

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (FINANCIAL RESOURCES AND PAYMENT FOR
SERVICES) REGULATIONS 2013

2013 No. 480

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

2. Purpose of the instrument

2.1 The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 set out the rules for making a determination about whether an individual is financially eligible for civil legal services under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”). The Regulations also set out when an individual is required to pay a contribution in respect of the cost of the civil legal services.

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

3.1 The draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013, currently before Parliament, will allow for civil legal aid to be provided in relation to applications under the Convention on the international recovery of child support and other forms of family maintenance concluded at The Hague on 23 November 2007 (the “2007 Hague Convention”). Subject to Parliamentary approval of that Order, a further set of regulations will be brought forward to amend these Regulations to make provision for the financial eligibility rules for cases under the 2007 Hague Convention. It is intended that these amending regulations will come into force on 1st April 2013.

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 programme 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 The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 make provision about the rules that the Director must apply to determine whether a person's financial resources are such that the individual is eligible for civil legal services under Part 1 of the Act. The Director cannot make a determination that an individual qualifies for civil legal services under Part 1 of the Act unless the Director has first determined that the individual is financially eligible for those services (subject to some exception set out in these Regulations).

7.3 Part 2 of the Regulations sets out the process for making a determination about an individual's financial resources, including the financial eligibility limits for gross income, disposable income and disposable capital. It also sets out the forms of civil legal services that may be provided without a determination in respect of an individual's financial resources. Part 3 of these Regulations sets out the requirements for paying contributions towards the cost of civil legal services.

7.4 These Regulations broadly replicate the effect of Parts 1 and 2 of the Community Legal Service (Financial) Regulations 2000 (S.I. 2000/516), subject to the changes highlighted below.

7.5 First, under these Regulations, individuals in receipt of certain benefits are automatically deemed to satisfy the income thresholds for civil legal services; that is, they are passported through the means assessment process for income. However, the same capital eligibility rules are now applied to applicants in receipt of these "passporting" benefits as to other applicants for legal aid who are not in receipt of such benefits. This means that all applicants will be subject to means testing in respect of their capital and those on passporting benefits will only be passported in respect of the income part of the means test. This is a change from the existing Community Legal Service (Financial) Regulations 2000, whereby a person in receipt of certain benefits was passported through the means assessment process on both income and capital.

7.6 Secondly, these Regulations cap the ‘subject matter of the dispute’ disregard at £100,000 for all forms of civil legal services. This means that the first £100,000 of the value of property that is the subject matter of the dispute will be disregarded in calculating the individual’s disposable capital. The £100,000 cap for the subject matter of the dispute disregard already exists under the Community Legal Service (Financial) Regulations 2000 for people seeking legal aid for representation and as such clients are required to draw upon their own resources where they have sufficient assets; this change extends the £100,000 cap to all forms of civil legal services.

7.7 Thirdly, under these Regulations, the level of income-based contributions has been increased to a maximum of approximately 30% of monthly disposable income. Persons with a higher level of disposable income will contribute a higher percentage of monthly disposable income.

8. Consultation outcome

8.1 The consultation ‘Proposals for the reform of legal aid in England and Wales’ <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-consultation.pdf> was published on 15 November 2010 and closed on 14 February 2011. The three changes highlighted above were consulted on as part of this consultation.

8.2 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 majority of responses did not support the Government’s proposals for reform, although there was some support for particular measures. Some of the original proposals were modified in light of the comments received from consultees.

8.3 A detailed Government response to the consultation exercise is available on the MoJ Website at <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf>. The Government’s response to the consultation confirmed that the Government would take forward the three changes highlighted above.

8.4 We have not consulted on the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.

9. Guidance

9.1 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>. The impacts of the three changes highlighted above were specifically assessed in that Impact Assessment. 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 in respect of the Act.

11. Regulating small business

11.1 The legislation does not apply to small business.

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

Michael Tyler at the Ministry of Justice Tel: 020 3334 2443 or email Michael.Tyler@justice.gsi.gov.uk can answer any queries regarding the instrument.