

2021 No. 1423

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2021

<i>Made</i>	- - - -	<i>9th December 2021</i>
<i>Laid before Parliament</i>		<i>14th December 2021</i>
<i>Coming into force</i>	- -	<i>12th January 2022</i>

The Lord Chancellor in exercise of the powers conferred by sections 21(2), 23(5)(a) and 41(1)(a), and (b), (2)(a) and (b) and (3)(c) 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) (Amendment) Regulations 2021 and come into force on 12th January 2022.

(2) 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(b) 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)—

(i) at the end of sub-paragraph (ka), omit “and”;

(ii) after sub-paragraph (l), insert—

“(m) other legal services(c) at an inquest under the Coroners and Justice Act 2009(d) into the death of a member of the family of the individual who has made an application where the Director has made a relevant determination; and

(a) 2012 c. 10; section 42(1) of the Act 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. 2013/512, 2013/753, 2014/812, and 2014/2701.

(c) The term “other legal services” is defined in regulation 2(4) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations (S.I. 2013/480), and further defined in regulation 19 of the Civil Legal Aid (Merits) Regulations 2013 (S.I. 2013/104).

(d) 2009 c. 25.

- (n) legal help^(a) at an inquest under the Coroners and Justice Act 2009 to the extent that the individual to whom the legal help may be provided is an individual to whom sub-paragraph (m) applies.”;
- (b) in paragraph (2)—
 - (i) after the definition of “mediator” insert—
 - ““relevant determination” means—
 - (a) an exceptional case determination as described in section 10(3) of the Act to the extent that it relates to an inquest; or
 - (b) a wider public interest determination as described in section 10(5) of the Act.”;
 - (c) after paragraph (2) insert—
 - “(3) For the purpose of paragraph (1)(m), an individual is a member of another individual’s family if their relationship is as described in section 10(6) of the Act.”.
- (3) In regulation 10 (waiver of eligibility limits and contributions in inquests)—
 - (a) at the end of paragraph (1), after the words “of the application” add “except where regulation 5(1)(n) applies”;
 - (b) omit paragraph (2);
 - (c) in paragraph (3), after “paragraph (1)”, omit “and” (2);
 - (d) in paragraph (4)—
 - (i) at the end of the definition of “Human Rights Convention”, omit “; and”;
 - (ii) omit the definition of “relevant determination”.
- (4) In regulation 44 (contributions)—
 - (a) omit paragraph (2)(a)(iii);
 - (b) omit paragraph (3)(a)(iii).

Transitional Provisions

3.—(1) Paragraph (2) applies to an application that is made before the relevant date and has yet to be determined and has not been withdrawn on the relevant date.

(2) An application is to be treated on and after the relevant date as an application falling under the 2013 Regulations as amended by these Regulations.

(3) Where an application has been determined ahead of the relevant date, and regulation 5(1)(m) of the 2013 Regulations 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 other 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—

“the 2013 Regulations” means the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013;

“application” means an application for a determination in respect of civil legal services at an inquest;

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

(a) The term “legal help” is defined in regulation 2(4) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (S.I. 2013/480), and further defined in regulation 13 of the Civil Legal Aid (Merits) Regulations 2013 (S.I. 2013/104).

“other legal services” are those services defined in regulation 19 of the Civil Legal Aid (Merits) Regulations 2013(a);

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

9th December 2021

Tom Pursglove
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 2013 Regulations”).

Regulation 5 of the 2013 Regulations provides a list of certain forms of civil legal services that are to be provided without a determination in respect of an individual’s financial resources. Regulation 2(2) adds two new sub-paragraphs to this list.

Regulation 2(2)(a)(ii) adds a new regulation 5(1)(m) to the 2013 Regulations, to provide that there is to be no determination in relation to the financial resources of an individual for other legal services at an inquest into the death of a member of the individual’s family held under the Coroners and Justice Act 2009 if the Director of Legal Aid Casework has made a relevant determination (an exceptional case determination or a wider public interest determination) under section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”). Regulation 5(1)(n) provides that if regulation 5(1)(m) applies to an individual, that individual will also receive legal help without a determination in relation to the financial resources of the individual.

Regulation 2(3) removes the Director’s discretionary waiver under regulation 10(2) of the 2013 Regulations where an application is made for an exceptional case determination or wider public interest determination for an inquest. The Director’s waiver under regulation 10(1) remains for legal services described in Schedule 1, paragraph 41 of the Act.

Regulation 44 of the 2013 Regulations sets out how contributions for civil legal services should be calculated and paid. Regulation 2(4) removes the part of regulation 44 that covers other legal services since they now fall under Regulation 5(1)(m).

Regulation 3 provides a transitional provision to ensure that the amendments made by regulation 2 apply to applications for civil legal services at an inquest where they have been made but not determined by the date that these Regulations come into force. It also provides that individuals who would have benefitted from Regulation 5(1)(m) but for the determination already having been made is not liable to any further contributions once the Regulations come into force.

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.

(a) S.I. 2013/104.