

2014 No. 2701

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) (No. 2) Regulations 2014

<i>Made</i> - - - -	<i>7th October 2014</i>
<i>Laid before Parliament</i>	<i>13th October 2014</i>
<i>Coming into force</i> - -	<i>3rd November 2014</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 21(2), 41(1)(a) and (b) and 41(3)(c) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a).

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) (No. 2) Regulations 2014 and come into force on 3rd November 2014.

Amendments to the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

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

(2) In regulation 5 (exceptions from requirement to make a determination in respect of an individual's financial resources)—

(a) in paragraph (1), after sub-paragraph (ga), insert—

“(gb) such family mediation as is the relevant mediation session for an individual (“A”) in relation to any matter described in paragraph 14(1) (mediation in family disputes) of Part 1 of Schedule 1 to the Act if—

(i) A is a party to the relevant mediation session; and

(ii) the Director has made a determination that the financial resources of another individual who is a party to that session (“B”) are such that B is eligible, for that session, for such family mediation as is a relevant mediation session;” and

(b) in paragraph (2), after the definition of “mediator”, insert—

““relevant mediation session” means the acting of a mediator at a mediation session (“the session”) which is held on or after 3rd November 2014 and—

(a) the session is a single session taking place following a Mediation Information and Assessment Meeting; or

(a) 2012 c. 10. Section 42(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) provides that in Part 1 of that Act “regulations” means regulations made by the Lord Chancellor.

(b) S.I. 2013/480, amended by S.I. 2013/753 and 2014/812; there are other amending instruments but none is relevant.

(b) where the session is part of a multi session, the session is the initial mediation session taking place following a Mediation Information and Assessment Meeting, and for the purposes of this definition, “single session” and “multi session” have the same meanings as in the contract named the Standard Civil Contract 2010 between the Lord Chancellor and a provider of civil legal services under Part 1 of the Act.”.

(3) In regulation 27 (deductions in respect of employment expenses and child care costs), after paragraph (2), insert—

“(3) Where the income of the individual consists, wholly or partly, of study-related income, there must be deducted, where it would be reasonable to do so, an amount to provide for the care of any dependent child living with the individual during the time that individual is absent from home by reason of their course of study.

(4) In this regulation, the “study-related income” of an individual means income consisting of a—

- (a) student loan;
- (b) student grant; or
- (c) other income received from a person who is not a partner or relative of the individual,

and the purpose of the income is to support the individual’s course of study.”.

Transitional provision

3. The amendments made by regulation 2(3) do not apply to a pre-commencement application for civil legal services.

Pre-commencement applications for civil legal services

4.—(1) In regulation 3, a “pre-commencement application for civil legal services” means an application for civil legal services that is made before 3rd November 2014.

(2) For the purpose of paragraph (1), an application, other than an application to the CLA, is made before 3rd November 2014 if the application is—

- (a) for Controlled Work and the application is signed and dated before 3rd November 2014;
- (b) for Licensed Work or an exceptional case determination under section 10 of the Act, other than an application for emergency representation, and the application is—
 - (i) signed and dated before 3rd November 2014 and received by the Director by 5.00pm on 10th November 2014; or
 - (ii) submitted through the Client and Cost Management System before 3rd November 2014; or
- (c) for emergency representation and the application—
 - (i) results in a determination being made by a provider before 3rd November 2014 and that determination is notified to the Director within five working days of the determination;
 - (ii) is emailed or faxed to, and received by, the Director before 3rd November 2014; or
 - (iii) is submitted through the Client and Cost Management System before 3rd November 2014.

(3) For the purpose of paragraph (1), an application that is made to the CLA is made before 3rd November 2014 if—

- (a) the individual makes the application to a CLA Specialist Telephone Provider before 12.30pm on 1st November 2014; or
- (b) the Civil Legal Advice Operator Service transfers the individual to a CLA Specialist Telephone Provider before 12:30pm on 1st November 2014 and—

- (i) the call is not answered by the CLA Specialist Telephone Provider before 12.30pm on 1st November 2014;
- (ii) the individual leaves a message with the CLA Specialist Telephone Provider before 12.30pm on 1st November 2014; and
- (iii) the individual makes the application to a CLA Specialist Telephone Provider within two weeks of leaving the message.

(4) In this regulation—

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

“CLA” means the Civil Legal Advice Operator Service and the CLA Specialist Telephone Providers;

“CLA Specialist Telephone Provider” means a provider under the 2013 CLA Contract between a provider and the Lord Chancellor;

“Client and Cost Management System” means the client and cost management system used by the Director in relation to applications for civil legal services;

“Controlled Work” has the meaning given in regulation 21(2) of the Procedure Regulations;

“emergency representation” means—

- (a) legal representation (within the meaning of regulation 18 of the Merits Criteria Regulations) that is not Controlled Work; or
- (b) family help (higher) (within the meaning of regulation 15(3) of the Merits Criteria Regulations),

which is provided following a determination made on an urgent application;

“Licensed Work” has the meaning given in regulation 29(2) of the Procedure Regulations;

“the Merits Criteria Regulations” means the Civil Legal Aid (Merits Criteria) Regulations 2013(a);

“the Procedure Regulations” means the Civil Legal Aid (Procedure) Regulations 2012(b);

“provider” means a person who provides civil legal services under Part 1 of the Act (legal aid); and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday for the purposes of paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971(c).

Signed by authority of the Lord Chancellor

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

7th October 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (S.I. 2013/480) (“the 2013 Regulations”), which make provision about the rules the Director of Legal Aid Casework must apply to determine whether an individual’s financial

(a) S.I. 2013/104, to which there are amendments not relevant to these Regulations.
(b) S.I. 2012/3098, to which there are amendments not relevant to these Regulations.
(c) 1971 c. 80.

resources are such that the individual is eligible for civil legal services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”).

Regulation 2(2) amends regulation 5 of the 2013 Regulations to provide a new circumstance in which the Director may determine that a specified form of civil legal services is to be available without a determination in respect of an individual’s financial resources (generally referred to as a “means test”). New regulation 5(1)(gb) provides that there is to be no means test for the civil legal services of family mediation for the initial mediation session following a Mediation Information and Assessment Meeting (whether or not the mediation proceeds beyond that initial session) if the individual is a party to the mediation and another party to that mediation has already been assessed as financially eligible for family mediation.

Regulation 2(3) amends regulation 27 of the 2013 Regulations to add to the circumstances in which child care costs must be deducted (where reasonable to do so) when calculating an individual’s “income” for the purpose of assessing financial eligibility in accordance with section 21 of the Act and the 2013 Regulations. Under new regulation 27(3), the deduction is required where the individual’s income consists of a student loan, student grant or other income received from a third party (who is not a relative or partner) for the purpose of supporting that course of study.

Regulation 3 provides that the amendments made by regulation 2(3) do not apply to pre-commencement applications for civil legal services. Regulation 4 defines a “pre-commencement application for civil legal services”.

The contracts referred to in these Regulations are available at www.gov.uk/legal-aid. Copies can be inspected at the Legal Aid Agency (Head Office) at 102 Petty France, London, SW1H 9AJ.

A costs/benefit analysis on the effect of regulation 2(2) of this instrument is annexed to the Explanatory Memorandum which is available alongside this instrument at www.legislation.gov.uk.

A full impact assessment has not been produced for the amendments made by regulation 2(3) of this instrument as no impact on the private or voluntary sectors is foreseen.

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£4.25

UK201410088 10/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/2701>

ISBN 978-0-11-112139-9



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