STATUTORY INSTRUMENTS

2017 No. 1237

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Procedure) (Amendment) (No. 2) Regulations 2017

Made - - - - *7th December 2017*

Laid before Parliament *8th December 2017*

Coming into force 8th January 2018

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 12(2), (3)(e), (f) and (g), and (4), 41(1)(a) and (b), and 41(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**1**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Procedure) (Amendment) (No. 2) Regulations 2017.

(2) These Regulations come into force on 8th January 2018.

(3) In these Regulations, the "Procedure Regulations" means the Civil Legal Aid (Procedure) Regulations 2012(**2**).

Amendment of the Procedure Regulations

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

(2) In regulation 33 (supporting documents: domestic violence)(**3**)—

(a) in paragraph (2), for the words from "following forms" to the end of that paragraph, substitute "forms that is described in Schedule 1 to these Regulations";

(b) omit paragraphs (3) and (4).

(3) In regulation 34 (supporting documents: protection of children)(**4**)—

(**1**) 2012 c. 10. See section 42(1) for the meaning of "regulations".
(**2**) S.I. 2012/3098.
(**3**) The relevant amending instruments are S.I. 2014/814, 2015/1416 and 2016/516.
(**4**) Amended by S.I. 2014/814 and 2015/1416.

(a) in paragraph (2), for the words from "following forms" to the end of that paragraph, substitute "forms that is described in Schedule 2";

(b) omit paragraph (3).

(4) For regulation 42(1)(k) (withdrawal of determinations)(**5**), substitute—

"(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(**6**) 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 violence

and 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.".

(5) After regulation 69 insert Schedules 1 and 2 as set out in the Schedule.

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;

(**5**) Amended by S.I. 2014/814 and 2015/1416.
(**6**) 2010 c. 17

(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

(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 paragraphs (1) and (2)—

"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" means the date specified by regulation 1(2);

"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 Legal Aid, Sentencing and Punishment of Offenders Act 2012(**7**);

"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(**8**).

Dominic Raab
Minister of State
Ministry of Justice

7th December 2017

(**7**) 2012 c. 10.
(**8**) 1971 c. 80.

SCHEDULE Regulation 2(5)

New Schedules 1 and 2 to the Procedure Regulations

"SCHEDULE 1 Regulation 33 (2)

Supporting documents: domestic violence

1. Evidence that B has been arrested for a relevant domestic violence offence.

2. A relevant police caution for a domestic violence offence.

3. Evidence of relevant criminal proceedings for a domestic violence offence which have not concluded.

4. A relevant conviction for a domestic violence offence.

5. Evidence of a court order binding over B in connection with a domestic violence offence.

6. A domestic violence protection notice issued under section 24 of the Crime and Security Act 2010(**9**) against B.

7. A relevant protective injunction.

8. An undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996(**10**) (or given in Scotland or Northern Ireland in place of a protective injunction) by B provided that a cross-undertaking relating to domestic violence was not given by A.

9. A copy of a finding of fact, made in proceedings in the United Kingdom, that there has been domestic violence by B.

10. An expert report produced as evidence in proceedings in the United Kingdom for the benefit of a court or tribunal confirming that a person with whom B is or was in a family relationship, was assessed as being, or at risk of being, a victim of domestic violence by B.

11. A letter or report from an appropriate health professional confirming that that professional, or another appropriate health professional—

(a) has examined A in person; and

(b) in the reasonable professional judgement of the author or the examining appropriate health professional A has, or has had, injuries or a condition consistent with being a victim of domestic violence.

12. A letter or report from—

(a) the appropriate health professional who made the referral described below;

(b) an appropriate health professional who has access to the medical records of A; or

(c) the person to whom the referral described below was made;

confirming that there was a referral by an appropriate health professional of A to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence.

13. A letter from any person who is a member of a multi-agency risk assessment conference (or other suitable local safeguarding forum) confirming that A, or a person with whom A is in a family relationship, is or has been at risk of harm from domestic violence by B.

(**9**) 2010 c. 17.
(**10**) 1996 c. 27. Section 63E added by section 1 of the Forced Marriage (Civil Protection) Act 2007 c. 20 and amended by section 120(3) of the Anti-social Behaviour, Crime and Policing Act 2014 c. 12.