

2020 No. 1584

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2020

Made - - - - *17th December 2020*

Laid before Parliament *18th December 2020*

Coming into force in accordance with regulation 1

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

Citation and commencement

1.—(1) These Regulations may be cited as the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2020.

(2) Subject to paragraph (3), these Regulations come into force on 8th January 2021.

(3) Regulation 2(4) and regulation 2(5) come into force on 28th January 2021.

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 2(1) (interpretation) insert at the appropriate places—

““the Caxton Foundation” means the charitable trust of that name (number 1142529) established on 28th March 2011 out of funds provided by the Secretary of State for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with its provisions;”;

““Criminal Injuries Compensation Scheme” means—

(a) the schemes established under the Criminal Injuries Compensation Act 1995(c) or any arrangements for compensation by the Secretary of State for criminal injuries in operation before the commencement of those schemes;

(a) 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; relevant amending instruments are S.I. 2013/591, 2015/643, 2015/838, 2016/211, 2016/708, 2017/745, 2019/894

(c) 1995 c. 53

(b) the scheme established under the Criminal Injuries Compensation (Northern Ireland) Order 2002^(a), or any earlier Northern Ireland criminal injuries compensation schemes in operation before the commencement of that scheme;”;

““the Eileen Trust” means the charitable trust of that name (number 1028027) established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;”;

““the London Emergencies Trust” means the company of that name (number 09928465) incorporated on 23rd December 2015 and the registered charity of that name (number 1172307) established on 28th March 2017;”;

““the Macfarlane Trust” means the charitable trust (number 298863), established on 22nd March 1988 partly out of funds provided by the Secretary of State to the Haemophilia Society, for the relief of poverty or distress among those suffering from haemophilia;”;

““the Macfarlane (Special Payments) Trust” means the trust of that name, established on 29th January 1990 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia;”;

““the Macfarlane (Special Payments) (No.2) Trust” means the trust of that name, established on 3rd May 1991 partly out of funds provided by the Secretary of State, for the benefit of certain persons suffering from haemophilia and other beneficiaries;”;

““MFET Limited” means the company limited by guarantee (number 7121661) of that name, established for the purpose in particular of making payments in accordance with arrangements made with the Secretary of State to persons who have acquired HIV as a result of treatment by the NHS with blood or blood products;”;

““the National Emergencies Trust” means the registered charity of that name (number 1182809) established on 28th March 2019;”;

““Relevant Infected Blood Support Scheme” means any of the following—

- (a) the England Infected Blood Support Scheme administered by the National Health Service Business Services Authority on behalf of the Department of Health and Social Care;
- (b) the Infected Blood Payment Scheme for Northern Ireland, administered by the Business Services Organisation, Northern Ireland on behalf of the Department of Health, Northern Ireland;
- (c) the Scottish Infected Blood Support Scheme administered by the Common Services Agency (constituted by section 10 of the National Health Service (Scotland) Act 1978)^(b); and
- (d) the Wales Infected Blood Support Scheme administered within the Velindre NHS Trust and the National Health Service Wales Shared Services Partnership.”;

““the Skipton Fund” means the ex-gratia payment scheme administered by Skipton Fund Limited (number 05084964), incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme’s provisions;”;

““the We Love Manchester Emergency Fund” means the registered charity of that name (number 1173260) established on 30th May 2017;”.

(3) In regulation 24 (payments to be disregarded from calculation of disposable income or gross income)^(c)—

- (a) at the end of paragraph (1)(p) omit “and”;
- (b) at the end of paragraph (1)(r) omit “and”;

(a) S.I. 2002/796 (N.I. 1)

(b) 1978 c. 29

(c) Regulation 24(2) was revoked by S.I. 2019/505

- (c) after paragraph (1)(s) insert—
- “(t) any payment made by or under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or a Relevant Infected Blood Support Scheme;
 - (u) any payment made under the Vaccine Damage Payments Act 1979(a); and
 - (v) any payment made by or under a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions.”, and
- (d) After paragraph (3) insert—
- “(3A) In calculating the disposable income or the gross income of the individual, the Director may disregard the following payments—
- (a) any payment made by or under the National Emergencies Trust, the We Love Manchester Emergency Fund, or the London Emergencies Trust; and
 - (b) any award of compensation paid under a Criminal Injuries Compensation Scheme.”.
- (4) In regulation 37 (interest in land)—
- (a) in paragraph (1) omit “, subject to paragraphs (2) and (3),”, and
 - (b) omit paragraphs (2) to (4) and renumber regulation 37 accordingly.
- (5) In regulation 38 (subject matter of the dispute disregard) after paragraph (3) insert—
- “(4) Where the individual resides in more than one dwelling, the Director must decide which is the main dwelling for the purposes of this regulation and regulation 39.”.
- (6) In regulation 40 (certain payments to be disregarded)—
- (a) at the end of paragraph (1)(d) omit “and”;
 - (b) after paragraph (1)(e) insert—
- “(f) any payment made by or under the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust, the Eileen Trust, MFET Limited, the Skipton Fund, the Caxton Foundation or a Relevant Infected Blood Support Scheme;
 - (g) any payment made under the Vaccine Damage Payments Act 1979; and
 - (h) any payment by or under a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments in accordance with its provisions.”, and
- (c) after paragraph (2) insert—
- “(2A) In calculating the disposable capital of the individual, the Director may disregard the following payments—
- (a) any payment made by or under the National Emergencies Trust, the We Love Manchester Emergency Fund, or the London Emergencies Trust; and
 - (b) any award of compensation under a Criminal Injuries Compensation Scheme.”.

Alex Chalk
Parliamentary Under Secretary of State
Ministry of Justice

17th December 2020

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”). The 2013 Regulations make provision about the rules the Director of Legal Aid Casework (the “Director”) must apply to determine whether an individual’s financial 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). Chapters 3 and 4 of Part 2 of the 2013 Regulations set out the rules on calculating income and capital. In particular, regulation 24 sets out the payments that must be disregarded from the calculation of gross or disposable income, as well as the payments the Director has a discretion to disregard. Regulation 40 makes similar provision in relation to the calculation of disposable capital.

Regulation 2(3) of these Regulations amends regulation 24 and regulation 40 to ensure that in the assessment of an individual’s income and capital resources, payments made under infected blood support schemes funded by the UK Government, the Vaccine Damage Payments Act 1979 and the Government funded trust for persons suffering from variant Creutzfeldt-Jakob disease must be disregarded. The amendments made by regulation 2(6) then provide that payments under a second category of charitable and Government funded compensation schemes may be disregarded by the Director.

Regulation 37 of the 2013 Regulations provides that for the purposes of calculating an individual’s disposable capital, any interest in land must be taken to be the amount for which that interest could be sold after any secured debt over the land is deducted.

The amendments to regulation 37 made by regulation 2(4) of these Regulations remove the limit on the amount of mortgage or other secured charge which must be deducted when calculating an individual’s financial interest in land for the purposes of capital. This deduction was previously limited to a maximum of £100,000. Regulation 2(5) inserts into Regulation 38 of the 2013 Regulations a provision enabling the Director to determine an individual’s main dwelling for the purposes of regulation 38 and 39 of the 2013 Regulations. This provision was previously in regulation 37 but will no-longer have any application to regulation 37 following removal of the mortgage cap but will continue to apply to regulation 38 and 39 of the 2013 Regulations.

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

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