Regulations made by the Lord Chancellor, laid before Parliament under section 41(9) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), for approval by resolution of each House of Parliament within 120 days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2016 No. 781

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016

Made - - - -	*20th July 2016*
Laid before Parliament	*21st July 2016*
Coming into force - -	*22nd July 2016*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 11(1)(b), 41(1)(a) and (b) and (3)(c) of, and paragraph 3(2) of Schedule 3 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**1**) ("the Act").

In making these Regulations, in accordance with section 11(2) to (5) of the Act, the Lord Chancellor —

(a) has considered the circumstances in which it is appropriate to make civil legal services available under Part 1 of the Act and, in particular, the extent to which the criteria ought to reflect the factors in section 11(3) of the Act;

(b) has sought to secure that, in cases in which more than one form of civil legal service could be provided for an individual, the individual qualifies under Part 1 of the Act for the form of service which in all the circumstances is the most appropriate having regard to the criteria, and

(c) is satisfied that the criteria reflect the principle that, in many disputes, mediation and other forms of dispute resolution are more appropriate than legal proceedings.

In accordance with section 41(8) of the Act, the Lord Chancellor considers that it is desirable for these Regulations to come into force without delay for the reasons given in the statement laid before Parliament on 21st July 2016, which accompanies these Regulations.

(**1**) 2012 c. 10. Section 42(1) provides that in Part 1 of that Act, "regulations" means regulations made by the Lord Chancellor.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016 and come into force on 22nd July 2016.

(2) In these Regulations, "the Merits Criteria Regulations" means the Civil Legal Aid (Merits Criteria) Regulations 2013(**2**).

Amendments to the Merits Criteria Regulations

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

(2) In regulation 5 (prospects of success test)(**3**)—

(a) in paragraph (1)(d)(ii)—

(i) before "poor" insert "marginal or", and

(ii) omit "or very poor";

(b) after paragraph (1)(d), insert—

"(da) "marginal", which means a 45% or more chance, but less than a 50% chance, of obtaining a successful outcome;";

(c) for paragraph (1)(e), substitute—

"(e) "poor", which means less than a 45% chance of obtaining a successful outcome; or";

(d) omit paragraph (1)(ea), and

(e) in paragraph (2), for "(ea)" substitute "(e)".

(3) In regulation 42(2)(c) (cost benefit criteria for determinations for full representation)(**4**), omit ", borderline or poor".

(4) For regulation 43 (prospects of success criterion for determinations for full representation)(**5**), substitute—

"**43.** The prospects of success criterion is only met if the Director is satisfied that the prospects of success are—

(a) very good, good or moderate; or

(b) borderline or marginal, and the case is—

(i) of significant wider public interest; or

(ii) a case with overwhelming importance to the individual.".

(5) For regulation 56(3) (criteria for determinations for full representation in relation to public law claims)(**6**), substitute—

"(3) The Director must be satisfied that the prospects of successfully obtaining the substantive order sought in the proceedings are—

(a) very good, good or moderate; or

(b) borderline or marginal, and—

(i) the case is of significant wider public interest;

(ii) the case is one with overwhelming importance to the individual; or

(**2**) S.I. 2013/104.
(**3**) Amended by S.I. 2015/1571.
(**4**) Amended by S.I. 2015/1571.
(**5**) The relevant amending instrument is S.I. 2015/1571.
(**6**) The relevant amending instrument is S.I. 2015/1571.

(iii) the substance of the case relates to a breach of Convention rights.".

(6) In regulation 58 (criteria for determinations for full representation in relation to claims against public authorities)(**7**)—

(a) in paragraph (1)(a), omit "and regulation 43 (prospects of success criterion for determinations for full representation)";

(b) in paragraph (1)(b), for "and regulation 42 (cost benefit criteria) do not apply;" substitute ", regulation 42 (cost benefit criteria) and regulation 43 (prospects of success criterion) do not apply;";

(c) for paragraph (1)(c), substitute—

"(c) paragraphs (2) and (3) apply.";

(d) in paragraph (2)—

(i) in sub-paragraph (a), after "met" insert "; and", and

(ii) after sub-paragraph (a), insert—

"(b) the criterion in paragraph (3) is met.", and

(e) after paragraph (2), insert—

"(3) The Director must be satisfied that the prospects of success are—

(a) very good, good or moderate; or

(b) borderline or marginal, and—

(i) the case is of significant wider public interest;

(ii) the case is one with overwhelming importance to the individual; or

(iii) the substance of the case relates to a breach of Convention rights.".

(7) For regulation 60(3) (criteria for determinations for full representation in relation to immigration)(**8**), substitute—

"(3) The Director must be satisfied that the prospects of success are—

(a) very good, good or moderate; or

(b) borderline, marginal or unclear, and—

(i) the case is of significant wider public interest;

(ii) the case is one with overwhelming importance to the individual; or

(iii) the substance of the case relates to a breach of Convention rights.".

(8) In regulation 61 (criteria for determinations for full representation in relation to court orders for possession)(**9**)—

(a) in paragraph (1)(a), omit "and regulation 43 (prospects of success criterion for determinations for full representation)";

(b) in paragraph (1)(b), for "41, 42 and 44" substitute "41 to 44";

(c) in paragraph (2)(a), omit "and", and

(d) after paragraph (2)(a), insert—

"(b) the prospects of success are very good, good, moderate, borderline or marginal; and".

(**7**) Amended by S.I. 2014/131.
(**8**) The relevant amending instrument is S.I. 2015/1571.
(**9**) Amended by S.I. 2014/131.