
STATUTORY INSTRUMENTS

2013 No. 480

**The Civil Legal Aid (Financial Resources
and Payment for Services) Regulations 2013**

PART 2

Determinations in respect of an individual's financial resources

CHAPTER 1

Financial eligibility limits and waivers

Determination in respect of an individual's financial resources

4.—(1) This Part applies for the purposes of determining whether an individual qualifies for civil legal services under Part 1 of the Act in accordance with section 11(1)(a).

(2) Subject to regulation 5, the Director must determine whether the individual's financial resources are such that the individual is eligible for civil legal services in accordance with these Regulations.

Exceptions from requirement to make a determination in respect of an individual's financial resources

5.—(1) The following forms of civil legal services may be provided without a determination in respect of an individual's financial resources—

- (a) such legal help and help at court as is authorised, under the provider's arrangement with the Lord Chancellor under section 2(1) (arrangements) of the Act, to be provided without a determination in respect of an individual's financial resources;
- (b) such forms of civil legal services as are provided through grants under section 2(2) (arrangements) of the Act where the terms of the grant provide that the services are available without a determination in respect of an individual's financial resources;
- (c) legal representation in a special Children Act 1989 case;
- (d) legal representation in proceedings related to any proceedings in sub-paragraph (c) to the extent that the individual to whom the legal representation may be provided is an individual to whom legal representation is being provided under sub-paragraph (c) and—
 - (i) the proceedings are being heard together with those proceedings referred to in sub-paragraph (c); or
 - (ii) an order is being sought in the proceedings as an alternative to an order in the proceedings referred to in sub-paragraph (c);
- (e) family help (lower) in any matter described in paragraph 1(1)(b) (care, supervision and protection of children) of Part 1 of Schedule 1 to the Act to the extent that the matter concerns contemplated proceedings under section 31 (care and supervision orders) of the

Children Act 1989(1) and the individual to whom the family help (lower) may be provided is—

- (i) the parent of a child, or the person with parental responsibility for a child within the meaning of the Children Act 1989 in respect of whom a local authority has given notice of contemplated proceedings under section 31 of that Act; or
- (ii) in the case of an unborn child in respect of whom a local authority has given notice of contemplated proceedings under section 31 of the Children Act 1989, the person who, following the birth of the child—
 - (aa) will be the parent of the child; and
 - (bb) will have parental responsibility for the child within the meaning of the Children Act 1989;
- (f) legal help in contemplated proceedings or legal representation in proceedings or contemplated proceedings in relation to any matter described in paragraph 5(1)(a) or (b) (mental health and repatriation of prisoners) of Part 1 of Schedule 1 to the Act to the extent that the individual's case or application to the relevant tribunal under the Mental Health Act 1983(2) or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984(3) is, or is to be, the subject of proceedings before the relevant tribunal;
- (g) legal representation in relation to a matter described in paragraph 5(1)(c) (mental capacity) of Part 1 of Schedule 1 to the Act to the extent that—
 - (i) the legal representation is in proceedings in the Court of Protection under section 21A of the Mental Capacity Act 2005(4); and
 - (ii) the individual to whom legal representation may be provided is—
 - (aa) the individual in respect of whom an authorisation is in force under paragraph 2 of Schedule A1 to the Mental Capacity Act 2005; or
 - (bb) a representative of that individual appointed as such in accordance with Part 10 of that Schedule;
- (h) legal representation in relation to any matter described in paragraph 17(1)(a) and (b) (EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act, to the extent that the matter relates to an applicant under the 1980 European Convention on Child Custody(5) or 1980 Hague Convention(6);
- (i) legal representation in a case in which the applicant is an individual who, in the State of origin, has benefited from complete or partial legal aid, or exemption from costs or expenses, in relation to any matter described in—
 - (i) paragraph 17(1)(c) (EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act; or
 - (ii) paragraph 18(1) (EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act;

(1) 1989 c. 41. Section 31 was amended by section 75 of, and paragraph 1 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43); sections 120 and 121(1) of the Adoption and Children Act 2002 (c. 38) and section 6 of, and paragraph 35 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(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) 2005 c. 9. Section 21A was inserted by section 50(7) of, and paragraphs 1 and 2 of Part 1 of Schedule 9 to, the Mental Health Act 2007 (c. 12).

(5) The 1980 European Convention on Child Custody is defined in paragraph 17(3) of Part 1 of Schedule 1 to the Act to mean the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20 May 1980.

(6) The 1980 Hague Convention is defined in paragraph 17(3) of Part 1 of Schedule 1 to the Act to mean the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25 October 1980.

- (j) family help (higher) or legal representation in relation to any matter described in paragraph 18(3) (parties who benefited from free legal aid etc. in the Member State of origin) of Part 1 of Schedule 1 to the Act;
 - (k) legal help, family help (lower), family help (higher) and legal representation in relation to any matter described in paragraph 18(2) (EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act, to the extent that the matter—
 - (i) relates to any application under Article 56(1) of the EU Maintenance Regulation(7); and
 - (ii) is an application made by a creditor concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21; and
 - (l) civil legal services in relation to a matter described in paragraph 45(1) (terrorism prevention and investigation measures etc) of Part 1 of Schedule 1 to the Act to the extent that the services consist of—
 - (i) legal help or legal representation for an individual who is the subject of an application for permission under section 6 of the Terrorism Prevention and Investigation Measures Act 2011(8), in respect of such an application;
 - (ii) legal help for advice in connection with a TPIM notice(9) for an individual who is subject to that notice;
 - (iii) legal help for an individual who is subject to a TPIM notice, in respect of an application—
 - (aa) to vary measures specified in that notice under section 12(2) of the Terrorism Prevention and Investigation Measures Act 2011;
 - (bb) for revocation of that notice in accordance with section 13(3) of the Terrorism Prevention and Investigation Measures Act 2011;
 - (cc) for permission under Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011; or
 - (iv) legal representation in respect of TPIM proceedings for an individual who is subject to a TPIM notice.
- (2) In this regulation—
- “relevant tribunal” means—
- (a) the Health, Education and Social Care Chamber of the First-tier Tribunal(10); or
 - (b) the Mental Health Review Tribunal for Wales(11);
- “special Children Act 1989 case” means any matter described in paragraph 1(1)(a), (b) or (c) (care, supervision and protection of children) of Part 1 of Schedule 1 to the Act, to the extent that it relates to any of the following provisions of the Children Act 1989—

(7) The EU Maintenance Regulation is defined in paragraph 18(5) of Part 1 of Schedule 1 to the Act to mean Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations.

(8) 2011 c. 23.

(9) TPIM notice is defined in paragraph 45(4) of Part 1 of Schedule 1 to the Act to mean a notice under section 2(1) of the Terrorism Prevention and Investigation Measures Act 2011.

(10) 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.

(11) 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.

- (a) section 25 (use of accommodation for restricting liberty)(**12**), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order;
- (b) section 31, to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child;
- (c) section 43 (child assessment orders), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child;
- (d) section 44 (orders for emergency protection of children), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child; or
- (e) section 45 (duration of emergency protection orders and other supplemental provisions)(**13**), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child,

but does not include appeals from final orders made under any of those provisions of the Children Act 1989; and

“TPIM proceedings” are the proceedings listed at (b) to (g) of the definition of “TPIM proceedings” given in section 30(1) of the Terrorism Prevention and Investigation Measures Act 2011.

Individuals in receipt of certain support

6.—(1) Where the Director is satisfied that the individual is in receipt, directly or indirectly, of support provided under section 4(**14**) or 95(**15**) of the Immigration and Asylum Act 1999(**16**), the Director must determine that the individual’s financial resources are such that the individual is eligible for—

- (a) legal help in relation to any matter described in paragraphs 24 to 30 (immigration and asylum) and 32(1) (victims of trafficking in human beings) of Part 1 of Schedule 1 to the Act;
- (b) help at court and legal representation for proceedings in—
 - (i) the Immigration and Asylum Chamber of the First-tier Tribunal(**17**); and
 - (ii) the Immigration and Asylum Chamber of the Upper Tribunal(**18**) in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal.

(12) Section 25 was amended by section 39 of, and paragraph 15 of Schedule 3 to, the Children and Young Persons Act 2008 (c. 23) and section 24 of, and paragraph 45 of Schedule 4 to, the Access to Justice Act 1999 (c. 22).

(13) Section 45 was amended by section 52 of, and paragraph 4 of Schedule 6 to, the Family Law Act 1996 (c. 27); section 42 of, and paragraph 1 of Schedule 4 to, the Children and Young Persons Act 2008 (c. 23); section 116 of, and paragraph 19 of Part 1 of Schedule 16 to, the Courts and Legal Services Act 1990 (c. 41); S.I. 2002/253 and S.I. 2004/1771.

(14) Section 4 was amended by section 49 of the Nationality, Immigration and Asylum Act 2002 (c. 41); section 10(1) and (6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19); and section 43(7) of the Immigration, Asylum and Nationality Act 2006 (c. 13).

(15) Section 95 was amended by section 50(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41). Section 95 will be amended by section 44(6) of the Nationality, Immigration and Asylum Act 2002 at a date to be appointed.

(16) 1999 c. 33.

(17) The Immigration and Asylum Chamber of the First-tier Tribunal is allocated these functions under article 5 of S.I. 2010/2655.

(18) The Immigration and Asylum Chamber of the Upper Tribunal is allocated these functions under article 11(a) and (b) of S.I. 2010/2655.

(2) Subject to paragraph (4), where the Director is satisfied that the individual is properly in receipt, directly or indirectly, of—

- (a) income support paid under section 124 of the Social Security Contributions and Benefits Act 1992⁽¹⁹⁾ or section 123 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽²⁰⁾;
- (b) income-based jobseeker's allowance paid under the Jobseekers Act 1995⁽²¹⁾ or Part II of the Jobseekers (Northern Ireland) Order 1995⁽²²⁾;
- (c) guarantee credit paid under section 1(3)(a) of the State Pension Credit Act 2002⁽²³⁾ or section 1(3)(a) of the State Pension Credit Act (Northern Ireland) 2002⁽²⁴⁾;
- (d) income-related employment and support allowance paid under Part 1 of the Welfare Reform Act 2007⁽²⁵⁾ or section 1(2)(b) of the Welfare Reform Act (Northern Ireland) 2007⁽²⁶⁾; or
- (e) universal credit paid under Part 1 of the Welfare Reform Act 2012⁽²⁷⁾,

the Director must determine that the individual's financial resources are such that the individual is eligible for all forms of civil legal services without paying (where applicable) any contributions.

(3) Subject to paragraph (4), where the Director is satisfied that the individual is properly in receipt, directly or indirectly, of a means-tested benefit or support paid by another EU Member State that is equivalent to a benefit or support listed in paragraph (2), the Director must determine that the individual's financial resources are such that the individual is eligible for legal help or legal representation in relation to a matter described in paragraph 44 (cross-border disputes) of Part 1 of Schedule 1 to the Act without paying (where applicable) any contributions.

(4) If the individual's disposable capital—

- (a) exceeds £8,000, the Director must determine that the individual's financial resources are such that the individual is not eligible for civil legal services; and
- (b) exceeds £3,000 but does not exceed £8,000, the individual must pay a contribution out of capital in accordance with regulation 44⁽³⁾.

Financial eligibility limit – gross income

7.—(1) For the purposes of this regulation, “gross income” means income under regulation 21 before any deductions are made other than—

- (a) those payments which are to be disregarded under regulation 24; and
 - (b) any housing benefit paid under section 130 of the Social Security Contributions and Benefits Act 1992⁽²⁸⁾ or section 129 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (2) This regulation does not apply to any applications to which regulation 5 or 6 applies.
- (3) In relation to the calculation of gross income—
- (a) regulations 13, 15, 16, 17 and 20 apply as if “gross income” were substituted for “disposable income” each time it appears; and

(19) 1992 c. 4. Section 124 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) at a date to be appointed.

(20) 1992 c. 7.

(21) 1995 c. 18.

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

(23) 2002 c. 16.

(24) 2002 c. 14.

(25) 2007 c. 5.

(26) 2007 c. 2.

(27) 2012 c. 5.

(28) 1992 c. 4. Section 130 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

(b) regulations 26 and 27 do not apply.

(4) Subject to paragraph (5), where the gross monthly income of the individual exceeds £2,657, the Director must determine that the individual's financial resources are such that the individual is not eligible for civil legal services.

(5) Where the individual has more than four dependent children in respect of whom the individual receives child benefit, the sum referred to in paragraph (4) must be increased by £222 in respect of the fifth and each subsequent child.

(6) In this regulation "child benefit" means child benefit under section 141(29) of the Social Security Contributions and Benefits Act 1992 or section 137(30) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Financial eligibility limit – disposable income and disposable capital

8.—(1) This regulation has effect subject to regulations 5, 6 and 7.

(2) Except where paragraph (3) applies, where an individual's monthly disposable income does not exceed £733 and the individual's disposable capital does not exceed £8,000, the Director must determine that the individual's financial resources are such that the individual is eligible for civil legal services.

(3) Where an individual's monthly disposable income does not exceed £733 and the individual's disposable capital does not exceed £3,000, the Director must determine that the individual's financial resources are such that the individual is eligible for legal representation in respect of any matter described in paragraphs 25 to 29 (immigration) and 32(1) (victims of trafficking in human beings) of Part 1 of Schedule 1 to the Act before—

- (a) the Immigration and Asylum Chamber of the First-tier Tribunal; and
- (b) the Immigration and Asylum Chamber of the Upper Tribunal in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal.

Waiver of eligibility limit in multi-party actions of significant wider public interest

9. Where an application is made for legal representation in a multi-party action which the Director considers has a significant wider public interest, the Director may, if the Director considers it equitable to do so, do one or both of the following—

- (a) disapply the eligibility limits in regulations 7 and 8 in respect of those services in relation to specific issues within the multi-party action; and
- (b) waive all or part of any contributions payable under regulation 44.

Waiver of eligibility limits and contributions in inquests

10.—(1) Where an application is made for legal help in relation to any matter described in paragraph 41 (inquests) of Part 1 of Schedule 1 to the Act, the Director may, if the Director considers it equitable to do so, disapply the eligibility limits in regulations 7 and 8 in respect of the application.

(2) Where an application is made for a relevant determination, the Director may, if the Director considers it equitable to do so, do one or both of the following:

- (a) disapply the eligibility limits in regulations 7 and 8 in respect of the application; and
- (b) waive all or part of any contributions payable under regulation 44.

(29) Section 141 was amended by section 1(1) of the Child Benefit Act 2005 (c. 6).

(30) Section 137 was amended by section 2(1) of the Child Benefit Act 2005.

(3) In considering whether to disapply the eligibility limits under paragraph (1) and (2), the Director must have regard in particular to any applicable rights under Article 2 of the Human Rights Convention.

(4) In this regulation—

“Human Rights Convention” has the meaning given to “the Convention” by section 21(1) of the Human Rights Act 1998⁽³¹⁾; and

“relevant determination” is a determination under—

- (a) section 10(2)(b) of the Act, to the extent that it relates to services which consist of advocacy in proceedings at an inquest under the Coroners Act 1988⁽³²⁾ into the death of a member of the family of the individual who has made an application; or
- (b) section 10(4)(c) of the Act.

Waiver of eligibility limit and contributions in cross-border disputes

11.—(1) This regulation applies to an application by an individual in relation to a matter described in paragraph 44 (cross-border disputes) of Part 1 of Schedule 1 to the Act.

(2) Where this regulation applies, the Director must—

- (a) disapply the relevant eligibility limits in regulations 7 and 8 if the individual proves that they are unable to pay the cost of proceedings in England and Wales in relation to the dispute as a result of differences in the cost of living between the individual’s Member State of domicile or habitual residence and England and Wales; and
- (b) waive all or part of any contributions payable under regulation 44, if and to such extent as the individual proves that they are unable to pay them as a result of such differences in the cost of living.

(3) For the purposes of this regulation the Member State in which an individual is domiciled must be determined in accordance with Article 59 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Waiver of eligibility limit in proceedings relating to domestic violence and forced marriage

12.—(1) This regulation applies to an application in respect of legal representation in a matter described in paragraph 11 (family homes and domestic violence) or 16 (forced marriage) of Part 1 of Schedule 1 to the extent that the individual is seeking—

- (a) an injunction or other order for protection from harm to the person; or
- (b) committal for breach of any such order.

(2) Where this regulation applies, the Director may, if the Director considers it equitable to do so, disapply the eligibility limits in regulations 7 and 8.

⁽³¹⁾ 1998 c. 42. Section 21(1) has been amended but the amendments are not relevant to these Regulations.

⁽³²⁾ 1988 c. 13.