
STATUTORY INSTRUMENTS

2012 No. 3098

The Civil Legal Aid (Procedure) Regulations 2012

PART 3

Controlled Work

General

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

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

- (a) legal help;
- (b) help with family mediation;
- (c) help at court;
- (d) family help (lower); or
- (e) legal representation for proceedings in—
 - (i) the Health, Education and Social Care Chamber of the First-tier Tribunal⁽¹⁾ under the Mental Health Act 1983⁽²⁾ or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984⁽³⁾;
 - (ii) the Mental Health Review Tribunal for Wales⁽⁴⁾;
 - (iii) the Immigration and Asylum Chamber of the First-tier Tribunal⁽⁵⁾; or
 - (iv) the Immigration and Asylum Chamber of the Upper Tribunal⁽⁶⁾ in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal.

Applicants

22.—(1) An individual applying for Controlled Work must attend the proposed provider’s premises in person unless—

- (a) the proposed provider decides that attendance in person is not necessary in accordance with the provider’s arrangement with the Lord Chancellor under section 2(1) of the Act;

(1) 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](#).
(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) 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](#).
(5) The Immigration and Asylum Chamber of the First-tier Tribunal is allocated these functions under article 5 of [S.I. 2010/2655](#).
(6) The Immigration and Asylum Chamber of the Upper Tribunal is allocated these functions under article 11(a) and (b) of [S.I. 2010/2655](#).

- (b) the individual—
 - (i) resides, or is present, in the European Union;
 - (ii) cannot attend in person for good reason; and
 - (iii) authorises another person to attend on their behalf; or
 - (c) the individual is applying for Controlled Work to be provided by a specialist telephone provider.
- (2) A child may make an application for Controlled Work if—
- (a) the civil legal services which are the subject of the application are in relation to proceedings or proposed 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(7); or
 - (ii) a litigation friend in accordance with rule 21.2 of the Civil Procedure Rules 1998(8); or
 - (b) there is good reason why none of the persons described in paragraph (3)(a) or (b) can make the application on behalf of the child and the provider considers that child is able, having regard to the child’s understanding, to give instructions.
- (3) The following persons may make an application for Controlled Work on behalf of a child—
- (a) the child’s parent, guardian or other person who has care of the child;
 - (b) a person acting or proposing to act as the child’s professional children’s guardian or litigation friend; or
 - (c) any other person where there is good reason why none of the persons described in sub-paragraph (a) or (b) can make the application.
- (4) The following persons may make an application for Controlled Work on behalf of a protected party—
- (a) a person acting or proposing to act as the protected party’s litigation friend; or
 - (b) any other person where there is good reason why a litigation friend or proposed litigation friend cannot make the application.
- (5) The proposed provider may not make an application for Controlled Work on behalf of a child or protected party.

The application

23.—(1) An application for Controlled Work must be in a form specified by the Lord Chancellor and 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.

(7) [S.I. 2010/2955](#).

(8) [S.I. 1998/3132](#).

(2) An application for civil legal services described in paragraph 12 of Part 1 of Schedule 1 to the Act to be provided as Controlled Work must include evidence of the domestic violence or risk of domestic violence and regulation 33 applies to such an application.

(3) An application for civil legal services described in paragraph 13 of Part 1 of Schedule 1 to the Act to be provided as Controlled Work 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 other than the applicant for civil legal services and regulation 34 applies to such an application.

(4) Where a determination has been made that an individual qualifies for legal help in a particular matter (the “initial determination”), the individual may not, within the six month period following the last provision of services pursuant to that determination, make an application for legal help in the same matter which proposes a different provider unless—

- (a) there has been a material change in relevant circumstances since the initial determination;
- (b) the individual has reasonable cause to be dissatisfied with the services provided under the initial determination;
- (c) the individual’s usual residence has changed since the initial determination and, as a result, effective communication between the individual and the provider is not practicable; or
- (d) the provider named in the initial determination has confirmed in writing that no remuneration will be claimed under arrangements made by the Lord Chancellor under section 2(1) of the Act in respect of any services provided under the initial determination.

(5) An application for help with family mediation in relation to the issuing of proceedings to obtain a consent order following the settlement of a family dispute must be made within three months of the final family mediation session at which the dispute was settled.

(6) The individual must provide any additional information and documents requested by the Director in order to make a determination in relation to the application.

Position of providers

24.—(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—

- (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 Controlled Work following the conclusion of any review or appeal for which provision is made in these Regulations.

(3) Where an authorised person within the meaning of the Legal Services Act 2007⁽⁹⁾ 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.

Reasons

25.—(1) Where the Director has—

- (a) made 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;

(9) 2007 c. 29.

(b) made a determination that an individual does not qualify for Controlled Work; or
 (c) withdrawn a determination that an individual qualifies for Controlled Work,
 the Director must notify the individual.

(2) The Director must also provide—

(a) reasons for the determination or withdrawal of a determination; and
 (b) notice of the right to a review of the determination or withdrawal of a determination,
 and may provide information about alternative ways of obtaining or funding civil legal services.

Withdrawal of determinations

26. The Director may withdraw a determination about Controlled Work 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
 - (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 individual consents;
- (e) the individual has died;
- (f) a bankruptcy order has been made against the individual; or
- (g) the individual has failed without good reason to comply with a requirement to provide information or documents or, in providing required information or documents, has made a statement or representation knowing or believing it to be false.

Review

27.—(1) An individual may apply to the Director for a review of—

- (a) a determination that an individual does not qualify for Controlled Work; or
- (b) a withdrawal of a determination in the circumstances described in regulation 26(a)(i) and (g),

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

(2) The Director must consider the application and may confirm the original decision or substitute a new determination.

(3) 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.

(4) The Director must notify the individual of—

- (a) the determination or withdrawal following the review; and
- (b) any right of appeal described in regulation 28.

Appeal

28.—(1) Following the conclusion of a review, an individual may appeal to an adjudicator against—

- (a) a determination that an individual does not qualify for legal representation that is Controlled Work; or
 - (b) a withdrawal of a determination that an individual qualifies for legal representation that is Controlled Work.
- (2) The provisions about appeals in Part 4 (Licensed Work) apply to an appeal under paragraph (1).