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.

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil Legal Aid (Costs) Regulations 2013

Made - - - -	***
Coming into force - -	*1st April 2013*

The Lord Chancellor makes the following Regulations(**1**) in exercise of the powers conferred by sections 5(2) and 26(3) to (5), (6)(a) to (g), (7) and (9) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**2**)("the Act").

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.

PART 1

INTERPRETATION AND GENERAL

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Costs) Regulations 2013 and come into force on 1st April 2013.

Interpretation

2.—(1) In these Regulations—

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

"certificate" means a certificate issued under regulations made under section 12 of the Act(**3**);

"costs order" means an order that a party pay all or part of the costs of proceedings;

(**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**) The Civil Legal Aid (Procedure) Regulations 2012 (SI 2012/3098).

"cost protection" means the limit on costs awarded against a legally aided party in relevant civil proceedings, set out in section 26(1) and (2) of the Act;

"court" includes any tribunal having the power to award costs in favour of, or against, a party;

"CPR" means the Civil Procedure Rules 1998, and a reference to a Part or rule, prefixed by "CPR", means the Part or rule so numbered in the CPR(**4**);

"emergency representation" has the same meaning as in regulations made under section 12 of the Act;

"family enactment" has the same meaning as in paragraph 12(9) of Part 1 of Schedule 1 to the Act;

"family relationship" and "matter arising out of a family relationship" have the same meaning as in paragraphs 12(7) and (8) of Part 1 of Schedule 1 to the Act(**5**);

"family proceedings" means—

(a) a matter described in paragraph 12 (victims of domestic violence and family matters) or paragraph 13 (protection of children and family matters) of Part 1 of Schedule 1 to the Act; or

(b) a matter arising out of a family relationship in respect of which the Director has made an exceptional case determination under section 10 of the Act and which is under—

(i) a family enactment; or

(ii) the Trusts of Land and Appointment of Trustees Act 1996(**6**);

"full costs" means, where a section 26(1) costs order is made against a legally aided party, the amount of costs which that party would, but for section 26(1) of the Act, have been ordered to pay;

"legally aided party" means an individual or legal person(**7**) to whom, in relation to relevant proceedings, civil legal services have been made available under Part 1 of the Act;

"legally aided party's costs order" and "legally aided party's costs agreement" mean, respectively, an order and an agreement that another party to relevant proceedings pay all or part of the costs of a legally aided party;

"litigation friend" has the same meaning as in CPR Part 21;

"non-legally aided party" means a party to proceedings to whom no civil legal services have been made available in a form for which a certificate would be issued under regulations made under section 12 of the Act, or a party to whom such services have been made available under a determination which has been revoked;

"partner", in relation to a party to proceedings, means—

(a) a party's spouse or civil partner, from whom the party is not separated due to a breakdown in the relationship which is likely to be permanent;

(b) a person with whom the party lives as a couple; or

(c) a person with whom the party ordinarily lives as a couple, from whom the party is not separated due to a breakdown in the relationship which is likely to be permanent;

"provider" means a person who provides civil legal services under Part 1 of the Act;

(**4**) SI 1998/3132; relevant amending instruments are, as regards Part 21, 2007/2204, 2008/2178, 2010/621, and, as regards Part 22, 2001/1769, 2001/4015, 2004/3419.

(**5**) The Civil Legal Aid (Family Relationship) Regulations 2012 (SI 2012/2684), made under paragraph 12(8)(b) of Part 1 of Schedule 1 to the Act, make provision about when matters arise out of a family relationship for the purpose of paragraph 12.

(**6**) 1996 c. 47.

(**7**) Paragraph 7 of Schedule 3 to the Act (legal aid for legal persons) provides that in section 26 references to an individual include a legal person to whom legal services are made available under Part 1 of the Act in accordance with Schedule 3 or regulations made under Schedule 3.

"receiving party" means a non-legally aided party in favour of whom a costs order is made;

"relevant proceedings" means relevant civil proceedings (or contemplated proceedings) before a court;

"revocation" means the withdrawal of a determination in circumstances in which the Director has exercised the power to revoke the determination under regulations made under section 12 of the Act (and "revoked" has the equivalent meaning);

"rules of court", in relation to a tribunal, means rules or regulations made by the authority having power to make rules or regulations regulating the practice and procedure of that tribunal and, in relation to any court, includes practice directions;

"section 26(1) costs order" means a costs order against a legally aided party where cost protection applies;

"statement of truth" has the same meaning as in CPR Part 22; and

"the arrangements" means arrangements made by the Lord Chancellor under section 2 of the Act.

(2) A reference in these Regulations to a form of civil legal services has the same meaning as set out in Part 2 of the Civil Legal Aid (Merits Criteria) Regulations 2013(**8**).

Effect of these Regulations

3. Where one or more parties are receiving, or have received, civil legal services in relation to proceedings, nothing in these Regulations is to be construed as—

(a) requiring a court to make a costs order where it would not otherwise have made a costs order; or

(b) affecting the court's power to make a wasted costs order against a legal representative.

Delegation

4. A function of the Lord Chancellor under these Regulations may be exercised by a person authorised for that purpose by the Lord Chancellor, or by an employee of that person(**9**).

PART 2

COST PROTECTION

Costs to which cost protection applies

5. Except as provided by this Part, cost protection only applies to costs incurred by the receiving party in relation to proceedings which are, as regards the legally aided party, relevant proceedings.

Parts of proceedings to which cost protection does not apply

6. Cost protection does not apply in relation to—

(a) parts of proceedings for which civil legal services are provided in the form of—

(i) help at court;

(**8**) SI 2013/XXXX.

(**9**) Section 6 of the Act (authorisations) makes provision for authorisations given for the purpose of section 5 of the Act (delegation) or regulations under that section.

(ii) legal help, help with family mediation or family help (lower), except in the circumstances described by regulation 7;

(b) parts of family proceedings for which civil legal services are provided in the form of—

(i) family help (higher);

(ii) legal representation.

Cost protection in relation to legal help, help with family mediation or family help (lower)

7. Cost protection applies where a legally aided party receives legal help, help with family mediation or family help (lower) in relation to proceedings (other than family proceedings) and later receives, in respect of the same proceedings—

(a) family help (higher); or

(b) legal representation.

Periods during which cost protection applies

8.—(1) Subject to paragraphs (2) and (3), cost protection applies in respect of costs incurred by the receiving party during the period in which civil legal services are being provided, whether before or after the commencement of proceedings.

(2) Cost protection does not apply to costs incurred by the receiving party—

(a) before the date of issue of a certificate, except in the circumstances described by paragraph (3) and regulation 7;

(b) after the date on which a determination that the legally aided party qualified for civil legal services has been withdrawn;

(c) before, at the time of, or after the date of revocation of a determination.

(3) Where the Director makes a determination about emergency representation (other than a determination in relation to family proceedings to which cost protection does not apply) cost protection applies to costs incurred before the making of that determination, if—

(a) the application for emergency representation could not be made because the office to which the application would ordinarily be made was closed; and

(b) the provider made the application at the first available opportunity.

PART 3

COSTS ORDERS AGAINST A LEGALLY AIDED PARTY AND THE LORD CHANCELLOR

Effect of this Part

9.—(1) This Part applies where cost protection applies.

(2) The court may not, except in accordance with this Part, make an order requiring the Lord Chancellor to pay the whole or part of any costs incurred by a non-legally aided party because the proceedings are relevant proceedings as regards another party.

Costs order against the Lord Chancellor

10.—(1) This regulation applies where relevant proceedings are finally decided in favour of a non-legally aided party.

(2) Subject to paragraphs (3) to (8), the court may make an order for the payment by the Lord Chancellor to the non-legally aided party of the whole or any part of the costs incurred by that party in the proceedings (other than the costs that the legally aided party is required to pay under a section 26(1) costs order).

(3) An order under paragraph (2) may only be made if the following conditions are satisfied—

(a) a section 26(1) costs order is made against the legally aided party in the proceedings, and the amount (if any) which the legally aided party is required to pay under that costs order is less than the amount of the full costs;

(b) the non-legally aided party makes a request—

(i) under regulation 16(2), within three months of the date on which the section 26(1) costs order is made; or

(ii) after the expiry of the time limit under regulation 16(2), where there is a good reason for the delay in the request being made;

(c) as regards costs incurred in a court of first instance, the following conditions are met—

(i) the proceedings were instituted by the legally aided party;

(ii) the non-legally aided party is an individual; and

(iii) the court is satisfied that the non-legally aided party will suffer financial hardship unless the order is made; and

(d) in any case, the court is satisfied that it is just and equitable in the circumstances that provision for the costs should be made out of public funds.

(4) Where the legally aided party receives civil legal services in connection with only part of the proceedings, the reference in paragraph (2) to the costs incurred by the non-legally aided party in the proceedings is to be construed as a reference to so much of those costs as is attributable to the part of the proceedings for which civil legal services are provided.

(5) Where a court decides any proceedings in favour of a non-legally aided party and an appeal lies (with or without permission) against that decision, any order made under this regulation must not take effect—

(a) where permission to appeal is required, unless the time limit for an application for permission to appeal expires without such an application being made;

(b) where an application for permission is made within the time limit, unless the application is refused; or

(c) where permission to appeal is granted or is not required, unless the time limit for appeal expires without an appeal being brought.

(6) Subject to paragraph (7), in determining whether the conditions in paragraph (3)(c)(iii) and (d) are satisfied, the court must have regard to the resources of the non-legally aided party and of that party's partner.

(7) The court must not have regard to the resources of the partner of the non-legally aided party if the partner has a contrary interest in the proceedings.

(8) Where the non-legally aided party is acting in a representative, fiduciary or official capacity and is entitled to be indemnified in respect of costs from any property, estate or fund, the court must, for the purposes of determining whether the conditions in paragraph (3)(c)(iii) and (d) are satisfied, have regard to the value of the property, estate or fund and the resources of any person who has a beneficial interest in that property, estate or fund.