

**2016 No. 516**

**LEGAL AID AND ADVICE, ENGLAND AND WALES**

**The Civil Legal Aid (Procedure) (Amendment) Regulations  
2016**

*Made* - - - - - *18th April 2016*

*Laid before Parliament* *21st April 2016*

*Coming into force in accordance with regulation 1(2)*

The Lord Chancellor makes the following Regulations(a) in exercise of the powers conferred by sections 12(2) and (3)(e) and (g), 41(1)(a) and (b), and 41(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(b).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Civil Legal Aid (Procedure) (Amendment) Regulations 2016.

(2) These Regulations come into force for the purposes of regulation 2(2) on 25th April 2016 and for all other purposes on 16th May 2016.

(3) In these Regulations, the “Procedure Regulations” means the Civil Legal Aid (Procedure) Regulations 2012(c).

**Amendments to the Procedure Regulations**

2.—(1) The Procedure Regulations are amended as follows.

(2) For regulation 33(2) (supporting documents: domestic violence)(d), substitute—

“(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 following forms—

- (a) a relevant unspent conviction for a domestic violence offence;
- (b) a relevant police caution for a domestic violence offence given within the sixty month period immediately preceding the date of the application for civil legal services;
- (c) evidence of relevant criminal proceedings for a domestic violence offence which have not concluded;

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(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 (except in Schedule 6).

(b) 2012 c. 10.

(c) S.I. 2012/3098.

(d) Amended by S.I. 2014/814 and 2015/1416. On 9th March 2016, the Court of Appeal by order quashed references in regulation 33(2) to the requirement for evidence in support of an application for civil legal services to be no more than 24 months old (*R (on the application of Rights of Women) v The Lord Chancellor* [2016] EWCA Civ 91).

- (d) a relevant protective injunction which is in force or which was granted within the sixty month period immediately preceding the date of the application for civil legal services;
- (e) an undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996<sup>(a)</sup> (or given in Scotland or Northern Ireland in place of a protective injunction)—
  - (i) by the individual (“B”) with whom the applicant for civil legal services (“A”) was in a family relationship giving rise to the need for the civil legal services which are the subject of the application; and
  - (ii) within the sixty month period immediately preceding the date of the application for civil legal services,
 provided that a cross-undertaking was not given by A;
- (ea) evidence that B is on relevant police bail for a domestic violence offence;
- (eb) a relevant conviction for a domestic violence offence where B was convicted of that offence within the sixty month period immediately preceding the date of the application for civil legal services;
- (f) a letter from any person who is a member of a multi-agency risk assessment conference confirming that—
  - (i) A was referred to the conference as a victim of domestic violence; and
  - (ii) the conference has, within the sixty month period immediately preceding the date of the application for civil legal services, put in place a plan to protect A from a risk of harm by B;
- (g) a copy of a finding of fact, made in proceedings in the United Kingdom within the sixty month period immediately preceding the date of the application for civil legal services, that there has been domestic violence by B giving rise to a risk of harm to A;
- (h) a letter or report from a health professional who has access to the medical records of A confirming that that professional, or another health professional—
  - (i) has examined A in person within the sixty month period immediately preceding the date of the application for civil legal service; and
  - (ii) was satisfied following that examination that A had injuries or a condition consistent with those of a victim of domestic violence;
- (i) a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the sixty month period immediately preceding the date of the application, A was assessed as being, or at risk of being, a victim of domestic violence by B (or a copy of that assessment);
- (j) a letter or report from a domestic violence support organisation in the United Kingdom confirming—
  - (i) that within the sixty month period immediately preceding the date of the application for civil legal services, A had been accommodated in a refuge;
  - (ii) the dates on which A was admitted to and, where relevant, left the refuge; and
  - (iii) that A was admitted to the refuge because of allegations by A of domestic violence;
- (k) a letter or report from a domestic violence support organisation in the United Kingdom confirming—

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(a) 1996 c. 27; section 46 was amended by paragraph 37 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28) and paragraphs 129 and 131 of Schedule 11 to the Crime and Courts Act 2013 (c. 22). Section 63E was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007 (c. 20) and amended by section 120(1) and (3) of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

- (i) that A was, within the sixty month period immediately preceding the date of the application for civil legal services, refused admission to a refuge, on account of there being insufficient accommodation available in the refuge; and
- (ii) the date on which A was refused admission to the refuge;
- (l) a letter or report from—
  - (i) the person to whom the referral described below was made;
  - (ii) the health professional who made the referral described below; or
  - (iii) a health professional who has access to the medical records of A, confirming that there was, within the sixty month period immediately preceding the date of the application for civil legal services, a referral by a health professional of A to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence;
- (m) a relevant domestic violence protection notice issued under section 24 of the Crime and Security Act 2010<sup>(a)</sup>, or a relevant domestic violence protection order made under section 28 of that Act, against B within the sixty month period immediately preceding the date of the application for civil legal services;
- (n) evidence of a relevant court order binding over B in connection with a domestic violence offence, which is in force or which was granted within the sixty month period immediately preceding the date of application for civil legal services;
- (o) evidence which the Director is satisfied demonstrates that A has been, or is at risk of being, the victim of domestic violence by B in the form of abuse which relates to financial matters, where that evidence dates within the sixty month period immediately preceding the date of, or is dated on the date of, the application for civil legal services.”.

(3) In regulation 33(3) (definitions)<sup>(b)</sup>, in the definition of “protective injunction”, after subparagraph (i) insert—

- “(j) a female genital mutilation protection order under paragraph 1 or 18 of Schedule 2 to the Female Genital Mutilation Act 2003<sup>(c)</sup>;
- (k) a violent offender order within the meaning of section 98 of the Criminal Justice and Immigration Act 2008<sup>(d)</sup>”.

### **Transitional provision**

**3.—**(1) The amendments made by regulation 2 do not apply to an application for civil legal services that is made before the commencement date.

(2) For the purpose of this regulation, an application is to be treated as being made before the commencement date if the application is—

- (a) for Controlled Work and the application is signed and dated before the commencement date;
- (b) for Licensed Work, other than an application for emergency representation, and the application is—
  - (i) signed and dated before the commencement date and received by the Director by 5.00 pm on the seventh day after the commencement date, or
  - (ii) submitted through the Client and Cost Management System before the commencement date, or

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<sup>(a)</sup> 2010 c. 17.

<sup>(b)</sup> Amended by S.I. 2014/814 and 2015/1416.

<sup>(c)</sup> 2003 c. 31; Schedule 2 was inserted by section 73(2) of the Serious Crime Act 2015 (c. 9).

<sup>(d)</sup> 2008 c. 4; section 98 was amended by section 119(1) of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).

- (c) for emergency representation and the application—
  - (i) results in a determination being made by a provider before the commencement date 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 the commencement date, or
  - (iii) is submitted through the Client and Cost Management System before the commencement date.

(3) In this regulation—

“Client and Cost Management System” means the client and cost management system used by the Director in relation to applications for civil legal services;

“commencement date” is—

(a) in relation to the amendments made by regulation 2(2), 25th April 2016; and

(b) in relation to the amendments made by regulation 2(3), 16th May 2016;

“Controlled Work” has the meaning given in regulation 21(2) of the Procedure Regulations;

“emergency representation” has the meaning given in regulation 2 of the Procedure Regulations;

“Licensed Work” has the meaning given in regulation 29(2) of the Procedure Regulations;

“provider” means a person who provides civil legal services under Part 1 (legal aid) of the Act;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales for the purposes of paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971(a).

*Shailesh Vara*  
Parliamentary Under Secretary of State  
Ministry of Justice

18th April 2016

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012 (S.I. 2012/3098) (“the Procedure Regulations”). The Procedure Regulations make provision about the making and withdrawal of determinations that an individual qualifies for civil legal services under sections 9 and 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”).

Regulation 2(2) of this instrument substitutes a new regulation 33(2) which sets out the forms of evidence of domestic violence which must be provided with an application for civil legal services under paragraph 12 of Part 1 of Schedule 1 to the Act. The new regulation 33(2) includes a time limit of sixty months for certain types of evidence of domestic violence, or risk of domestic violence, and introduces a new form of evidence where the relevant domestic violence is in the form of abuse which relates to financial matters.

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(a) 1971 c. 80.

Regulation 2(3) of this instrument extends the definition of “protective injunction” in regulation 33(3) of the Procedure Regulations to include female genital mutilation protection orders and violent offender orders, for the purpose of the evidence requirements in regulations 33(2) and 34(2) of those Regulations (supporting documents in relation to domestic violence and protection of children).

Regulation 3 of this instrument provides that the amendments made by regulation 2 do not apply to an application for civil legal services made before these Regulations come into force.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Ministry of Justice, 102 Petty France, London SW1H 9AJ and is published with an Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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