
STATUTORY INSTRUMENTS

2015 No. 1571

**The Civil Legal Aid (Merits Criteria)
(Amendment) (No. 2) Regulations 2015**

Amendments to the Civil Legal Aid (Merits Criteria) Regulations 2013

- 2.—(1) The Civil Legal Aid (Merits Criteria) Regulations 2013(1) are amended as follows.
- (2) In regulation 5 (prospects of success test)—
- (a) in paragraph (1)(d)(ii), after “poor” insert “or very poor”;
 - (b) for paragraph (1)(e) substitute—
 - “(e) “poor”, which means a 20% or more chance, but less than a 50% chance, of obtaining a successful outcome;
 - (ea) “very poor”, which means a less than 20% chance of obtaining a successful outcome; or”, and
 - (c) in paragraph (2), for “(e)” substitute “(ea)”.
- (3) In regulation 42(2)(c) (cost benefit criteria for determinations for full representation), after “moderate”, insert “, borderline or poor”.
- (4) For regulation 43(2) (prospects of success criterion for determinations for full representation) substitute—
- “**43.** The prospects of success criterion is only met if the Director is satisfied that—
- (a) the prospects of success are very good, good or moderate; or
 - (b) the prospects of success are borderline or poor but it is—
 - (i) necessary for the Director to determine that the prospects of success criterion is met to prevent a breach of—
 - (aa) the individual’s Convention rights; or
 - (bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or
 - (ii) appropriate for the Director to determine that the prospects of success criterion is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.”.
- (5) For regulation 56(3)(3) (criteria for determinations for full representation in relation to public law claims) substitute—
- “(3) The Director must be satisfied that—
- (a) the prospects of successfully obtaining the substantive order sought in the proceedings are very good, good or moderate; or

(1) S.I. 2013/104.

(2) Amended by S.I. 2014/131.

(3) Amended by S.I. 2014/131.

- (b) the prospects of successfully obtaining the substantive order sought in the proceedings are borderline or poor but it is—
 - (i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—
 - (aa) the individual’s Convention rights; or
 - (bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or
 - (ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.”.

(6) For regulation 60(3)(4) (criteria for determinations for full representation in relation to immigration) substitute—

“(3) The Director must be satisfied that—

- (a) the prospects of success are very good, good or moderate;
- (b) the prospects of success are borderline or poor but it is—
 - (i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—
 - (aa) the individual’s Convention rights; or
 - (bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or
 - (ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach; or
- (c) the prospects of success are unclear, and—
 - (i) the case is of significant wider public interest;
 - (ii) the case is one with overwhelming importance to the individual; or
 - (iii) the substance of the case relates to a breach of Convention rights.”.

(7) For regulation 66(2)(5) (criteria for determinations for full representation in relation to public law children cases) substitute—

“(2) An individual may qualify for full representation in a public law children case only if the Director is satisfied that the criterion in paragraph (3) and, where applicable, paragraph (4) are met.

(3) It is reasonable for full representation to be provided, having regard to the importance of the case to the individual.

(4) If the individual is making or supporting an appeal or application—

- (a) the prospects of success of that appeal or application are very good, good or moderate; or
- (b) the prospects of success of that appeal or application are borderline or poor but it is—
 - (i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—
 - (aa) the individual’s Convention rights; or

(4) Regulation 60 was amended by S.I. 2014/131 and 2015/1414.

(5) Amended by S.I. 2014/131.

- (bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or
 - (ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.”.
- (8) In regulation 67(6) (criteria for determinations for full representation in relation to domestic violence cases)—
- (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (3)”, and
 - (b) for paragraph (2) substitute—
 - “(2) An individual may qualify for full representation in a domestic violence case only if the Director is satisfied that—
 - (a) the prospects of success are very good, good or moderate; or
 - (b) the prospects of success are borderline or poor but it is—
 - (i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—
 - (aa) the individual’s Convention rights; or
 - (bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or
 - (ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.
 - (3) An individual may qualify for full representation in a domestic violence case only if the Director is satisfied that the proportionality test is met.”.
- (9) In regulation 68(7) (criteria for determinations for full representation in relation to private law children cases and certain cases relating to EU and international agreements)—
- (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (2A)”, and
 - (b) for paragraph (2) substitute—
 - “(2) The Director is satisfied that—
 - (a) the prospects of success are very good, good or moderate; or
 - (b) the prospects of success are borderline or poor but it is—
 - (i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—
 - (aa) the individual’s Convention rights; or
 - (bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or
 - (ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.
 - (2A) The Director is satisfied that the reasonable private paying individual test is met.”.
- (10) For regulation 69(3)(8) (criteria for determinations for full representation in relation to other family cases to which specific merits criteria apply) substitute—

(6) Amended by [S.I. 2014/131](#).

(7) Amended by [S.I. 2014/131](#).

(8) Regulation 69(3) was amended by [S.I. 2014/131](#).

- “(3) The Director must be satisfied that—
- (a) the prospects of success of the case are very good, good or moderate;
 - (b) the prospects of success of the case are borderline or poor but it is—
 - (i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—
 - (aa) the individual’s Convention rights; or
 - (bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or
 - (ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach; or
 - (c) the prospects of success of the case are unclear, and—
 - (i) the case is of significant wider public interest;
 - (ii) the case is one with overwhelming importance to the individual; or
 - (iii) the substance of the case relates to a breach of Convention rights.”.

(11) In regulation 75(9) (criteria for determinations for legal representation in relation to legal persons)—

- (a) in paragraph (2)(c), for “paragraph (3)(b) and (c)” substitute “paragraphs (3)(b) and (3A)”;
- (b) in paragraph (3)(a), for “paragraph (1) are met;” substitute “paragraphs (1) and (3A) are met; and”;
- (c) omit paragraph (3)(c) and the “and” preceding it, and
- (d) after paragraph (3) insert—

- “(3A) The Director must be satisfied that—
- (a) the prospects of success of the case are very good, good or moderate; or
 - (b) the prospects of success of the case are borderline or poor but it is—
 - (i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—
 - (aa) the person’s Convention rights; or
 - (bb) any rights of the person to the provision of legal services that are enforceable EU rights; or
 - (ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.”.