Draft Regulations laid before Parliament under section 41(6) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. XX

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Merits Criteria) (Amendment) (No. 2) Regulations 2013

Made - - - -	***
Coming into force - -	*27th January 2014*

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

In making these Regulations, in accordance with section 11(2), (3) and (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); and

(b) 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(6) of the Act, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

(**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.

PART 1

GENERAL AND AMENDMENTS

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Merits Criteria) (Amendment) (No. 2) Regulations 2013 and come into force on 27th January 2014.

(2) In these Regulations—

"the Act" means the Legal Aid, Sentencing and Punishment of Offenders Act 2012; and

"the Merits Criteria Regulations" means the Civil Legal Aid (Merits Criteria) Regulations 2013(**3**).

Amendments to the Merits Criteria Regulations

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

(2) In regulation 2 (interpretation), in paragraph (b) of the definition of "private law children case"—

(a) after "(victims of domestic violence and family matters)" insert "or paragraph 15 (children who are parties to family proceedings)"; and

(b) for "it relates to" substitute "such provisions relate to".

(3) In regulation 43 (prospects of success criterion for determinations for full representation), omit paragraph (b) and the "or" preceding it.

(4) In regulation 56 (criteria for determinations for full representation in relation to public law claims), omit paragraph (3)(b) and the "or" preceding it.

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

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

(b) in paragraph (1)(b), for the words from ", regulation 42" to the end of paragraph (1)(b) substitute "and regulation 42 (cost benefit criteria) do not apply"; and

(c) for paragraph (1)(c) substitute—

"(c) paragraph (2) applies.";

(d) omit paragraph (2)(b) and the "and" preceding it; and

(e) omit paragraph (3).

(6) In regulation 60(3)(b) (criteria for determinations for full representation in relation to immigration), omit "borderline or".

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

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

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

(c) in paragraph (2)(a), after "a defence to the claim;" insert "and"; and

(d) omit paragraph (2)(b).

(**3**) S.I. 2013/104, to which there are amendments not relevant to these Regulations.

(8) In regulation 64(2) (standard criteria for determinations for full representation in relation to certain family disputes), omit sub-paragraph (c).

(9) In each of—

(a) regulation 66(2)(b) (criteria for determinations for full representation in relation to public law children cases);

(b) regulation 67(2)(a) (criteria for determinations for full representation in relation to domestic violence cases); and

(c) regulation 68(2)(a) (criteria for determinations for full representation in relation to private law children cases and certain cases relating to EU and international agreements),

for "very good, good, moderate or borderline" substitute "very good, good or moderate".

(10) In regulation 69(3)(b) (criteria for determinations for full representation in relation to other family cases to which specific merits criteria apply), omit "or borderline".

(11) After regulation 69(4)(b) insert—

"(ba) a determination for full representation in relation to any matter described in paragraph 15 of Part 1 of Schedule 1 to the Act (children who are parties to family proceedings), to the extent that regulations 64 and 68 do not apply;".

(12) In regulation 75 (criteria for determinations for legal representation in relation to legal persons), omit paragraph (3)(c)(ii) and the "or" preceding it.

PART 2

TRANSITIONAL PROVISIONS

Application

3. The amendments made by regulation 2 do not apply to a pre-commencement application for civil legal services.

Pre-commencement applications for civil legal services

4. In this Part, a "pre-commencement application for civil legal services" means an application for civil legal services that is—

(a) made before 27th January 2014; or

(b) a new application for civil legal services within the meaning of regulation 6.

5.—(1) For the purpose of regulation 4(a), an application is made before 27th January 2014 if the application is—

(a) for Controlled Work and the application is signed and dated before 27th January 2014;

(b) for Licensed Work or an exceptional case determination under section 10 of the Act, other than an application for emergency representation, and the application is—

(i) signed and dated before 27th January 2014 and received by the Director by 5.00pm on 3rd February 2014; or

(ii) submitted through the Client and Cost Management System before 27th January 2014; or

(c) for emergency representation and the application—