
STATUTORY INSTRUMENTS

2012 No. 3098

The Civil Legal Aid (Procedure) Regulations 2012

PART 1

Interpretation and General

Interpretation

2. In these Regulations—

“the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“adjudicator” means an independent funding adjudicator appointed by the Lord Chancellor under section 2 of the Act;

“business day” means any day except Saturday, Sunday, a bank holiday, Good Friday or Christmas Day;

“child” means an individual under the age of 18;

“children’s guardian” has the meaning given in rule 2.3 of the Family Procedure Rules 2010⁽¹⁾;

“Controlled Work” has the meaning given in regulation 21(2);

“costs” means the fees payable to any provider calculated by reference to remuneration rates set out in arrangements made by the Lord Chancellor under section 2(1) of the Act or in regulations under section 2(3) of the Act, including (but not limited to)—

- (a) counsel’s fees;
- (b) disbursements; and
- (c) any fees paid to providers at an enhanced rate,

but not including Value Added Tax;

“cost benefit criteria” means the criteria of that name which the Director⁽²⁾ must apply when determining whether an individual qualifies for full representation in accordance with regulations made under section 11 of the Act;

“the effective administration of justice test” has the meaning given in regulation 31(5);

“emergency representation” means legal representation (that is not Controlled Work) or family help (higher) provided following a determination made on an urgent application;

“face-to-face provider” means a provider with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act for the provision of civil legal services to an individual in person;

“family dispute” means any matter which is described in any of the following paragraphs of Part 1 of Schedule 1 to the Act—

- (a) paragraph 1 (care, supervision and protection of children);

(1) S.I. 2010/2955.

(2) Section 42(1) of the Act provides that in Part 1 of the Act “the Director” means the Director of Legal Aid Casework.

- (b) paragraph 9 (inherent jurisdiction of the High Court in relation to children and vulnerable adults), to the extent that it relates to—
 - (i) a child; or
 - (ii) a vulnerable adult, but only in so far as such matters arise out of a family relationship within the meaning of paragraph 14(7) of Part 1 of Schedule 1 to the Act;
- (c) paragraph 10 (unlawful removal of children);
- (d) paragraph 11 (family homes and domestic violence);
- (e) paragraph 12 (victims of domestic violence and family matters);
- (f) paragraph 13 (protection of children and family matters);
- (g) paragraph 14 (mediation in family disputes);
- (h) paragraph 15 (children who are parties to family proceedings);
- (i) paragraph 16 (forced marriage);
- (j) paragraph 17 (EU and international agreements concerning children); or
- (k) paragraph 18 (EU and international agreements concerning maintenance);

“individual case contract” means an arrangement between the Lord Chancellor and a provider under section 2(1) of the Act for the provision of civil legal services in an individual case;

“Licensed Work” has the meaning given in regulation 29(2);

“litigation friend” has the meaning given in Part 21 of the Civil Procedure Rules 1998⁽³⁾ and rule 2.3 of the Family Procedure Rules 2010;

“parental order reporter” has the meaning given in rule 13.1 of the Family Procedure Rules 2010;

“prospects of success” means the prospects of success as assessed by the Director in accordance with regulations made under section 11 of the Act;

“protected party” means a party or a proposed party who lacks capacity (within the meaning of the Mental Capacity Act 2005⁽⁴⁾) to conduct proceedings;

“provider” means a person who provides civil legal services under Part 1 of the Act;

“revocation” means the withdrawal of a determination which has the consequences described in regulations made under section 23 and 26 of the Act (and “revoked” and “revoke” have equivalent meanings);

“Special Case Work” means civil legal services provided under an individual case contract in the circumstances described in regulation 54(3);

“specialist telephone provider” means a provider with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act for the provision of civil legal services by telephone or other means that do not require the attendance in person of the individual to whom the services are provided; and

“2010 Standard Civil Contract”, “2013 Standard Civil Contract” and “2013 CLA Contract” mean the contracts so named between the Lord Chancellor and a provider for the provision of civil legal services⁽⁵⁾.

⁽³⁾ S.I. 1998/3132. Part 21 was substituted by S.I. 2007/2204.

⁽⁴⁾ 2005 c. 9.

⁽⁵⁾ The 2010 Standard Civil Contract, 2013 Standard Civil Contract and 2013 CLA Contract are available at www.justice.gov.uk/legal-aid. Copies can be inspected at The Legal Aid Agency (Head Office) at 102 Petty France, London, SW1H 9AJ.

Form of civil legal services

3. “Form of civil legal services” means—

- (a) legal help;
- (b) help at court;
- (c) family help;
- (d) family mediation;
- (e) help with family mediation;
- (f) legal representation; and
- (g) other legal services,

which are further defined in regulations 4 to 10.

Legal help

4. “Legal help” means the provision of civil legal services other than—

- (a) acting as a mediator or arbitrator;
- (b) issuing or conducting court proceedings;
- (c) instructing an advocate in proceedings;
- (d) preparing to provide advocacy in proceedings; or
- (e) advocacy in proceedings.

Help at court

5. “Help at court” means the provision of any of the following civil legal services at a particular hearing—

- (a) instructing an advocate;
- (b) preparing to provide advocacy; or
- (c) advocacy.

Family help

6.—(1) Family help may be provided in a family dispute as either family help (lower) or family help (higher).

(2) “Family help (lower)” means—

- (a) civil legal services provided in relation to the negotiation of a family dispute before the issuing of proceedings; or
- (b) civil legal services provided in relation to the issuing of proceedings in order to obtain a consent order following the settlement of a family dispute.

(3) “Family help (higher)” means such civil legal services as are available under legal representation but does not include preparation for, or representation at, a contested final hearing or appeal.

Family mediation

7. “Family mediation” means the provision of any of the following civil legal services in a family dispute—

- (a) an assessment by a mediator of whether, in light of all the circumstances, a case is suitable for mediation; or
- (b) acting as a mediator.

Help with family mediation

8. “Help with family mediation” means the provision of any of the following civil legal services, in relation to a family dispute—

- (a) civil legal services provided in relation to family mediation; or
- (b) civil legal services provided in relation to the issuing of proceedings to obtain a consent order following the settlement of the dispute following family mediation.

Legal representation

9.—(1) Legal representation may be provided as either investigative representation or full representation.

(2) “Legal representation” means the provision of civil legal services, other than acting as a mediator or arbitrator, to an individual or legal person⁽⁶⁾ in particular proceedings where that individual or legal person—

- (a) is a party to those proceedings;
- (b) wishes to be joined as a party to those proceedings; or
- (c) is contemplating issuing those proceedings.

(3) “Investigative representation” means legal representation which is limited to the investigation of the strength of the contemplated proceedings and includes the issuing and conducting of proceedings but only so far as necessary—

- (a) to obtain disclosure of information relevant to the prospects of success of the proceedings;
- (b) to protect the position of the individual or legal person applying for investigative representation in relation to an urgent hearing; or
- (c) to protect the position of the individual or legal person applying for investigative representation in relation to the time limit for the issue of the proceedings.

(4) “Full representation” means legal representation other than investigative representation.

Other legal services

10. “Other legal services” means the provision of any of the following civil legal services—

- (a) instructing an advocate;
- (b) preparing to provide advocacy; or
- (c) advocacy,

in proceedings in relation to which the Director, having applied the relevant merits criteria in accordance with regulations made under section 11 of the Act, has made a determination under section 10(2)(b) or (4)(c) of the Act.

Notification

11.—(1) Where these Regulations provide for notice to be given, one or more of the following methods of delivery must be used—

(6) Paragraph 1 of Schedule 3 to the Act provides that in that Schedule “legal person” means a person other than an individual.

- (a) personal service;
- (b) first class post, document exchange or other service which provides for delivery on the next business day;
- (c) fax or other means of electronic communication; or
- (d) any method authorised in writing by the Director.

(2) Where the intended recipient is represented by a provider, notice must be delivered to the business address of the provider.

(3) Where the intended recipient is not represented by a provider, notice must be delivered to that person's usual or last known residence or, for legal persons, business address.

Delegation

12. Except as provided in regulation 39(3), a function of the Lord Chancellor or Director under these Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Lord Chancellor or Director respectively(7).

Disregarding determinations

13. The Director may disregard a determination about whether an individual qualifies for civil legal services under Part 1 of the Act if the determination was made—

- (a) by a person to whom the Director has delegated that function; and
- (b) in response to an application made otherwise than in accordance with these Regulations.

Duty Scheme

14. These Regulations do not apply to civil legal services which are—

- (a) provided under the Housing Possession Court Duty Scheme (as described in the Specification to the 2013 Standard Civil Contract); or
- (b) required by the Specification to the 2013 Standard Civil Contract to be treated as services described in sub-paragraph (a).

Applications by legal persons

15.—(1) An application by a legal person for a determination under paragraph 3 of Schedule 3 to the Act must be made in a form specified by the Lord Chancellor.

(2) The legal person must provide any additional information and documents requested by the Director in order to make a determination in relation to the application.

(3) A determination that a legal person qualifies for civil legal services must specify any limitation or condition to which the determination is subject.

(4) Where the Director—

- (a) does not make the determination for which the legal person has applied; or
- (b) withdraws a determination that the legal person qualifies for civil legal services,

the Director must notify the legal person, giving written reasons and notice of the right of review.

(5) Within fourteen days of receipt of the notification described in paragraph (4), the legal person may—

(7) Section 6 of the Act makes provision for authorisations given for the purpose of section 5 of the Act or regulations under that section.

- (a) apply to the Director in a form specified by the Lord Chancellor for a review of the determination or the withdrawal of a determination; and
 - (b) include written representations supporting that application.
- (6) The Director must—
- (a) consider the application for review and any written representations;
 - (b) confirm or amend the determination or withdrawal or substitute a new determination; and
 - (c) notify the legal person of the determination or withdrawal following the review.