

2020 No. 1001

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil Legal Aid (Remuneration) (Amendment) (No. 2)
(Coronavirus) Regulations 2020**

<i>Made</i>	- - - -	<i>15th September 2020</i>
<i>Laid before Parliament</i>		<i>16th September 2020</i>
<i>Coming into force</i>	- -	<i>7th October 2020</i>

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

Citation and commencement

1.—(1) These Regulations may be cited as the Civil Legal Aid (Remuneration) (Amendment) (No. 2) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on 7th October 2020.

Amendment of the Civil Legal Aid (Remuneration) Regulations 2013

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

(2) In regulation 2(1) (interpretation)—

(a) in the definition of “advocacy services”, after “those services”, insert “but does not include anything done that falls under the definition of “online procedure advocacy services””;

(b) after the definition of “legally aided person”, insert—

““online procedure advocacy services” means advocacy in relation to online procedure cases, and fees and rates for online procedure advocacy services include remuneration for travelling and waiting in relation to those services”.

(3) In regulation 11 (payments on account direct to barristers in independent practice)—

(a) in paragraph (1)—

(i) for “(5) and (6)” substitute “(6) and (7)”;

(ii) after “may apply” insert “from time to time”;

(iii) omit “where any of the conditions in paragraphs (2) to (4) apply”;

(b) omit paragraphs (2) to (5);

(c) after paragraph (6), insert—

(a) 2012 c. 10. See section 42(1) for the definition of “regulations” for the purposes of Part 1 of the 2012 Act.

(b) S.I. 2013/422, as amended by S.I. 2015/898 and 2020/515. There are other amending instruments but none is relevant.

- “(7) In addition, an application under paragraph (1) may not be made—
- (a) before the end of the period of three months beginning with the date on which the Director determined under section 9 of the Act that the legally aided person qualified for civil legal services;
 - (b) if it is the second or subsequent application under that paragraph in connection with services provided to the person mentioned in sub-paragraph (a), less than three months after the date on which the previous application was made.
- (8) For the purposes of paragraph (7)—
- (a) it does not matter whether the Director makes the determination under section 9 of the Act before, on or after 7th October 2020;
 - (b) where the barrister has made one or more applications under paragraph (1) before 7th October 2020 in connection with services provided to a particular legally aided person, that application or, as the case may be, the last of those applications is to be treated as the first application for the purposes of determining when the barrister may make a further application under paragraph (1).”.

(4) In regulation 12 (payments on account direct to barristers in independent practice)—

 - (a) in paragraph (1), for “75%” substitute “80%”;
 - (b) in paragraph (2)(b) for “11(2)” substitute “11(7)(a)”.

(5) In Schedule 1 (fees and rates of remuneration)—

 - (a) in Part 1, after Table 4(c), insert—

“Table 4(ca)

Immigration and Asylum Online Procedure Advocacy Services Standard Fees

<i>Activity</i>	<i>Advocacy Services Standard Fee</i>
Oral Case Management Review Hearing	£166
Telephone Case Management Review Hearing	£90
Substantive Hearing in the Immigration and Asylum Chamber of the First-tier Tribunal	Asylum - £302 Immigration - £237
Additional Day Substantive Hearing	Asylum - £161 Immigration - £161”;

- (b) in Part 2, after Table 8(c), insert—

“Table 8(ca)

Controlled Legal Representation – Immigration and Asylum Online Procedure hourly rates cases

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation and Attendance	£55.08 per hour	£51.53 per hour
Routine Letters Out and Telephone Calls	£3.96 per hour	£3.69 per hour”.

Revocation of the Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020

3. The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020(a) are revoked.

(a) S.I. 2020/515, regulation 2 of which made an amendment (which ceases to have effect on revocation of S.I. 2020/515) to Table 4(a) in Part 1 of Schedule 1 to S.I. 2013/422.

Transitional provision

4.—(1) In this regulation—

“the online procedure fees” means the fees in the final column of Table 4(a) (Stage 2c—online procedure (controlled legal representation)) and, where relevant, the fees in Table 4(c) (Additional Payments for Advocacy Services) in Part 1 of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013, as they had effect immediately before the relevant date;

“relevant date” means the date on which these Regulations came into force.

(2) Paragraph (3) applies to remuneration for—

- (a) civil legal services provided before the relevant date and to which the online procedure fees were applicable;
- (b) civil legal services—
 - (i) the provision of which began before, but continues on or after, the relevant date, and
 - (ii) to which the online procedure fees would have applied on or after that date had the Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020 not been revoked by these Regulations.

(3) Remuneration for civil legal services to which this paragraph applies must be paid to the provider of those services either—

- (a) in accordance with the online procedure fees, or
- (b) if the provider does not wish to be paid in accordance with those fees, in accordance with Table 4(ca) and Table 8(ca) in Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013, as inserted by these Regulations.

15th September 2020

Alex Chalk
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 (Remuneration) Regulations 2013 (S.I. 2013/422) (“the 2013 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 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the 2012 Act”). These Regulations also revoke the Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020 (S.I. 2020/515) (“the 2020 Regulations”).

Amendment of the 2013 Regulations – remuneration where online procedure is used

These Regulations amend the 2013 Regulations to insert a new definition of online procedure advocacy services and two new tables of fees to enable payment of remuneration by the Lord Chancellor to providers of civil legal services where the HM Courts and Tribunals Service online procedure is used (see regulation 2(2) and (5) of these Regulations).

These fees are subject to the definitions and payment scheme set out in the contracts made between the Lord Chancellor and a provider of civil legal services under Part 1 of the 2012 Act. The contracts are available at <https://www.gov.uk/government/publications/standard-civil-contract-2018>. Copies can be inspected at the Legal Aid Agency (Head Office) at 102 Petty France, London, SW1H 9AJ.

Amendment of the 2013 Regulations – payments on account

Regulation 11 of the 2013 Regulations is amended to change the circumstances in which barristers in independent practice can apply for payment on account for certain civil legal services they have provided. Applications for payment on account can in future be made, in all relevant cases, at three monthly intervals (regulation 2(3) of these Regulations).

Regulation 12 of the 2013 Regulations is amended so as to increase the amount that the Lord Chancellor may pay to a barrister on account. The amount is increased to 80% of the amount that the Lord Chancellor considers to be the barrister's reasonable fees (regulation 2(4) of these Regulations).

These changes are directed immediately at the circumstances during the Covid-19 pandemic.

Revocation of the 2020 Regulations

The 2020 Regulations are revoked with the effect that the amendments which they made to the 2013 Regulations cease to have effect. Regulation 4 makes related transitional provisions.

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