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DRAFT STATUTORY INSTRUMENTS

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**2022 No. 000**

**LEGAL AID AND ADVICE, ENGLAND AND WALES**

**The Early Legal Advice Pilot Scheme Order 2022**

*Made* - - - - \*\*\*

*Coming into force* - - - \*\*\*

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 2(3), 9(2), 11(1)(b) and (6), 21, 23, and 41 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>(a)</sup>.

A draft of this Order was laid before Parliament in accordance with section 41(6) of that Act and approved by a resolution of each House of Parliament.

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Early Legal Advice Pilot Scheme Order 2022 and comes into force on the day after the date on which it is made.

(2) This Order extends to England and Wales.

**Interpretation**

**2.** In this Order—

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

“the pilot period” has the meaning given in article 3(1);

“the pilot scheme” has the meaning given in article 3;

“pilot scheme participant” has the meaning given in article 4(1).

**The Early Legal Advice Pilot Scheme**

**3.**—(1) The modifications of enactments made in the Schedule (“the pilot scheme”) have effect for the period beginning with 1st April 2022 and ending with 31st March 2024 (“the pilot period”).

(2) Notwithstanding paragraph (1), the pilot scheme continues to have effect after the end of the pilot period in relation to—

(a) a pilot scheme participant who was provided, during the pilot period, with less than three hours of advice and assistance in accordance with paragraph 47 of Schedule 1 to the Act;

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<sup>(a)</sup> 2012 c. 10. See section 42(1) for the meanings of “prescribed” and “regulations”.

- (b) a person who provided advice and assistance to a pilot scheme participant in accordance with paragraph 47 of Schedule 1 to the Act—
  - (i) during the pilot period, or
  - (ii) after the end of the pilot period, in accordance with sub-paragraph (a).

### **Pilot scheme participants**

- 4.**—(1) An individual is a pilot scheme participant if that individual—
- (a) lives, or is habitually resident, in the area of Manchester City Council or the area of Middlesbrough Council,
  - (b) has been selected for participation in the pilot scheme—
    - (i) by reference to criteria contained in guidance published by the Lord Chancellor, and
    - (ii) by a person appointed by the Lord Chancellor, and
  - (c) has been notified by that person that they have been so selected.
- (2) For the purposes of paragraph (1)(b), the Lord Chancellor must—
- (a) publish guidance, and
  - (b) appoint a person to select pilot scheme participants.

Signed by authority of the Lord Chancellor

Date

*Name*  
Minister of State  
Ministry of Justice

## **SCHEDULE**

Article 3

### **Modification of enactments**

#### **Modification of the Legal Aid, Sentencing and Punishment of Offenders Act 2012**

**1.**—(1) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is modified as follows.

(2) Part 1 of Schedule 1 (civil legal services) has effect as if after paragraph 46 there were inserted—

*“Early legal advice in relation to housing, debt and welfare benefits*

- 47.**—(1) Civil legal services provided to an individual in relation to—
- (a) housing;
  - (b) debt;
  - (c) a benefit, allowance, payment, credit or pension under—
    - (i) a social security enactment;
    - (ii) the Vaccine Damage Payments Act 1979<sup>(a)</sup>;
    - (iii) Part 4 of the Child Maintenance and Other Payments Act 2008<sup>(b)</sup>;
  - (d) a council tax reduction scheme.

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<sup>(a)</sup> 1979 c. 17.  
<sup>(b)</sup> 2008 c. 6.

### *General exclusions*

(2) Sub-paragraph (1) is subject to the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1 and 15 of that Part.

### *Specific exclusions*

(3) The services described in sub-paragraph (1) do not include advocacy.

(4) The services described in sub-paragraph (1) do not include the provision of more than three hours of advice and assistance in total—

- (a) in respect of any one or more of those services;
- (b) by one or more providers of those services.

(5) The services described in sub-paragraph (1) only include services provided to an individual who is a pilot scheme participant in relation to the Early Legal Advice Pilot Scheme.

### *Definitions*

(6) In this paragraph—

- (a) “council tax reduction scheme” has the meaning given in paragraph 8A(4);
- (b) “the Early Legal Advice Pilot Scheme” means the pilot scheme established by the Early Legal Advice Pilot Scheme Order 2022;
- (c) “home” has the meaning given in paragraph 33(9) to (13);
- (d) “housing” means matters which concern—
  - (i) the possession, status, terms of occupation, repair, improvement, eviction from, quiet enjoyment of, or payment of rent or other charges for, an individual’s home;
  - (ii) the rights of leaseholders under the terms of their lease or under any statutory provision (including in relation to leasehold enfranchisement);
  - (iii) the allocation and transfer of housing and the provision of sites for occupation,but does not include disputes relating to any boundary of a property;
- (e) “pilot scheme participant” has the meaning given in article 4(1) of the Early Legal Advice Pilot Scheme Order 2022;
- (f) “social security enactment” has the meaning given in paragraph 8(3).”.

## **Modification of the Civil Legal Aid (Merits Criteria) Regulations 2013**

**2.—**(1) The Civil Legal Aid (Merits Criteria) Regulations 2013(a) are modified as follows.

(2) Regulation 11 (qualifying for civil legal services) has effect as if—

- (a) the “or” after paragraph (9)(c) were omitted,
- (b) after paragraph (9)(d) there were inserted—  
“; or

(da) in relation to any matter described in paragraph 47 of Part 1 of Schedule 1 to the Act (early legal advice in relation to housing, debt and welfare benefits).”.

## **Modification of the Civil Legal Aid (Remuneration) Regulations 2013**

**3.—**(1) The Civil Legal Aid (Remuneration) Regulations 2013(b) are modified as follows.

(2) Regulation 2(1) has effect as if—

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(a) S.I. 2013/104, as amended by S.I. 2019/519. There are other amendments to this instrument but none is relevant.  
(b) S.I. 2013/422, as amended by 2013/2877, 2014/7 and 586, 2015/325, 2016/983, 2020/100, 515 and 1001. There are other amendments to this instrument but none is relevant.

- (a) in the definition of “relevant contract”—
  - (i) after “(Welfare benefits)” in the second place it occurs, the “or” were omitted;
  - (ii) after the definition of “the 2018 Standard Civil Contract” there were inserted “or the Early Legal Advice Pilot Scheme Contract”;
- (b) in the final paragraph—
  - (i) after “(Welfare Benefits)” in the second place it occurs, the “and” were omitted;
  - (ii) after “the 2018 Standard Civil Contract” there were inserted “and the Early Legal Advice Pilot Scheme Contract”.
- (3) Schedule 1 has effect as if—
  - (a) in paragraph 1 (interpretation), after sub-paragraph (2) there were inserted—
 

“(2A) In this Schedule “the Early Legal Advice Pilot” means the pilot scheme established by the Early Legal Advice Pilot Scheme Order 2022.”,
  - (b) in Part 1 (civil standard and graduated fees), after Table 1 there were inserted—

**“Table 1A**

<i>Category Definition</i>	<i>Standard Fee</i>
Legal help provided under the Early Legal Advice Pilot	£200.70”,

- (c) in Part 2 (hourly rates – controlled work), after Table 7(d) there were inserted—

**“Table 7(da): Early Legal Advice Pilot**

<i>Activity</i>	<i>Non-London Rate</i>
Preparation and Attendance	£57.43 per hour
Travel and Waiting Time	£32.17 per hour
Routine Letters(a) Out and Telephone Calls	£4.56 per item”.

### **Modification of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013**

**4.—**(1) The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013(b) are modified as follows.

(2) Regulation 5 (exceptions from requirement to make a determination in respect of an individual’s financial resources) has effect as if—

- (a) the “and” after paragraph (1)(ka) were omitted,
- (b) after paragraph (1)(l) there were inserted—
  - “; and
  - (la) civil legal services provided in relation to any matter described in paragraph 47 of Part 1 of Schedule 1 to the Act (early legal advice in relation to housing, debt and welfare benefits).”.

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(a) An explanation of “routine letter” is contained in the guidance published by the Lord Chancellor under section 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The guidance can be found at <https://www.gov.uk/guidance/funding-and-costs-assessment-for-civil-and-crime-matters> and a hard copy can be obtained from Ministry of Justice, 102 Petty France, London, SW1H 9AJ.

(b) S.I. 2013/480. Regulation 5 is amended by S.I. 2013/753, 2014/812 and 2701, 2016/211, and 2019/519. There are other amendments to this instrument but none is relevant.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order establishes a scheme to pilot the provision of legal aid for certain civil legal services, to be known as the Early Legal Advice Pilot.

The pilot scheme will run from 1st April 2022 to 31st March 2024, and will apply in relation to individuals living or habitually resident in the area of Manchester City Council or of Middlesbrough Council who are selected to take part in the pilot scheme.

This Order modifies Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPOA”), to provide for advice and assistance provided in relation to certain housing, debt, and welfare benefits issues to be civil legal services for the purposes of the pilot scheme. These issues are therefore in scope of legal aid for the purposes of the pilot scheme, but only for the provision of up to three hours of advice and assistance, and not including the provision of advice and assistance in the form of representation.

This Order also modifies:

- (a) the Civil Legal Aid (Merits Criteria) Regulations 2013, which set out the merits criteria according to which the Director of Legal Aid Casework must determine whether a person qualifies for civil legal services under Part 1 of LASPOA, so that no merits criteria apply in relation to the civil legal services which are the subject of the pilot scheme;
- (b) the Civil Legal Aid (Remuneration) Regulations 2013, which provide for the payment of remuneration to the providers of civil legal services, to specify the hourly fees for the provision of advice and assistance under the pilot scheme; and
- (c) the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, which require the Director of Legal Aid Casework to determine whether a person’s financial resources are such that they are eligible for civil legal services, so that a person is not required to meet the means test in order to qualify for legal aid for the civil legal services which are the subject of the pilot scheme.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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