

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT LEGAL AID, SENTENCING AND  
PUNISHMENT OF OFFENDERS ACT 2012  
(LEGAL AID: FAMILY AND DOMESTIC ABUSE)  
(MISCELLANEOUS AMENDMENTS) ORDER 2023

*Thursday 26 January 2023*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Monday 30 January 2023**

© Parliamentary Copyright House of Commons 2023

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chair:* MARTIN VICKERS

† Bacon, Gareth (*Orpington*) (Con)  
† Bailey, Shaun (*West Bromwich West*) (Con)  
† Baron, Mr John (*Basildon and Billericay*) (Con)  
† Britcliffe, Sara (*Hyndburn*) (Con)  
Carden, Dan (*Liverpool, Walton*) (Lab)  
† Duguid, David (*Banff and Buchan*) (Con)  
† Ellis, Michael (*Northampton North*) (Con)  
Foy, Mary Kelly (*City of Durham*) (Lab)  
† Freer, Mike (*Parliamentary Under-Secretary of  
State for Justice*)  
Gardiner, Barry (*Brent North*) (Lab)

† Jones, Andrew (*Harrogate and Knaresborough*)  
(Con)  
† McMorrin, Anna (*Cardiff North*) (Lab)  
† Mann, Scott (*Lord Commissioner of His Majesty's  
Treasury*)  
† Morton, Wendy (*Aldridge-Brownhills*) (Con)  
† Smyth, Karin (*Bristol South*) (Lab)  
† Tami, Mark (*Alyn and Deeside*) (Lab)  
Trickett, Jon (*Hemsworth*) (Lab)  
Seb Newman, *Committee Clerk*  
† **attended the Committee**

## Eighth Delegated Legislation Committee

Thursday 26 January 2023

[MARTIN VICKERS *in the Chair*]

### Draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Family and Domestic Abuse) (Miscellaneous Amendments) Order 2023

11.30 am

**The Parliamentary Under-Secretary of State for Justice (Mike Freer):** I beg to move,

That the Committee has considered the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Family and Domestic Abuse) (Miscellaneous Amendments) Order 2023.

It is a pleasure to serve under you, Mr Vickers.

This draft statutory instrument will expand the civil legal aid scheme, making civil legal aid available in two new areas of family law and in certain domestic abuse proceedings. It will also broaden the acceptable evidence requirements for victims of domestic abuse.

The intention of the legal aid scheme, as set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012—LASPO—is to provide legal aid to those most in need. Over the past few years, several events and legislation have necessitated further consideration of legal aid provision, such as the post-implementation review of LASPO, the passing of the Domestic Abuse Act 2021 and the covid-19 pandemic.

Before turning to the amendments in the draft instrument, I will briefly set out how the legal aid scheme works in general. Civil legal aid is available to an individual if their issue is listed in part 1 of schedule 1 to LASPO. In most cases, an individual must pass a means test—a check on their financial eligibility—and a merits test to ensure that the taxpayer is not funding entirely unmeritorious cases. Evidence requirements must also be satisfied in certain cases, as set out by the procedure regulations. Those tests are to ensure that legal aid goes to the individuals who need it most.

Turning to some of the provisions of the draft order, four topics are covered. First, special guardianship orders, or SGOs, which are a court order to allow parental control over a child by individuals other than the parent. They are usually made to appoint members of the extended birth family or other significant people, such as a child's long-term foster carer, as the special guardian. Currently, SGOs in private family proceedings, which are disputes between private individuals, are not within the scope of legal aid. Legal aid for SGOs are in scope only if sought in public family proceedings, generally proceedings brought by a local authority, such as care order proceedings.

Evidence submitted during the post-implementation review of LASPO in 2019 suggested that, without legal aid provision, prospective guardians might be deterred from seeking an SGO, and parents might not get the legal advice they required when faced with the loss of rights over their child. The Government accepted that evidence in 2019 and committed to making the amendment.

Unfortunately, this amendment was delayed due to the covid-19 pandemic, but I am pleased that this draft statutory instrument has now been brought before us. It will bring SGOs in private family law proceedings within the scope of the legal aid scheme to deliver on that commitment and to ensure that families and guardians receive the support they need when seeking an SGO to bring stability to a child's life.

Secondly, the statutory instrument will expand the availability of civil and criminal legal aid to reflect new protective orders and notices introduced by the Domestic Abuse Act 2021. A domestic abuse protection notice will provide victims of domestic abuse with immediate protection for up to 48 hours, and a domestic abuse protection order will provide a victim with longer-term protection from their abuser. Such notices and orders were created by the Domestic Abuse Act 2021 and will be piloted before a wider national roll-out. Currently, no provision for legal aid exists for such orders. However, legal aid is available for existing types of protective orders, such as non-molestation orders, so it is right that legal aid will also be available for victims of domestic abuse seeking a domestic abuse protection order to support those who are seeking refuge from domestic abuse.

Similarly, criminal legal aid will be made available to a respondent to a domestic abuse protection order or notice in the same way that it is already available for breaches of other kinds of protective injunctions, such as non-molestation orders. This will help the respondent to understand the requirements imposed by the order or notice.

Thirdly, the SI will amend the means and merits tests for parents contesting a placement or adoption order. A placement order authorises a local authority to place a child for adoption, and an adoption order gives the adoptive parents full legal status as the child's parents. The current applicable means and merits tests differ, depending on whether a placement or adoption order is sought within care proceedings. This is contrary to the Government's policy intention that parents or those with parental responsibility who are at risk of having their child permanently removed should be legally represented, regardless of whether the order is sought within care proceedings. The Government are grateful to the individuals and organisations who submitted evidence to us on this point, which has allowed us to make the amendment. The SI will therefore rectify the unintentional difference to ensure that the same means and merits tests apply to the parents in all instances when they are contesting a placement and/or adoption order.

Fourthly and finally, we are updating the supporting evidence requirements for victims of domestic abuse when they apply for certain legal aid services. One of the types of evidence that a victim of domestic abuse can currently provide is a letter from their medical practitioner after they have had a face-to-face appointment. The SI will also allow medical practitioners to provide a letter as evidence of domestic abuse after a telephone or video conferencing consultation, which will help make it easier for victims to evidence their claims and access the support they need. This change reflects medical working practices since the covid-19 pandemic, whereby appointments may be held over the phone or via video conferencing. It is right that medical practitioners who provide this vital service to victims of domestic abuse treat their patients according to their professional opinion,

and not because of a requirement of the legal aid scheme. As medical working practices change and evolve with time, we will review the change after a year to assess how it is working in practice.

Before concluding, I would like to draw the Committee's attention to the fact that the draft order was previously laid on 17 October 2022 but was subsequently withdrawn. The previous draft order contained provisions to realign access to immigration legal aid for victims of domestic abuse applying for indefinite leave to remain with eligibility under the immigration rules. That was to ensure that the Government's policy intention of providing legal aid to these victims of domestic abuse kept pace with changes to the immigration rules. Unfortunately, a statement of changes to the immigration rules, which was laid on the same date in October 2022, directly impacted and contradicted the purpose of the draft order. The Secondary Legislation Scrutiny Committee also drew the previous draft order to the special attention of the House on that basis.

As a result of the inconsistency, the Government decided to withdraw the previous draft order. Hon. Members will notice that this draft order, laid in December 2022, does not contain any provisions relating to immigration legal aid. I want to reassure the House that my officials are diligently working with colleagues across Government to bring forward a further draft order in due course. We remain committed to ensuring that access to immigration legal aid for victims of domestic abuse is in line with the immigration rules.

The draft instrument before us expands the scope of civil legal aid in a number of ways to ensure that legal aid continues to be available to those most in need. Furthermore, the instrument sets out numerous amendments to ensure the original policy intention of LASPO is maintained, following recent events and other legislative changes.

11.38 am

**Anna McMorris** (Cardiff North) (Lab): It is a pleasure to serve under your chairmanship, Mr Vickers. I thank the Minister for his opening remarks.

Let me make it clear from the start that the Labour party will not oppose the draft order. We support the principle of introducing new measures to offer more comprehensive and longer-term protection of victims of domestic abuse. We welcome the expansion of the legal aid scheme for special guardianship orders, as well as the changes to the means and merits tests, and we support the changes made to allow the use of telephone or video conference consultations by health professionals.

However, this legislation is well overdue. The years of underinvestment in the legal aid system, coupled with cuts in 2011 and 2014, has had a significant effect on the ability of victims of abuse to access legal aid assistance or the representation that they need to escape abusive relationships. Although we welcome the Government's steps in the right direction, the damaging legacy of LASPO will be difficult to reverse. The fallout for victims has been devastating. At the moment, more than one third of women who have experienced domestic violence are unable to satisfy the Government's strict requirements for providing proof and are denied access to legal aid. The actions of this Government have often meant that victims of domestic abuse had to face abusers in the courtroom without legal advice or representation.

On the expansion of legal aid for special guardians, the legislation does not go far enough. Will the Minister consider whether there should be non-means-tested legal aid for prospective guardians? Often they are grandparents who have limited resources, but might own their own home. They would most likely be disqualified from legal aid because of the capital in their home, but they should not be expected to sell their own home to raise the money for legal expenses in such cases, particularly as they would be caring for and providing a home for particularly vulnerable children.

We know that the covid pandemic has had a huge impact on the number of domestic abuse cases. The national domestic abuse helpline saw calls soar by 66% during lockdown and a 300% rise in visits to its website. In the family courts there were over 68,000 new cases from October to December 2020, and 21% of those were domestic violence-related. That is an increase of 6% compared with the same quarter in 2019. We know that the crisis has been left to worsen. I am afraid the actions of this Government to date have been disappointing, and we are concerned that the order comes a little too late.

Although the order improves the scope of legal aid for domestic abuse cases, ultimately proper funding and early intervention are the well-established solutions that the Government appear slow to act on. Access to early specialist legal advice representation is vital for survivors to secure safety and secure rights. It supports justice and their recovery.

On the wider legal aid system, we are still waiting for answers as to why the Government have not committed to implement the recommendations of their own criminal legal aid review. Will the Minister answer that? Why are we having to wait for a review on civil providers, where change is unlikely to be seen for several years? Why are we waiting so long for that review?

The changes that the Government introduced are ultimately late, partial, and have not kept up with the rise and the need in the courts. We are faced with a justice system on the brink of collapse. It is broken, yet we have a Government simply tinkering at the edges and looking for quick wins. They have had 13 years to nurse the justice system, but unfortunately they have put it back and have failed miserably. However, as I said, we will support the order today.

11.43 am

**Shaun Bailey** (West Bromwich West) (Con): It is a pleasure to speak in this debate today and to serve under your chairmanship, Mr Vickers. It is also a pleasure to follow the hon. Member for Cardiff North. I had not intended to contribute to this debate, but it is quite a personal one for me as the son of a survivor of domestic abuse.

I saw the shambolic system under the previous Labour Government. After having lived through that and experienced that myself, I question the narrative of the land of milk and honey under that previous Administration. However, I agree with the hon. Lady. In the broader context of support for survivors, the order is long overdue. I welcome what my hon. Friend the Minister has done to ease access. I remember my mum's own story as a survivor of domestic abuse. She struggled to access the justice system at the time, and she had to face down my father—who tried to throw her over the balcony of the court



[Shaun Bailey]

building itself during their hearings—in court because there was no way in which the evidence could be taken that did not involve her having to encounter him.

I support freeing up the system to make it more accessible. I particularly want to draw attention to the provisions around medical practitioners providing evidence, because I have seen at first hand how difficult it is for survivors to go through this system while staying safe. We need to couch this in terms of what it is: ultimately, when we talk about domestic violence, it is a threat to someone's life. I have seen that at first hand, and I spoke about it when I got into this place. The reason I am here is because of the fights that my mum had to go through in order to just keep me and my sister alive, quite frankly, and to ensure that my father never got within five feet of us.

Making the system easier in any way is, in my view, the right thing for the Government to do, but it is probably 25 years overdue. That is not the Minister's fault: Governments of all colours have had abysmal track records in this space. I am glad to see that we are finally going some way towards remediating and rectifying that. Of course, there is more I would like to see. We made steps in the Domestic Abuse Act 2021; we need to keep building on that legislation, and I implore my hon. Friend the Minister to do so. We have spoken many times about the work that he and right hon. and hon. Friends in his Department are doing.

It is also good to see an expansion of ease of access to legal aid, for once. Too often, we hear other narratives around legal aid, but it is such a vital part of this process. Just to give an example, during my childhood we were homeless, so accessing the justice system in the way that people currently have to do was just not doable. What my hon. Friend the Minister has done today would have meant that my mum could access that system more easily, and she would have been able to get to the end of this horrific process in a quicker way and one that kept her safe and ensured that she could keep us protected. That is who I think of as I make this speech. As I say, Mr Vickers, I had not intended to contribute to this debate, but the nature of this SI is personal to me. Quite often, we come into these Committees thinking that the piece of delegated legislation we are considering is quite odd and abstract, but this one is not. It is about people's lives; it is about the experiences that so many people up and down this country are having to go through, but quite frankly, should not have to go through.

I thank the Committee for its indulgence in letting me speak to this piece of legislation. While it is overdue, it is very welcome, and I hope that it is not the end, but merely part of the process as we build a system that supports survivors. We have to remember that the people in these situations are survivors, not victims, and we can help them by ensuring they get access to justice and the systems they need, so that they can carry on with their lives. At the end of the day, if it were not for people like my mum, I would not be stood here right now—it is as simple as that—so I thank my hon. Friend the Minister. Let us hope that we can get some positives out of what is a horrendous situation.

11.47 am

**Mark Tami** (Alyn and Deeside) (Lab): Following the very moving and personal case described by the hon. Member for West Bromwich West (Shaun Bailey), I would like to raise the case of Jade Ward from my seat. Jade was 27 when she was murdered by her ex-partner after years of abuse. That murder should have been the last act of that abuse, but unfortunately, given how the law works at the moment, it was not. Her murderer sits in prison, but he still has the right to be consulted about the four children that he had with Jade, who were in the house at the time she was murdered. He is to be consulted about where they go to school, whether they go on holiday and whether they have passports, which perpetuates the abuse.

Jade's parents, who are looking after the children, might well get to the stage of challenging her murderer over those rights. Personally, I am campaigning for the law to be the other way around—he should not have those rights; he should be the one who needs to go to court to get any rights given back. If Jade's family have to take a murderer to court to take his rights away from him, will they get legal aid to fight for what I believe the law should give them in the first place but unfortunately does not as it stands?

11.50 am

**Mike Freer**: I will answer some of the points made in reverse order. The right hon. Member for Alyn and Deeside mentioned his constituents. I want to tread carefully, to ensure that I get this absolutely right. The family procedure rules committee is reviewing the existing procedures in case matters can be expedited to ensure that the families impacted are represented correctly. The issue he raised is very valid, and it has been well aired. My understanding—I will ask officials to write in more detail to ensure that we give him the correct advice—is that the SGOs will allow families to ensure that those who have been involved in murder are excluded from the decisions the right hon. Gentleman expounded. I will ensure that we give a full answer that is correct and in detail.

Turning to my hon. Friend the Member for West Bromwich West, may I say that, in this place, when we are making legislation, so often it is dry and technical. When colleagues are able to give a personal perspective, not only does it make the law better, but it brings the law to life. I thank him for his contribution, which cannot have been easy.

I will now turn to some of the points made by the shadow Minister, the hon. Member for Cardiff North. I am grateful for her support, and I always enjoy that speech—I think I have heard it several times now. We have implemented the Bellamy review and, apart from one item—pages of prosecution evidence—the fee uplifts have gone through.<sup>1</sup> I make no apologies for not putting further funds into a part of the payment scheme that all sides agree is antiquated and needs significant reform. On the review of civil and family matters, the consultation is closed. Our response is due imminently.

May I also correct a couple of assertions? Targeted intervention is not “tinkering”. I make no apology for being a careful steward of taxpayers' money. I am not prepared simply to spray money at the legal aid system; I want to ensure that the intervention is targeted, so that it gets to the right people and gets the right result. We spend £1.6 billion on legal aid, half of which is on civil.

1. [Official Report, 30 January 2023, Vol. 727, 2MC.]

The draft SI will inject a further £13 million. Last week, we injected a further £10 million of housing legal aid, and that is in addition to the recent £8 million of immigration legal aid. I firmly reject the assertion that the Government are not committed to the legal aid system. However, we are committed to ensuring that our investment is well spent, with targeted outcomes.

*Question put and agreed to.*

11.53 am

*Committee rose.*

