

EXPLANATORY MEMORANDUM TO
THE CIVIL LEGAL AID (MERITS CRITERIA) (AMENDMENT) (No. 3)
REGULATIONS 2013

2013 No. 3195

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Civil Legal Aid (Merits Criteria) (Amendment) (No. 3) Regulations 2013 amend the merits criteria which the Director of Legal Aid Casework (“the Director”) must apply when determining whether an applicant qualifies for civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”). This amendment introduces a specific merits test to be applied to applications for civil legal services in respect of challenges to certain decisions made under Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ¹ (referred to below as Dublin III).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This instrument is being laid before Parliament with an urgency statement as the Lord Chancellor considers that it is desirable for it to come into force without delay for the reasons given in that statement, as set out in Section 41(9) of LASPO.

4. **Legislative Context**

- 4.1 This instrument is an amendment to the civil legal aid scheme as set out in LASPO. A merits test is applied to most applications for civil legal aid. The merits criteria are set out in the Civil Legal Aid (Merits Criteria) Regulations 2013 and this instrument amends those regulations.

5. **Territorial Extent and Application**

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State, Shailesh Vara, has made the following statement regarding Human Rights:

In my view the provisions of the Civil Legal Aid (Merits Criteria) (Amendment) (No. 3) Regulations 2013 are compatible with Convention Rights.

7. Policy background

7.1 Dublin III establishes criteria and mechanisms for determining the Member State of the European Union responsible for examining asylum applications. A number of criteria are used to determine which Member State will be responsible for examining an asylum application, and, where asylum is granted, provide the protection and support that is required. Where it is determined that a Member State, other than the one the asylum seeker is present in, must take responsibility for examining the asylum application, the asylum seeker can be transferred to that Member State. In England and Wales, the asylum seeker can seek to challenge the transfer decision by judicial review. Dublin III replaces Council Regulations (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national² (referred to below as Dublin II).

7.2 Dublin III establishes an explicit right of access to civil legal aid for individuals seeking to challenge a transfer decision made under Dublin III. Unlike Dublin II, Dublin III establishes a merits test for accessing legal aid in these matters, based on the prospects of success in individual cases. The prospects of success must be judged to be greater than 'no tangible prospect of success' in order to qualify for publicly funded legal aid.

7.3 The current merits test for civil legal aid for a judicial review is more stringent than the test in Dublin III. As a result this instrument introduces a specific merits test, compatible with Dublin III, to be applied to applications for civil legal aid in relation to challenges to transfer decisions made under Dublin III.

8. Consultation outcome

8.1 This instrument implements directly applicable European Union legislation. On that basis, we have not consulted on it.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0343:EN:NOT>

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. The Legal Aid Agency will communicate the effect of this amendment to legal aid practitioners to ensure the appropriate merits test is applied in the relevant circumstances.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector arising from this instrument is negligible.

11. Regulation of small businesses

11.1 The legislation does not apply to small business.

11.3 The instrument does not impose any additional regulatory burdens on small firms.

12. Monitoring & review

12.1 The operation of and expenditure on the legal aid scheme is continually monitored by the Ministry of Justice and the Legal Aid Agency. The Ministry of Justice will conduct a post-implementation review of LASPO between three to five years after implementation. This review will also consider the operation of the secondary legislation, including this instrument.

13. Contact

13.1 Joe Parsons at the Ministry of Justice (Joe.Parsons@justice.gsi.gov.uk tel. 020 3334 2979) can answer any queries regarding the instrument.