

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (REMUNERATION) REGULATIONS 2013

2013 No. 422

1. This explanatory memorandum has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Civil Legal Aid (Remuneration) Regulations 2013 make provision about the payment of remuneration by the Lord Chancellor to persons who provide civil legal services under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”).

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

3.1 None.

4. Legislative Context

4.1 This is one of a number of statutory instruments which implement Part 1 of the Act. These instruments will be laid in time for the Act to come into force on 1 April 2013.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Act gives effect to the Government’s policy position on Legal Aid. The Government believes that legal aid has expanded far beyond its original intentions and is available for a wide range of issues, many of which need not be resolved through the courts. Irrespective of the current economic situation, a wide ranging program of reform is required to ensure that legal aid is targeted to those who need it most, for the most serious cases in which legal advice and representation is justified.

7.2 Section 2(3) of the Act provides that the Lord Chancellor may, in regulations, make provision about the payment of remuneration by the Lord Chancellor to persons who provide services under arrangements made for the purposes of Part 1 of the Act. These Regulations exercise that power in relation to civil legal services.

7.3 On 14 September 2012, the Legal Services Commission issued an invitation to tender for contracts to provide face to face civil legal services under the 2013 Standard Civil Contract. The Ministry of Justice made a number of documents available for background information to support the 2013 Standard Civil Contract, including one entitled “Policy for payment of civil & family legal aid work provided through a face to face contract under section 2(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012” which is available on the Ministry of Justice website at the following link (document number 10 under MoJ Material):

<http://www.justice.gov.uk/legal-aid/contracts-and-tenders/standard-civil-contract-2013>

7.4 These Regulations reflect the policy intention set out in that policy statement. In summary:

- payment for civil legal services will continue to be paid in accordance with the current applicable rate for the work calculated in accordance with the Community Legal Service (Funding) Order 2007 (S.I. 2007/2441) (“the CLS Funding Order”);
- the Regulations contain new fees for mediation work;
- discrimination work that has not been competitively tendered for no longer attracts a separate rate under these Regulations, but will be remunerated at the relevant rate for the category of law in which the matter first arose;
- the rates and fees for areas of law no longer within the general scope of civil legal aid remain set out in the Regulations to meet the policy aim that individual cases funded on an exceptional basis under section 10 of the Act are remunerated on the same basis as they are currently;
- the rates that are currently paid in relation to inquests, currently set out in guidance, have been set out in these Regulations.

7.5 In addition, two changes have been made in relation to the rates for experts (regulation 10 and Schedule 5): a new rate for housing disrepair surveyors has been added, and the London/Non-London hourly rate payment differential for all psychologists and psychiatrists has been harmonised.

7.6 These Regulations do not apply:

- where the contract governing the provision of civil legal services in a case has been awarded after price competitive tendering has taken place;
- with the exception of regulations 7 and 10 (provisions about the payment of barristers in independent practice and about the payment of experts) where the contract governing the provision of civil legal services in a case is the Individual Case Contract (High Cost Civil);
- with the exception of regulation 10 (provision about the payment of experts) where the contract governing the provision of civil legal services in a case is awarded as part of a pilot which provides for remuneration by way of one or more standard fees.

8. Consultation

8.1 The consultation on legal aid reform ‘Proposals for the reform of legal aid in England and Wales’ was published on 15 November 2010 and closed on 14 February 2011. Over 5,000 responses were received from representative bodies, practitioner and other organisations, individual members of the judiciary, members of the House of Commons and Lords, individual solicitors and barristers and members of the public. The consultation proposed a number of changes to scope of and eligibility for civil and family legal aid, as well as several changes to remuneration rates for solicitors and barristers undertaking legal aid work. After the consultation closed, having made a number of changes to the original proposals, several changes were introduced to remuneration in civil and family proceedings in August 2011, through amendments to the CLS Funding Order. These included a reduction to all fees paid in civil and family matters by 10%, a cap on enhancements to hourly rates payable to solicitors in civil cases generally, and a 100% cap on any enhancements to hourly rates payable to solicitors in civil cases in the Upper Tribunal, High Court, Court of Appeal and Supreme Court and a 50% cap on any enhancements to hourly rates payable to solicitors in civil cases in all other courts. The use of Queen’s Counsel was restricted in family cases where provisions similar to those in criminal cases apply. A detailed Government response to the consultation is available on the MoJ Website at www.justice.gov.uk/consultations/legal-aid-reform

8.2 We have not consulted on the Civil Legal Aid (Remuneration) Regulations 2013.

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. A programme of training and guidance is being prepared by the Legal Services Commission to support the transition to the new arrangements. This will be made available to legal aid providers ahead of the commencement of the Act on 1 April 2013.

10. Impact

10.1 The impacts of the Government's programme of legal aid reform are set out in an Impact Assessment, which was updated following the Act receiving Royal Assent. This is available at: <http://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information>. An Impact Assessment has not been prepared specifically for this instrument.

10.2 There is no impact on business, charities or voluntary bodies.

10.3 There is no impact on the public sector arising from this instrument beyond those accounted for in the Royal Assent Impact Assessment.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 The Ministry of Justice will conduct a post-implementation review of the Act between three to five years after implementation. This review will also consider the operation of the secondary legislation.

13. Contact

Christine Okiya, Legal Aid Reform (Remuneration and Provider Strategy), Ministry of Justice, 102 Petty France, London SW1H 9AJ, 020 3334 5625 or email: christine.okiya@justice.gsi.gov.uk can answer any queries regarding these Regulations.