

2015 No. 1416

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil and Criminal Legal Aid (Amendment) Regulations
2015**

Made - - - - - *23rd June 2015*

Laid before Parliament *26th June 2015*

Coming into force in accordance with regulation 1

The Lord Chancellor makes these Regulations in exercise of the powers conferred by sections 2(3), 12(2) and (3), 14(h), 21(2) to (4), 23(1) and (6), and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Civil and Criminal Legal Aid (Amendment) Regulations 2015.

(2) These Regulations come into force—

- (a) for the purposes of regulations 2(3)(b), 2(5)(b), 3(b) and (c) and 6(3) on 31st July 2015;
- (b) for all other purposes on 17th July 2015.

Amendments to the Civil Legal Aid (Procedure) Regulations 2012

2.—(1) The Civil Legal Aid (Procedure) Regulations 2012(b) are amended as follows.

(2) In regulation 2(c) (interpretation), in the definition of “family dispute”, after paragraph (h) insert—

“(ha) paragraph 15A (female genital mutilation protection orders)(d);”.

(3) In regulation 23(e) (the application) after paragraph (3)—

(a) insert—

“(3A) An application for civil legal services described in paragraph 32(1) of Part 1 of Schedule 1 to the Act to be provided as Controlled Work to an individual must be made—

- (a) where a conclusive determination described in paragraph 32(1)(a) of Part 1 of Schedule 1 to the Act has been made in relation to that individual, within twelve months of the date of that determination;

(a) 2012 c. 10. Section 42(1) provides that in Part 1 of that Act “regulations” mean regulations made by the Lord Chancellor and “prescribed” means prescribed by regulations (except in Schedule 6).
(b) S.I. 2012/3098.
(c) Amended by S.I. 2014/1824.
(d) Paragraph 15A was inserted into Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 by section 85(1) of, and paragraph 87 of Schedule 4 to, the Serious Crime Act 2015 (c. 9).
(e) Amended by S.I. 2014/1824.

(b) where a determination by a competent authority described in paragraph 32(6) of Part 1 of Schedule 1 to the Act has been made in relation to that individual and the individual has been given—

(i) leave to remain in the United Kingdom outside the rules made under section 3(2) of the Immigration Act 1971(a), or

(ii) temporary admission or release under paragraph 21(b) of Schedule 2 to that Act),

on or before the latest date on which that leave or temporary admission or release comes to an end,

(and in any case where both sub-paragraphs (a) and (b) apply, the application must be made by the latest date specified by those sub-paragraphs).”, and

(b) insert—

“(3B) An application for civil legal services described in paragraph 32A(1)(c) of Part 1 of Schedule 1 to the Act to be provided as Controlled Work to an individual must be made—

(a) where a conclusive determination described in paragraph 32A(1)(a) of Part 1 of Schedule 1 to the Act has been made in relation to that individual, within twelve months of the date of that determination;

(b) where a determination by a competent authority described in paragraph 32A(6) of Part 1 of Schedule 1 to the Act has been made in relation to that individual and the individual has been given—

(i) leave to remain in the United Kingdom outside the rules made under section 3(2) of the Immigration Act 1971, or

(ii) temporary admission or release under paragraph 21 of Schedule 2 to that Act, on or before the latest date on which that leave or temporary admission or release comes to an end,

(and in any case where both sub-paragraphs (a) and (b) apply, the application must be made by the latest date specified by those sub-paragraphs).”.

(4) In regulation 30 (applicants)—

(a) at the end of paragraph (2)(a) omit “or”, and

(b) after paragraph (2)(b) insert—

“; or

(c) the proposed provider if the application is made in relation to proceedings in the youth court for civil legal services in circumstances where a child is permitted to conduct proceedings on the child’s own behalf.”.

(5) In regulation 31(d) (the application)—

(a) after paragraph (7) insert—

“(7A) Regulations 33 and 34 do not apply to an application for legal representation for an individual where a determination has already been made that the individual qualifies for family help (higher) (“the initial determination”) and—

(a) the initial determination has not been withdrawn by the Director under regulation 42(1); and

(b) the application is for legal representation in the same proceedings as those for which the initial determination was made.”;

(b) for paragraph (8) substitute—

(a) 1971 c. 77.

(b) Amended by the Immigration and Asylum Act 1999 (c. 33).

(c) Paragraph 32A was inserted into the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) by section 47 of the Modern Slavery Act 2015 (c. 30).

(d) Amended by S.I. 2014/1824.

“(8) An application for civil legal services described in paragraph 32(1) of Part 1 of Schedule 1 to the Act to be provided to an individual must be made—

- (a) where a conclusive determination described in paragraph 32(1)(a) of Part 1 of Schedule 1 to the Act has been made in relation to that individual, within twelve months of the date of that determination;
- (b) where a determination by a competent authority described in paragraph 32(6) of Part 1 of Schedule 1 to the Act has been made in relation to that individual and the individual has been given—
 - (i) leave to remain in the United Kingdom outside the rules made under section 3(2) of the Immigration Act 1971, or
 - (ii) temporary admission or release under paragraph 21 of Schedule 2 to that Act, on or before the latest date on which that leave or temporary admission or release comes to an end,

(and in any case where both sub-paragraphs (a) and (b) apply, the application must be made by the latest date specified by those sub-paragraphs).

(9) An application for civil legal services described in paragraph 32A(1) of Part 1 of Schedule 1 to the Act to be provided to an individual must be made—

- (a) where a conclusive determination described in paragraph 32A(1)(a) of Part 1 of Schedule 1 to the Act has been made in relation to that individual, within twelve months of the date of that determination;
- (b) where a determination by a competent authority described in paragraph 32A(6) of Part 1 of Schedule 1 to the Act has been made in relation to that individual and the individual has been given—
 - (i) leave to remain in the United Kingdom outside the rules made under section 3(2) of the Immigration Act 1971, or
 - (ii) temporary admission or release under paragraph 21 of Schedule 2 to that Act, on or before the latest date on which that leave or temporary admission or release comes to an end,

(and in any case where both sub-paragraphs (a) and (b) apply, the application must be made by the latest date specified by those paragraphs).”

(6) In regulation 33(a) (supporting documents: domestic violence)—

- (a) in paragraph (2)—
 - (i) after sub-paragraph (ea) insert—

“(eb) a relevant conviction for a domestic violence offence where B was convicted of that offence within the twenty four month period immediately preceding the date of the application for civil legal services;”;
 - (ii) in sub-paragraph (j) for paragraph (i) substitute—

“(i) that within the twenty four month period immediately preceding the date of the application for civil legal services, A had been accommodated in a refuge;”;
 - (iii) in sub-paragraph (k), in paragraph (i), omit the words from “established” to “domestic violence”;
- (b) in paragraph (3)—
 - (i) after the definition of “A” and “B” insert—

““accommodated” does not require a stay of a minimum time period;”;
 - (ii) in the definition of “protective injunction”, after paragraph (d) insert—

- “(da) an injunction under section 3A of the Protection from Harassment Act 1997(a);”, and
- (iii) after the definition of “protective injunction” insert—
 - ““refuge” means a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence.”;
- (c) in paragraph (4)—
 - (i) in sub-paragraph (a)(i) after “(ea),” insert “(eb),”;
 - (ii) in sub-paragraph (b)(i) for “and (ea) substitute “, (ea) and (eb)”, and
- (d) after paragraph (4) insert—
 - “(5) In relation to Licensed Work, this regulation applies subject to regulation 31(7A).”.
- (7) In regulation 34(b) (supporting documents: protection of children)—
 - (a) After paragraph (2)(a) insert—
 - “(aa) a relevant conviction for a child abuse offence where B was convicted of that offence within the twenty four month period immediately preceding the date of the application for civil legal services.”, and
 - (b) after paragraph (3) insert—
 - “(4) In relation to Licensed Work, this regulation applies subject to regulation 31(7A).”.

Amendments to the Criminal Legal Aid (General) Regulations 2013

3. Regulation 9 (criminal proceedings) of the Criminal Legal Aid (General) Regulations 2013(c) is amended as follows—

- (a) after paragraph (k) insert—
 - “(ka) proceedings under paragraph 3 of Schedule 2 to the Female Genital Mutilation Act 2003(d) in relation to female genital mutilation protection orders made other than on conviction and related appeals;
 - (kb) proceedings under paragraph 6 of Schedule 2 to the Female Genital Mutilation Act 2003 in relation to female genital mutilation protection orders made under paragraph 3 of that Schedule;”;
- (b) at the end of paragraph (u)(ii), omit “and”, and
- (c) after paragraph (u) insert—
 - “(ua) proceedings under sections 14(1)(b) and (c), 15 and 20 to 22 of the Modern Slavery Act 2015(e) in relation to slavery and trafficking prevention orders;
 - (ub) proceedings under sections 23 and 27 to 29 of the Modern Slavery Act 2015 in relation to slavery and trafficking risk orders, and”.

Amendment to the Civil Legal Aid (Remuneration) Regulations 2013

4. In regulation 8(4) (remuneration: advocacy services in family proceedings) of the Civil Legal Aid (Remuneration) Regulations 2013(f), after sub-paragraph (a) insert—

- “(aa) in proceedings under paragraph 1 of Schedule 2 to the Female Genital Mutilation Act 2003;”.

(a) 1997 c. 40. Section 3A was inserted by the Serious Organised Crime and Police Act 2005 (c. 15), section 125(5) and was amended by the Crime and Courts Act 2013 (c. 22), Schedule 9, part 3, paragraph 52(1)(b).
 (b) Amended by S.I. 2014/814.
 (c) S.I. 2013/9. Regulation 9 was amended by S.I. 2013/472, 2015/326 and 2015/838.
 (d) 2003 c. 31. Schedule 2 was inserted by section 73(2) of the Serious Crime Act 2015 (c. 9).
 (e) 2015 c. 30.
 (f) S.I. 2013/422, as amended by S.I. 2014/1389. There are other amending instruments but none is relevant.

Amendments to the Criminal Legal Aid (Remuneration) Regulations 2013

- 5.**—(1) The Criminal Legal Aid (Remuneration) Regulations 2013(a) are amended as follows.
- (2) In regulation 3(b) (scope)—
- (a) in paragraph (2) for “County Court,” substitute “county court, to proceedings in the family court,”, and
 - (b) for paragraph (3) substitute—

“(3) Regulations 16 and 31 and Schedule 5 apply to proceedings in magistrates’ courts, to proceedings in the county court, to proceedings in the family court, to proceedings in the Crown Court, to proceedings in the High Court and to proceedings in the Court of Appeal.”.
- (3) In Schedule 4 (rates payable for the claims specified in regulation 8), in each of the following provisions, after “High Court” insert “, the family court”—
- (a) paragraph 7(2)(c) (representation in proceedings prescribed as criminal proceedings under section 14(h) of the Act);
 - (b) the heading of the table following paragraph 7(2)(d) (representation in prescribed proceedings in the High Court or a county court);
 - (c) paragraph 7(3)(e), and
 - (d) paragraph 12(1)(b)(f) (payment for assigned counsel).

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

- 6.**—(1) The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013(g) are amended as follows.
- (2) In the table of contents, in the entry for regulation 12, after “domestic violence” insert “, female genital mutilation protection orders”.
- (3) In regulations 6(1)(a) (individuals in receipt of certain support) and 8(3) (financial eligibility limit – disposable income and disposable capital) for “and 32(1) (victims of trafficking in human beings)” substitute “, 32(1) (victims of trafficking in human beings) and 32A(1) (victims of slavery, servitude or forced or compulsory labour)”.
- (4) In regulation 12 (waiver of eligibility limit in proceedings relating to domestic violence and forced marriage)—
- (a) in the heading, after “domestic violence” insert “, female genital mutilation protection orders”; and
 - (b) in paragraph (1), after “domestic violence)” insert “, 15A (female genital mutilation protection orders)”.
- (5) In regulation 16(7) (resources to be treated as the individual’s resources), in sub-paragraph (a) of the definition of “family proceedings”, after subparagraph (viii) insert—
- “(viiiia) paragraph 15A (female genital mutilation protection orders);”.

Transitional provision

- 7.**—(1) The amendment made by regulation 2(3)(a) does not apply to an application for civil legal services that is made before 17th July 2015.

(a) S.I. 2013/435.
(b) Amended by S.I. 2013/2803, 2015/325.
(c) Amended by S.I. 2014/415, 2015/325, 2015/1369.
(d) Amended by S.I. 2014/415, 2015/325, 2015/1369.
(e) Amended by S.I. 2014/415, 2015/325, 2015/1369.
(f) Amended by S.I. 2014/415, 2015/1369.
(g) S.I. 2013/480. There are amending instruments but none is relevant.

(2) For the purpose of this regulation, an application is to be treated as being made before 17th July 2015 if the application is—

- (a) for Controlled Work and the application is signed and dated before 17th July 2015;
- (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 17th July 2015 and received by the Director by 5.00 pm on 24th July 2015; or
 - (ii) submitted through the Client and Cost Management System before 17th July 2015, or
- (c) for emergency representation and the application—
 - (i) results in a determination being made by a provider before 17th July 2015 and that determination is notified within five working days of the determination to the Director;
 - (ii) is emailed or faxed to, and received by, the Director before 17th July 2015, or
 - (iii) is submitted through the Client and Cost Management System before 17th July 2015.

(3) In this regulation—

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

“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” has the meaning given in regulation 2 of the Procedure Regulations;

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

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

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

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

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

23rd June 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to subordinate civil and criminal legal aid legislation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”).

Regulation 2 amends the Civil Legal Aid (Procedure) Regulations 2012 (S.I. 2012/3098) in so far as they relate to the making of applications for civil legal aid in relation to Female Genital Mutilation Protection Orders; by victims of trafficking in human beings and victims of slavery, servitude or forced or compulsory labour; and in relation to certain proceedings in the youth court. The amendments also extend and clarify the evidential requirements in relation to applications regarding victims of human trafficking, victims of domestic violence and child abuse.

(a) 1971 c. 80.

Regulation 3 amends the Criminal Legal Aid (General) Regulations 2013 (S.I. 2013/9) to prescribe certain proceedings under the Female Genital Mutilation Act 2003 (c. 31) and certain proceedings under the Modern Slavery Act 2015 (c. 30) as “criminal proceedings” for the purposes of Part 1 of the Act.

Regulation 4 amends the Civil Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/422) to provide that the Family Advocacy Scheme in Schedule 3 does not apply to the remuneration of advocacy services in civil proceedings concerning Female Genital Mutilation Protection Orders. Therefore, remuneration for this work will be at the relevant hourly rate set out in Schedule 1.

Regulation 5 amends the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/435) to provide for the remuneration of providers conducting criminal proceedings in the family court.

Regulation 6 amends the Civil Legal Aid (Financial Resources and Payment for Services) Regulations (S. I. 2013/480) to provide a discretion to waive the financial eligibility requirements for civil legal aid for Female Genital Mutilation Protection Orders and makes provision concerning the calculation of a child applicant’s resources. It also sets down financial eligibility requirements for immigration matters for victims of slavery, servitude or forced or compulsory labour.

Regulation 7 of these Regulations provides that the amendment made by regulation 2(3)(a) of these Regulations does not apply to pre-commencement applications for civil legal services (as defined by regulation 7).

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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