

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 65 and 66 of the Domestic Abuse Act 2021 (c. 17) introduce new Part 4A into the Matrimonial and Family Proceedings Act 1984 and new Part 7A into the Courts Act 2003, respectively. Those provisions operate in family and civil proceedings to prohibit cross-examination in person between a party and a witness in defined circumstances, including where there is evidence of domestic abuse between them.

Where a party to family or civil proceedings is prohibited from cross-examining a witness in person by virtue of these provisions, the court is required to consider whether there is a satisfactory alternative means for the witness to be cross-examined, or for obtaining the evidence that the witness might have given under cross-examination. If the court concludes that there is no satisfactory alternative means that can be used, it must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a court-appointed ‘qualified legal representative’. Power is conferred on the Lord Chancellor to make provision by regulations for the payment out of central funds of sums to cover the properly incurred fees, costs and expenses of a legal representative appointed under new section 31W(6) of the Matrimonial and Family Proceedings Act 1984 or new section 85K(6) of the Courts Act 2003.

Regulation 1 defines the respective case types for the purposes of calculating the fee payable to a qualified legal representative, in accordance with regulation 2 and the provisions of the Schedule.

Regulation 3 makes provision for payment of an additional bolt-on fee where the bundle of documents for a hearing exceeds 350 pages. Regulation 4 confirms the amounts specified in the Schedule are exclusive of Value Added Tax.

Regulation 5 makes provision for payment of a fee where a qualified legal representative has undertaken preparatory work for a hearing which is subsequently cancelled.

Regulations 6 and 7 make procedural provision in respect of the claims for and the payment of fees.

Part 1 of the Schedule prescribes the fixed fees payable in family proceedings in accordance with the case type, the type of hearing and the level of judge before whom the matter is heard. Part 2 of the Schedule makes similar provision in relation to civil proceedings. Part 3 of the Schedule prescribes the bolt-on fee payable in both family and civil proceedings pursuant to Regulation 3.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

Changes to legislation:

There are currently no known outstanding effects for the The Prohibition of Cross-Examination in Person (Fees of Court-Appointed Qualified Legal Representatives) Regulations 2022.