

2015 No. 898

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil Legal Aid (Remuneration) (Amendment) Regulations
2015**

<i>Made</i> - - - -	<i>25th March 2015</i>
<i>Laid before Parliament</i>	<i>26th March 2015</i>
<i>Coming into force</i> - -	<i>27th March 2015</i>

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).

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Remuneration) (Amendment) Regulations 2015 and come into force on 27th of March 2015.

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 regulation 5 (non application to civil legal services provided under certain contracts)—
- (a) in paragraph (1), for “6” substitute “5A”;
 - (b) in paragraph (3), before “7 and 10” insert “5A,”, and
 - (c) in paragraph (4), for “regulation 10,” substitute “regulations 5A and 10,”.
- (3) Before regulation 6 (remuneration for civil legal services: general) insert—

“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—

- (a) the court gives permission to bring judicial review proceedings;
- (b) the court neither refuses nor gives permission to bring judicial review proceedings and the Lord Chancellor considers that it is reasonable to pay remuneration in the circumstances of the case, taking into account, in particular—

(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, amended by S.I. 2013/2877; there are other amending instruments but none is relevant. S.I. 2014/607, which amended S.I. 2013/422, was quashed by the High Court by order dated 19th March 2015 in *Q* (on the application of Ben Hoare Bell Solicitors & others) v Lord Chancellor, [2015] EWHC 523 (Admin).

- (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;
- (c) the defendant withdraws the decision to which the application for judicial review relates and the withdrawal results in the court—
- (i) refusing permission to bring judicial review proceedings, or
 - (ii) neither refusing nor giving permission;
- (d) the court orders an oral hearing to consider—
- (i) whether to give permission to bring judicial review proceedings;
 - (ii) whether to give permission to bring a relevant appeal, or
 - (iii) a relevant appeal, or
- (e) the court orders a rolled-up hearing.
- (2) Nothing in this regulation affects any payment—
- (a) by the Lord Chancellor of disbursements incurred by a provider in accordance with the relevant contract, or
 - (b) 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 or 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 under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
 - (c) “application for judicial review” means an application for judicial review made or treated as made in accordance with—
 - (i) Part 54 of the Procedure Rules, or
 - (ii) Part 4 of the Tribunal Rules,
 and includes bringing a relevant appeal and making an application for permission to bring a relevant appeal, but does not include a relevant application for interim relief;
 - (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^(a);
 - (f) “issued” includes—
 - (i) the sending of the application by the Upper Tribunal under rule 28(8) of the Tribunal Rules^(b), or

(a) 2007 c. 15.

(b) Amended by S.I. 2011/2343 and 2013/2067.

(ii) the provision of the application by the applicant under rule 28A(2)(a) of the Tribunal Rules(a),

to each person named in the application as a respondent or interested party;

- (g) “Procedure Rules” means the Civil Procedure Rules 1998(b)
- (h) “relevant appeal” means an appeal against a decision to refuse permission to bring judicial review proceedings under—
- (i) Part 52 of the Procedure Rules, or
 - (ii) Part 7 of the Tribunal Rules;
- (i) “relevant application for interim relief” means application for an interim remedy under—
- (i) Part 25 of the Procedure Rules, or
 - (ii) Part 4 of the Tribunal Rules;
- (j) “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) governs the provision of the civil legal services for which remuneration is claimed(c);
- (k) “rolled-up hearing” means a hearing at which the court considers the application for judicial review (including whether to give permission to bring judicial review proceedings);
- (l) “Tribunal Rules” means the Tribunal Procedure (Upper Tribunal) Rules 2008(d).”

(4) At the beginning of regulation 6(2), insert “Subject to regulation 5A,”.

(5) 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,”.

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

“(2A) Where an application for judicial review is issued and none of sub-paragraphs (a) to (e) of regulation 5A(1) applies, the barrister must repay to the Lord Chancellor any amount paid on account under paragraph (1) of this regulation for civil legal services consisting of making that application.”

Transitional provision

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.—(1) In regulation 3, a “pre-commencement application for civil legal services” means an application for civil legal services that is—

- (a) made before 27th March 2015, or
- (b) a new application for civil legal services within the meaning of paragraph (3).

(a) Inserted by S.I. 2011/2343 and amended by S.I. 2013/2067.

(b) S.I. 1998/3132 (L. 17), to which there are amendments not relevant to these Regulations.

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

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

(2) For the purpose of sub-paragraph (1)(a), an application is made before 27th March 2015 if the application is—

- (a) for Licensed Work or an exceptional case determination under section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, other than an application for emergency representation, and the application is—
 - (i) signed and dated before 27th March 2015 and received by the Director by 5.00pm on 31st March 2015, or
 - (ii) submitted through the Client and Cost Management System before 27th March 2015, or
- (b) for legal representation provided as emergency representation and the application—
 - (i) results in a determination being made by a provider before 27th March 2015 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 27th March 2015, or
 - (iii) is submitted through the Client and Cost Management System before 27th March 2015.

(3) An application is a new application for civil legal services if it is made by a person on or after 27th March 2015 and the following conditions are met—

- (a) civil legal services that are Licensed Work have been provided to that person as a result of a pre-commencement application for civil legal services (“the original application”);
- (b) the application for civil legal services made on or after 27th March 2015 (“the further application”) 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, 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.

(4) In this regulation—

- (a) “the Procedure Regulations” means the Civil Legal Aid (Procedure) Regulations 2012(a);
- (b) “Client and Cost Management System” means the client and cost management system used by the Director in relation to applications for civil legal services;
- (c) “Controlled Work” has the meaning given in regulation 21(2) of the Procedure Regulations;
- (d) “emergency representation” means legal representation that is not Controlled Work, which is provided following a determination made on an urgent application;
- (e) “legal representation” has the meaning given in regulation 18 of the Civil Legal Aid (Merits Criteria) Regulations 2013(b);
- (f) “Licensed Work” has the meaning given in regulation 29(2) of the Procedure Regulations;
- (g) “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(c).

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

25th March 2015

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

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 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”). These Regulations replace the Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014 (S.I. 2014/607), which were quashed by the High Court by order dated 19th March 2015 in *Q* (on the application of Ben Hoare Bell Solicitors & others) v Lord Chancellor, [2015] EWHC 523 (Admin).

Regulation 2(3) inserts a new regulation 5A into the Remuneration Regulations. New 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 (a) permission to proceed is given by the court; (b) permission is neither given nor refused and the Lord Chancellor considers that it is reasonable to pay remuneration (taking into account a number of factors in particular); (c) the defendant withdraws the decision to which the application for judicial review relates (and the withdrawal results in the court refusing permission or neither refusing nor giving permission); (d) the court orders an oral hearing; or (e) the court orders a rolled-up hearing.

New regulation 5A does not affect the payment of disbursements incurred in accordance with the contract under which the civil legal services are provided. New regulation 5A also does not affect the discretion of the Lord Chancellor to make payments on account 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. Regulation 2(6) of these Regulations amends regulation 12 to provide that where the Lord Chancellor does not pay remuneration for the application for judicial review under new regulation 5A, the barrister must repay the amount paid to them under regulation 12 of the Remuneration Regulations.

Regulation 2(2) of these Regulations provides that 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(4) and (5) provides 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. Regulation 4 defines a “pre-commencement application”.

An 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/>. That impact assessment relates to the policy implemented by this instrument in so far as it relates to regulation 5A(1)(a) and (b) of the Remuneration Regulations. An impact assessment of the policy implemented by this instrument in so far as it relates to regulation 5A(1)(c) to (e) has not been produced; the impact of those provisions would be to reduce the costs as previously assessed for those providing civil legal services to which regulation 5A applies.

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