STATUTORY INSTRUMENTS

2015 No. 898

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Remuneration) (Amendment) Regulations 2015

Made - - - -	*25th March 2015*
Laid before Parliament	*26th March 2015*
Coming into force - -	*27th March 2015*

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

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Remuneration) (Amendment) Regulations 2015 and come into force on 27th of March 2015.

Amendments to the Civil Legal Aid (Remuneration) Regulations 2013

2.—(1) The Civil Legal Aid (Remuneration) Regulations 2013(**3**) are amended as follows.

(2) In regulation 5 (non application to civil legal services provided under certain contracts)—

(a) in paragraph (1), for "6" substitute "5A";

(b) in paragraph (3), before "7 and 10" insert "5A,", and

(c) in paragraph (4), for "regulation 10," substitute "regulations 5A and 10,".

(3) Before regulation 6 (remuneration for civil legal services: general) insert—

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

(**2**) 2012 c. 10.

(**3**) S.I. 2013/422, amended by S.I. 2013/2877; there are other amending instruments but none is relevant. S.I. 2014/607, which amended S.I. 2013/422, was quashed by the High Court by order dated 19th March 2015 in Q (on the application of Ben Hoare Bell Solicitors & others) v Lord Chancellor, [2015] EWHC 523 (Admin).

"**Remuneration for civil legal services: judicial review**

5A.—(1) Where an application for judicial review is issued, the Lord Chancellor must not pay remuneration for civil legal services consisting of making that application unless—

(a) the court gives permission to bring judicial review proceedings;

(b) the court neither refuses nor gives permission to bring judicial review proceedings and the Lord Chancellor considers that it is reasonable to pay remuneration in the circumstances of the case, taking into account, in particular—

(i) the reason why the provider did not obtain a costs order or costs agreement in favour of the legally aided person;

(ii) the extent to which, and the reason why, the legally aided person obtained the outcome sought in the proceedings, and

(iii) the strength of the application for permission at the time it was filed, based on the law and on the facts which the provider knew or ought to have known at that time;

(c) the defendant withdraws the decision to which the application for judicial review relates and the withdrawal results in the court—

(i) refusing permission to bring judicial review proceedings, or

(ii) neither refusing nor giving permission;

(d) the court orders an oral hearing to consider—

(i) whether to give permission to bring judicial review proceedings;

(ii) whether to give permission to bring a relevant appeal, or

(iii) a relevant appeal, or

(e) the court orders a rolled-up hearing.

(2) Nothing in this regulation affects any payment—

(a) by the Lord Chancellor of disbursements incurred by a provider in accordance with the relevant contract, or

(b) on account by the Lord Chancellor to a provider in accordance with the relevant contract.

(3) In this regulation—

(a) "2010 Standard Crime Contract" means the contract so named between the Lord Chancellor and a provider with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act for the provision of advice, assistance and representation made available under sections 13, 15 or 16 of the Act;

(b) "2013 CLA Contract" means the contract so named between the Lord Chancellor and a provider for the provision of civil legal services under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

(c) "application for judicial review" means an application for judicial review made or treated as made in accordance with—

(i) Part 54 of the Procedure Rules, or

(ii) Part 4 of the Tribunal Rules,

and includes bringing a relevant appeal and making an application for permission to bring a relevant appeal, but does not include a relevant application for interim relief;

(d) "costs agreement" and "costs order" mean, respectively, an agreement or an order that another party to the proceedings pay all, or part of, the costs of the legally aided person;

(e) "court" includes the Upper Tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007(**4**);

(f) "issued" includes—

(i) the sending of the application by the Upper Tribunal under rule 28(8) of the Tribunal Rules(**5**), or

(ii) the provision of the application by the applicant under rule 28A(2)(a) of the Tribunal Rules(**6**),

to each person named in the application as a respondent or interested party;

(g) "Procedure Rules" means the Civil Procedure Rules 1998(**7**)

(h) "relevant appeal" means an appeal against a decision to refuse permission to bring judicial review proceedings under—

(i) Part 52 of the Procedure Rules, or

(ii) Part 7 of the Tribunal Rules;

(i) "relevant application for interim relief" means application for an interim remedy under—

(i) Part 25 of the Procedure Rules, or

(ii) Part 4 of the Tribunal Rules;

(j) "relevant contract" means whichever of the 2010 Standard Civil Contract, the 2010 Standard Crime Contract, the 2013 Standard Civil Contract, the 2013 Individual Case Contract (Civil), the 2013 Individual Case Contract (High Cost Civil), the 2013 CLA Contract or the 2014 Standard Civil Contract (Welfare Benefits) governs the provision of the civil legal services for which remuneration is claimed(**8**);

(k) "rolled-up hearing" means a hearing at which the court considers the application for judicial review (including whether to give permission to bring judicial review proceedings);

(l) "Tribunal Rules" means the Tribunal Procedure (Upper Tribunal) Rules 2008(**9**)."

(4) At the beginning of regulation 6(2), insert "Subject to regulation 5A,".

(5) In paragraph (2) of regulation 7 (remuneration for civil legal services: general), for "Subject to paragraphs (3) and (4),", substitute "Subject to regulation 5A and paragraphs (3) and (4) of this regulation,".

(6) After paragraph (2) of regulation 12 (payments on account by the Lord Chancellor direct to barristers in independent practice) insert—

"(2A) Where an application for judicial review is issued and none of sub-paragraphs (a) to (e) of regulation 5A(1) applies, the barrister must repay to the Lord Chancellor any amount paid on account under paragraph (1) of this regulation for civil legal services consisting of making that application."

(**4**) 2007 c. 15.
(**5**) Amended by S.I. 2011/2343 and 2013/2067.
(**6**) Inserted by S.I. 2011/2343 and amended by S.I. 2013/2067.
(**7**) S.I. 1998/3132 (L. 17), to which there are amendments not relevant to these Regulations.
(**8**) The contracts are available at www.gov.uk/government/collections/legal-aid-agency-current-contracts. Copies can be inspected at the Legal Aid Agency (Head Office) at 102 Petty France, London, SW1H 9AJ.
(**9**) S.I. 2008/2698 (L. 15).