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STATUTORY INSTRUMENTS

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**2013 No. 480**

**The Civil Legal Aid (Financial Resources  
and Payment for Services) Regulations 2013**

**PART 2**

**Determinations in respect of an individual's financial resources**

**CHAPTER 1**

**Financial eligibility limits and waivers**

**Exceptions from requirement to make a determination in respect of an individual's financial resources**

**5.—(1)** The following forms of civil legal services may be provided without a determination in respect of an individual's financial resources—

- (a) such legal help and help at court as is authorised, under the provider's arrangement with the Lord Chancellor under section 2(1) (arrangements) of the Act, to be provided without a determination in respect of an individual's financial resources;
- (b) such forms of civil legal services as are provided through grants under section 2(2) (arrangements) of the Act where the terms of the grant provide that the services are available without a determination in respect of an individual's financial resources;
- (c) legal representation in a special Children Act 1989 case;
- (d) legal representation in proceedings related to any proceedings in sub-paragraph (c) to the extent that the individual to whom the legal representation may be provided is an individual to whom legal representation is being provided under sub-paragraph (c) and—
  - (i) the proceedings are being heard together with those proceedings referred to in sub-paragraph (c); or
  - (ii) an order is being sought in the proceedings as an alternative to an order in the proceedings referred to in sub-paragraph (c);
- (e) family help (lower) in any matter described in paragraph 1(1)(b) (care, supervision and protection of children) of Part 1 of Schedule 1 to the Act to the extent that the matter concerns contemplated proceedings under section 31 (care and supervision orders) of the Children Act 1989<sup>(1)</sup> and the individual to whom the family help (lower) may be provided is—
  - (i) the parent of a child, or the person with parental responsibility for a child within the meaning of the Children Act 1989 in respect of whom a local authority has given notice of contemplated proceedings under section 31 of that Act; or

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<sup>(1)</sup> 1989 c. 41. Section 31 was amended by section 75 of, and paragraph 1 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43); sections 120 and 121(1) of the Adoption and Children Act 2002 (c. 38) and section 6 of, and paragraph 35 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).

- (ii) in the case of an unborn child in respect of whom a local authority has given notice of contemplated proceedings under section 31 of the Children Act 1989, the person who, following the birth of the child—
  - (aa) will be the parent of the child; and
  - (bb) will have parental responsibility for the child within the meaning of the Children Act 1989;
- (f) legal help in contemplated proceedings or legal representation in proceedings or contemplated proceedings in relation to any matter described in paragraph 5(1)(a) or (b) (mental health and repatriation of prisoners) of Part 1 of Schedule 1 to the Act to the extent that the individual's case or application to the relevant tribunal under the Mental Health Act 1983<sup>(2)</sup> or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984<sup>(3)</sup> is, or is to be, the subject of proceedings before the relevant tribunal;
- (g) legal representation in relation to a matter described in paragraph 5(1)(c) (mental capacity) of Part 1 of Schedule 1 to the Act to the extent that—
  - (i) the legal representation is in proceedings in the Court of Protection under section 21A of the Mental Capacity Act 2005<sup>(4)</sup>; and
  - (ii) the individual to whom legal representation may be provided is—
    - (aa) the individual in respect of whom an authorisation is in force under paragraph 2 of Schedule A1 to the Mental Capacity Act 2005; or
    - (bb) a representative of that individual appointed as such in accordance with Part 10 of that Schedule;
- (h) legal representation in relation to any matter described in paragraph 17(1)(a) and (b) (EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act, to the extent that the matter relates to an applicant under the 1980 European Convention on Child Custody<sup>(5)</sup> or 1980 Hague Convention<sup>(6)</sup>;
- (i) legal representation in a case in which the applicant is an individual who, in the State of origin, has benefited from complete or partial legal aid, or exemption from costs or expenses, in relation to any matter described in—
  - (i) paragraph 17(1)(c) (EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act; or
  - (ii) paragraph 18(1) (EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act;
- (j) family help (higher) or legal representation in relation to any matter described in paragraph 18(3) (parties who benefited from free legal aid etc. in the Member State of origin) of Part 1 of Schedule 1 to the Act;
- (k) legal help, family help (lower), family help (higher) and legal representation in relation to any matter described in paragraph 18(2) (EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act, to the extent that the matter—

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(2) 1983 c. 20.

(3) 1984 c. 47. Paragraph 5(2) was amended by article 9(1) of, and paragraph 69(a) of Schedule 3 to, [S.I. 2008/2833](#).

(4) 2005 c. 9. Section 21A was inserted by section 50(7) of, and paragraphs 1 and 2 of Part 1 of Schedule 9 to, the Mental Health Act 2007 (c. 12).

(5) The 1980 European Convention on Child Custody is defined in paragraph 17(3) of Part 1 of Schedule 1 to the Act to mean the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20 May 1980.

(6) The 1980 Hague Convention is defined in paragraph 17(3) of Part 1 of Schedule 1 to the Act to mean the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25 October 1980.

- (i) relates to any application under Article 56(1) of the EU Maintenance Regulation(7); and
  - (ii) is an application made by a creditor concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21; and
- (l) civil legal services in relation to a matter described in paragraph 45(1) (terrorism prevention and investigation measures etc) of Part 1 of Schedule 1 to the Act to the extent that the services consist of—
- (i) legal help or legal representation for an individual who is the subject of an application for permission under section 6 of the Terrorism Prevention and Investigation Measures Act 2011(8), in respect of such an application;
  - (ii) legal help for advice in connection with a TPIM notice(9) for an individual who is subject to that notice;
  - (iii) legal help for an individual who is subject to a TPIM notice, in respect of an application—
    - (aa) to vary measures specified in that notice under section 12(2) of the Terrorism Prevention and Investigation Measures Act 2011;
    - (bb) for revocation of that notice in accordance with section 13(3) of the Terrorism Prevention and Investigation Measures Act 2011;
    - (cc) for permission under Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011; or
  - (iv) legal representation in respect of TPIM proceedings for an individual who is subject to a TPIM notice.
- (2) In this regulation—
- “relevant tribunal” means—
- (a) the Health, Education and Social Care Chamber of the First-tier Tribunal(10); or
  - (b) the Mental Health Review Tribunal for Wales(11);
- “special Children Act 1989 case” means any matter described in paragraph 1(1)(a), (b) or (c) (care, supervision and protection of children) of Part 1 of Schedule 1 to the Act, to the extent that it relates to any of the following provisions of the Children Act 1989—
- (a) section 25 (use of accommodation for restricting liberty)(12), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order;
  - (b) section 31, to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child;

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(7) The EU Maintenance Regulation is defined in paragraph 18(5) of Part 1 of Schedule 1 to the Act to mean Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations.

(8) 2011 c. 23.

(9) TPIM notice is defined in paragraph 45(4) of Part 1 of Schedule 1 to the Act to mean a notice under section 2(1) of the Terrorism Prevention and Investigation Measures Act 2011.

(10) The Health, Education and Social Care Chamber of the First-tier Tribunal is allocated these functions under article 4(i) of S.I. 2010/2655.

(11) The Mental Health Review Tribunal for Wales established under section 65 of the Mental Health Act 1983 (c. 20) as amended by section 2(1) of, and paragraph 107(6) of Schedule 1 to, the Health Authorities Act 1995 (c. 17) and article 9(1) of, and paragraphs 39 and 45 of Schedule 3 to, S.I. 2008/2833.

(12) Section 25 was amended by section 39 of, and paragraph 15 of Schedule 3 to, the Children and Young Persons Act 2008 (c. 23) and section 24 of, and paragraph 45 of Schedule 4 to, the Access to Justice Act 1999 (c. 22).

- (c) section 43 (child assessment orders), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child's parent or other person with parental responsibility for that child;
- (d) section 44 (orders for emergency protection of children), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child's parent or other person with parental responsibility for that child; or
- (e) section 45 (duration of emergency protection orders and other supplemental provisions)(**13**), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child's parent or other person with parental responsibility for that child,

but does not include appeals from final orders made under any of those provisions of the Children Act 1989; and

"TPIM proceedings" are the proceedings listed at (b) to (g) of the definition of "TPIM proceedings" given in section 30(1) of the Terrorism Prevention and Investigation Measures Act 2011.

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(13) Section 45 was amended by section 52 of, and paragraph 4 of Schedule 6 to, the Family Law Act 1996 (c. 27); section 42 of, and paragraph 1 of Schedule 4 to, the Children and Young Persons Act 2008 (c. 23); section 116 of, and paragraph 19 of Part 1 of Schedule 16 to, the Courts and Legal Services Act 1990 (c. 41); S.I. 2002/253 and S.I. 2004/1771.