

2014 No. 814

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil Legal Aid (Procedure) (Amendment) Regulations
2014**

<i>Made</i> - - - -	<i>24th March 2014</i>
<i>Laid before Parliament</i>	<i>27th March 2014</i>
<i>Coming into force</i> - -	<i>22nd April 2014</i>

The Lord Chancellor makes the following Regulations^(a) in exercise of the powers conferred by sections 12(2) to (4), 41(1)(a) and (b), and 41(3)(b) and (c) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012^(b).

PART 1

GENERAL AND AMENDMENTS

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Procedure) (Amendment) Regulations 2014 and come into force on 22nd April 2014.

(2) In these Regulations—

“the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

“the Procedure Regulations” means the Civil Legal Aid (Procedure) Regulations 2012^(c).

Amendment of Regulation 33 (Supporting documents: domestic violence) of the Procedure Regulations

2.—(1) Regulation 33 of the Procedure Regulations is amended as follows.

(2) In paragraph (2)—

(a) after sub-paragraph (e) insert—

“(ea) evidence that B is on relevant police bail for a domestic violence offence;”;

(b) in sub-paragraph (f)—

(i) for “the person appointed to chair” substitute “any person who is a member of”; and

(ii) in paragraph (i) omit “high risk”;

(a) 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.

(b) 2012 c. 10.

(c) S.I. 2012/3098.

- (c) in sub-paragraph (h)—
 - (i) after “a health professional” insert “who has access to the medical records of A”;
 - (ii) for “the professional” substitute “that professional, or another health professional”;
 - (iii) in paragraph (i) after “examined A” insert “in person”;
 - (iv) at the end of paragraph (i) insert “and”;
 - (v) at the end of paragraph (ii) omit “and”; and
 - (vi) omit paragraph (iii);
- (d) in sub-paragraph (j), for paragraph (i) substitute—
 - “(i) that A was, within the twenty four month period immediately preceding the date of the application for civil legal services (and, where relevant, that period commences with the date on which A left the refuge), admitted to a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence;” and
- (e) after sub-paragraph (j) insert—
 - “(k) a letter or report from a domestic violence support organisation in the United Kingdom confirming—
 - (i) that A was, within the twenty four month period immediately preceding the date of the application for civil legal services, refused admission to a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence, on account of there being insufficient accommodation available in the refuge; and
 - (ii) the date on which A was refused admission to the refuge;
 - (l) a letter or report from—
 - (i) the person to whom the referral described below was made;
 - (ii) the health professional who made the referral described below; or
 - (iii) a health professional who has access to the medical records of A, confirming that there was, within the twenty four month period immediately preceding the date of the application for civil legal services, a referral by a health professional of A to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence;
 - (m) a relevant domestic violence protection notice issued under section 24 of the Crime and Security Act 2010(a), or a relevant domestic violence protection order made under section 28 of that Act, against B within the twenty four month period immediately preceding the date of the application for civil legal services;
 - (n) evidence of a relevant court order binding over B in connection with a domestic violence offence, which is in force or which was granted within the twenty four month period immediately preceding the date of application for civil legal services.”.
- (3) In paragraph (3), in the definition of “health professional”—
 - (a) at the end of sub-paragraph (b) omit “or”;
 - (b) at the end of sub-paragraph (c) for “and” substitute “or”; and
 - (c) after sub-paragraph (c) insert—
 - “(d) practitioner psychologist who holds a licence to practice; and”.
- (4) In paragraph (4)—
 - (a) in sub-paragraph (a) for paragraph (i) substitute—

(a) 2010 c. 17.

- “(i) is in a form described in paragraph (2)(a) to (c), (ea), (m) or (n); and”;
- (b) for sub-paragraph (b) substitute—
 - “(b) B as being—
 - (i) for evidence described in paragraph (2)(a) to (c) and (ea) convicted of, cautioned with, on police bail for, or charged with the domestic violence offence;
 - (ii) for evidence described in paragraph (2)(d), the respondent to the protective injunction;
 - (iii) for evidence described in paragraph (2)(m), the person against whom the notice or order has been issued or made; and
 - (iv) for evidence described in paragraph (2)(n), the person against whom the order binding over has been made.”.

Amendment of Regulation 34 (Supporting documents: protection of children) of the Procedure Regulations

- 3. In regulation 34 of the Procedure Regulations—
 - (a) in paragraph (2) after sub-paragraph (e) insert—
 - “(ea) evidence that B is on relevant police bail for a child abuse offence;”;
 - (b) in paragraph (3) in the definition of “relevant” for sub-paragraph (a) substitute—
 - “(a) for the purpose of paragraph (2)(a) to (c) and (ea) that the conviction, caution, criminal proceedings or police bail identifies B as being convicted of, cautioned with, charged with or on police bail for the child abuse offence; and”.

Amendment of Regulation 42 (Withdrawal of determinations) of the Procedure Regulations

- 4. In regulation 42(1) of the Procedure Regulations in sub-paragraph (k)—
 - (a) at the end of paragraph (ii) omit “or”; and
 - (b) after paragraph (ii) insert—
 - “(iia) evidence described in regulation 33(2)(ea) where no charge is brought for the domestic violence offence (within the meaning of regulation 33) and the Director is satisfied that it is unlikely that such a charge will be brought;
 - (iib) evidence described in regulation 34(2)(ea) where no charge is brought for the child abuse offence (within the meaning of regulation 34) and the Director is satisfied that it is unlikely that such a charge will be brought;
 - (iic) evidence described in regulation 33(2)(m) where the application for a domestic violence protection order has been made under section 27 of the Crime and Security Act 2010 but has been unsuccessful on account of the conditions set out in section 28 of that Act not having been satisfied; or”.

PART 2

TRANSITIONAL PROVISIONS

Application

- 5. The amendments made by regulations 2, 3 and 4 do not apply to a pre-commencement application for civil legal services.

Pre-commencement applications for civil legal services

6.—(1) In this Part, a “pre-commencement application for civil legal services” means an application for civil legal services that is made before 22nd April 2014.

(2) For the purpose of this regulation, an application is to be treated as being made before 22nd April 2014 if the application is—

- (a) for Controlled Work and the application is signed and dated before 22nd April 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 22nd April 2014 and received by the Director by 5.00 pm on 29th April 2014; or
 - (ii) submitted through the Client and Cost Management System before 22nd April 2014; or
- (c) for emergency representation and the application—
 - (i) results in a determination being made by a provider before 22nd April 2014 and that determination is notified within five working days of the determination to the Director;
 - (ii) is emailed or faxed to, and received by, the Director before 22nd April 2014; or
 - (iii) is submitted through the Client and Cost Management System before 22nd April 2014.

(3) In this regulation—

“Client and Cost Management System” means the client and cost management system used by the Director in relation to applications for civil legal services;

“Controlled Work” has the meaning given in regulation 21(2) of the Procedure Regulations;

“emergency representation” has the meaning given in Regulation 2 of the Procedure Regulations;

“Licensed Work” has the meaning given in regulation 29(2) of the Procedure Regulations;

“provider” means a person who provides civil legal services under Part 1 (legal aid) of the Act; and

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday for the purposes of paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971(a).

Signed by authority of the Lord Chancellor

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

24th March 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Procedure) Regulations 2012 (S.I. 2012/3098) (“the Procedure Regulations”). The Procedure Regulations make provision about the making and withdrawal of determinations that an individual qualifies for civil legal services under sections 9 and 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the Act”). These Regulations amend the evidence requirements relating to victims of, or persons at risk of,

(a) 1971 c. 80.

domestic violence, and persons with a child who has experienced, or is at risk of, child abuse, who seek civil legal services under the Act.

Regulation 2 amends regulation 33 of the Procedure Regulations to add to the list of acceptable evidence of domestic violence, or of a risk of domestic violence. The additional evidence relates to: police bail for a domestic violence offence; refusal of entry to a refuge on account of the refuge having insufficient accommodation; referral by a health professional to a specialist support service; domestic violence protection notices; domestic violence protection orders; and binding over orders for a domestic violence offence. Regulation 2 also amends the existing evidence requirements relating to multi-agency risk assessment conferences, medical evidence and admission to a refuge.

Regulation 3 amends regulation 34 of the Procedure Regulations to add to the list of acceptable evidence of a risk of child abuse. The additional evidence relates to police bail for a child abuse offence.

Regulation 4 amends regulation 42 of the Procedure Regulations. Under new regulation 42(1)(k)(ia) the Director of Legal Aid Casework will be able to withdraw a determination that civil legal services are available to an individual if the evidence relied on for the purposes of regulation 33 related to a person being on police bail and that person is not ultimately charged with a domestic violence offence. Under new regulation 42(1)(k)(ib) the Director of Legal Aid Casework has similar powers to withdraw a determination for civil legal services in respect of regulation 34, where a person is on police bail for a child abuse offence but is not ultimately charged. Under new regulation 42(1)(k)(ic) the Director will be able to withdraw a determination that civil legal services are available to an individual if the evidence relied on for the purposes of regulation 33 was a domestic violence protection notice, which formed the basis for an unsuccessful application for a domestic violence protection order.

Part 2 of these Regulations provides that the amendments made in Part 1 do not apply to pre-commencement applications for civil legal services (within the meaning given by regulation 6).

An impact assessment has not been prepared for this instrument as it has no impact on business and civil society organisations. It has a negligible impact on the public sector.

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