
STATUTORY INSTRUMENTS

2012 No. 3098

The Civil Legal Aid (Procedure) Regulations 2012

PART 4 **E+W**

Licensed Work

General **E+W**

29.—(1) This Part makes provision in relation to the making and withdrawal of determinations under section 9 of the Act about Licensed Work.

(2) In this Part, “Licensed Work” means the provision of any of the following forms of civil legal services—

- (a) family help (higher); or
- (b) legal representation that is not Controlled Work or Special Case Work.

Applicants **E+W**

30.—(1) An individual applying for Licensed Work must be—

- (a) a party to the proceedings to which the application relates;
- [^{F1}(aa) a separated child within the meaning given in paragraph 31A of Part 1 of Schedule 1 to the Act and the proceedings concern a relevant application falling within paragraph 31A(2)(a) of Part 1 of Schedule 1 to the Act;]
- (b) proposing to be joined as a party to those proceedings; or
- (c) contemplating issuing those proceedings.

(2) An application on behalf of a child must be made by—

- (a) a person who is, or proposes to be, the child's litigation friend, professional children's guardian or parental order reporter; ^{F2}...
 - (b) the proposed provider if the application is made in relation to proceedings which the child may conduct without—
 - (i) a children's guardian or litigation friend in accordance with rule 16.6 of the Family Procedure Rules 2010; or
 - (ii) a litigation friend in accordance with rule 21.2 of the Civil Procedure Rules 1998 [^{F3}; or
 - (c) the proposed provider if the application is made in relation to proceedings in the youth court for civil legal services in circumstances where a child is permitted to conduct proceedings on the child's own behalf.]
- (3) An individual acting as a professional children's guardian or parental order reporter may not make an application other than on behalf of a child.
- (4) An application on behalf of a protected party must be made by a person who is, or proposes to be, the protected party's litigation friend.

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(5) The Director may waive any or all of the requirements of this regulation if the application otherwise satisfies the requirements of these Regulations.

Textual Amendments

- F1** Reg. 30(1)(aa) inserted (25.10.2019) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Legal Aid for Separated Children\) \(Miscellaneous Amendments\) Order 2019 \(S.I. 2019/1396\)](#), arts. 1, **3(3)**
- F2** Word in reg. 30(2)(a) omitted (17.7.2015) by virtue of [The Civil and Criminal Legal Aid \(Amendment\) Regulations 2015 \(S.I. 2015/1416\)](#), regs. 1(2)(b), **2(4)(a)**
- F3** Reg. 30(2)(c) and word inserted (17.7.2015) by [The Civil and Criminal Legal Aid \(Amendment\) Regulations 2015 \(S.I. 2015/1416\)](#), regs. 1(2)(b), **2(4)(b)**

The application **E+W**

31.—(1) An application for Licensed Work must be made in writing in a form specified by the Lord Chancellor and signed by the individual and proposed provider.

(2) Except as provided in paragraph (3), the application must be in English unless—

- (a) the individual resides in or is present in Wales; or
- (b) the application relates to proceedings which may be heard in Wales,

in which case the application may be in English or Welsh.

(3) Where the individual resides outside the [^{F4}United Kingdom] and is not present in England and Wales when the application is made, the application must—

- (a) be in English or French;
- (b) include a written statement of the individual's financial resources; and
- (c) be verified by a statement that the individual believes that the facts stated in the application are true.

(4) The application must specify—

- (a) the form of civil legal services to which the application relates;
- (b) the matter to which the application relates;
- (c) the category within which the civil legal services fall (as described in the Category Definitions that form part of the 2010 Standard Civil Contract [^{F5}, 2013 Standard Civil Contract [^{F6}, 2014 Standard Civil Contract [^{F7}, 2015 Standard Civil Contract or 2018 Standard Civil Contract]]); and
- (d) a proposed provider with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act for the provision of the services which are the subject of the application (unless the effective administration of justice test described in paragraph (5) is satisfied).

(5) The effective administration of justice test is satisfied if the Director decides that it is necessary for a provider to provide the services which are the subject of the application under an individual case contract having considered—

- (a) the provider's knowledge of the particular proceedings or dispute and expertise in providing the civil legal services which are the subject of the application;
- (b) the nature and likely length of the particular proceedings or dispute;
- (c) the complexity of the issues; and
- (d) the circumstances of the individual making the application.

(6) The individual must provide any additional information or documents requested by the Director in order to make a determination in relation to the application.

(7) Where additional information or documents are requested in accordance with paragraph (6), the application may not be considered until the requested information or documents are provided.

[^{F8}(7A) Regulations 33 and 34 do not apply to an application for legal representation for an individual where a determination has already been made that the individual qualifies for family help (higher) (“the initial determination”) and—

- (a) the initial determination has not been withdrawn by the Director under regulation 42(1); and
- (b) the application is for legal representation in the same proceedings as those for which the initial determination was made.]

[^{F9}(8) An application for civil legal services described in paragraph 32(1) of Part 1 of Schedule 1 to the Act to be provided to an individual must be made—

- (a) where a conclusive determination described in paragraph 32(1)(a) of Part 1 of Schedule 1 to the Act has been made in relation to that individual, within twelve months of the date of that determination;
- (b) where a determination by a competent authority described in paragraph 32(6) of Part 1 of Schedule 1 to the Act has been made in relation to that individual and the individual has been given—

- (i) leave to remain in the United Kingdom outside the rules made under section 3(2) of the Immigration Act 1971, or
- (ii) [^{F10}immigration bail under paragraph 1 of Schedule 10 to the Immigration Act 2016],

on or before the latest date on which that [^{F11}leave or immigration bail] comes to an end,

(and in any case where both sub-paragraphs (a) and (b) apply, the application must be made by the latest date specified by those sub-paragraphs).

(9) An application for civil legal services described in paragraph 32A(1) of Part 1 of Schedule 1 to the Act to be provided to an individual must be made—

- (a) where a conclusive determination described in paragraph 32A(1)(a) of Part 1 of Schedule 1 to the Act has been made in relation to that individual, within twelve months of the date of that determination;
- (b) where a determination by a competent authority described in paragraph 32A(6) of Part 1 of Schedule 1 to the Act has been made in relation to that individual and the individual has been given—

- (i) leave to remain in the United Kingdom outside the rules made under section 3(2) of the Immigration Act 1971, or
- (ii) [^{F12}immigration bail under paragraph 1 of Schedule 10 to the Immigration Act 2016],

on or before the latest date on which that [^{F13}leave or immigration bail] comes to an end,

(and in any case where both sub-paragraphs (a) and (b) apply, the application must be made by the latest date specified by those paragraphs).]

Textual Amendments

- F4** Words in reg. 31(3) substituted (31.12.2020) by [The Civil Legal Aid \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/505\)](#), regs. 1(1), **4(3)** (with regs. 8, 9) (as amended by [S.I. 2020/1493](#), regs. 1(1), 7(2)-(4)): 2020 c. 1, Sch. 5 para. 1(1)

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- F5** Words in reg. 31(4)(c) substituted (1.8.2014) by The Civil Legal Aid (Procedure, Remuneration and Statutory Charge) (Amendment) Regulations 2014 (S.I. 2014/1824), regs. 1, **2(3)(c)**
- F6** Words in reg. 31(4)(c) substituted (1.11.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), **regs. 1(2)(b), 2(3)(c)**
- F7** Words in reg. 31(4)(c) substituted (1.9.2018) by The Civil Legal Aid (Procedure, Remuneration and Statutory Charge) (Amendment) Regulations 2018 (S.I. 2018/803), regs. 1, **2(3)(c)**
- F8** Reg. 31(7A) inserted (17.7.2015) by The Civil and Criminal Legal Aid (Amendment) Regulations 2015 (S.I. 2015/1416), regs. 1(2)(b), **2(5)(a)**
- F9** Reg. 31(8)(9) substituted for reg. 31(8) (31.7.2015) by The Civil and Criminal Legal Aid (Amendment) Regulations 2015 (S.I. 2015/1416), regs. 1(2)(a), **2(5)(b)**
- F10** Words in reg. 31(8)(b)(ii) substituted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 6(2)**
- F11** Words in reg. 31(8)(b) substituted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 6(3)**
- F12** Words in reg. 31(9)(b)(ii) substituted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 6(2)**
- F13** Words in reg. 31(9)(b) substituted (15.1.2018) by The Immigration Act 2016 (Consequential Amendments) (Immigration Bail) Regulations 2017 (S.I. 2017/1242), reg. 1, **Sch. para. 6(3)**

Supporting documents: damages **E+W**

32.—(1) Where an application for Licensed Work requires the Director to consider likely damages (in accordance with regulations made under section 11 of the Act), the application must include—

- (a) an estimate of likely damages; and
 - (b) an explanation of the estimate, including the calculations required by paragraph (2).
- (2) An estimate of likely damages must take into account—
- (a) any likely reduction in the damages or other sum of money contested in the case through contributory negligence, set-off or otherwise;
 - (b) any amount of damages the individual is likely to receive in addition to any amount that is offered by way of settlement;
 - (c) any likely reduction in damages or other sum of money contested in the case to take account of any amount which is recoverable under the Social Security (Recovery of Benefits) Act 1997 ^{M1}; and
 - (d) the ability of the other party to the proceedings to pay any damages or other sum of money contested in the case.

Marginal Citations

M1 1997 c. 27.

Supporting documents: domestic violence **E+W**

33.—(1) An application for civil legal services described in paragraph 12 of Part 1 of Schedule 1 to the Act must include evidence of the domestic violence or the risk of domestic violence.

(2) For the purpose of paragraph (1), the evidence of domestic violence or risk of domestic violence must be provided in one or more of the [F14 forms that is described in Schedule 1 to these Regulations].

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^{F15}(3)

^{F15}(4)

[^{F16}(5) In relation to Licensed Work, this regulation applies subject to regulation 31(7A).]

Textual Amendments

F14 Words in reg. 33(2) substituted (8.1.2018) by [The Civil Legal Aid \(Procedure\) \(Amendment\) \(No. 2\) Regulations 2017 \(S.I. 2017/1237\)](#), regs. 1(2), **2(2)(a)** (with reg. 3)

F15 Reg. 33(3)(4) omitted (8.1.2018) by virtue of [The Civil Legal Aid \(Procedure\) \(Amendment\) \(No. 2\) Regulations 2017 \(S.I. 2017/1237\)](#), regs. 1(2), **2(2)(b)** (with reg. 3)

F16 Reg. 33(5) inserted (17.7.2015) by [The Civil and Criminal Legal Aid \(Amendment\) Regulations 2015 \(S.I. 2015/1416\)](#), regs. 1(2)(b), **2(6)(d)**

Supporting documents: protection of children **E+W**

34.—(1) An application for civil legal services described in paragraph 13 of Part 1 of Schedule 1 to the Act must include evidence that the child who is or would be the subject of the order to which the application relates is at risk of abuse from an individual (“B”) other than the applicant for civil legal services (“A”) against which risk of abuse the order is to provide protection.

(2) For the purpose of paragraph (1), evidence of the risk of abuse must be provided in one or more of the [^{F17}forms that is described in Schedule 2].

^{F18}(3)

[^{F19}(4) In relation to Licensed Work, this regulation applies subject to regulation 31(7A).]

Textual Amendments

F17 Words in reg. 34(2) substituted (8.1.2018) by [The Civil Legal Aid \(Procedure\) \(Amendment\) \(No. 2\) Regulations 2017 \(S.I. 2017/1237\)](#), regs. 1(2), **2(3)(a)** (with reg. 3)

F18 Reg. 34(3) omitted (8.1.2018) by virtue of [The Civil Legal Aid \(Procedure\) \(Amendment\) \(No. 2\) Regulations 2017 \(S.I. 2017/1237\)](#), regs. 1(2), **2(3)(b)** (with reg. 3)

F19 Reg. 34(4) inserted (17.7.2015) by [The Civil and Criminal Legal Aid \(Amendment\) Regulations 2015 \(S.I. 2015/1416\)](#), regs. 1(2)(b), **2(7)(b)**

Determinations: general **E+W**

35.—(1) A determination that an individual qualifies for Licensed Work must specify—

(a) the maximum costs which may be incurred in providing the services to which the determination relates [^{F20}(“the services”)]; and

(b) any other limitations and conditions to which the determination is subject.

(2) Where a limitation is exceeded or a condition is breached, the Director may—

(a) withdraw the determination; or

(b) amend the relevant limitation or condition.

[^{F21}(3) If the requirements in paragraph (4) are met, the Director may specify that a determination has effect from a date earlier than the date of the determination.

(4) The requirements are that—

(a) the application for the services was made as soon as reasonably practicable;

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- (b) the Director is satisfied that—
 - (i) it was in the interests of justice for the services to be carried out prior to the date of the determination; and
 - (ii) the services could not have been carried out as Controlled Work; and
 - (c) in the case of reconsidering a determination on review or following an appeal, having regard to all the circumstances, including the information that was available to the provider when the application for the services or the application for the review was made, the Director is satisfied that it is appropriate for the determination to have effect from the earlier date.
- (5) In paragraphs (3) and (4), “determination” includes a limitation or condition.]

Textual Amendments

- F20** Words in [reg. 35\(1\)\(a\)](#) inserted (20.2.2019) by [The Civil Legal Aid \(Procedure\) \(Amendment\) Regulations 2019 \(S.I. 2019/130\)](#), regs. 1(1), **2(2)(a)** (with [reg. 3](#))
- F21** [Reg. 35\(3\)-\(5\)](#) inserted (20.2.2019) by [The Civil Legal Aid \(Procedure\) \(Amendment\) Regulations 2019 \(S.I. 2019/130\)](#), regs. 1(1), **2(2)(b)** (with [reg. 3](#))

Determinations: contributions **E+W**

36.—(1) Where an individual is required to make a contribution in respect of the cost of the civil legal services in accordance with regulations made under section 23 of the Act, a determination that an individual qualifies for Licensed Work must be made subject to a condition that the individual pays, or arranges payment of, the required contribution.

- (2) The determination must specify—
 - (a) the amount of any contribution;
 - (b) whether the individual is required to pay, or arrange payment of, the contribution—
 - (i) by periodical payments;
 - (ii) by one or more lump sums;
 - (iii) out of income;
 - (iv) out of capital; and
 - (c) any time limit about payment.
- (3) The individual must—
 - (a) complete and return the form specified by the Lord Chancellor to indicate acceptance of a condition; and
 - (b) pay any contribution required by the determination,

within any time limit specified in the determination.

(4) If the individual fails to comply with the obligation in paragraph (3), the determination may be withdrawn.

Certificates **E+W**

37.—(1) When the Director makes a determination that an individual qualifies for Licensed Work, the Director must—

- (a) issue a certificate recording the determination and send the certificate to the provider; and
- (b) send a copy of the certificate to the individual.

- (2) A certificate issued by the Director must specify—
- (a) the name and address of—
 - (i) the individual;
 - (ii) where an application was made on behalf of a child or protected party, the person who is acting on behalf of the child or protected party; and
 - (iii) the provider;
 - (b) the date of the determination [^{F22}and, if different, the date on which the determination had effect];
 - (c) the form of civil legal services to which the determination relates;
 - (d) the matter in relation to which the civil legal services are to be available;
 - (e) the proceedings to which the determination relates;
 - (f) the parties to any proceedings to which the determination relates (except to the extent that the Director considers it inappropriate to name any of the parties); and
 - (g) any limitation or condition to which the determination is subject.
- (3) Except as provided in paragraph (4), the Director must issue a separate certificate for each—
- (a) form of civil legal services for which the individual qualifies; and
 - (b) set of proceedings to which a determination relates, unless the Director decides that the proceedings are so closely connected that they should be covered by a single certificate.
- (4) The Director may amend a certificate for—
- (a) family help (higher) to record a subsequent determination that the individual qualifies for legal representation in family proceedings which arose out of the dispute which was the subject of the initial determination in relation to family help (higher); or
 - (b) investigative representation to record a subsequent determination that the individual qualifies for full representation in the same proceedings.
- (5) The Director may amend a certificate to ensure that it accurately records a determination either—
- (a) upon the application of the individual in a form specified by the Lord Chancellor; or
 - (b) of the Director's own volition.
- (6) The Director must amend a certificate to record an amendment of a limitation or condition to which the determination is subject.
- (7) When the Director amends a certificate, the Director must send—
- (a) the amended certificate to the provider; and
 - (b) a copy of the amended certificate to the individual.
- (8) Where the Director withdraws a determination, the Director must withdraw the certificate recording that determination and notify the provider.

Textual Amendments

- F22** Words in [reg. 37\(2\)\(b\)](#) inserted (20.2.2019) by [The Civil Legal Aid \(Procedure\) \(Amendment\) Regulations 2019 \(S.I. 2019/130\)](#), [regs. 1\(1\), 2\(3\)](#) (with [reg. 3](#))

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Notice of determinations **E+W**

38.—(1) Where the Director issues a certificate in relation to proceedings that have been issued, the provider must—

- (a) send a copy of the certificate to the court or tribunal, and
- (b) give notice of the determination in a form specified by the Lord Chancellor to all parties to the proceedings.

(2) Where the Director issues a certificate before proceedings are issued, the provider must—

- (a) give notice of the determination in a form specified by the Lord Chancellor to any proposed party to those proceedings except in proceedings relating to a family dispute; and
- (b) when proceedings are issued—
 - (i) send a copy of the certificate to the court or tribunal, and
 - (ii) give notice of the determination in a form specified by the Lord Chancellor to all parties to the proceedings.

(3) The provider must give notice of a determination in accordance with paragraph (1)(b) to any person subsequently joined as a party to the proceedings.

(4) Where, in relation to proceedings which have been issued, the Director amends a certificate to alter the description of the proceedings or the form of civil legal services to which the determination relates, the provider must—

- (a) send a copy of the amended certificate to the court or tribunal; and
- (b) give notice of the new or amended determination in a form specified by the Lord Chancellor to all parties to the proceedings, unless the Director directs otherwise.

(5) Nothing in this regulation entitles a party or proposed party to the proceedings to which the determination relates to see the certificate recording the determination.

Authorised representation **E+W**

39.—(1) Where the Director has authorised a provider to make a determination under section 9 of the Act that an individual qualifies for legal representation that is Licensed Work (“authorised representation”), the provider must, within 5 business days of making a determination, notify the Director in a form specified by the Lord Chancellor.

(2) The Director may remove or amend any limitation or condition to which a determination about authorised representation is subject or impose a new limitation or condition on such a determination.

(3) The following functions of the Director may not be delegated to the provider—

- (a) issuing a certificate recording the determination in relation to authorised representation;
- (b) amending a limitation or condition to which the determination is subject (unless the determination relates to emergency representation);
- (c) the withdrawal of the determination; and
- (d) conducting a review in relation to authorised representation under regulation 44.

(4) Where, following a review in relation to authorised representation under regulation 44, the Director makes a determination that an individual qualifies for the legal representation which was the subject of the application, the individual may choose a different authorised provider from the provider named on the original application.

Reporting duties **E+W**

40.—(1) The individual (or the person acting on behalf of the individual) must—

- (a) immediately notify the provider of any change in circumstances which might affect a determination that the individual qualifies for civil legal services; and
 - (b) attend a meeting with the Director if requested to do so.
- (2) The provider must report to the Director any change in the individual's circumstances which become known to the provider and which might affect a determination that an individual qualifies for civil legal services.
- (3) The provider must report to the Director—
- (a) a refusal by the individual (or the person acting on behalf of the individual) to accept—
 - (i) an offer to settle;
 - (ii) an offer to mediate any issue in the proceedings;
 - (iii) an offer to use an alternative dispute resolution procedure; or
 - (iv) any other offer of settlement which the provider considers to be reasonable;
 - (b) any aspect of the conduct of the individual (or the person acting on behalf of the individual) which the provider considers relevant to the determination that the individual qualifies for civil legal services;
 - (c) notice of any other party to the proceedings to which the determination relates qualifying for civil legal services;
 - (d) any other information which might affect a determination that an individual qualifies for civil legal services; or
 - (e) the fact that the provider has concluded that it is no longer possible to act for the individual, together with reasons for the provider's conclusion.
- (4) Where an authorised person within the meaning of the Legal Services Act 2007 ^{M2} has been instructed by the provider to provide civil legal services in relation to a determination, the reporting requirements described in paragraphs (2) and (3) also apply to that person.

Marginal Citations

M2 2007 c. 29.

Position of providers **E+W**

41.—(1) Notwithstanding the relationship between an individual and the provider or any privilege arising out of that relationship, where the provider knows or suspects that the individual (or the person acting on behalf of the individual)—

- (a) has failed without good reason to comply with a requirement to provide information or documents; or
- (b) in providing required information or documents has made a statement or representation knowing or believing it to be false,

the provider must immediately report the relevant circumstances to the Director.

(2) A provider's retainer terminates upon the withdrawal of a determination that an individual qualifies for Licensed Work but that termination does not take effect until—

- (a) the conclusion of any review or appeal for which provision is made in this Part; and
- (b) the provider has complied with any obligation to give notice of the withdrawal of the determination.

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(3) Where an authorised person within the meaning of the Legal Services Act 2007 has been instructed (by a provider with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act) to provide civil legal services in relation to a determination, the reporting requirement described in paragraph (1) also applies to that authorised person.

Withdrawal of determinations **E+W**

- 42.**—(1) The Director may withdraw a determination where—
- (a) the individual no longer qualifies for the services to be made available by the determination in accordance with—
 - (i) the criteria set out in regulations made under section 11 of the Act; or
 - (ii) regulations made under section 21 of the Act;
 - (b) the services made available by the determination have been provided;
 - (c) the proceedings to which the determination relates have been concluded;
 - (d) the service made available by the determination was investigative representation and sufficient work has been carried out to determine the prospects of success and the cost benefit criteria;
 - (e) the individual consents;
 - (f) the individual has died;
 - (g) a bankruptcy order has been made against the individual;
 - (h) the individual has—
 - (i) failed without good reason to comply with a requirement to provide information or documents;
 - (ii) failed without good reason to attend a meeting with the Director; or
 - (iii) in providing required information or documents, made a statement or representation knowing or believing it to be false;
 - (i) an order has been made under section 42 of the Senior Courts Act 1981 ^{M3} or section 33 of the Employment Tribunals Act 1996 ^{M4} (restriction of vexatious proceedings) in relation to the individual;
 - (j) the Director is satisfied that the individual has required the proceedings to be conducted unreasonably so as to incur unjustifiable expense; or
 - ^{F23}(k) in relation to services described in paragraphs 12 and 13 of Part 1 of Schedule 1 to the Act, the evidence included with the application was—
 - (i) a conviction for an offence and that conviction has subsequently been quashed;
 - (ii) evidence of ongoing criminal proceedings and those proceedings have subsequently been concluded without a conviction;
 - (iii) evidence described in paragraph 7 of Schedule 1 or paragraph 5 of Schedule 2 where—
 - (a) the order was obtained without notice to the respondent; and
 - (b) that order has subsequently been set aside by the court;
 - (iv) evidence described in paragraph 7 of Schedule 1 where the application for a domestic violence protection order has been made under section 27 of the Crime and Security Act 2010 but has been unsuccessful on account of the conditions set out in section 28 of that Act not having been satisfied;

- (v) evidence described in paragraph 1 of Schedule 1 where no charge is brought for the domestic violence offence (within the meaning of Schedule 1) and the Director is satisfied that it is unlikely that such a charge will be brought;
 - (vi) evidence described in paragraphs 16 to 18 of Schedule 1 and a public authority has confirmed in writing that it is satisfied—
 - (a) there has not been domestic violence between A and B; or
 - (b) A was not at any time at risk of being the victim of domestic violenceand in this sub-paragraph “public authority” has the meaning given by Schedule 1 to these Regulations;
 - (vii) evidence described in paragraph 1 of Schedule 2 where no charge is brought for the child abuse offence (within the meaning of Schedule 2) and the Director is satisfied that it is unlikely that such a charge will be brought;
 - (viii) evidence of an application described in paragraph 9 of Schedule 2 and that application has subsequently been withdrawn or refused,
unless the individual provides another form of evidence (excluding evidence described in paragraphs (i) to (viii)) which would have been permitted in accordance with these Regulations at the date of the application.]
- (2) In any of the circumstances described in paragraph (1)(h) to (j) the Director may—
- (a) revoke the determination; and
 - (b) withdraw any other determination that the individual qualifies for civil legal services.
- (3) Except in the circumstances described in paragraph (1)(a)(ii), (b), (e) and (f), before withdrawing a determination, the Director must—
- (a) notify the individual of the intention to withdraw the determination;
 - (b) invite written representations within a specified time limit;
 - (c) upon the expiry of the time limit specified under sub-paragraph (b)—
 - (i) consider the written representations;
 - (ii) decide whether to withdraw the determination; and
 - (iii) notify the individual of the decision as to whether to withdraw the determination.
- (4) The withdrawal is to be treated as having effect from the date of the notification described in paragraph (3)(a).
- (5) The withdrawal of a determination does not affect the provider's right to remuneration for work done prior to the date of the withdrawal unless the provider failed without good reason to comply with the reporting requirements in regulations 40(2) and (3) and 41(1).
- (6) Where the Director has withdrawn a determination, the Director may subsequently determine that the withdrawal is to be treated as a revocation following the provision of new information which demonstrates that the circumstances described in paragraph (1)(h) to (j) were present at the time of withdrawal.

Textual Amendments

- F23** Reg. 42(1)(k) substituted (8.1.2018) by [The Civil Legal Aid \(Procedure\) \(Amendment\) \(No. 2\) Regulations 2017 \(S.I. 2017/1237\)](#), regs. 1(2), 2(4) (with reg. 3)

Marginal Citations

- M3** 1981 c. 54.

Changes to legislation: The Civil Legal Aid (Procedure) Regulations 2012, PART 4 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

M4 1996 c. 17.

Reasons **E+W**

43.—(1) Where the Director has—

- (a) determined that the services which are the subject of the application are not civil legal services described in Part 1 of Schedule 1 to the Act;
- (b) determined that an individual does not qualify for particular services;
- (c) determined that an individual does qualify but not on the terms requested in the application (whether because of a limitation or condition to which the determination has been made subject or otherwise);
- (d) amended a limitation or condition to which the determination is subject; or
- (e) withdrawn a determination,

the Director must notify the individual.

(2) In the circumstances described in paragraph (1), the Director must send to the individual and provider or proposed provider—

- (a) written notice of the determination, amendment or withdrawal of a determination in a form specified by the Lord Chancellor;
- (b) written reasons for the determination, amendment or withdrawal of a determination; and
- (c) notice of the right to a review of the determination, amendment or withdrawal of a determination,

and may provide information about alternative ways of obtaining or funding civil legal services.

Review **E+W**

44.—(1) An individual may apply for a review by the Director of any of the following—

- (a) a determination that the services which are the subject of the application are not civil legal services described in Part 1 of Schedule 1 to the Act;
- (b) a determination that an individual does not qualify for the civil legal services which are the subject of the application;
- (c) a determination that an individual qualifies for civil legal services but not on the terms requested in the application (whether because of a limitation or condition to which the determination has been made subject or otherwise);
- (d) an amendment of, or refusal to amend, a limitation or condition to which the determination is subject; or
- (e) a withdrawal of a determination,

within fourteen days of receipt of the notice of the determination, amendment or withdrawal (“the original decision”).

(2) The application for review must be in a form specified by the Lord Chancellor and must include any written representations supporting the application.

(3) The Director must consider the application and any written representations and may confirm or amend the original decision or substitute a new determination, amendment or withdrawal.

(4) Where the original decision was the withdrawal of a determination and, following the review, the Director substitutes a determination for that withdrawal, the determination takes effect (unless the Director directs otherwise) as if the original decision had not been made.

(5) The Director must ensure that a certificate accurately records the civil legal services for which an individual qualifies following the review.

(6) The Director must notify the individual and the provider or proposed provider identified in the individual's application of—

- (a) the decision following the review; and
- (b) any right of appeal to an adjudicator.

Appeal: general **E+W**

45.—(1) Where an individual remains dissatisfied following a review, the individual may appeal to an adjudicator unless the determination in question is—

- (a) a determination under section 21 of the Act; or
- (b) a determination that the services which are the subject of the application are not civil legal services described in Part 1 of Schedule 1 to the Act.

(2) An appeal must be considered without a hearing unless the adjudicator considers that it is in the interests of justice for the individual or a person acting on their behalf to make oral representations.

(3) Where the Director or adjudicator considers that the appeal is of exceptional complexity or importance, the Director or adjudicator may refer the appeal to a panel of two or more adjudicators.

Appeal: power to refer for reconsideration **E+W**

46.—(1) The adjudicator may do one or more of the following—

- (a) decide certain issues in accordance with regulation 47; and
- (b) consider whether the determination, amendment or withdrawal under appeal (“the decision under appeal”) was unlawful or unreasonable.

(2) Where the adjudicator decides that the decision under appeal was not unlawful or unreasonable—

- (a) the adjudicator must confirm the decision under appeal, giving written reasons; and
- (b) the Director must notify the individual.

(3) Where the adjudicator decides that the decision under appeal was unlawful or unreasonable—

- (a) the adjudicator must refer the decision under appeal to the Director for reconsideration, giving written reasons; and
- (b) the Director must notify the individual.

(4) Where new information relevant to the decision under appeal is provided by the individual following the review, the adjudicator may refer the decision under appeal to the Director for reconsideration instead of determining the appeal.

Appeal: power to decide certain issues **E+W**

47.—(1) The adjudicator may decide any of the following issues on appeal and the decision of the adjudicator on any such issue is binding on the Director—

- (a) the prospects of success;
- (b) the cost benefit criteria;
- (c) whether a case has overwhelming importance to the individual; and
- (d) whether a determination should be made, withdrawn or revoked in light of the individual's conduct.

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- (2) Where the adjudicator confirms the Director's assessment of any of the issues described in paragraph (1)—
- (a) the adjudicator must give written reasons, and
 - (b) the Director must notify the individual.
- (3) Where the adjudicator disagrees with the Director's assessment of any of the issues described in paragraph (1), the adjudicator must—
- (a) refer the determination, amendment or withdrawal under appeal to the Director for reconsideration, giving written reasons; and
 - (b) the Director must notify the individual.
- (4) In this regulation, “case with overwhelming importance to the individual” means a case which is not primarily a claim for damages or other sum of money and which relates to one or more of the following—
- (a) the life, liberty or physical safety of the individual or a member of that individual's family (an individual is a member of another individual's family if the requirements of section 10(6) of the Act are met); or
 - (b) the immediate risk that the individual may become homeless.

Appeal: reconsideration by the Director E+W

- 48.**—(1) Where a determination, amendment or withdrawal (“the decision under appeal”) is referred to the Director by the adjudicator under regulation 46 or 47, the Director must reconsider that decision taking into account—
- (a) the adjudicator's decision and written reasons; and
 - (b) any new information provided by the individual following the review.
- (2) After reconsidering the decision under appeal, the Director may confirm or amend that decision or substitute a new determination, amendment or withdrawal.
- (3) The Director must notify the individual and the provider or proposed provider identified in the individual's application of the decision following the appeal, giving written reasons.
- (4) Where the Director confirms the decision under appeal but for reasons that are materially different from the reasons for the decision under appeal, the individual may make a further appeal to the adjudicator (using the appeal provisions in this Part), following which there is no further review or appeal under these Regulations.
- (5) Where the decision under appeal was the withdrawal of a determination and, following the appeal, the Director substitutes a determination for that withdrawal, the determination takes effect (unless the Director directs otherwise) as if the original withdrawal had not been made.
- (6) The Director must ensure that a certificate accurately records the civil legal services for which an individual qualifies following the appeal.

Notice to third parties E+W

- 49.** Where the Director withdraws a determination and the proceedings to which the determination related have not been concluded, the provider must give notice of the withdrawal in a form specified by the Lord Chancellor to—
- (a) the court or tribunal; and
 - (b) any parties to the proceedings who were given notice of the determination under regulation 38.

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Changes and effects yet to be applied to :

- [table of contents words inserted by S.I. 2016/561 reg. 2\(2\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 6A inserted by [S.I. 2023/150 art. 7\(3\)\(a\)](#)