

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

**EXITING THE EUROPEAN
UNION, ENGLAND AND WALES
EXITING THE EUROPEAN
UNION, NORTHERN IRELAND
LEGAL AID AND ADVICE,
ENGLAND AND WALES
LEGAL AID AND ADVICE,
NORTHERN IRELAND**

The Civil Legal Aid (Amendment) (EU Exit) Regulations 2019

Made - - - -

Coming into force in accordance with regulation 1

The Lord Chancellor makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(1).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Civil Legal Aid (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(2) Any amendment or revocation made by these Regulations has the same extent as the provision amended or revoked.

PART 2

Amendment of primary legislation

Amendment of the Access to Justice (Northern Ireland) Order 2003

2.—(1) The Access to Justice (Northern Ireland) Order 2003(2) is amended as follows.

(2) In Article 12A(3)(a)(ii) (exceptional case determinations), for “enforceable EU rights” substitute “rights (as modified from time to time) which form part of retained EU law by virtue of section 3 or 4 of the European Union (Withdrawal) Act 2018”.

(3) Omit paragraph 2(d)(xx) (cross-border disputes) of Schedule 2.

Amendment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

3.—(1) The Legal Aid, Sentencing and Punishment of Offenders Act 2012(3) is amended as follows.

(2) In section 10(3)(a)(ii) (exceptional cases), before “enforceable EU rights” insert “retained”.

(3) In section 32(3)(a)(ii) (foreign law), before “enforceable EU rights”, insert “retained”.

(4) In section 42(1) (interpretation), after the definition of “representation”, insert—

““retained enforceable EU right” means a right (as modified from time to time) which forms part of retained EU law by virtue of section 3 or 4 of the European Union (Withdrawal) Act 2018.”.

(5) Omit paragraph 44 of Part 1 of Schedule 1 (cross-border disputes).

(6) In paragraph 2(2)(b) of Schedule 3 (exceptional case determinations: legal persons), before “enforceable EU rights”, insert “retained”.

PART 3

Amendment of subordinate legislation

Amendment of the Civil Legal Aid (Procedure) Regulations 2012

4.—(1) The Civil Legal Aid (Procedure) Regulations 2012(4) are amended as follows.

(2) [S.I. 2003/435 \(N.I. 10\)](#), as amended by Schedule 2 to the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014 ([2014 c. 11 \(N.I.\)](#)) and [S.I. 2014/3298](#); there are other amending instruments but none is relevant.

(3) [2012 c.10](#).

(4) [S.I. 2012/3098](#); amended by [S.I. 2018/803](#); there are other amending instruments but none is relevant.

(2) In regulation 22(1)(b)(i) (applications for controlled work), for “European Union”, substitute “United Kingdom”.

(3) In regulation 31(3) (applications for licensed work), for “European Union”, substitute “United Kingdom”.

Amendment of the Civil Legal Aid (Merits Criteria) Regulations 2013

5.—(1) The Civil Legal Aid (Merits Criteria) Regulations 2013(5) are amended as follows.

(2) In regulation 20(1) and (2) (provision of the most appropriate form of civil legal services), for “31” substitute “30”.

(3) Omit regulation 31 (cross-border disputes).

Amendment of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

6.—(1) The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013(6) are amended as follows.

(2) Omit regulation 6(3) (individuals in receipt of certain support).

(3) Omit regulation 11 (waiver of eligibility limit and contributions in cross-border disputes).

(4) Omit regulation 24(2) (payments to be disregarded from calculation of disposable income or gross income).

(5) In regulation 44(2) and (3) (contributions), omit “or 6(3)”.

Amendment of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015

7. In the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015(7), omit regulation 9 (waiver of eligibility limits and contributions in cross-border disputes).

PART 4

Transitional Provisions

Transitional provision – England and Wales

8.—(1) The amendments made by regulations 3(5) and 4 to 6 do not apply to an application for civil legal services falling within paragraph (2).

(2) An application for civil legal services falls within this paragraph if it is an application—

(a) submitted to the Director in accordance with Article 13(1)(b) of the Cross-Border Legal Aid Directive, reading that Article as if the United Kingdom were a member State, which—

(i) is made using the standard form for legal aid applications established under Article 16 of the Cross-Border Legal Aid Directive, and

(ii) received by the Director before exit day,

(b) transmitted to the Director by a transmitting authority and received by the Director before 5.00pm on the fifteenth day after the day on which exit day falls, or

(5) S.I. 2013/104, to which there are amendments not relevant to these Regulations.

(6) S.I. 2013/480, to which there are amendments not relevant to these Regulations.

(7) S.R. 2015 No. 196 (N.I.); amended by S.R. 2016 No. 338 (N.I.); there are other amending instruments but none is relevant.

- (c) not falling within sub-paragraph (a) or (b), and—
 - (i) it is an application for Controlled Work, and the application is signed and dated on or before the day on which exit day falls,
 - (ii) it is an application for Licensed Work, other than an application for emergency representation, and the application is—
 - (aa) signed and dated on or before the day on which exit day falls and received by the Director by 5.00pm on the seventh day after the day on which exit day falls, or
 - (bb) submitted through the Client and Cost Management System before exit day, or
 - (iii) it is an application for emergency representation, and the application—
 - (aa) results in a determination being made by a provider before exit day and that determination is notified to the Director within five working days of the determination,
 - (bb) is emailed or faxed to, and received by, the Director before exit day, or
 - (cc) is submitted through the Client and Cost Management System before exit day.
- (3) After exit day, for the purposes of an application falling within paragraph (2)—
 - (a) the following provisions have effect as if the United Kingdom were a member State—
 - (i) paragraph 44 of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012,
 - (ii) regulation 11 of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, and
 - (iii) regulation 5D of the Community Legal Service (Financial) Regulations 2000⁽⁸⁾,
 - (b) regulation 11(3) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 is to be read as if for it there were substituted—
 - “(3) For the purposes of this regulation—
 - (a) in order to determine whether an individual is domiciled in the member State whose courts are seised of a matter, the internal law of that member State must be applied;
 - (b) if an individual is not domiciled in the member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another member State, the internal law of that member State must be applied.”, and
 - (c) regulation 5D(4) of the Community Legal Service (Financial) Regulations 2000 is to be read as if for it there were substituted—
 - “(4) For the purposes of this regulation—
 - (a) in order to determine whether an individual is domiciled in the member State whose courts are seised of a matter, the internal law of that member State shall be applied;
 - (b) if an individual is not domiciled in the member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another member State, the internal law of that member State shall be applied”

⁽⁸⁾ [S.I. 2000/516](#). Relevant amendments are [S.I. 2004/2899](#) and [2007/1655](#). This instrument has been revoked by paragraph 51 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10), subject to consequential, transitional and savings provisions set out in [S.I. 2013/534](#).

(4) In this regulation—

“civil legal services” has the meaning given in section 8(3) (civil legal services) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“Client and Cost Management System” means the client and cost management system used by the Director in relation to applications for civil legal services;

“Controlled Work” has the meaning given in regulation 21(2) (controlled work: general) of the Civil Legal Aid (Procedure) Regulations 2012;

“the Cross-Border Legal Aid Directive” means Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes⁽⁹⁾;

“determination” means a determination that an individual qualifies for civil legal services in accordance with Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“Director” means the person designated as the Director of Legal Aid Casework under section 4(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and any person to whom a function of the Director of Legal Aid Casework has been delegated under regulation 12 of the Civil Legal Aid (Procedure) Regulations 2012;

“emergency representation” has the meaning given in regulation 2 (interpretation) of the Civil Legal Aid (Procedure) Regulations 2012;

“Licensed Work” has the meaning given in regulation 29(2) (licensed work: general) of the Civil Legal Aid (Procedure) Regulations 2012;

“provider” means a person who provides civil legal services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“transmitting authority” has the meaning given in Article 14(1) of the Cross-Border Legal Aid Directive; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971⁽¹⁰⁾.

Transitional provision – Northern Ireland

9.—(1) The amendments made by regulation 2(3) and 7 do not apply to an application for civil legal services falling within paragraph (2).

(2) An application for civil legal services falls within this paragraph if it is an application—

(a) submitted to the Director in accordance with Article 13(1)(b) of the Cross-Border Legal Aid Directive, reading that Article as if the United Kingdom were a member State, which—

(i) is made using the standard form for legal aid applications established under Article 16 of the Cross-Border Legal Aid Directive, and

(ii) received by the Director before exit day,

(b) transmitted to the Director by a transmitting authority and received by the Director before 5.00pm on the fifteenth day after the day on which exit day falls, or

(c) not falling within sub-paragraph (a) or (b), and—

(i) the application is for advice and assistance, and the application is signed and dated on or before the day on which exit day falls,

⁽⁹⁾ OJNo. L 26, 31.1.2003, p. 41-47; original reference, “2002/8/EC”, corrected by OJ No. L 32, 7.2.2003, p. 15.

⁽¹⁰⁾ 1971 c. 80.

- (ii) the application is for representation (lower courts), and the application is signed and dated on or before the day on which exit day falls and received by the Director before 11pm on the twenty-eighth day following exit day, or
 - (iii) the application is for representation (higher courts), and the application is signed and dated on or before the day on which exit day falls and received by the Director before 11pm on the twenty-eighth day following exit day.
- (3) After exit day, for the purposes of an application falling within paragraph (2)—
- (a) the following provisions have effect as if the United Kingdom were a member State—
 - (i) paragraph 2(d)(xx) of Schedule 2 to the Access to Justice (Northern Ireland) Order 2003, and
 - (ii) regulation 9 of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015, and
 - (b) regulation 9(4) of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 is to be read as if for it there were substituted—
 - “(4) For the purposes of this regulation—
 - (a) in order to determine whether an individual is domiciled in the member State whose courts are seised of a matter, the internal law of that member State shall be applied;
 - (b) if an individual is not domiciled in the member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another member State, the internal law of that member State shall be applied.”
- (4) In this regulation—
- “advice” and “assistance” have the meanings given in Article 2(2) of the Access to Justice (Northern Ireland) Order 2003;
- “civil legal services” has the meaning given in Article 10 of the Access to Justice (Northern Ireland) Order 2003;
- “the Cross-Border Legal Aid Directive” means Council [Directive 2003/8/EC](#) of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes;
- “Director” means the Director of Legal Aid Casework designated by the Department of Justice under section 2 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014⁽¹¹⁾ and any person to whom a function of the Director of Legal Aid Casework has been delegated under section 4 of that Act;
- “representation (lower courts)” and “representation (higher courts)” have the meanings given in regulation 2 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015⁽¹²⁾; and
- “transmitting authority” has the meaning given in Article 14(1) of the Cross-Border Legal Aid Directive.

⁽¹¹⁾ 2014 c.11 (N.I.).

⁽¹²⁾ S.R. 2015 No. 195 (N.I.); to which there are amending instruments not relevant to these Regulations.

Signatory text

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. They relate to the categories of deficiencies in retained EU law specified in section 8(2)(a), (c), (d) and (g) of that Act.

These Regulations make amendments to legislation relating to civil legal aid in England and Wales and in Northern Ireland. Part 2 amends the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) and the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)) and Part 3 amends subordinate legislation. Part 4 contains transitional provisions.

A full impact assessment has not been published for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.