STATUTORY INSTRUMENTS

2015 No. 1571

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Merits Criteria) (Amendment) (No. 2) Regulations 2015

Approved by both Houses of Parliament

Made - - - -	*23rd July 2015*
Laid before Parliament	*24th July 2015*
Coming into force - -	*27th July 2015*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 11(1)(b), 41(1)(a) and (b), (3)(a) and (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 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 2015, which accompanies these Regulations.

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Merits Criteria) (Amendment) (No. 2) Regulations 2015 and come into force on 27th July 2015.

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

Amendments to the Civil Legal Aid (Merits Criteria) Regulations 2013

2.—(1) The Civil Legal Aid (Merits Criteria) Regulations 2013(**2**) are amended as follows.

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

(a) in paragraph (1)(d)(ii), after "poor" insert "or very poor";

(b) for paragraph (1)(e) substitute—

"(e) "poor", which means a 20% or more chance, but less than a 50% chance, of obtaining a successful outcome;

(ea) "very poor", which means a less than 20% chance of obtaining a successful outcome; or", and

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

(3) In regulation 42(2)(c) (cost benefit criteria for determinations for full representation), after "moderate", insert ", borderline or poor".

(4) For regulation 43(**3**) (prospects of success criterion for determinations for full representation) substitute—

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

(a) the prospects of success are very good, good or moderate; or

(b) the prospects of success are borderline or poor but it is—

(i) necessary for the Director to determine that the prospects of success criterion is met to prevent a breach of—

(aa) the individual's Convention rights; or

(bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or

(ii) appropriate for the Director to determine that the prospects of success criterion is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.".

(5) For regulation 56(3)(**4**) (criteria for determinations for full representation in relation to public law claims) substitute—

"(3) The Director must be satisfied that—

(a) the prospects of successfully obtaining the substantive order sought in the proceedings are very good, good or moderate; or

(b) the prospects of successfully obtaining the substantive order sought in the proceedings are borderline or poor but it is—

(i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—

(aa) the individual's Convention rights; or

(bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or

(ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.".

(**2**) S.I. 2013/104.
(**3**) Amended by S.I. 2014/131.
(**4**) Amended by S.I. 2014/131.

(6) For regulation 60(3)(**5**) (criteria for determinations for full representation in relation to immigration) substitute—

"(3) The Director must be satisfied that—

(a) the prospects of success are very good, good or moderate;

(b) the prospects of success are borderline or poor but it is—

(i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—

(aa) the individual's Convention rights; or

(bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or

(ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach; or

(c) the prospects of success are 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.".

(7) For regulation 66(2)(**6**) (criteria for determinations for full representation in relation to public law children cases) substitute—

"(2) An individual may qualify for full representation in a public law children case only if the Director is satisfied that the criterion in paragraph (3) and, where applicable, paragraph (4) are met.

(3) It is reasonable for full representation to be provided, having regard to the importance of the case to the individual.

(4) If the individual is making or supporting an appeal or application—

(a) the prospects of success of that appeal or application are very good, good or moderate; or

(b) the prospects of success of that appeal or application are borderline or poor but it is—

(i) necessary for the Director to determine that the criterion in this paragraph is met to prevent a breach of—

(aa) the individual's Convention rights; or

(bb) any rights of the individual to the provision of legal services that are enforceable EU rights; or

(ii) appropriate for the Director to determine that the criterion in this paragraph is met, in the particular circumstances of the case, having regard to any risk that a failure to make such a determination would be such a breach.".

(8) In regulation 67(**7**) (criteria for determinations for full representation in relation to domestic violence cases)—

(a) in paragraph (1), for "paragraph (2)" substitute "paragraphs (2) and (3)", and

(b) for paragraph (2) substitute—

(**5**) Regulation 60 was amended by S.I. 2014/131 and 2015/1414.
(**6**) Amended by S.I. 2014/131.
(**7**) Amended by S.I. 2014/131.