
STATUTORY INSTRUMENTS

2013 No. 471

The Criminal Legal Aid (Financial Resources) Regulations 2013

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Financial Resources) Regulations 2013 and come into force on 1st April 2013.

Interpretation

2. In these Regulations—

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

“the 1989 Act” means the Children Act 1989⁽¹⁾;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992⁽²⁾;

“the 1992 (Northern Ireland) Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽³⁾;

“the 1995 Act” means the Jobseekers Act 1995⁽⁴⁾;

“the 1995 (Northern Ireland) Order” means the Jobseekers (Northern Ireland) Order 1995⁽⁵⁾;

“the 2001 Act” means the Health and Social Care Act 2001⁽⁶⁾;

“the 2002 Act” means the State Pension Credit Act 2002⁽⁷⁾;

“the 2002 (Northern Ireland) Act” means the State Pension Credit Act (Northern Ireland) 2002⁽⁸⁾;

“the 2002 (Northern Ireland) Direct Payments Act” means Carers and Direct Payments Act (Northern Ireland) 2002⁽⁹⁾;

“the 2007 Act” means the Welfare Reform Act 2007⁽¹⁰⁾;

“the 2007 (Northern Ireland) Act” means the Welfare Reform Act (Northern Ireland) 2007⁽¹¹⁾;

“the 2012 Act” means the Welfare Reform Act 2012⁽¹²⁾;

(1) 1989 c. 41.

(2) 1992 c. 4.

(3) 1992 c. 7.

(4) 1995 c. 18.

(5) S.I. 1995/2705 (N.I. 15).

(6) 2001 c. 15.

(7) 2002 c. 16.

(8) 2002 c. 14.

(9) 2002 c. 6.

(10) 2007 c. 5.

(11) 2007 c. 2.

(12) 2012 c. 5.

“child” means, unless different provision is made, an individual who is under the age of 18 on the date on which an application is made for a determination under section 15 of the Act (advice and assistance for criminal proceedings) or section 16 of the Act (representation for criminal proceedings);

“criminal legal aid” means advice, assistance and representation made available under sections 15 and 16 of the Act;

“dependant” means an individual (“A”) who—

- (a) is wholly or substantially maintained by an individual (“B”) whose financial resources fall to be assessed in accordance with these Regulations; and
- (b) the Director considers it equitable to treat as being dependant on B, having regard to A’s income and other resources;

“maintenance payment” means a payment by an individual for the maintenance of—

- (a) a former partner;
- (b) a child; or
- (c) a relative,

who is not a member of the individual’s household;

“partner” means—

- (a) an individual’s spouse or civil partner, from whom the individual is not separated due to a breakdown in the relationship which is likely to be permanent;
- (b) a person with whom the individual lives as a couple; or
- (c) a person with whom the individual ordinarily lives as a couple, from whom they are not separated due to a breakdown in the relationship which is likely to be permanent;

“period of calculation” means—

- (a) in Part 2 of these Regulations, the seven days up to and including the date on which the application for a determination under section 15 of the Act is made;
- (b) in Part 3 of these Regulations, the period of one year ending on the date on which the application for a determination under section 16 of the Act is made;

“provider” means a person with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act (arrangements) for the provision of criminal legal aid;

“qualifying benefit” means any of the following—

- (a) income support paid under section 124 of the 1992 Act⁽¹³⁾ or section 123 of the 1992 (Northern Ireland) Act;
- (b) income-based jobseeker’s allowance paid under the 1995 Act or an allowance payable under Part 2 of the 1995 (Northern Ireland) Order;
- (c) guarantee credit paid under section 1(3)(a) of the 2002 Act or section 1(3)(a) of the 2002 (Northern Ireland) Act;
- (d) income-related employment and support allowance paid under Part 1 of the 2007 Act or section 1(2)(b) of the 2007 (Northern Ireland) Act; and
- (e) universal credit paid under Part 1 of the 2012 Act; and

“relative” means—

- (a) in the definition of “excluded costs” in regulation 16, a grandparent, brother, sister, aunt, uncle or first cousin, whether of the full blood or half blood or by marriage or civil partnership;

(13) Section 124 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

- (b) in the Schedule, a partner or child of an individual who is living as a member of that individual's household; and
- (c) elsewhere in these Regulations, a parent, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece or first cousin, whether of the full blood or half blood, by marriage or civil partnership.

Delegation

3. A function of the Director under these Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Director⁽¹⁴⁾.

Deprivation of resources

4. If it appears to the Director that an individual or that individual's partner has, with intent to reduce the amount of the individual's financial resources, whether for the purpose of making the individual eligible to receive criminal legal aid or otherwise—

- (a) directly or indirectly deprived themselves of any financial resources;
- (b) transferred any financial resources to another person; or
- (c) converted any financial resources into resources which under these Regulations are to be wholly or partly disregarded,

the Director must treat such financial resources as part of the individual's resources, or as not so converted as the case may be.

⁽¹⁴⁾ Section 6 of the Act (authorisations) makes provision for authorisations given for the purpose of section 5 of the Act (delegation) or regulations under that section.