
STATUTORY INSTRUMENTS

2005 No. 184

The Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2005

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2005 and shall come into force on 28th February 2005.

(2) In this Order reference to an article or Schedule alone means an article or Schedule so numbered in the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001(1).

Transitional provisions

2.—(1) This Order applies for the purposes of—

(a) articles 3 to 16 and 18 of, and the Schedule to, this Order, to work carried out under a certificate granted, and amendments made to add new proceedings to an existing certificate, on or after the date on which this Order comes into force;

(b) article 17 of this Order, to—

(i) a main hearing which concludes; and

(ii) a certificate discharged or revoked,

on or after the date on which this Order comes into force.

(2) In all other circumstances the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 shall have effect as if articles 3 to 18 of, and the Schedule to, this Order had not been made.

(3) In this article reference to a certificate is to a certificate to fund services issued under the Funding Code approved under section 9 of the Access to Justice Act 1999.

Amendment to the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001

3. In article 2—

(a) after the definition of “assessment of costs” insert—

““business accounts” includes accounts relating to trusts and investments whether or not those accounts are maintained for the purposes of, or in connection with, a business;”;

(b) after the definition of “the Commission” insert—

““committal hearing” means any hearing to determine whether a person should be committed to prison;”;

- (c) in the definition of function F1 for “means” to the end substitute “has the meaning set out in article 2A;”;
- (d) in the definition of function F2 for “means” to the end substitute “has the meaning set out in article 2B;”;
- (e) in the definition of function F3 for “means” to the end substitute “has the meaning set out in article 2C;”;
- (f) in the definition of function F4 for “means” to the end substitute “has the meaning set out in article 2D;”;
- (g) in the definition of function F5 for “means” to the end substitute “has the meaning set out in article 2E;”;
- (h) after the definition of “Funding Review Committee” insert—
 - ““harm” has the same meaning as in section 31(9) of the Children Act 1989(2) and the question of whether harm is significant shall be determined in accordance with section 31(10) of that Act;”;
- (i) after the definition of “the main hearing” insert—
 - ““mental disorder” has the same meaning as in section 1(2) of the Mental Health Act 1983(3);”.

4. After article 2 insert—

“Function F1

- 2A.**—(1) Subject to paragraph (2), function F1 means all work—
- (a) which is carried out prior to the issue of proceedings; or
 - (b) which does not fall within functions F2 to F5.
- (2) Function F1 does not include work carried out in connection with a conference.

Function F2

- 2B.**—(1) Subject to paragraph (2), function F2 means all work carried out in connection with a hearing relating to injunctive relief or enforcement procedures, except a committal hearing.
- (2) Function F2 does not include any work which falls within function F5.
- (3) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.

Function F3

- 2C.**—(1) Subject to paragraph (2), function F3 means all work carried out in connection with—
- (a) a hearing, including a committal hearing; or
 - (b) in care proceedings, an Advocates Meeting, Case Management Conference or Pre-Hearing Review.
- (2) Function F3 does not include any work which falls within function F2 or F5.

(2) 1989 c. 41; amended by Adoption and Children Act 2002 (c. 38), section 120.

(3) 1983 c. 20.

(3) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.

Function F4

2D.—(1) Subject to paragraph (2), function F4 means all work carried out in connection with a conference, including a telephone or video conference.

(2) Function F4 does not include any conference which takes place on the same day as a hearing for which payment is claimed under function F5.

(3) In this article “work” includes, but is not limited to, preparation and advice.

Function F5

2E.—(1) Function F5 means all work carried out in connection with—

- (a) the main hearing; and
- (b) in care proceedings, where the same counsel attends both the Pre-Hearing Review and the main hearing on behalf of a client, the Pre-Hearing Review.

(2) In this article “work” includes, but is not limited to, preparation, advocacy, advising and drafting.”.

5. In article 4—

- (a) in paragraph (2), for “(3)” substitute “(2A)”; and
- (b) after paragraph (2) insert—

“(2A) This Order does not apply to family proceedings in magistrates' courts where:

- (a) prior authority to instruct counsel in respect of the work which was carried out has not been granted by the Commission; and
- (b) on the assessment of costs by the Commission, instructing counsel to carry out that work was not considered to be justified,

in which case all costs and disbursements in respect of such work shall be assessed in accordance with the rates set out in the Legal Aid in Family Proceedings (Remuneration) Regulations 1991(4).”.

6. In article 5(1)(c) after “payment” insert “(“CBP”)”.

7. In article 6(1) for “Only one base fee” substitute “A maximum of two base fees”.

8.—(1) After article 9(1)(c) insert—

“(ca) representation of a person who has difficulty:

- (i) giving instruction, or
- (ii) understanding advice,

attributable to a mental disorder or to a significant impairment of intelligence or social functioning;

(cb) representation of:

- (i) a parent or parents of a child who is the subject of proceedings, or
- (ii) another person (including a child) against whom allegations are made that he has caused or is likely to cause significant harm to a child;

- (cc) analysis of the business accounts of an individual, partnership or company;
 - (cd) in respect of proceedings which fall within paragraph 4 of Schedule 2, one or more experts;”.
- (2) In article 9(1)(d) before “more than” insert “in respect of proceedings which fall within paragraphs 1, 2 or 3 of Schedule 2,”.
9. In article 9(2)—
- (a) for “(c)” substitute “(cb)(i)”;
 - (b) for “(d)” substitute “(cb)(ii)”;
 - (c) after “court” insert “at that hearing”.
10. For article 9(4) substitute—
- “(4) In relation to functions F2, F3 and F5:
- (a) a special issue payment shall be made for each special issue certified;
 - (b) such payment shall equate to the percentage applicable to each special issue multiplied by the total hearing unit fees applicable to the function in which the issue arises, as specified in Schedule 1.”.
11. In article 9(5)—
- (a) for “Subject to paragraph (8)” substitute “In relation to functions F1 and F4”;
 - (b) in sub-paragraph (a), omit “in relation to functions F1 and F4”.
12. Omit article 9(7) and (8).
13. In article 10—
- (a) for “£150” substitute “£287.50”; and
 - (b) for “£60” substitute “£115”.
14. In article 10A—
- (a) for “£206.25” substitute “£162.50”; and
 - (b) for “£82.50” substitute “£65”.
15. After article 10A insert—
- “Payments for enforcement procedures and contested injunction hearings**
- 10B.** In respect of a set of proceedings within paragraph 4 of Schedule 2, which include work carried out under function F2 in connection with a hearing relating to:
- (a) injunctive relief which is contested, or
 - (b) enforcement procedures,
- an additional payment shall be made at a rate of £250 in respect of Queen’s Counsel, and £100 in respect of counsel other than Queen’s Counsel.”.
16. After article 12(1) insert—
- “(1A) In paragraph (1), reference to the base fee or the hearing unit fee means the single fee applicable to the function in which the settlement takes place, and no account is to be taken of multiple base fees or hearing unit fees which may be claimed in relation to a set of proceedings.”.
17. For article 17(6) substitute—
- “(6) Counsel shall submit his claim for payment—

- (a) in respect of function F5, within two months of the conclusion of the main hearing;
- (b) in respect of all other functions, within two months of the discharge or revocation of the certificate to which it relates,

and if he fails to do so, the Regional Director may reduce the amount payable under this Order.

(6A) A reduction in the amount payable under paragraph (6) shall not be made unless counsel has been allowed a reasonable opportunity to show cause in writing why the amount should not be reduced.”.

18. For Schedule 1, substitute the new Schedule 1 set out in the Schedule to this Order.

Signed by authority of the Secretary of State

31st January 2005

David Lammy
Parliamentary Under Secretary of State
Department for Constitutional Affairs