

2023 No. 745

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Criminal and Civil Legal Aid (Amendment) Regulations 2023

Made - - - - - *3rd July 2023*

Laid before Parliament *4th July 2023*

Coming into force in accordance with regulation 1

The Lord Chancellor makes these Regulations(a) in exercise of the powers conferred by sections 12(2), 15(5) and (6), 21(2), 23(1), (2) and (5), and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(b).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Criminal and Civil Legal Aid (Amendment) Regulations 2023.

(2) Except as provided for in paragraphs (3) and (4), these Regulations come into force on 3rd August 2023.

(3) Regulations 3(2)(c), 3(3) and 4 come into force on 4th September 2023.

(4) Regulation 3(2)(a) comes into force on the same day as and immediately following the coming into force of section 25(4) of the Nationality and Borders Act 2022(c).

(5) These Regulations extend to England and Wales.

Amendments to the Criminal Legal Aid (Financial Resources) Regulations 2013

2.—(1) The Criminal Legal Aid (Financial Resources) Regulations 2013(d) are amended as follows.

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

(a) in paragraph (2), in the definition of “relevant advice and assistance”, after sub-paragraph (e), insert—

“(f) advice and assistance provided to a child.”.

(3) Omit regulation 10.

(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) 2012 c. 10.

(c) 2022 c. 36.

(d) S.I. 2013/471, to which there are amendments not relevant to these Regulations.

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

3.—(1) The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013(a) 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), renumber sub-paragraph (m) as inserted by section 25(4) of the Nationality and Borders Act 2022 as sub-paragraph (ma)(b);

(b) after sub-paragraph (1)(b), insert—

“(ba) legal representation or family help (higher) where the individual is a child;”;

(c) after sub-paragraph (1)(n), insert—

“(na) legal help in relation to an inquest where the Director, having considered the available evidence, considers that if the individual were to make an application under s10(2) or (4) of the Act for representation at the inquest, the application would be reasonably likely to succeed.”;

(d) in sub-paragraph 1(o), for paragraph (ii), substitute—

“(ii) the applicant makes or proposes to make an application to appeal to either the First-tier Tribunal in accordance with section 51 of the Children and Families Act 2014 or the Education Tribunal for Wales in accordance with section 70 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, in respect of that child;”;

(e) in sub-paragraph 1(p)—

(i) after the first instance of “First-tier Tribunal (Special Educational Needs and Disability)”, insert “or the Education Tribunal for Wales”;

(ii) for paragraph (ii), substitute—

“(ii) the applicant makes an application to either the First-tier Tribunal in accordance with section 51 of the Children and Families Act 2014 or to the Education Tribunal for Wales in accordance with section 70 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, in respect of that child; and”;

(f) in sub-paragraph 1(q)—

(i) for paragraph (ii), substitute—

“(ii) the applicant making or proposing to make an application to appeal to the First-tier Tribunal or to the Education Tribunal for Wales is a person described in paragraphs (a), (b) or (c) of section 80(6) of the Children and Families Act 2014 or paragraphs (a), (b) or (c) of section 83(5) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, and that person is acting on behalf of the young person; and”;

(ii) for paragraph (iii), substitute—

“(iii) the young person cannot make the application to the First Tier Tribunal or the Education Tribunal for Wales themselves because at the time of the

(a) S.I. 2013/480; relevant amending instruments are S.I. 2015/1416, S.I. 2019/519, S.I. 2021/1423, S.I. 2023/45.

(b) Section 25(4) of the Nationality and Borders Act 2022 will insert a paragraph (m) into regulation 5(1) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013. Regulation 5(1) of those Regulations already contain paragraph (m) and this renumbering is to avoid confusion.

application they lack capacity within the meaning given in section 2 of the Mental Capacity Act 2005; and”;

(g) in sub-paragraph 1(r)—

(i) after the first instance of “First-tier Tribunal (Special Educational Needs and Disability)”, insert “or the Education Tribunal for Wales”;

(ii) for paragraph (ii) substitute—

“(ii) the applicant making the application to appeal to the First-tier Tribunal or the Education Tribunal for Wales is a person described in paragraphs (a), (b) or (c) of section 80(6) of the Children and Families Act 2014 or paragraphs (a), (b) or (c) of section 83(5) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, and that person is acting on behalf of the young person;”;

(iii) for paragraph (iii) substitute—

“(iii) the young person cannot make the application to the First Tier Tribunal or the Education Tribunal for Wales themselves because at the time of the application they lack capacity within the meaning given in section 2 of the Mental Capacity Act 2005; and”;

(h) after sub-paragraph (1)(r), insert—

“(s) legal representation in a matter described in paragraph 9(1) (inherent jurisdiction of High Court in relation to children and vulnerable adults) of Part 1 of Schedule 1 to the Act to the extent that the matter concerns the withdrawal or withholding of life-sustaining treatment in respect of a person who is a child at the date of the application, and the applicant is—

(aa) a parent of that child; or

(bb) a person with parental responsibility for that child.”.

(3) Omit regulation 10.

(4) In regulation 16 (resources to be treated as the individual's resources)—

(a) in paragraph (3), for “(other than legal representation in family proceedings)”, substitute “or family help (higher)”;

(b) omit paragraph (7).

Amendments to the Civil Legal Aid (Procedure) Regulations 2012

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

(2) In regulation 23 (the application), for paragraph (1C), substitute—

“(1C) Where—

(a) an application is made for legal help in relation to any matter described in paragraph 41 (inquests) of Part 1 of Schedule 1 to the Act, and

(b) either regulation 5(1)(n) or regulation 5(1)(na) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 applies,

the Director may specify that the determination is to be treated as having effect from a date earlier than the date of the determination.”.

(a) S.I. 2012/3098; amended by S.I. 2020/439; there are other amending instruments but none is relevant.

Amendments to the The Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023

5.—(1) The Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023(a) are amended as follows.

(2) In regulation 3(6) (transitional provisions), omit definitions “approved prospective adoptive parent”, “child who is looked after by a local authority”, “foster parent” and “staying put arrangement”.

Transitional Provisions

6.—(1) Paragraph (2) applies to an application for legal services that—

- (a) is made before the relevant date and has yet to be determined and has not been withdrawn on the relevant date; and
- (b) is not an application which relates to legal help for inquests.

(2) An application is to be treated on and after the relevant date as an application falling under the Criminal Legal Aid (Financial Resources) Regulations 2013 or Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, as the case may be, as amended by these Regulations.

(3) Where an application for legal representation or family help (higher) has been determined ahead of the relevant date and regulation 5(1)(ba) or regulation 5(1)(s) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 would have applied if it had been determined on or after that date, the individual is not liable to any further contributions payable under section 23 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 towards those legal services.

(4) For the purpose of this regulation, an application is made on the date that it is—

- (a) submitted to the Client and Cost Management System, or;
- (b) received by the Director.

(5) In this regulation—

“Client and Cost Management System” means the system used by the Director to manage applications for civil legal services;

“the relevant date” means 3rd August 2023.

3rd July 2023

Bellamy
Parliamentary Under Secretary of State
Ministry of Justice

(a) S.I. 2023/45.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Financial Resources) Regulations 2013 (S.I. 2013/471), the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (S.I. 2013/480), the Civil Legal Aid (Procedure) Regulations 2012 (S.I. 2012/3098), and the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023 (S.I. 2023/45).

Regulation 1 establishes when each part of these Regulations come into force.

Regulation 2 amends the Criminal Legal Aid (Financial Resources) Regulations 2013 so that there is to be no determination of financial resources where advice and assistance is provided to a child.

Regulation 3 amends the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 so that there is to be no determination of financial resources in the following cases: (i) legal help in relation to an inquest in certain cases; (ii) legal representation or family help (higher) where the applicant is a child; (iii) certain education appeals pursued in the Tribunal of Wales; and (iv) cases concerning the withdrawal or withholding of life-sustaining treatment for a child. The regulation also renumbers a paragraph that will be inserted into the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 when section 25(4) of the Nationality and Borders Act 2022 comes into force. Section 25(4) prospectively introduces a paragraph (m) into regulation 5(1) of the 2013 regulations. The regulations already contain paragraph (m) so this renumbering will avoid the confusion of two having paragraph (m)s.

Regulation 4 amends the Civil Legal Aid (Procedure) Regulations 2012 so that certain determinations in relation to legal help for inquests may be treated as having effect from a date earlier than the date of determination.

Regulation 5 amends the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023 by omitting certain otiose definitions.

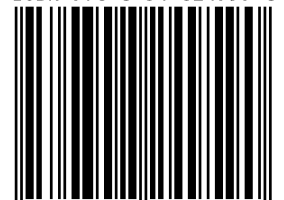
Regulation 6 provides transitional provisions in relation to applications for legal aid (excluding applications for legal help for inquests) that have been received before the coming into force of the regulations but have not yet been determined. The regulation also provides that certain financial contributions will no longer be payable.

An impact assessment has been published alongside the Government Response to the Means Test Review in relation to the following changes made by this instrument: changes to criminal advice and assistance provided to a child, changes to legal representation or family help (higher) in relation to a child, changes in relation to legal representation in cases of the withdrawal or withholding of life-sustaining treatment and changes to legal help for certain inquests. For the remaining changes in this instrument, an impact assessment has not been produced as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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<http://www.legislation.gov.uk/id/uksi/2023/745>

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