence requirements for victims of domestic abuse

How has the law changed?

7.3 This instrument is being made to change the law by amending the Civil Legal Aid (Procedure) Regulations 2012, at paragraph 22 of Schedule 1 to the Regulations in the definition of appropriate health professional, to refer to evidence of a report or letter that is obtained from a health professional registered and licensed to practise overseas, in the country where the domestic violence took place or where the evidence was obtained.

Why was this approach taken to change the law?

7.4 The amendment guarantees that the letter or report of an appropriate health professional who examined that a victim has, or has had, injuries or a condition consistent with being a victim of domestic abuse outside the UK is accepted as evidence for legal aid purposes.

Replacing 'domestic violence' with 'domestic abuse', 'financial' with 'economic' and amending the list of behaviours captured by the term 'domestic abuse'.

How has the law changed?

7.5 This instrument amends paragraph 12(9) and 29(4) of Schedule 1 of LASPO to firstly amend the definition of domestic abuse to expressly include behaviour, violence or abuse directed at another individual (for example a victim's child) and secondly it aligns the terminology with the DA Act by substituting 'domestic abuse' for 'domestic violence' and economic' for 'financial' abuse.

7.6 It further amends other secondary legislation to ensure consistency with changes made to LASPO by substituting 'domestic abuse' for 'domestic violence' in the applicable provisions of the Civil Legal Aid (Procedure) Regulations 2012, the Civil Legal Aid (Merits Criteria) Regulations 2013, the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, the Civil Legal Aid (Costs) Regulations 2013 and the Civil Legal Aid (Statutory Charge) Regulations 2013.

Why was this approach taken to change the law?

7.7 To replace the terminology used in LASPO with the DA Act. The definition in LASPO is largely retained (with only minor amendments as outlined in para 6.5) because it provides greater scope for provision of legal aid.

Domestic abuse protection notices and orders (articles 4, 10 and 11 of the Order)

How has the law changed?

7.8 This instrument makes amendments and additions to paragraph 11(1A) of Part 1 of Schedule 1 to LASPO to bring further matters regarding DAPOs into scope of civil legal aid. It also makes some technical drafting changes to facilitate clarity and consistency across the paragraph following these changes (for example, the insertion of sub-paragraphs (d) and (f) in to paragraph 11(1A)).

7.9 Currently there is civil legal aid provision for applications under section 28, proceedings under section 31(2) and (7), certain applications under section 44 (i.e. limited to variation or discharge of those order mentioned in paragraph 11(1A) of Part 1 of Schedule 1). This Order makes additional provision.

7.10 This Order inserts sub-paragraphs (ba), (bc) and (e) and an accompanying exclusion at paragraph 3B. The effect is to provide availability of legal help to victims where a DAPO is made or varied/discharged by a criminal court's on its own motion, and in relation to appeals under section 46(3) and (4). This Order also makes provision for civil legal aid for victims and relevant third parties for an order under section 40 and any contempt of court proceedings that may flow from an arrest under section 39 or 40 of the DA Act.

7.11 Sub-paragraph (3B) inserts new provision, to limit the existing civil legal aid provision to the level of legal help for victims in applications under section 28 brought by the chief officer of police for a DAPO. This reflects the fact the victims will not be party to proceedings. See section 29 of the Civil Legal Aid (Merits Criteria) Regulations 2013 which confirms this mechanism for limiting the level of service.

7.12 Part 3 of Schedule 1 was amended by S.I. 2024/715 but is now amended further by this instrument as follows.

7.13 Paragraph 6 (relating to advocacy in the Crown Court) had provision for civil legal aid to include advocacy in this court in relation to appeals under section 46(1) or (5) of the DA Act, by virtue of the 2024 Order. This draft Order goes further and has added sub-paragraph (ea) to ensure that civil legal aid will include advocacy in this court in relation to applications to vary or discharge a DAPO. An application to vary or discharge a DAPO must be made to the court in accordance with s.45 of the DA Act (in the main, wherever that DAPO was made). The amendment allows advocacy in relation to variation and discharge applications where the DAPO was made in proceedings to which the victim was not a party (i.e. existing criminal proceedings). Thus, this amendment is only relevant to victims and certain third-party individuals because in this scenario the defendant would be in scope of criminal legal aid. Further amendments in paragraph 6 are technical changes for drafting purposes only.

7.14 Paragraph 7 (relating to advocacy in the magistrates' court) at (ba) is amended to narrow the availability of legally aided advocacy only in relation to applications to vary or discharge a DAPO. This reflects that advocacy is not included in civil legal services where the magistrates court makes a variation/discharge order of its own motion. Only criminal (not civil) magistrates courts would have the power to make such an order of its own volition, this would be in existing criminal proceedings to which neither the victim or third party would be parties. Criminal legal aid is in scope for this in relation to the defendant.

7.15 To change what is in scope of criminal legal aid, in relation to the individual who is subject to a DAPN or DAPO, article 10 of this Order amends regulation 9 of the Criminal Legal Aid (General) Regulations 2013. The instrument relies on the power at 14(h) of LASPO and has the effect of making additional matters "criminal proceedings" in relation to DAPN and DAPO proceedings.

7.16 Accordingly, paragraph (ue) of regulation 9 is amended to widen provision of criminal legal aid. It removes '(a)' from the original reference to section 26(2)(a) DA Act (inserted by S.I. 2023/150). This provides that criminal legal aid is in scope for an individual who is subject to a DAPN that follows a s.26(2)(b) DA Act route upon breach and arrest (not just a section 26(2)(a) route) and does so regardless of whether proceedings relating to a DAPN are heard together with the DAPO application. Article 11 makes a saving provision, further to this amendment at article 10(2). This ensures that those individuals who have already been arrested for breach of a DAPN and who have already secured civil legal aid for a hearing under section 26(2)(b) in relation to that breach prior to this coming into force (i.e. by virtue of securing civil legal aid for the substantive DAPO application), can continue with that legal aid.

7.17 This instrument also inserts paragraph (ufa) into regulation 9, with the effect that where a court makes an order to vary or discharge a DAPO of its own motion under subsection 44(2)(b)), there is legal aid provision. In this case, it is criminal legal aid provision for the individual subject to the order, where that court would have the power to make a DAPO under s.31(3), (5) or (6). This amendment complements the legal help provision made at paragraph 11(1A)(bc) of Part 1 of Schedule 1 for victims or third parties, by article 4.

Why was this approach taken to change the law?

7.18 This is the only possible approach to make the necessary changes.

8. Consultation

Summary of consultation outcome and methodology

8.1 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 to date with changes to wider government policy and legislation.

8.2 In relation to DAPNs and DAPOs, no consultation was undertaken for the changes in this Order because government policy in relation to the provision of legal aid for DAPNs and DAPOs has not changed. The previous Government carried out a public consultation on the draft Domestic Abuse Bill in 2018, before its introduction in Parliament (the consultation and the consultation response can be found on the GOV.UK website[3]).

[3] https://www.gov.uk/government/consultations/domestic-abuse-bill-consultation

8.3 All of the DA Act's measures, including DAPNs and DAPOs, were carefully considered during its passage through Parliament. The previous Government indicated in response to the 2018 consultation that it would pilot the new DAPNs and DAPOs and this pilot launched in certain geographical locations on 27 November 2024. The Government will consider the outcome of the pilot, which will provide an opportunity to address any further issues that may arise from the legal aid provision for DAPNs and DAPOs.

9. Applicable Guidance

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

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

9.3 Guidance on DAPNs and DAPOs has already been published by the Government[4] and by the Legal Aid Agency[5].

[4] https://www.gov.uk/guidance/domestic-abuse-protection-notices-dapns-and-domestic-abuse-protection-orders-dapos ; https://www.gov.uk/government/publications/domestic-abuse-protection-orders-and-protection-notices
[5] https://www.gov.uk/government/news/dapn-and-dapo-contract-changes; https://legalaidlearning.justice.gov.uk/domestic-abuse-protection-orders-dapo-application-guidance/

Part Two: Impact and the Better Regulation Framework

10. Impact Assessment

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

10.2 This Impact Assessment does not cover the amendments in relation to DAPNs and DAPOs because their impact was addressed in the Impact Assessment already published for SI 2023/150[6]. We cannot estimate the volume of cases impacted by the amendments on DAPNs and DAPOs in this SI. However, the circumstances are very specific, therefore they will likely arise infrequently and in small enough volumes that they will not have a significant cost.

Impact on businesses, charities and voluntary bodies

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

10.4 The impact on the public sector is in the form of additional annual costs to the legal aid fund. Expanding legal aid eligibility for domestic abuse victims applying for leave to enter or remain under the Immigration Rules is expected to incur a cost to the Legal Aid Fund in the range of £0.7m to £2.0m per year in steady state cost, with a best estimate of £1.3m. It is unlikely that the other amendments will result in a substantial increase in legal aid applications, and therefore the costs to the legal aid fund will be negligible.

11. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

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

11.2 The 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 at the Ministry of Justice Sarah Sackman 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, and because in relation to the DAPN and DAPO pilot, this will be evaluated."

[6] Pg. 3 of https://www.legislation.gov.uk/ukia/2023/27/pdfs/ukia_20230027_en.pdf

Part Three: Statements and Matters of Particular Interest to Parliament

12. Matters of special interest to Parliament

12.1 This instrument is intended to come into force on the day after it is made, and we consider that this approach is justified. 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, and

b) requires them to adopt different patterns of behaviour.

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

Domestic abuse protection notices and orders (articles 4, 10 and 11 of the Order)

12.3 For the DAPN and DAPO elements of this instrument, this SI does not reflect a change of policy intention but is bringing into scope legal aid for DAPNs and DAPOs which were not expressly brought into scope through previous SIs. For victims, legal aid is essential to ensure that the proper protections are in place for this vulnerable cohort. For respondents to a DAPN and/or DAPO, the powers afforded to the court to restrict the liberty of alleged perpetrators are far-reaching; legal aid is therefore important to ensure that the court can properly take account of their interests. Until this SI comes into force, individuals may not be able to access legal aid, in relation to the changes outlined in paragraphs 5.15 to 5.24 (other than by exceptional case funding). The DAPN and DAPO pilot was launched in November 2024, however these gaps currently exist and should be closed as soon as possible in order to ensure the provision of legal aid.

12.4 When the changes come into effect, the current process for applying for legal aid for the areas that are currently out of scope (Exceptional Case Funding (ECF)) will change. Those that deliver legal aid will now need to adopt an existing process, i.e., applying for civil (or in one case, in relation to section 26(2)(b) DA Act hearings, for criminal) legal aid funding. Despite this, we do not expect any of the amendments made in this instrument to impose duties on legal aid providers in relation to DAPNs and DAPOs that are significant, new administrative or operational burdens, and certainly not ones that are more onerous than currently exist. This is because the DAPN and DAPO pilot has been in force since November 2024 and the legal aid providers have been notified that these legislative changes are underway. Furthermore, we have not yet seen any ECF applications in relation to DAPNs or DAPOs. To the extent that a behaviour change is required, it will be less onerous on providers to access legal aid that is in scope, rather than through ECF, and it is a known process to providers. We will continue to engage with legal aid providers in advance of these changes being made.

12.5 Concerning the other elements of this instrument, we believe introduction of these changes will not place a significant or onerous duty on the public or those delivering legal aid services. Changes will update legislation and regulations to align with legislation which has been in place for many years.

Immigration legal aid for victims of domestic abuse

12.6 The amendments regarding immigration legal aid for victims of domestic abuse will expand the cohort of individuals able to access legal aid (subject to the means and

merits test). This will increase the number of individuals that those delivering legal aid services may take on as clients. However, no new processes or burdens regarding provision of advice will be incurred. The expansion of standard legal aid to this wider cohort may, in fact, reduce burdens on those delivering legal aid services, as applications to the ECF scheme will no longer be required to provide advice to these individuals.

Evidence requirements for victims of domestic abuse

12.7 The amendments to evidence requirements will broaden the evidence requirements for a domestic abuse victim who would already be putting forward an application for legal aid. The Procedure Regulations already enable the Legal Aid Agency to accept various forms of overseas evidence to verify domestic abuse applications, so this amendment does not set a new precedent or require new behaviour on the part of those delivering legal aid services.

Replacing 'domestic violence' with 'domestic abuse', 'financial' with 'economic' and amending the list of behaviours captured by the term 'domestic abuse'.

12.8 The amendments to terminology from 'domestic violence' to 'domestic abuse' and from 'financial' to 'economic' and amendments to the definition of domestic abuse are technical in nature and are unlikely to result in a substantial increase in legal aid applications as it does not change the scope of legal aid. They will not require any new administrative or operational burdens on providers as the current definition of domestic abuse implicitly captures abuse via behaviour, violence or abuse directed at another individual as well as economic abuse. It is hoped that the changes will make it clearer what behaviour is acceptable evidence for civil legal aid applications for both those that deliver legal aid and individuals trying to access legal aid.

12.9 The Government will conduct engagement with legal aid providers concerning these changes prior to the commencement of this instrument to help prepare them for legislative changes and minimise any changes to behaviour which may be required.

13. European Convention on Human Rights

13.1 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: Domestic Abuse) (Miscellaneous Amendments) Order 2025 are compatible with the Convention rights."

14. The Relevant European Union Acts

14.1 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").