

2014 No. 1818

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Community Legal Service (Funding) (Amendment) Order
2014**

<i>Made</i>	- - - -	<i>8th July 2014</i>
<i>Laid before Parliament</i>		<i>10th July 2014</i>
<i>Coming into force</i>	- -	<i>31st July 2014</i>

The Lord Chancellor makes the following Order in exercise of the power conferred by sections 6(4), 25(8) and (8A) of the Access to Justice Act 1999(a).

Citation and commencement

1. This Order may be cited as the Community Legal Service (Funding) (Amendment) Order 2014 and comes into force on 31st July 2014.

Amendments to the Community Legal Service (Funding) Order 2007

2.—(1) The Community Legal Service (Funding) Order 2007(b) is amended as follows.

(2) In article 3(1) (interpretation)—

(a) after the definition of “the Act”, insert—

““the 1981 Act” means the Senior Courts Act 1981(c);

“the 1984 Act” means the Matrimonial and Family Proceedings Act 1984(d);

“the 2003 Act” means the Courts Act 2003(e);”;

(b) in the definition of “advocates’ meeting”, for “Public Law Outline” substitute “outline set out in the table following paragraph 1.3 of Practice Direction 12A (Care, Supervision and other Part 4 Proceedings: Guide to Case Management) to the Family Procedure Rules 2010”(f);

(c) after the definition of “advocates’ meeting”, insert—

““assistant to a justices’ clerk” has the meaning given in section 27(5) of the 2003 Act;

(a) 1999 c. 22. Sections 6 and 25 were amended by Schedule 1 to SI 2005/3429 and section 25 was also amended by section 153 of the Coroners and Justice Act 2009 (c. 25). Sections 6 and 25 were repealed by section 39 of, and paragraph 51 of Schedule 5 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), subject to the savings in regulation 6 of S.I. 2013/534.

(b) S.I. 2007/2441, as amended by S.I. 2008/1328, 2008/2704, 2009/2468, 2010/95, 2011/1027 and 2011/2066.

(c) 1981 c. 54.

(d) 1984 c. 42.

(e) 2003 c. 39.

(f) S.I. 2010/2955 (L.17). Practice Direction 12A (Care, Supervision and other Part 4 Proceedings: Guide to Case Management) came into effect on 22nd April 2014.

“authorised” means authorised by the President of the Family Division, or nominated by or on behalf of the Lord Chief Justice to conduct particular business, under powers granted by rules made under section 31D of the 1984 Act^(a);

(d) after the definition of “Commission”, insert—

““costs judge” means—

- (a) the Chief Taxing Master;
- (b) a taxing master of the Senior Courts; or
- (c) a person appointed to act as deputy for the person holding office referred to in subparagraph (b) or to act as a temporary additional officer for any such office;”;

(e) in the definition of “Higher Courts”, after “the High Court”, insert “other than a judge of High Court judge level acting as a judge of the family court”;

(f) after the definition beginning “Immigration and Asylum Chamber of the First-tier Tribunal” insert—

““judge of circuit judge level” means—

- (a) a circuit judge who is authorised, where applicable;
- (b) a Recorder who is authorised, where applicable; or
- (c) any other judge of the family court authorised to sit as a judge of circuit judge level in the family court;

“judge of district judge level” means—

- (a) the Senior District Judge of the Family Division;
- (b) a district judge of the Principal Registry of the Family Division;
- (c) a person appointed to act as deputy for the person holding office referred to in subparagraph (b) or to act as a temporary additional officer for any such office;
- (d) a district judge who is authorised, where applicable;
- (e) a deputy district judge appointed under section 102 of the 1981 Act^(b) or section 8 of the County Courts Act 1984^(c) who is authorised, where applicable;
- (f) an authorised District Judge (Magistrates’ Courts); or
- (g) any other judge of the family court authorised to sit as a judge of district judge level in the family court;

“judge of High Court judge level” means—

- (a) a deputy judge of the High Court;
- (b) a puisne judge of the High Court;
- (c) a person who has been a judge of the Court of Appeal or a puisne judge of the High Court who may act as a judge of the family court by virtue of section 9 of the 1981 Act^(d);
- (d) the Senior President of Tribunals;

(a) Section 31D was inserted by section 17 of, and paragraph 1 of Schedule 10 to the Crime and Courts Act 2013 (c. 22).

(b) 1981 c. 54. Section 102 was amended by paragraph 40 of Schedule 18 and Schedule 20 to, the Courts and Legal Services Act 1990 (c. 41), paragraph 15(3) of Schedule 8 to the Judicial Pensions and Retirement Act 1993 (c. 8), paragraph 3 of Schedule 11 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) and paragraph 36 of Schedule 13 to the Crime and Courts Act 2013.

(c) 1984 c. 28. Section 8 was amended by paragraph 42 of Schedule 18 to the Courts and Legal Services Act 1990, paragraph 17(1) of Schedule 6, and Schedule 9, to the Judicial Pensions and Retirement Act 1993, paragraph 7 of Schedule 11 to the Tribunals, Courts and Enforcement Act 2007 and paragraph 6 of Schedule 9, and paragraph 37 of Schedule 13, to the Crime and Courts Act 2013.

(d) Section 9 was amended by section 58 of the Administration of Justice Act 1982 (c. 53), paragraph 5 of Schedule 6 to, and Schedule 9 to, the Judicial Pensions and Retirement Act 1993, section 52 of the Criminal Justice and Public Order Act 1994 (c.33), paragraph 260 of Schedule 8 to the Courts Act 2003 (c. 39), paragraph 121 of Schedule 4, paragraph 36 of Schedule 9 and paragraph 22 of Schedule 17 to the Constitutional Reform Act 2005 (c. 4), and paragraphs 52 and 89 of Schedule 13 and paragraphs 1 and 2 of Schedule 14 to the Crime and Courts Act 2013.

- (e) the Chancellor of the High Court;
- (f) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court);
- (g) the President of the Queen’s Bench Division;
- (h) the President of the Family Division;
- (i) the Master of the Rolls; or
- (j) the Lord Chief Justice;

“judge of the family court” means a judge referred to in section 31C(1) of the 1984 Act^(a);

“justices’ clerk” has the meaning given in section 27(1) of the 2003 Act^(b);

“lay justice” means an authorised justice of the peace who is not a District Judge (Magistrates’ Courts);”;

- (g) omit the entry for “Public Law Outline”.

(3) Schedule 1 (Fees and Hourly Rates) is amended as follows.

(4) In table 2(c) (Legal Representation - section 31 Children Act 1989 Care or Supervision proceedings only), the second column is amended as follows—

- (a) in the heading, for “Court” substitute “Person before whom proceedings are heard”;
- (b) for “Other”, in each place it appears, substitute “Assistant to a justices’ clerk, justices’ clerk, lay justice, judge of district judge level, judge of circuit judge level or costs judge”; and
- (c) for “High Court”, in each place it appears, substitute “Judge of High Court judge level”.

(5) In tables 3(e) (Higher Standard Fee Scheme – Children), 3(f) (Higher Standard Fee Scheme – Finance) and 3(g) (Higher Standard Fee Scheme – Domestic Abuse Proceedings), the second column of each table is amended as follows—

- (a) in the heading, for “Court” substitute “Person or court before whom proceedings are heard”;
- (b) for “Other”, in each place it appears, substitute “Assistant to a justices’ clerk, justices’ clerk, lay justice, judge of district judge level, judge of circuit judge level or costs judge”; and
- (c) for “High Court”, in each place it appears, substitute “Judge of High Court judge level or Court of Protection”.

(6) Tables 9(a) (Care Proceedings) and 9(b) (Other Family Proceedings) are amended as follows—

- (a) in the heading of the second column in each table, before “Higher Courts” insert “Judge of High Court judge level (acting as a judge of the family court) or”; and
- (b) in the heading of the third column in each table, for “County Court and Family Proceedings Court” substitute “Assistant to a justices’ clerk, justices’ clerk, lay justice, judge of district judge level, judge of circuit judge level or costs judge”.

(7) Schedule 2 (Family Advocacy Scheme: Fees and Rates) is amended as follows.

(8) Tables 1(a) (Care or supervision proceedings under section 31 of the Children Act 1989 – graduated fees), 1(b) (Other Public Law cases – graduated fees), 2(a) (Private Law children – graduated fees) and 2(b) (Domestic abuse – graduated fees) are amended as follows—

- (a) in the heading of each first column, for “Court” substitute “Person before whom proceedings are heard”;

(a) Section 31C was inserted by paragraph 1 of Schedule 10 to the Crime and Courts Act 2013 (c. 22).

(b) Section 27(1) was amended by paragraph 326 of Schedule 4 to the Constitutional Reform Act 2005 (c. 4).

- (b) for “Family Proceedings Court”, wherever it appears, substitute “Assistant to a justices’ clerk, justices’ clerk or lay justices”;
 - (c) for “County Court”, wherever it appears, substitute “Judge of district judge level, judge of circuit judge level or costs judge”; and
 - (d) for “High Court”, wherever it appears, substitute “Judge of High Court judge level”.
- (9) In tables 1(c) (Public Law – bolt-on fees) and 2(d) (Private Law – bolt-one fees), in the first column, for “Court” substitute “Advocate’s”.
- (10) In table 1(d) (Public Law – bolt-on fees – court bundle payments)—
- (a) in the title, for “court bundle payments” substitute “advocate’s bundle payment (“ABP”)”;
 - (b) for “CB1”, substitute “ABP1”;
 - (c) for “CB2”, substitute “ABP2”; and
 - (d) for “CB3”, substitute “ABP3”.
- (11) Table 2(c) (Private Law Finance – graduated fees) is amended as follows—
- (a) in the heading of the first column, for “Court” substitute “Person before whom proceedings are heard”;
 - (b) for “County Court”, substitute “Assistant to a justices’ clerk, justices’ clerk, lay justice, judge of district judge level, judge of circuit judge level or costs judge”; and
 - (c) for “High Court” substitute “Judge of High Court judge level”.
- (12) In table 2(e) (Private law children and finance – bolt-on fees – court bundle payment)—
- (a) in the title, for “court bundle payment” substitute “advocate’s bundle payment (“ABP”)”;
 - (b) for “CB1”, substitute “ABP1”;
 - (c) for “CB2”, substitute “ABP2”; and
 - (d) for “CB3”, substitute “ABP3”.
- (13) In Schedule 3 (Family Private Law: Higher Standard Fee Scheme), omit paragraph 16.
- (14) Schedule 4 (Advocacy Services in Family Proceedings) is amended as follows.
- (15) In paragraph 1—
- (a) after “In this Schedule—”, insert—
 - ““advocate’s bundle” means a bundle which includes—
 - (a) only those documents relevant to the case which have been served by the parties in the proceedings to which the hearing relates;
 - (b) notes of contact visits only if included in the court bundle; and
 - (c) a paginated index agreed by the parties to those proceedings;”
 - (b) after the definition of “children”, insert—
 - ““court bundle” means the bundle prepared for the hearing to which the claim relates in accordance with Practice Direction 27A – Family Proceedings: Court Bundles (universal practice to be applied in the High Court and Family court) to the Family Procedure Rules 2010(a);”.
- (16) In the heading before paragraph 59, for “court” substitute “advocate’s”.
- (17) In paragraph 59, for “paragraph 60 applies”, substitute “paragraphs 60 and 60A apply”.
- (18) In paragraphs 60 to 63, for “court”, in each place it appears, substitute “advocate’s”.
- (19) After paragraph 60, insert—

(a) S.I. 2010/2955 (L. 17). Practice Direction 27A (Family Proceedings: Court Bundles (universal practice to be applied in the High Court and Family Court)) came into effect on 22 April 2014 and replaced Practice Direction 27A (Family Proceedings: Court Bundles (universal practice to be applied in all courts other than the Family Proceedings Court)) (April 2012).

“60A.—(1) This paragraph applies if both the criteria set out in sub-paragraphs (2) and (3) are met.

(2) The advocate submits a claim for a bolt-on fee on a form specified by the Lord Chancellor.

(3) The advocate provides any additional information or documents where requested by the Lord Chancellor as evidence that paragraph 60(b) is satisfied.”

(20) In paragraph 61—

- (a) in sub-paragraph (1), for “CB1” substitute “ABP1”;
- (b) in sub-paragraphs (2) and (3), for “CB2” substitute “ABP2”; and
- (c) in sub-paragraph (4), for “CB3” substitute “ABP3”.

Transitional provision

3. The amendments made by article 2(9), (10), (12) and (14) to (20) do not apply to the determination of a claim for a bolt-on fee where that claim relates to a hearing which takes place before 31st July 2014.

Signed by authority of the Lord Chancellor

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

8th July 2014

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Community Legal Service (Funding) Order 2007 (S.I. 2007/2441) which sets out the remuneration rates payable for funded services under the Access to Justice Act 1999 (c. 22).

Article 2(1) to (8), and (11) and (13) make amendments which are consequential on the introduction of the new single family court by the Crime and Courts Act 2013 (c. 22), and other minor amendments reflecting developments in family procedure. Articles 2(1) to (8), and (11) and (13) amend the provisions governing remuneration for matters heard before the family court. Previously, remuneration varied according to the court before which proceedings were heard, such as the county court or magistrates’ court. Now, most family matters will be heard by judges sitting in the family court. The amendments align remuneration with the new structure and jurisdiction of the family court. As a result, fees vary according to the person or court before whom proceedings are heard. Article 2(2)(b) and (g) makes a minor amendment to the definition of “advocate’s meeting” to reflect the current procedures relevant to family proceedings.

Article 2(9), (10), (12) and (14) to (20) make amendments to the Legal Aid Family Advocacy Scheme which are consequential on changes to Practice Direction (PD) 27A – Family Proceedings: Court Bundles (universal practice to be applied in the High Court and Family Court) supporting the Family Procedure Rules 2010. Under the current Legal Aid Family Advocacy Scheme, a bolt-on fee is payable to an advocate where the court bundle for a hearing exceeds a certain size. Changes to PD27A introduced a cap on the size of court bundles, meaning that fewer cases would be eligible for the current bundle bolt-on fee. These amendments introduce the concept of an “advocate’s bundle” and provide for bundle bolt-on fees to be based on the size of the advocate’s bundle instead of the court bundle.

Article 3 makes transitional provision providing that the amendments made by articles 2(9), (10), (12) and (14) to (20) only apply to determination of claims which take place on or after 31st July 2014.

A full impact assessment of the policy implemented by articles 2(1) to (8) and (11) and (13) has not been produced for this instrument, as no impact on the private or voluntary sectors is foreseen.

However, the policy implemented by the amendments was consulted on in *Supporting the introduction of the single Family Court – Proposed changes to Family legal aid remuneration schemes*, available at <https://consult.justice.gov.uk/>.

A full impact assessment of the policy implemented by article 2(9), (10), (12) and (14) to (20) and article 3 was produced with the Government's consultation response, *Court bundles – Changes to the family legal aid remuneration schemes* and is available at <https://consult.justice.gov.uk/>.

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