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STATUTORY INSTRUMENTS

2023 No. 1177

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Financial Resources and Payment for Services and Remuneration) (Amendment) Regulations 2023

Made - - - - 25th October 2023

Laid before Parliament 6th November 2023

Coming into force in accordance with regulation 1(2)

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Civil Legal Aid (Financial Resources and Payment for Services and Remuneration) (Amendment) Regulations 2023.

(2) These Regulations come into force on the same day as and immediately following the coming into force of section 56(3) and (4) of the Illegal Migration Act 2023(b).

(3) These Regulations extend to England and Wales.

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(c) are amended as follows.

(2) At the end of regulation 5(1)(r) omit “and”;

(3) At the end of regulation 5(1)(s) insert “; and”;

(4) After regulation 5(1)(s) insert—

“(t) legal help, help at court or legal representation in relation to a matter described in paragraph 31C of Part 1 of Schedule 1 to the Act (removal notices under the Illegal Migration Act 2023).”.

(a) 2012 c. 10.

(b) 2023 c. 37.

(c) S.I. 2013/480 as amended by S.I. 2013/753, S.I. 2014/812, S.I. 2014/2701, S.I. 2016/211, S.I. 2019/519, S.I. 2021/1423, S.I. 2023/45, S.I. 2023/150 and S.I. 2023/745. There are other amending instruments, but none are relevant.

Amendments to the Civil Legal Aid (Remuneration) Regulations 2013

3.—(1) The Civil Legal Aid (Remuneration) Regulations 2013(a) are amended as follows.

(2) In regulation 7—

(a) at the beginning of paragraphs (4) and (4A), in both places it appears, for “Where”, substitute “Subject to paragraph (4B), where”;

(b) after paragraph (4A) insert—

“(4B) In a case where a barrister in independent practice, who is not a King’s Counsel provides services described in paragraph 31C of Part 1 of Schedule 1 to the Act, not listed in Table 3 or 4 in Schedule 2, in considering the rate at which to remunerate the barrister for the services provided, the Lord Chancellor must have regard to the rates in Table 3, and the provisions relating to enhancement under paragraphs (3) to (3B).”.

(3) In Schedule 1, Part 3, at the end of the heading in Table 10(a) insert “(except as in Table 10(d))” and in the heading in Table 10(b) for “(except as in Table 10(a))” substitute “(except as in Table 10(a) or 10(d))”.

(4) In Schedule 1, Part 3, after Table 10(c) (First-tier Tribunal) insert—

“Table 10(d): Civil legal services under paragraph 31C of Part 1 of Schedule 1 to the Act: Removal notices under the Illegal Migration Act 2023

Activity	Higher Courts
Routine letters out	£7.76 per item
Routine telephone calls	£4.30 per item
Preparation and attendance (London rate)	£82.28 per hour
Preparation and attendance (non-London rate)	£77.63 per hour
Attendance at court or conference with Counsel	£38.30 per hour
Advocacy	£77.63 per hour
Travelling and waiting time	£34.42 per hour”.

(5) In Schedule 2, after Table 2, insert—

“Table 3: Rates in the Upper Tribunal other than for King’s Counsel - civil legal services under paragraph 31C of Part 1 of Schedule 1 to the Act: Removal notices under the Illegal Migration Act 2023

Category	Hourly rate
Preparation and attendance	£82.28 (London rate)
	£77.63 (Non-London rate)
Attendance at court or conference	£38.30
Advocacy	£77.63
Travel and waiting	£34.42

(a) S.I. 2013/422 as amended by S.I. 2013/2877, S.I. 2014/7, S.I. 2014/586, S.I. 2014/1824, S.I. 2015/325, S.I. 2015/898, S.I. 2015/1678, S.I. 2016/983, S.I. 2018/803, S.I. 2020/1001 and S.I. 2022/1379.

Table 4: Rates in the Court of Appeal or Supreme Court and for King’s Counsel (in any court) - civil legal services under paragraph 31C of Part 1 of Schedule 1 of the Act: Removal notices under the Illegal Migration Act 2023

Category	Hourly Rate
Led junior counsel in the Court of Appeal or Supreme Court	£129.38
Leading senior counsel in the Court of Appeal	£181.13
King’s Counsel (where approved for briefing or instruction by the Lord Chancellor) in the Upper Tribunal or Court of Appeal	£207.00
Leading senior counsel in the Supreme Court	£207.00
King’s Counsel (where approved for briefing or instruction by the Lord Chancellor) in the Supreme Court	£258.75
Noter/Pupil/2nd led junior counsel in the Court of Appeal or Supreme Court	£41.40*

25th October 2023

Bellamy
Parliamentary Under Secretary of State
Ministry of Justice

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 Means Regulations”) and the Civil Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/422) (“the Remuneration Regulations”).

Regulation 5(1) of the Means Regulations sets out a list of certain descriptions of civil legal services that are to be provided without a determination in respect of an individual’s financial resources. Regulation 2 adds a new sub-paragraph to this list such that no determination in relation to the financial resources of an individual will be made where the services applied for by that individual are described in paragraph 31C of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”).

This means that any individual in receipt of a removal notice under the Illegal Migration Act 2023 will be entitled to legal aid in relation to that removal notice without their financial circumstances being assessed. Civil legal services described only within other paragraphs of Part 1 of Schedule 1 to LASPO (in particular paragraph 19 - judicial review) to which the individual may be entitled to will still be subject to any relevant tests within the Means Regulations.

Regulation 3 amends the Remuneration Regulations, which make provision about payment by the Lord Chancellor to providers of civil legal services under arrangements made for the purposes of Part 1 of the Act.

Regulation 3 adds new hourly rates to remunerate legal aid providers and barristers in independent practice for conducting work described in paragraph 31C of Part 1 of Schedule to LASPO. This work is brought into scope of legal aid by an amendment to LASPO made by the Illegal Migration Act 2023.

All amendments made by these Regulations are to come into force on the same date that, and immediately after the relevant section of, the Illegal Migration Act 2023 is commenced.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector has been published as part of the Government Response to the consultation on fees in relation to the Illegal Migration Act and is available from the Legal Aid Policy Team, Access to Justice Directorate, Ministry of Justice, 102 Petty France, London, SW1H 9AJ.

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