
STATUTORY INSTRUMENTS

2013 No. 104

The Civil Legal Aid (Merits Criteria) Regulations 2013

PART 6

SPECIFIC MERITS CRITERIA

CHAPTER 6

Family

Standard criteria for determinations for full representation in relation to certain family disputes

- 64.**—(1) For the purposes of a relevant determination the criteria in—
- (a) regulation 39(a) and (c) to (e) (standard criteria for determinations for legal representation) apply; and
 - (b) regulations 39(b) and (f) (standard criteria for determinations for full representation) and 41 to 44 (criteria for determinations for full representation) do not apply.
- (2) In this regulation, a relevant determination is a determination for full representation in relation to—
- (a) a domestic violence case;
 - (b) a private law children case;
 - (c) any matter described in paragraph 15 (children who are parties to family proceedings) of Part 1 of Schedule 1 to the Act;
 - (d) any matter described in paragraph 17(1)(EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act, to the extent that regulations 11(9)(c) or 65 do not apply; or
 - (e) any matter described in paragraph 18(1)(EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act, to the extent that regulation 65 does not apply.

Criteria for determinations for full representation in relation to special Children Act 1989 cases and certain cases relating to EU and international agreements

- 65.**—(1) For the purposes of a determination for full representation in relation to a relevant determination, the criteria in—
- (a) regulation 39(e) apply (standard criteria for determinations for legal representation); and
 - (b) regulations 39(a) to (d) and (f) (standard criteria for determinations for legal representation) and 41 to 44 (criteria for determinations for full representation) do not apply.
- (2) In this regulation, a relevant determination is—

- (a) a determination for full representation in relation to a special Children Act 1989 case; or
- (b) a determination for full representation in a case in which the applicant is an individual who, in the State of origin, has benefited from complete or partial legal aid in relation to any matter described in—
 - (i) paragraph 17(1)(c)(EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act;
 - (ii) paragraph 18(1)(EU and international agreements concerning maintenance) of that Part;
 - (iii) paragraph 18(3)(parties who benefited from free legal aid etc. in the Member State of origin) of that Part;
 - (iv) paragraph 18(3A)(applications under Article 10 of the 2007 Hague Convention) of that Part, to the extent that Article 17(b) of that Convention applies; or
 - (v) paragraph 18(3B)(applications under Article 17(b) of the 2007 Hague Convention which is applied by virtue of Article 37(2)) of that Part.

Criteria for determinations for full representation in relation to public law children cases

66.—(1) For the purposes of a determination for full representation in relation to a public law children case—

- (a) the criteria in regulations 39(b) to (d) and (f) (standard criteria for determinations for legal representation) and 41 to 44 (criteria for determinations for full representation) do not apply;
- (b) the criteria in regulation 39(a) and (e) apply; and
- (c) paragraph (2) applies.

(2) An individual may qualify for full representation in a public law children case only if the Director is satisfied that—

- (a) it is reasonable for full representation to be provided, having regard to the importance of the case to the individual; and
- (b) if the individual is making or supporting an appeal or application, the prospects of success of that appeal or application are very good, good, moderate or borderline.

Criteria for determinations for full representation in relation to domestic violence cases

67.—(1) For the purposes of a determination for full representation in relation to a domestic violence case, regulation 64 (standard criteria for determinations for full representation in relation to certain family disputes) applies in addition to the criteria in paragraph (2).

(2) An individual may qualify for full representation in a domestic violence case only if the Director is satisfied that—

- (a) the prospects of success are very good, good, moderate or borderline; and
- (b) the proportionality test is met.

Criteria for determinations for full representation in relation to private law children cases and certain cases relating to EU and international agreements

68.—(1) For the purposes of a relevant determination the criteria in regulation 64 (standard criteria for determinations for full representation in relation to certain family disputes) apply in addition to the criteria in paragraph (2).

(2) The Director is satisfied that—

- (a) the prospects of success are very good, good, moderate or borderline; and
 - (b) the reasonable private paying individual test is met.
- (3) In this regulation, a relevant determination is a determination for full representation in relation to—
- (a) a private law children case;
 - (b) any matter described in paragraph 17(1) (EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act, to the extent that regulations 11(9)(c) and 65 do not apply; or
 - (c) any matter described in paragraph 18(1) (EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act, to the extent that regulation 65 does not apply.

Criteria for determinations for full representation in relation to other family cases to which specific merits criteria apply

- 69.**—(1) For the purposes of a relevant determination the criteria in—
- (a) regulations 39(a) to (e) (criteria for determinations for legal representation) apply;
 - (b) regulations 39(f), 41, 42 (cost benefit criteria), 43 (prospects of success criterion) and 44 (multi-party) do not apply; and
 - (c) paragraphs (2) and (3) apply.
- (2) The Director must be satisfied that—
- (a) the reasonable private paying individual test is met; and
 - (b) the criterion in paragraph (3) is met.
- (3) The Director must be satisfied that the prospects of success of the case are—
- (a) very good, good or moderate; or
 - (b) unclear or borderline, and—
 - (i) the case is one 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.
- (4) In this regulation, a relevant determination is—
- (a) a determination for full representation in relation to any matter described in paragraph 12 of Part 1 of Schedule 1 to the Act (victims of domestic violence and family matters) to the extent that it does not relate—
 - (i) to Part 1 or 3 of the Family Law Act 1986(1) (child custody and declarations of status);
 - (ii) subject to sub-paragraph (b), to any provision of Part 1 or 2 of the Children Act 1989(2) (orders with respect to children in family proceedings);
 - (b) a determination for full representation in relation to any matter described in paragraph 12 of Part 1 of Schedule 1 to the Act (victims of domestic violence and family matters) to the extent that it relates an order made under section 15 of, and Schedule 1 to, the Children Act 1989;

(1) 1986 c.55.

(2) 1989 c.41.

- (c) a determination for full representation in relation to any matter described in paragraph 18(2) of Part 1 of Schedule 1 to the Act (applications in relation to maintenance decisions), to the extent that regulations 11(9)(b) or 70 do not apply; or
- (d) any matter described in paragraph 18(3A) of Part 1 of Schedule 1 to the Act (applications under Article 10 of the 2007 Hague Convention), to the extent that article 17(a)(3) of the 2007 Hague Convention applies.

Criteria for determinations in relation to the EU Maintenance Regulation

70.—(1) For the purposes of a determination for any form of civil legal services in relation to any matter described in paragraph 18(2) of Part 1 of Schedule 1 to the Act (applications relating to maintenance decisions), to the extent that it—

- (a) is an application under Article 56(1)(c) to (f) of the EU Maintenance Regulation; and
- (b) concerns maintenance obligations arising from a parent-child relationship towards a person under the age of 21,

the general merits criteria do not apply and paragraph (2) applies.

(2) An individual may qualify for civil legal services only if the Director is satisfied that the application is not manifestly unfounded.

Criteria for determinations in relation to the 2007 Hague Convention

71.—(1) For the purposes of a determination for any form of civil legal services in relation to any matter described in paragraph 18(3A) (applications under Article 10 of the 2007 Hague Convention), to the extent that it—

- (a) does not relate to an application under Article 10(1)(a) or (b) of the 2007 Hague Convention; and
- (b) is an application by a creditor under the 2007 Hague Convention concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21,

the general merits criteria do not apply and paragraph (2) applies.

(2) The individual may qualify for civil legal services only if the Director is satisfied that the application is not manifestly unfounded.

(3) Article 17(a) provides that in the case of all applications under the 2007 Hague Convention other than those under article 15 or 16 the provision of free legal assistance may be made subject to a merits test.