
STATUTORY INSTRUMENTS

2012 No. 3098

The Civil Legal Aid (Procedure) Regulations 2012

PART 4

Licensed Work

General

29.—(1) This Part makes provision in relation to the making and withdrawal of determinations under section 9 of the Act about Licensed Work.

(2) In this Part, “Licensed Work” means the provision of any of the following forms of civil legal services—

- (a) family help (higher); or
- (b) legal representation that is not Controlled Work or Special Case Work.

Applicants

30.—(1) An individual applying for Licensed Work must be—

- (a) a party to the proceedings to which the application relates;
- (b) proposing to be joined as a party to those proceedings; or
- (c) contemplating issuing those proceedings.

(2) An application on behalf of a child must be made by—

- (a) a person who is, or proposes to be, the child’s litigation friend, professional children’s guardian or parental order reporter; or
- (b) the proposed provider if the application is made in relation to proceedings which the child may conduct without—
 - (i) a children’s guardian or litigation friend in accordance with rule 16.6 of the Family Procedure Rules 2010; or
 - (ii) a litigation friend in accordance with rule 21.2 of the Civil Procedure Rules 1998.

(3) An individual acting as a professional children’s guardian or parental order reporter may not make an application other than on behalf of a child.

(4) An application on behalf of a protected party must be made by a person who is, or proposes to be, the protected party’s litigation friend.

(5) The Director may waive any or all of the requirements of this regulation if the application otherwise satisfies the requirements of these Regulations.

The application

31.—(1) An application for Licensed Work must be made in writing in a form specified by the Lord Chancellor and signed by the individual and proposed provider.

- (2) Except as provided in paragraph (3), the application must be in English unless—
- (a) the individual resides in or is present in Wales; or
 - (b) the application relates to proceedings which may be heard in Wales,
- in which case the application may be in English or Welsh.
- (3) Where the individual resides outside the European Union and is not present in England and Wales when the application is made, the application must—
- (a) be in English or French;
 - (b) include a written statement of the individual’s financial resources; and
 - (c) be verified by a statement that the individual believes that the facts stated in the application are true.
- (4) The application must specify—
- (a) the form of civil legal services to which the application relates;
 - (b) the matter to which the application relates;
 - (c) the category within which the civil legal services fall (as described in the Category Definitions that form part of the 2010 Standard Civil Contract or 2013 Standard Civil Contract); and
 - (d) a proposed provider with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act for the provision of the services which are the subject of the application (unless the effective administration of justice test described in paragraph (5) is satisfied).
- (5) The effective administration of justice test is satisfied if the Director decides that it is necessary for a provider to provide the services which are the subject of the application under an individual case contract having considered—
- (a) the provider’s knowledge of the particular proceedings or dispute and expertise in providing the civil legal services which are the subject of the application;
 - (b) the nature and likely length of the particular proceedings or dispute;
 - (c) the complexity of the issues; and
 - (d) the circumstances of the individual making the application.
- (6) The individual must provide any additional information or documents requested by the Director in order to make a determination in relation to the application.
- (7) Where additional information or documents are requested in accordance with paragraph (6), the application may not be considered until the requested information or documents are provided.
- (8) An application for civil legal services described in paragraph 32(1) of Part 1 of Schedule 1 to the Act must be made within—
- (a) twelve months of the date of a conclusive determination described in paragraph 32(1)(a) of Part 1 of Schedule 1 to the Act; or
 - (b) a period beginning with the date of a determination by a competent authority described in paragraph 32(6) of Part 1 of Schedule 1 to the Act and ending with the date on which the applicant’s leave to remain in the United Kingdom (outside the rules made under section 3(2) of the Immigration Act 1971(1)) comes to an end,
- whichever is longer.

Supporting documents: damages

32.—(1) Where an application for Licensed Work requires the Director to consider likely damages (in accordance with regulations made under section 11 of the Act), the application must include—

- (a) an estimate of likely damages; and
 - (b) an explanation of the estimate, including the calculations required by paragraph (2).
- (2) An estimate of likely damages must take into account—
- (a) any likely reduction in the damages or other sum of money contested in the case through contributory negligence, set-off or otherwise;
 - (b) any amount of damages the individual is likely to receive in addition to any amount that is offered by way of settlement;
 - (c) any likely reduction in damages or other sum of money contested in the case to take account of any amount which is recoverable under the Social Security (Recovery of Benefits) Act 1997⁽²⁾; and
 - (d) the ability of the other party to the proceedings to pay any damages or other sum of money contested in the case.

Supporting documents: domestic violence

33.—(1) An application for civil legal services described in paragraph 12 of Part 1 of Schedule 1 to the Act must include evidence of the domestic violence or the risk of domestic violence.

(2) For the purpose of paragraph (1), the evidence of domestic violence or risk of domestic violence must be provided in one or more of the following forms—

- (a) a relevant unspent conviction for a domestic violence offence;
- (b) a relevant police caution for a domestic violence offence given within the twenty four month period immediately preceding the date of the application for civil legal services;
- (c) evidence of relevant criminal proceedings for a domestic violence offence which have not concluded;
- (d) a relevant protective injunction which is in force or which was granted within the twenty four month period immediately preceding the date of the application for civil legal services;
- (e) an undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996⁽³⁾ (or given in Scotland or Northern Ireland in place of a protective injunction)—
 - (i) by the individual (“B”) with whom the applicant for civil legal services (“A”) was in a family relationship giving rise to the need for the civil legal services which are the subject of the application; and
 - (ii) within the twenty four month period immediately preceding the date of the application for civil legal services, provided that a cross-undertaking was not given by A;
- (f) a letter from the person appointed to chair a multi-agency risk assessment conference confirming that—
 - (i) A was referred to the conference as a high risk victim of domestic violence; and

(2) 1997 c. 27.

(3) 1996 c. 27. Section 46 was amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1) and Schedule 10, paragraph 37(1) to (4). Section 63E was inserted by the Forced Marriage (Civil Protection) Act 2007 (c. 20), section 1.

- (ii) the conference has, within the twenty four month period immediately preceding the date of the application for civil legal services, put in place a plan to protect A from a risk of harm by B;
 - (g) a copy of a finding of fact, made in proceedings in the United Kingdom within the twenty four month period immediately preceding the date of the application for civil legal services, that there has been domestic violence by B giving rise to a risk of harm to A;
 - (h) a letter or report from a health professional confirming that the professional—
 - (i) has examined A within the twenty four month period immediately preceding the date of the application for civil legal services;
 - (ii) was satisfied following that examination that A had injuries or a condition consistent with those of a victim of domestic violence; and
 - (iii) has no reason to believe that A’s injuries or condition were not caused by domestic violence;
 - (i) a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the twenty four month period immediately preceding the date of the application, A was assessed as being, or at risk of being, a victim of domestic violence by B (or a copy of that assessment);
 - (j) a letter or report from a domestic violence support organisation in the United Kingdom confirming—
 - (i) that A was, within the twenty four month period immediately preceding the date of the application for civil legal services, admitted for a period of twenty four hours or more to a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence;
 - (ii) the dates on which A was admitted to and, where relevant, left the refuge; and
 - (iii) that A was admitted to the refuge because of allegations by A of domestic violence.
- (3) For the purpose of this regulation—
- “A” and “B” have the meaning given in paragraph (2)(e)(i);
- “domestic violence offence” has the meaning given in the document published by the Lord Chancellor for that purpose under section 2 of the Act;
- “health professional” means a registered—
- (a) medical practitioner who holds a licence to practise;
 - (b) nurse; or
 - (c) midwife; and
- “protective injunction” means—
- (a) a non-molestation order under section 42 of the Family Law Act 1996⁽⁴⁾ or article 20 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998⁽⁵⁾;
 - (b) an occupation order under section 33, 35, 36, 37 or 38 of the Family Law Act 1996⁽⁶⁾ or article 11, 13, 14, 15 or 16 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998⁽⁷⁾;

(4) 1996 c. 27. Section 42 was amended by the Civil Partnership Act 2004 (c. 33), section 82 and Schedule 9, paragraph 9; and the Domestic Violence, Crime and Victims Act 2004, section 58(1) and (2) and Schedule 10, paragraph 36(1) to (3) and Schedule 11.

(5) S.I. 1998/1071 (N.I. 6) as amended by the Civil Partnership Act 2004, section 206 and Schedule 19, paragraph 15.

(6) Section 33 was amended by the Civil Partnership Act 2004, section 82 and Schedule 9, paragraph 4(1) to (7). Section 35 was amended by the Civil Partnership Act 2004, section 82 and Schedule 9, paragraph 6(1) to (10). Section 36 was amended by the Domestic Violence, Crime and Victims Act 2004, sections 2(2) and 58(1) and Schedule 10, paragraph 34(1) to (3); and the Civil Partnership Act 2004, section 82 and Schedule 9, paragraph 7. Section 37 was amended by the Civil Partnership

- (c) an exclusion order under section 4 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981**(8)** or section 104 of the Civil Partnership Act 2004;
 - (d) a forced marriage protection order or interim forced marriage protection order under any of the following provisions—
 - (i) Part 4A of the Family Law Act 1996**(9)**;
 - (ii) section 2 of, and paragraph 1 of Schedule 1 to, the Forced Marriage (Civil Protection) Act 2007**(10)**;
 - (iii) section 1 of the Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Act 2011**(11)**; and
 - (iv) section 5 of the Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Act 2011;
 - (e) a restraining order under section 5 or 5A of the Protection from Harassment Act 1997**(12)**;
 - (f) a restraining injunction under article 5 or a restraining order under article 7 or 7A of the Protection from Harassment (Northern Ireland) Order 1997**(13)**;
 - (g) a non-harassment order under section 234A of the Criminal Procedure (Scotland) Act 1995**(14)** or section 8 or 8A of the Protection from Harassment Act 1997**(15)**;
 - (h) a common law injunction;
 - (i) any of the following interdicts—
 - (i) a matrimonial interdict within the meaning of section 14 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - (ii) a domestic interdict within the meaning of section 18A of the Matrimonial Homes (Family Protection) (Scotland) Act 1981**(16)**;
 - (iii) an interdict for civil partners within the meaning of section 113 of the Civil Partnership Act 2004**(17)**;
 - (iv) an interdict that has been determined to be a domestic abuse interdict within the meaning of section 3 of the Domestic Abuse (Scotland) Act 2011**(18)**; and
 - (v) a common law interdict.
- (4) “Relevant” means that the evidence identifies—

Act 2004, section 82 and Schedule 9, paragraph 8(1) to (4). Section 38 was amended by the Domestic Violence, Crime and Victims Act 2004, section 58(1) and Schedule 10, paragraph 35.

- (7) *S.I. 1998/1071 (N.I. 6)* as amended by the Civil Partnership Act 2004, section 206 and Schedule 19, paragraphs 10 to 14.
- (8) 1981 c. 59. Section 4 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 13(5).
- (9) Part 4A was inserted by the Forced Marriage (Civil Protection) Act 2007 (c. 20), section 1.
- (10) 2007 c. 20.
- (11) 2011 asp 15.
- (12) 1997 c. 40. Section 5 was amended by the Domestic Violence, Crime and Victims Act 2004, section 12(1) to (4), 58(1) and (2) and Schedule 10, paragraph 43(1) to (3) and Schedule 11. Section 5A was inserted by the Domestic Violence, Crime and Victims Act 2004, section 12(5).
- (13) *SI. 1997/1180 (N.I. 9)*. Article 7 was amended by, and article 7A was inserted by, the Domestic Violence, Crime and Victims Act 2004, section 13.
- (14) 1995 c. 46. Section 234A was inserted by the Protection from Harassment Act 1997 (c. 40), section 11. It was subsequently amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 15(a) to (d); the Criminal Justice (Scotland) Act 2003 (asp 7), section 49(1)(a) and (b); and the Crime and Punishment (Scotland) Act 1997 (c. 48), section 62(2) and Schedule 3.
- (15) 1997 c. 40. Section 8(1A) was inserted by the Domestic Abuse (Scotland) Act 2011 (asp 13), section 1(1). Section 8(8) was repealed by the Damages (Scotland) Act 2011 (asp 7), section 16 and Schedule 2. Section 8A was inserted by the Domestic Abuse (Scotland) Act 2011, section 1(2).
- (16) 1981 c. 59. Section 18A was inserted by the Family Law (Scotland) Act 2006 (asp 2), section 31(3).
- (17) 2004 c. 33. Section 113 was amended by the Family Law (Scotland) Act 2006, sections 33, 45(2) and 46(2) and Schedules 1 and 3 and the Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 (S.S.I. 2006/384), article 10.
- (18) 2011 asp 13.

- (a) A as being, or at risk of being, the victim of domestic violence unless the evidence—
 - (i) is in a form described in paragraph (2)(a) to (c), and
 - (ii) relates to a domestic violence offence which does not identify the victim; and
- (b) B as being—
 - (i) for evidence described in paragraph (2)(a) to (c) convicted of, cautioned with or charged with the domestic violence offence; and
 - (ii) for evidence described in paragraph (2)(d), the respondent to the protective injunction.

Supporting documents: protection of children

34.—(1) An application for civil legal services described in paragraph 13 of Part 1 of Schedule 1 to the Act must include evidence that the child who is or would be the subject of the order to which the application relates is at risk of abuse from an individual (“B”) other than the applicant for civil legal services (“A”) against which risk of abuse the order is to provide protection.

(2) For the purpose of paragraph (1), evidence of the risk of abuse must be provided in one or more of the following forms—

- (a) a relevant unspent conviction for a child abuse offence;
- (b) a relevant police caution for a child abuse offence given within the twenty four month period immediately preceding the date of the application for civil legal services;
- (c) evidence of relevant criminal proceedings for a child abuse offence which have not concluded;
- (d) a relevant protective injunction which is in force or which was granted within the twenty four month period immediately preceding the date of the application for civil legal services;
- (e) a copy of a finding of fact, made in proceedings in the United Kingdom within the twenty four month period immediately preceding the date of the application for civil legal services, of abuse of a child by B;
- (f) a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the twenty four month period immediately preceding the date of the application, the child was assessed as being, or at risk of being, a victim of child abuse by B (or a copy of that assessment);
- (g) a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the twenty four month period immediately preceding the date of the application, a child protection plan was put in place to protect the child from abuse or a risk of abuse by B (or a copy of that plan);
- (h) an application for an injunction described in paragraph (2)(d) made with an application for a prohibited steps order against B under section 8 of the Children Act 1989⁽¹⁹⁾ which has not, at the date of the application for civil legal services, been decided by the court.

(3) In this regulation—

“child abuse offence” has the meaning given in the document published by the Lord Chancellor for that purpose under section 2 of the Act;

(19) 1989 c. 41. Section 8(4)(ba) and (ea) was inserted by the Civil Partnership Act 2004 (c. 33), section 261(1), Schedule 27, paragraph 129(1), (2) and (3). Section 8(4)(c) and (f) was repealed by the Family Law Act 1996 (c. 27), section 66(1) and (3), Schedule 8, paragraph 60(1) and Schedule 10. Section 8(4)(d) was substituted by the Adoption and Children Act 2002 (c. 38), section 139(1), Schedule 3, paragraphs 54 and 55. Section 8(4)(h) was inserted by the Family Law Act 1996, section 66(1), Schedule 8, paragraph 60(1). Section 8(4)(i) was inserted by the Crime and Disorder Act 1998 (c. 37), section 119, Schedule 8, paragraph 68.

“protective injunction” has the meaning given in regulation 33(3); and

“relevant” means—

- (a) for the purpose of paragraph (2)(a), (b) and (c) that the conviction, caution or criminal proceedings identifies B as being convicted of, cautioned with or charged with the child abuse offence; and
- (b) for the purpose of paragraph (2)(d), that the protective injunction—
 - (i) identifies B as the respondent; and
 - (ii) is made for the protection of the child who is or would be the subject of the order to which the application relates.

Determinations: general

- 35.**—(1) A determination that an individual qualifies for Licensed Work must specify—
- (a) the maximum costs which may be incurred in providing the services to which the determination relates; and
 - (b) any other limitations and conditions to which the determination is subject.
- (2) Where a limitation is exceeded or a condition is breached, the Director may—
- (a) withdraw the determination; or
 - (b) amend the relevant limitation or condition.

Determinations: contributions

36.—(1) Where an individual is required to make a contribution in respect of the cost of the civil legal services in accordance with regulations made under section 23 of the Act, a determination that an individual qualifies for Licensed Work must be made subject to a condition that the individual pays, or arranges payment of, the required contribution.

- (2) The determination must specify—
- (a) the amount of any contribution;
 - (b) whether the individual is required to pay, or arrange payment of, the contribution—
 - (i) by periodical payments;
 - (ii) by one or more lump sums;
 - (iii) out of income;
 - (iv) out of capital; and
 - (c) any time limit about payment.
- (3) The individual must—
- (a) complete and return the form specified by the Lord Chancellor to indicate acceptance of a condition; and
 - (b) pay any contribution required by the determination,
- within any time limit specified in the determination.

(4) If the individual fails to comply with the obligation in paragraph (3), the determination may be withdrawn.

Certificates

37.—(1) When the Director makes a determination that an individual qualifies for Licensed Work, the Director must—

- (a) issue a certificate recording the determination and send the certificate to the provider; and
 - (b) send a copy of the certificate to the individual.
- (2) A certificate issued by the Director must specify—
- (a) the name and address of—
 - (i) the individual;
 - (ii) where an application was made on behalf of a child or protected party, the person who is acting on behalf of the child or protected party; and
 - (iii) the provider;
 - (b) the date of the determination;
 - (c) the form of civil legal services to which the determination relates;
 - (d) the matter in relation to which the civil legal services are to be available;
 - (e) the proceedings to which the determination relates;
 - (f) the parties to any proceedings to which the determination relates (except to the extent that the Director considers it inappropriate to name any of the parties); and
 - (g) any limitation or condition to which the determination is subject.
- (3) Except as provided in paragraph (4), the Director must issue a separate certificate for each—
- (a) form of civil legal services for which the individual qualifies; and
 - (b) set of proceedings to which a determination relates, unless the Director decides that the proceedings are so closely connected that they should be covered by a single certificate.
- (4) The Director may amend a certificate for—
- (a) family help (higher) to record a subsequent determination that the individual qualifies for legal representation in family proceedings which arose out of the dispute which was the subject of the initial determination in relation to family help (higher); or
 - (b) investigative representation to record a subsequent determination that the individual qualifies for full representation in the same proceedings.
- (5) The Director may amend a certificate to ensure that it accurately records a determination either—
- (a) upon the application of the individual in a form specified by the Lord Chancellor; or
 - (b) of the Director's own volition.
- (6) The Director must amend a certificate to record an amendment of a limitation or condition to which the determination is subject.
- (7) When the Director amends a certificate, the Director must send—
- (a) the amended certificate to the provider; and
 - (b) a copy of the amended certificate to the individual.
- (8) Where the Director withdraws a determination, the Director must withdraw the certificate recording that determination and notify the provider.

Notice of determinations

- 38.**—(1) Where the Director issues a certificate in relation to proceedings that have been issued, the provider must—
- (a) send a copy of the certificate to the court or tribunal, and
 - (b) give notice of the determination in a form specified by the Lord Chancellor to all parties to the proceedings.

- (2) Where the Director issues a certificate before proceedings are issued, the provider must—
 - (a) give notice of the determination in a form specified by the Lord Chancellor to any proposed party to those proceedings except in proceedings relating to a family dispute; and
 - (b) when proceedings are issued—
 - (i) send a copy of the certificate to the court or tribunal, and
 - (ii) give notice of the determination in a form specified by the Lord Chancellor to all parties to the proceedings.
- (3) The provider must give notice of a determination in accordance with paragraph (1)(b) to any person subsequently joined as a party to the proceedings.
- (4) Where, in relation to proceedings which have been issued, the Director amends a certificate to alter the description of the proceedings or the form of civil legal services to which the determination relates, the provider must—
 - (a) send a copy of the amended certificate to the court or tribunal; and
 - (b) give notice of the new or amended determination in a form specified by the Lord Chancellor to all parties to the proceedings, unless the Director directs otherwise.
- (5) Nothing in this regulation entitles a party or proposed party to the proceedings to which the determination relates to see the certificate recording the determination.

Authorised representation

39.—(1) Where the Director has authorised a provider to make a determination under section 9 of the Act that an individual qualifies for legal representation that is Licensed Work (“authorised representation”), the provider must, within 5 business days of making a determination, notify the Director in a form specified by the Lord Chancellor.

(2) The Director may remove or amend any limitation or condition to which a determination about authorised representation is subject or impose a new limitation or condition on such a determination.

- (3) The following functions of the Director may not be delegated to the provider—
- (a) issuing a certificate recording the determination in relation to authorised representation;
 - (b) amending a limitation or condition to which the determination is subject (unless the determination relates to emergency representation);
 - (c) the withdrawal of the determination; and
 - (d) conducting a review in relation to authorised representation under regulation 44.

(4) Where, following a review in relation to authorised representation under regulation 44, the Director makes a determination that an individual qualifies for the legal representation which was the subject of the application, the individual may choose a different authorised provider from the provider named on the original application.

Reporting duties

- 40.**—(1) The individual (or the person acting on behalf of the individual) must—
- (a) immediately notify the provider of any change in circumstances which might affect a determination that the individual qualifies for civil legal services; and
 - (b) attend a meeting with the Director if requested to do so.
- (2) The provider must report to the Director any change in the individual’s circumstances which become known to the provider and which might affect a determination that an individual qualifies for civil legal services.

- (3) The provider must report to the Director—
- (a) a refusal by the individual (or the person acting on behalf of the individual) to accept—
 - (i) an offer to settle;
 - (ii) an offer to mediate any issue in the proceedings;
 - (iii) an offer to use an alternative dispute resolution procedure; or
 - (iv) any other offer of settlement which the provider considers to be reasonable;
 - (b) any aspect of the conduct of the individual (or the person acting on behalf of the individual) which the provider considers relevant to the determination that the individual qualifies for civil legal services;
 - (c) notice of any other party to the proceedings to which the determination relates qualifying for civil legal services;
 - (d) any other information which might affect a determination that an individual qualifies for civil legal services; or
 - (e) the fact that the provider has concluded that it is no longer possible to act for the individual, together with reasons for the provider's conclusion.

(4) Where an authorised person within the meaning of the Legal Services Act 2007⁽²⁰⁾ has been instructed by the provider to provide civil legal services in relation to a determination, the reporting requirements described in paragraphs (2) and (3) also apply to that person.

Position of providers

41.—(1) Notwithstanding the relationship between an individual and the provider or any privilege arising out of that relationship, where the provider knows or suspects that the individual (or the person acting on behalf of the individual)—

- (a) has failed without good reason to comply with a requirement to provide information or documents; or
- (b) in providing required information or documents has made a statement or representation knowing or believing it to be false,

the provider must immediately report the relevant circumstances to the Director.

(2) A provider's retainer terminates upon the withdrawal of a determination that an individual qualifies for Licensed Work but that termination does not take effect until—

- (a) the conclusion of any review or appeal for which provision is made in this Part; and
- (b) the provider has complied with any obligation to give notice of the withdrawal of the determination.

(3) Where an authorised person within the meaning of the Legal Services Act 2007 has been instructed (by a provider with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act) to provide civil legal services in relation to a determination, the reporting requirement described in paragraph (1) also applies to that authorised person.

Withdrawal of determinations

42.—(1) The Director may withdraw a determination where—

- (a) the individual no longer qualifies for the services to be made available by the determination in accordance with—
 - (i) the criteria set out in regulations made under section 11 of the Act; or

(20) 2007 c. 29.

- (ii) regulations made under section 21 of the Act;
 - (b) the services made available by the determination have been provided;
 - (c) the proceedings to which the determination relates have been concluded;
 - (d) the service made available by the determination was investigative representation and sufficient work has been carried out to determine the prospects of success and the cost benefit criteria;
 - (e) the individual consents;
 - (f) the individual has died;
 - (g) a bankruptcy order has been made against the individual;
 - (h) the individual has—
 - (i) failed without good reason to comply with a requirement to provide information or documents;
 - (ii) failed without good reason to attend a meeting with the Director; or
 - (iii) in providing required information or documents, made a statement or representation knowing or believing it to be false;
 - (i) an order has been made under section 42 of the Senior Courts Act 1981⁽²¹⁾ or section 33 of the Employment Tribunals Act 1996⁽²²⁾(restriction of vexatious proceedings) in relation to the individual;
 - (j) the Director is satisfied that the individual has required the proceedings to be conducted unreasonably so as to incur unjustifiable expense; or
 - (k) in relation to services described in paragraphs 12 and 13 of Part 1 of Schedule 1 to the Act, the evidence included with the application was—
 - (i) a conviction for an offence and that conviction has subsequently been quashed;
 - (ii) evidence of ongoing criminal proceedings and those proceedings have subsequently been concluded without a conviction; or
 - (iii) evidence of an application described in regulation 34(2)(h) and that application has subsequently been withdrawn or refused,
unless the individual provides another form of evidence (excluding evidence described in paragraphs (i) to (iii)) which would have been permitted in accordance with these Regulations at the date of the application.
- (2) In any of the circumstances described in paragraph (1)(h) to (j) the Director may—
- (a) revoke the determination; and
 - (b) withdraw any other determination that the individual qualifies for civil legal services.
- (3) Except in the circumstances described in paragraph (1)(a)(ii), (b), (e) and (f), before withdrawing a determination, the Director must—
- (a) notify the individual of the intention to withdraw the determination;
 - (b) invite written representations within a specified time limit;
 - (c) upon the expiry of the time limit specified under sub-paragraph (b)—
 - (i) consider the written representations;
 - (ii) decide whether to withdraw the determination; and
 - (iii) notify the individual of the decision as to whether to withdraw the determination.

(21) 1981 c. 54.

(22) 1996 c. 17.

(4) The withdrawal is to be treated as having effect from the date of the notification described in paragraph (3)(a).

(5) The withdrawal of a determination does not affect the provider's right to remuneration for work done prior to the date of the withdrawal unless the provider failed without good reason to comply with the reporting requirements in regulations 40(2) and (3) and 41(1).

(6) Where the Director has withdrawn a determination, the Director may subsequently determine that the withdrawal is to be treated as a revocation following the provision of new information which demonstrates that the circumstances described in paragraph (1)(h) to (j) were present at the time of withdrawal.

Reasons

43.—(1) Where the Director has—

- (a) determined that the services which are the subject of the application are not civil legal services described in Part 1 of Schedule 1 to the Act;
- (b) determined that an individual does not qualify for particular services;
- (c) determined that an individual does qualify but not on the terms requested in the application (whether because of a limitation or condition to which the determination has been made subject or otherwise);
- (d) amended a limitation or condition to which the determination is subject; or
- (e) withdrawn a determination,

the Director must notify the individual.

(2) In the circumstances described in paragraph (1), the Director must send to the individual and provider or proposed provider—

- (a) written notice of the determination, amendment or withdrawal of a determination in a form specified by the Lord Chancellor;
- (b) written reasons for the determination, amendment or withdrawal of a determination; and
- (c) notice of the right to a review of the determination, amendment or withdrawal of a determination,

and may provide information about alternative ways of obtaining or funding civil legal services.

Review

44.—(1) An individual may apply for a review by the Director of any of the following—

- (a) a determination that the services which are the subject of the application are not civil legal services described in Part 1 of Schedule 1 to the Act;
- (b) a determination that an individual does not qualify for the civil legal services which are the subject of the application;
- (c) a determination that an individual qualifies for civil legal services but not on the terms requested in the application (whether because of a limitation or condition to which the determination has been made subject or otherwise);
- (d) an amendment of, or refusal to amend, a limitation or condition to which the determination is subject; or
- (e) a withdrawal of a determination,

within fourteen days of receipt of the notice of the determination, amendment or withdrawal (“the original decision”).

(2) The application for review must be in a form specified by the Lord Chancellor and must include any written representations supporting the application.

(3) The Director must consider the application and any written representations and may confirm or amend the original decision or substitute a new determination, amendment or withdrawal.

(4) Where the original decision was the withdrawal of a determination and, following the review, the Director substitutes a determination for that withdrawal, the determination takes effect (unless the Director directs otherwise) as if the original decision had not been made.

(5) The Director must ensure that a certificate accurately records the civil legal services for which an individual qualifies following the review.

(6) The Director must notify the individual and the provider or proposed provider identified in the individual's application of—

- (a) the decision following the review; and
- (b) any right of appeal to an adjudicator.

Appeal: general

45.—(1) Where an individual remains dissatisfied following a review, the individual may appeal to an adjudicator unless the determination in question is—

- (a) a determination under section 21 of the Act; or
- (b) a determination that the services which are the subject of the application are not civil legal services described in Part 1 of Schedule 1 to the Act.

(2) An appeal must be considered without a hearing unless the adjudicator considers that it is in the interests of justice for the individual or a person acting on their behalf to make oral representations.

(3) Where the Director or adjudicator considers that the appeal is of exceptional complexity or importance, the Director or adjudicator may refer the appeal to a panel of two or more adjudicators.

Appeal: power to refer for reconsideration

46.—(1) The adjudicator may do one or more of the following—

- (a) decide certain issues in accordance with regulation 47; and
- (b) consider whether the determination, amendment or withdrawal under appeal (“the decision under appeal”) was unlawful or unreasonable.

(2) Where the adjudicator decides that the decision under appeal was not unlawful or unreasonable—

- (a) the adjudicator must confirm the decision under appeal, giving written reasons; and
- (b) the Director must notify the individual.

(3) Where the adjudicator decides that the decision under appeal was unlawful or unreasonable—

- (a) the adjudicator must refer the decision under appeal to the Director for reconsideration, giving written reasons; and
- (b) the Director must notify the individual.

(4) Where new information relevant to the decision under appeal is provided by the individual following the review, the adjudicator may refer the decision under appeal to the Director for reconsideration instead of determining the appeal.

Appeal: power to decide certain issues

47.—(1) The adjudicator may decide any of the following issues on appeal and the decision of the adjudicator on any such issue is binding on the Director—

- (a) the prospects of success;
- (b) the cost benefit criteria;
- (c) whether a case has overwhelming importance to the individual; and
- (d) whether a determination should be made, withdrawn or revoked in light of the individual's conduct.

(2) Where the adjudicator confirms the Director's assessment of any of the issues described in paragraph (1)—

- (a) the adjudicator must give written reasons, and
- (b) the Director must notify the individual.

(3) Where the adjudicator disagrees with the Director's assessment of any of the issues described in paragraph (1), the adjudicator must—

- (a) refer the determination, amendment or withdrawal under appeal to the Director for reconsideration, giving written reasons; and
- (b) the Director must notify the individual.

(4) In this regulation, "case with overwhelming importance to the individual" means a case which is not primarily a claim for damages or other sum of money and which relates to one or more of the following—

- (a) the life, liberty or physical safety of the individual or a member of that individual's family (an individual is a member of another individual's family if the requirements of section 10(6) of the Act are met); or
- (b) the immediate risk that the individual may become homeless.

Appeal: reconsideration by the Director

48.—(1) Where a determination, amendment or withdrawal ("the decision under appeal") is referred to the Director by the adjudicator under regulation 46 or 47, the Director must reconsider that decision taking into account—

- (a) the adjudicator's decision and written reasons; and
- (b) any new information provided by the individual following the review.

(2) After reconsidering the decision under appeal, the Director may confirm or amend that decision or substitute a new determination, amendment or withdrawal.

(3) The Director must notify the individual and the provider or proposed provider identified in the individual's application of the decision following the appeal, giving written reasons.

(4) Where the Director confirms the decision under appeal but for reasons that are materially different from the reasons for the decision under appeal, the individual may make a further appeal to the adjudicator (using the appeal provisions in this Part), following which there is no further review or appeal under these Regulations.

(5) Where the decision under appeal was the withdrawal of a determination and, following the appeal, the Director substitutes a determination for that withdrawal, the determination takes effect (unless the Director directs otherwise) as if the original withdrawal had not been made.

(6) The Director must ensure that a certificate accurately records the civil legal services for which an individual qualifies following the appeal.

Notice to third parties

49. Where the Director withdraws a determination and the proceedings to which the determination related have not been concluded, the provider must give notice of the withdrawal in a form specified by the Lord Chancellor to—

- (a) the court or tribunal; and
- (b) any parties to the proceedings who were given notice of the determination under regulation 38.