

2014 No. XXX

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil Legal Aid (Remuneration) (Amendment) (No. 3)
Regulations 2014**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - *22nd April 2014*

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

PART 1

GENERAL AND AMENDMENTS

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014 and come into force on 22nd April 2014.

(2) In these Regulations, “the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Amendments to the Civil Legal Aid (Remuneration) Regulations 2013

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

(2) In paragraph (1) of regulation 5 (non-application to civil legal services provided under certain contracts), for “6” substitute “5A”.

(3) In regulation 5(3), before “7 and 10” insert “5A,”.

(4) In regulation 5(4), for “regulation 10,” substitute “regulations 5A and 10,”.

(5) Before regulation 6 (Remuneration for civil legal services: general) insert—

(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) S.I. 2013/422, as amended by S.I. 2013/2877, S.I. 2014/7 and S.I. 2014/XX.

“Remuneration for civil legal services: judicial review

5A.—(1) Where an application for judicial review is issued, the Lord Chancellor must not pay remuneration for civil legal services consisting of making that application unless either—

- (a) the court gives permission to bring judicial review proceedings; or
 - (b) the court neither refuses nor gives permission and the Lord Chancellor considers that it is reasonable to pay remuneration in the circumstances of the case, taking into account, in particular—
 - (i) the reason why the provider did not obtain a costs order or costs agreement in favour of the legally aided person;
 - (ii) the extent to which, and the reason why, the legally aided person obtained the outcome sought in the proceedings; and
 - (iii) the strength of the application for permission at the time it was filed, based on the law and on the facts which the provider knew or ought to have known at that time.
- (2) Nothing in this regulation affects—
- (a) any payment by the Lord Chancellor of disbursements incurred by a provider in accordance with the relevant contract; or
 - (b) any payment on account by the Lord Chancellor to a provider in accordance with the relevant contract.
- (3) In this regulation—
- (a) “2010 Standard Crime Contract” means the contract so named between the Lord Chancellor and a provider with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act for the provision of advice, assistance and representation made available under sections 13, 15 and 16 of the Act;
 - (b) “2013 CLA Contract” means the contract so named between the Lord Chancellor and a provider for the provision of civil legal services;
 - (c) “application for judicial review” means an application for judicial review made or treated as made in accordance with—
 - (i) Part 54 of the Civil Procedure Rules 1998(a); or
 - (ii) Part 4 of the Tribunal Rules;
 - (d) “costs agreement” and “costs order” mean, respectively, an agreement or an order that another party to the proceedings pay all, or part of, the costs of the legally aided person;
 - (e) “court” includes the Upper Tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007(b);
 - (f) “issued” includes—
 - (i) the sending of the application by the Upper Tribunal under rule 28(8) of the Tribunal Rules; or
 - (ii) the provision of the application by the applicant under rule 28A(2)(a) of the Tribunal Rules,to each person named in the application as a respondent or interested party;
 - (g) “relevant contract” means whichever of the 2010 Standard Civil Contract, the 2010 Standard Crime Contract, the 2013 Standard Civil Contract, the 2013 Individual Case Contract (Civil), the 2013 Individual Case Contract (High Cost Civil), the 2013 CLA Contract or the 2014 Standard Civil Contract (Welfare Benefits)

(a) S.I. 1998/3132 (L. 17).

(b) 2007 c. 15.

governs the provision of the civil legal services for which remuneration is claimed(a); and

(h) “Tribunal Rules” means the Tribunal Procedure (Upper Tribunal) Rules 2008(b).”

(6) In regulation 6(2), before “The Lord Chancellor”, insert “Subject to regulation 5A.”.

(7) In paragraph (2) of regulation 7 (Remuneration for civil legal services: general), for “Subject to paragraphs (3) and (4).”, substitute “Subject to regulation 5A and paragraphs (3) and (4) of this regulation.”.

(8) After paragraph (2) of regulation 12 (Payments on account by the Lord Chancellor direct to barristers in independent practice) insert—

“(2A) Where the court—

(a) does not give permission, or

(b) neither refuses nor gives permission and the Lord Chancellor does not consider it reasonable to pay remuneration under regulation 5A(1)(b),

the barrister must repay to the Lord Chancellor the amount paid on account under paragraph (1).”

PART 2

TRANSITIONAL PROVISIONS

Application

3. The amendments made by regulation 2 do not apply to a pre-commencement application for civil legal services.

Pre-commencement applications for civil legal services

4. In this Part, a “pre-commencement application for civil legal services” means an application for civil legal services that is—

(a) made before 22nd April 2014; or

(b) a new application for civil legal services within the meaning of regulation 6.

5.—(1) For the purpose of regulation 4(a), an application is made before 22nd April 2014 if the application is—

(a) 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 22nd April 2014 and received by the Director by 5.00pm on 29th April 2014; or

(ii) submitted through the Client and Cost Management System before 22nd April 2014; or

(b) for legal representation provided as emergency representation and the application—

(i) results in a determination being made by a provider before 22nd April 2014 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 22nd April 2014; or

(a) The contracts are available at www.justice.gov.uk/legal-aid. Copies can be inspected at the Legal Aid Agency (Head Office) at 102 Petty France, London, SW1H 9AJ.

(b) S.I. 2008/2698 (L. 15).

(iii) is submitted through the Client and Cost Management System before 22nd April 2014.

(2) In this regulation—

- (a) “Client and Cost Management System” means the client and cost management system used by the Director in relation to applications for civil legal services;
- (b) “Controlled Work” has the meaning given in regulation 21(2) of the Procedure Regulations;
- (c) “emergency representation” means legal representation that is not Controlled Work, which is provided following a determination made on an urgent application;
- (d) “legal representation” has the meaning given in regulation 18 of the Civil Legal Aid (Merits Criteria) Regulations 2013(a); and
- (e) “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday for the purposes of paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971(b).

6.—(1) An application is a new application for civil legal services referred to in regulation 4(b) if paragraph (2) applies.

(2) This paragraph applies where an individual makes an application for civil legal services on or after 22nd April 2014 and the following conditions are met—

- (a) civil legal services that are Licensed Work have been provided to that individual as a result of a pre-commencement application for civil legal services under regulation 4(a) (“the original application”);
- (b) the further application for civil legal services relates to the case for which civil legal services were provided as a result of the original application; and
- (c) as a result of the further application for civil legal services, the Director has decided in accordance with regulation 37(3)(b) of the Procedure Regulations that the certificate should cover more than one set of proceedings.

Interpretation of Part 2

7. In this Part—

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

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

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

(a) S.I. 2013/104, to which there are amendments not relevant to these Regulations.
(b) 1971 c. 80.
(c) S.I. 2012/3098.

These Regulations amend the Civil Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/422) (“the Remuneration Regulations”), which make provision about the payment by the Lord Chancellor to persons who provide civil legal services under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”).

Regulation 2(5) inserts a new regulation 5A into the Remuneration Regulations. Regulation 5A provides that where an application for judicial review is issued, the Lord Chancellor must not pay remuneration for the making of that application unless either permission to proceed is given by the court, or permission is neither granted nor refused and the Lord Chancellor considers that it is reasonable to pay remuneration. In making this decision, the Lord Chancellor is entitled to consider a number of factors in particular. Regulation 5A does not affect the payment of disbursements incurred in accordance with the contract under which the civil legal services are provided. Regulation 5A also does not affect the discretion of the Lord Chancellor to make payments on account to providers in accordance with the relevant contract.

Regulation 12 of the Remuneration Regulations makes provision for the Lord Chancellor to make payments on account direct to barristers in independent practice who have been instructed by providers. Regulation 2(6) amends regulation 12 to provide that where the Lord Chancellor does not pay remuneration for the application for judicial review under regulation 5A, the barrister must repay the amount paid to them under regulation 12 of the Remuneration Regulations.

Regulation 2(2) to (4) provides that the new regulation 5A is subject to regulation 5 of the Remuneration Regulations, which specifies that the Remuneration Regulations do not apply to civil legal services provided under certain contracts.

Regulation 2(6) and (7) provide that in order for remuneration to be paid under regulations 6(2) and 7(2) of the Remuneration Regulations for civil legal services consisting of making an application for judicial review, the Lord Chancellor must be permitted to pay remuneration under regulation 5A.

Regulation 3 provides that the amendments made by regulation 2 do not apply to a pre-commencement application for civil legal services. Regulations 4 to 6 define a “pre-commencement application”.

A full impact assessment of the effect of the policy implemented by this instrument on the costs of business and the voluntary sector was produced with the Government’s response to consultation, *Judicial Review – proposals for further reform: the Government response*, and is available at <https://consult.justice.gov.uk/>.