

2023 No. 45

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023

<i>Made</i>	- - - -	<i>18th January 2023</i>
<i>Laid before Parliament</i>		<i>19th January 2023</i>
<i>Coming into force</i>	- -	<i>10th February 2023</i>

The Lord Chancellor, in exercise of the powers conferred by sections 21(2), 23(5)(a) and 41(1)(a) and (b), (2)(a) and (b) and 3(c) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(a), makes the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2023 and come into force on 10 February 2023.

(2) These Regulations extend to England and Wales.

Amendments to the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

2.—(1) The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013(b) are amended as follows.

(2) At the end of sub-paragraph (m) of regulation 5(1), omit “and”.

(3) After regulation 5(1)(n) insert—

“(o) legal help in a matter described in paragraph 2 of Part 1 of Schedule 1 to the Act where—

(i) the applicant is a foster parent or an approved prospective adoptive parent of a child who is looked after by a local authority; and

(ii) the applicant makes or proposes to make an application to appeal to the First-tier Tribunal in accordance with section 51 of the Children and Families Act 2014(c) in respect of that child;

(p) legal representation in relation to an appeal to the First-tier Tribunal (Special Educational Needs and Disability) where—

(i) the applicant is a foster parent or an approved prospective adoptive parent of a child who is looked after by a local authority;

(a) 2012 c. 10

(b) S.I. 2013/480, as amended by S.I. 2013/753, S.I. 2014/812, S.I. 2014/2701, S.I. 2021/1423. There are other amending instruments, but none are relevant.

(c) 2015 c. 6

- (ii) the applicant makes an application to the First-tier Tribunal in accordance with section 51 of the Children and Families Act 2014 in respect of that child; and
 - (iii) the Director has made a determination under section 10(3) of the Act;
 - (q) legal help in a matter described in paragraph 2 of Part 1 of Schedule 1 to the Act where—
 - (i) the applicant was a foster parent of a young person with whom the young person is continuing to reside under a staying put arrangement;
 - (ii) the applicant making or proposing to make an application to appeal to the First-tier Tribunal is a person described in paragraphs (a), (b) or (c) of section 80(6) of the Children and Families Act 2014; and
 - (iii) the young person cannot make the application themselves; and
 - (r) legal representation in relation to an appeal to the First-tier Tribunal (Special Educational Needs and Disability) where—
 - (i) the applicant was a foster parent of a young person with whom the young person is continuing to reside under a staying put arrangement;
 - (ii) the applicant making the application to appeal to the First-tier Tribunal is a person described in paragraphs (a), (b) or (c) of section 80(6) of the Children and Families Act 2014;
 - (iii) the young person cannot make an application themselves; and
 - (iv) the Director has made a determination under section 10(3) of the Act.”.
- (4) In regulation 5(2)—
- (a) in the relevant places, insert—
 - ““approved prospective adoptive parent” means an individual who has received notification from a local authority or an adoption agency that they have decided to approve the prospective adopter as suitable to adopt a child, in accordance with the Adoption Agencies Regulations 2005(a) or the Adoption Agencies (Wales) Regulations 2005(b);”;
 - ““child who is looked after by a local authority” has the meaning set out in section 22 of the Children Act 1989(c) and section 74 of the Social Services and Well-being (Wales) Act 2014(d);”;
 - ““foster parent” means a local authority foster parent as defined in section 105(1) of the Children Act 1989;”;
 - ““staying put arrangement” has the meaning in section 23CZA of the Children Act 1989;”;
 - ““young person” has the meaning in section 83 of the Children and Families Act 2014.”;
 - (b) at the end of the definition of “special Children Act 1989 case” omit “and”;
 - (c) at the end of the definition of “TPIM proceedings” insert “; and”.

Transitional provisions

3.—(1) Paragraph (2) applies to an application for civil legal services that is made before the relevant date and has yet to be determined and has not been withdrawn on the relevant date.

(2) Where this paragraph applies, an application is to be treated on and after the relevant date as an application falling under the 2013 Regulations as amended by these Regulations.

(a) S.I. 2005/389, there are amending instruments but none are relevant.
 (b) S.I. 2005/1313 (W. 95), there are amending instruments but none are relevant.
 (c) 1989 c. 10
 (d) 2014 anaw 4

(3) Paragraph (4) applies to an application for civil legal services that was determined before the relevant date but to which regulation 5(1)(o), (p), (q) or (r) would have applied had it been determined on or after that date.

(4) Where this paragraph applies, the applicant is not liable for any contributions payable under section 23 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on or after the relevant date for legal services relating to that application.

(5) For the purposes of this regulation, an application for civil legal services is made on the date that it is—

- (a) submitted to the Client and Cost Management System; or
- (b) received by the Director.

(6) In this regulation—

“the 2013 Regulations” means the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013;

“approved prospective adoptive parent” means an individual who has received notification from a local authority or an adoption agency that they have decided to approve the prospective adopter as suitable to adopt a child, in accordance with the Adoption Agencies Regulations 2005(a) or the Adoption Agencies (Wales) Regulations 2005;

“child who is looked after by a local authority” has the meaning set out in section 22 of the Children Act 1989(b) and section 74 of the Social Services and Well-being (Wales) Act 2014;

“Client and Cost Management System” means the system used by the Director to manage applications for civil legal services;

“foster parent” means a local authority foster parent as defined in section 105(1) of the Children Act 1989;

“the relevant date” means the date on which these Regulations come into force;

“staying put arrangement” has the meaning in section 23CZA of the Children Act 1989.

Bellamy
Parliamentary Under Secretary of State
Ministry of Justice

18th January 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (S.I. 2013/480) (“the 2013 Regulations”).

Regulation 5 of the 2013 Regulations sets out a list of certain forms of civil legal services that are to be provided without a determination in respect of an individual’s financial resources. Regulation 2 adds four new sub-paragraphs to this list.

Regulation 2 provides that there is to be no determination in relation to the financial resources of an individual where that individual has made an application for legal help in a matter described in paragraph 2 of Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”). Regulation 2 also provides that there is to be no determination in relation to the financial resources of an individual where that individual has made an application for legal representation for an appeal to the First-tier Tribunal (Special Educational Needs and Disability) and the Director has made a relevant determination. Regulation 2 further confirms that these exemptions only apply where the individual making the application does so in respect of a child who is looked after by the local authority or in respect of a young person under certain

(a) S.I. 2005/389, there are amending instruments but none are relevant.
(b) 1989 c. 10

circumstances. However, the applicant must be a foster parent or an approved prospective adoptive parent of the child, or must be the young person's former foster parent but where the young person continues to reside with them in a "staying put" arrangement and the applicant is a person described in paragraphs (a), (b) or (c) of section 80(6) of the Children and Families Act 2014.

Regulation 3 provides a transitional provision to ensure that the amendments made by regulation 2 apply to applications for civil legal services described in regulation 2 where they have been made but not determined by the date that these Regulations come into force. It also provides that individuals who would have benefitted from regulation 5(1) (o), (p), (q) or (r) but for the determination already having been made are not liable to any further contributions once the Regulations come into force.

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

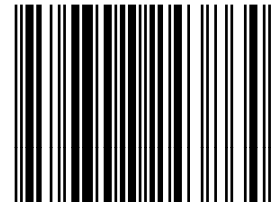
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£4.90

<http://www.legislation.gov.uk/id/uksi/2023/45>

ISBN 978-0-34-824386-4



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