
STATUTORY INSTRUMENTS

2017 No. 1237

**LEGAL AID AND ADVICE,
ENGLAND AND WALES**

**The Civil Legal Aid (Procedure)
(Amendment) (No. 2) Regulations 2017**

Made - - - - 7th December 2017

Laid before Parliament 8th December 2017

Coming into force 8th January 2018

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Procedure) (Amendment) (No. 2) Regulations 2017.

(2) These Regulations come into force on 8th January 2018.

(3) In these Regulations, the “Procedure Regulations” means the Civil Legal Aid (Procedure) Regulations 2012⁽²⁾.

Amendment of the Procedure Regulations

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

(2) In regulation 33 (supporting documents: domestic violence)⁽³⁾—

(a) in paragraph (2), for the words from “following forms” to the end of that paragraph, substitute “forms that is described in Schedule 1 to these Regulations”;

(b) omit paragraphs (3) and (4).

(3) In regulation 34 (supporting documents: protection of children)⁽⁴⁾—

(1) 2012 c. 10. See section 42(1) for the meaning of “regulations”.

(2) S.I. 2012/3098.

(3) The relevant amending instruments are S.I. 2014/814, 2015/1416 and 2016/516.

(4) Amended by S.I. 2014/814 and 2015/1416.

- (a) in paragraph (2), for the words from “following forms” to the end of that paragraph, substitute “forms that is described in Schedule 2”;
 - (b) omit paragraph (3).
- (4) For regulation 42(1)(k) (withdrawal of determinations)⁽⁵⁾, substitute—
- “(k) in relation to services described in paragraphs 12 and 13 of Part 1 of Schedule 1 to the Act, the evidence included with the application was—
 - (i) a conviction for an offence and that conviction has subsequently been quashed;
 - (ii) evidence of ongoing criminal proceedings and those proceedings have subsequently been concluded without a conviction;
 - (iii) evidence described in paragraph 7 of Schedule 1 or paragraph 5 of Schedule 2 where—
 - (a) the order was obtained without notice to the respondent; and
 - (b) that order has subsequently been set aside by the court;
 - (iv) evidence described in paragraph 7 of Schedule 1 where the application for a domestic violence protection order has been made under section 27 of the Crime and Security Act 2010⁽⁶⁾ but has been unsuccessful on account of the conditions set out in section 28 of that Act not having been satisfied;
 - (v) evidence described in paragraph 1 of Schedule 1 where no charge is brought for the domestic violence offence (within the meaning of Schedule 1) and the Director is satisfied that it is unlikely that such a charge will be brought;
 - (vi) evidence described in paragraphs 16 to 18 of Schedule 1 and a public authority has confirmed in writing that it is satisfied—
 - (a) there has not been domestic violence between A and B; or
 - (b) A was not at any time at risk of being the victim of domestic violence and in this sub-paragraph “public authority” has the meaning given by Schedule 1 to these Regulations;
 - (vii) evidence described in paragraph 1 of Schedule 2 where no charge is brought for the child abuse offence (within the meaning of Schedule 2) and the Director is satisfied that it is unlikely that such a charge will be brought;
 - (viii) evidence of an application described in paragraph 9 of Schedule 2 and that application has subsequently been withdrawn or refused, unless the individual provides another form of evidence (excluding evidence described in paragraphs (i) to (viii)) which would have been permitted in accordance with these Regulations at the date of the application.”.
- (5) After regulation 69 insert Schedules 1 and 2 as set out in the Schedule.

Transitional provision

3.—(1) The amendments made by regulation 2 do not apply to an application for civil legal services that is made before the commencement date.

(2) For the purpose of this regulation, an application is to be treated as being made before the commencement date if the application is—

- (a) for Controlled Work and the application is signed and dated before the commencement date;

⁽⁵⁾ Amended by S.I. 2014/814 and 2015/1416.

⁽⁶⁾ 2010 c. 17

- (b) for Licensed Work, other than an application for emergency representation, and the application is—
 - (i) signed and dated before the commencement date and received by the Director by 5.00 pm on the seventh day after the commencement date, or
 - (ii) submitted through the Client and Cost Management System before the commencement date, or
 - (c) for emergency representation and the application—
 - (i) results in a determination being made by a provider before the commencement date 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 the commencement date, or
 - (iii) is submitted through the Client and Cost Management System before the commencement date.
- (3) In paragraphs (1) and (2)—
- “Client and Cost Management System” means the client and cost management system used by the Director in relation to applications for civil legal services;
 - “commencement date” means the date specified by regulation 1(2);
 - “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 Legal Aid, Sentencing and Punishment of Offenders Act 2012(7);
 - “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday in England and Wales for the purposes of paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971(8).

7th December 2017

Dominic Raab
Minister of State
Ministry of Justice

(7) 2012 c. 10.
(8) 1971 c. 80.

SCHEDULE

Regulation 2(5)

New Schedules 1 and 2 to the Procedure Regulations

“SCHEDULE 1

Regulation 33 (2)

Supporting documents: domestic violence

1. Evidence that B has been arrested for a relevant domestic violence offence.
2. A relevant police caution for a domestic violence offence.
3. Evidence of relevant criminal proceedings for a domestic violence offence which have not concluded.
4. A relevant conviction for a domestic violence offence.
5. Evidence of a court order binding over B in connection with a domestic violence offence.
6. A domestic violence protection notice issued under section 24 of the Crime and Security Act 2010⁽⁹⁾ against B.
7. A relevant protective injunction.
8. An undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996⁽¹⁰⁾ (or given in Scotland or Northern Ireland in place of a protective injunction) by B provided that a cross-undertaking relating to domestic violence was not given by A.
9. A copy of a finding of fact, made in proceedings in the United Kingdom, that there has been domestic violence by B.
10. An expert report produced as evidence in proceedings in the United Kingdom for the benefit of a court or tribunal confirming that a person with whom B is or was in a family relationship, was assessed as being, or at risk of being, a victim of domestic violence by B.
11. A letter or report from an appropriate health professional confirming that that professional, or another appropriate health professional—
 - (a) has examined A in person; and
 - (b) in the reasonable professional judgement of the author or the examining appropriate health professional A has, or has had, injuries or a condition consistent with being a victim of domestic violence.
12. A letter or report from—
 - (a) the appropriate health professional who made the referral described below;
 - (b) an appropriate health professional who has access to the medical records of A; or
 - (c) the person to whom the referral described below was made;confirming that there was a referral by an appropriate health professional of A to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence.
13. A letter from any person who is a member of a multi-agency risk assessment conference (or other suitable local safeguarding forum) confirming that A, or a person with whom A is in a family relationship, is or has been at risk of harm from domestic violence by B.

⁽⁹⁾ 2010 c. 17.

⁽¹⁰⁾ 1996 c. 27. Section 63E added by section 1 of the Forced Marriage (Civil Protection) Act 2007 c. 20 and amended by section 120(3) of the Anti-social Behaviour, Crime and Policing Act 2014 c. 12.

14. A letter from an independent domestic violence advisor confirming that they are providing support to A.

15. A letter from an independent sexual violence advisor confirming that they are providing support to A relating to sexual violence by B.

16. A letter from an officer employed by a local authority or housing association (or their equivalent in Scotland or Northern Ireland) for the purpose of supporting tenants containing—

- (a) a statement to the effect that, in their reasonable professional judgment, a person with whom B is or has been in a family relationship is, or is at risk of being, a victim of domestic violence by B;
- (b) a description of the specific matters relied upon to support that judgment; and
- (c) a description of the support they provided to the victim of domestic violence or the person at risk of domestic violence by B.

17.—(1) A letter from an organisation providing domestic violence support services.

(2) The letter must confirm that it—

- (a) is situated in England and Wales;
- (b) has been operating for an uninterrupted period of six months or more; and
- (c) provided A with support in relation to A's needs as a victim, or person at risk, of domestic violence.

(3) The letter must contain—

- (a) a statement to the effect that, in the reasonable professional judgment of the author of the letter, A is, or is at risk of being, a victim of domestic violence;
- (b) a description of the specific matters relied upon to support that judgment;
- (c) a description of the support provided to A; and
- (d) a statement of the reasons why A needed that support.

18. A letter or report from an organisation providing domestic violence support services in the United Kingdom confirming—

- (a) that a person with whom B is or was in a family relationship was refused admission to a refuge;
- (b) the date on which they were refused admission to the refuge; and
- (c) they sought admission to the refuge because of allegations of domestic violence by B.

19. A letter from a public authority confirming that a person with whom B is or was in a family relationship, was assessed as being, or at risk of being, a victim of domestic violence by B (or a copy of that assessment).

20. A letter from the Secretary of State for the Home Department confirming that A has been granted leave to remain in the United Kingdom under paragraph 289B of the Immigration Rules.

21. Evidence which the Director is satisfied demonstrates that A has been, or is at risk of being, the victim of domestic violence by B in the form of abuse which relates to financial matters.

22. For the purpose of this Schedule—

“A” means the applicant for civil legal services;

“appropriate health professional” means—

- (a) a medical practitioner licensed to practise by the General Medical Council; or
- (b) a health professional who is registered to practise in the United Kingdom by—

- (i) the Nursing and Midwifery Council;
- (ii) the General Dental Council; or
- (c) a paramedic, practitioner psychologist, radiographer or social worker registered to practise in the United Kingdom by the Health and Care Professions Council;

“B” means the individual with whom A was in a family relationship giving rise to the need for the civil legal services that are the subject of the application;

“domestic violence offence” has the meaning given in the document published by the Lord Chancellor for that purpose under section 2 of the Act;

“expert report” means a report by a person qualified to give expert advice on all or most of the matters that are the subject of the report;

“housing association” has the same meaning as in subsection 1(1) of the Housing Associations Act 1985⁽¹¹⁾;

“Immigration Rules” means rules made by the Secretary of State under section 3(3) of the Immigration Act 1971⁽¹²⁾;

“local authority” means a county council, a district council, a London borough council or a parish council but, in relation to Wales, means a county council, county borough council or community council;

“protective injunction” means an order made by the court—

- (a) in respect of persons who are in a family relationship with each other, containing any of the following provisions—
 - (i) protecting a person from harm, intimidation, threats or harassment;
 - (ii) protecting a person from being forced into a marriage or from any attempt to be forced into a marriage;
 - (iii) prohibiting a person from contacting, or communicating with, another;
 - (iv) concerning entry or access to, or the use or occupation of, property;
- (b) for the protection from female genital mutilation under paragraph 1 or 18 of Schedule 2 to the Female Genital Mutilation Act 2003⁽¹³⁾; or
- (c) in respect of a violent offender within the meaning of section 98 of the Criminal Justice and Immigration Act 2008⁽¹⁴⁾;

but does not include an order made without notice to the respondent that was subsequently set aside by the court;

“public authority” has the same meaning as in section 6 of the Human Rights Act 1998⁽¹⁵⁾;

“refuge” means—

- (a) a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence; or
- (b) a residential home established and maintained by a public body for any other purpose that also provides accommodation to the victims of, or those at risk of, domestic violence;

“relevant” means that the evidence—

- (a) identifies a person with whom B is or was in a family relationship as being, or at risk of being, the victim of domestic violence; or

⁽¹¹⁾ 1985 c. 69.

⁽¹²⁾ 1971 c. 77.

⁽¹³⁾ 2003 c. 31.

⁽¹⁴⁾ 2008 c. 4.

⁽¹⁵⁾ 1998 c. 42.

- (b) is-
 - (i) in a form described in paragraphs 1 to 4 of this Schedule;
 - (ii) identifies B as the person arrested for, cautioned with, charged with, or convicted of the domestic violence offence; and
 - (iii) relates to a domestic violence offence which does not identify the victim.

SCHEDULE 2

Regulation 34 (2)

Supporting documents: protection of children

1. Evidence that B has been arrested for a child abuse offence.
2. A relevant police caution for a child abuse offence.
3. Evidence of relevant criminal proceedings for a child abuse offence which have not concluded.
4. A relevant conviction for a child abuse offence.
5. A relevant protective injunction.
6. A copy of a finding of fact made in proceedings in the United Kingdom of abuse of a child by B.
7. A letter from a social services department in England and Wales (or its equivalent in Scotland or Northern Ireland) confirming that the child was assessed as being, or at risk of being, a victim of child abuse by B (or a copy of that assessment).
8. A letter from a social services department in England and Wales (or its equivalent in Scotland or Northern Ireland) confirming that a child protection plan was put in place to protect the child from abuse or a risk of abuse by B (or a copy of that plan).
9. An application for an injunction described in paragraph 5 of this Schedule made with an application for a prohibited steps order against B under section 8 of the Children Act 1989(16) which has not, at the date of the application for civil legal services, been decided by the court.
10. For the purpose of this Schedule—
 - “child abuse offence” has the meaning given in the document published by the Lord Chancellor for that purpose under section 2 of the Act;
 - “protective injunction” has the same meaning given in Schedule 1 to these Regulations;
 - “relevant” means—
 - (a) for the purpose of paragraphs 1 to 4 of this Schedule that the arrest, caution, criminal proceedings or conviction identifies B as being arrested for, cautioned for, charged with, or convicted of, the child abuse offence; and
 - (b) for the purpose of paragraph 5 of this Schedule, that the protective injunction—
 - (i) identifies B as the respondent; and
 - (ii) is made for the protection of the child who is or would be the subject of the order to which the application relates.”

(16) 1989 c. 41.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulations 33, 34 and 42 of, and insert new Schedules 1 and 2 to, the Civil Legal Aid (Procedure) Regulations 2012 (S.I. 2012/3098). Those 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”).

Regulation 2(2) amends regulation 33 which sets out the forms of evidence of domestic violence which must be provided with an application for civil legal services under paragraph 12 of Part 1 of Schedule 1 to the Act. The amended regulation 33 removes the time limit of sixty months for certain types of evidence of domestic violence, or risk of domestic violence, and introduces new forms of evidence, listed in new Schedule 1, where the victim has sought the help of an appropriate health professional, public authority, or domestic violence support organisation.

The new Schedule 1 introduces a new definition of “protective injunction”, for the purpose of the evidence requirements in regulations 33(2) and 34(2) (supporting documents in relation to domestic violence and protection of children).

Regulation 2(3) amends regulation 34(2) which removes the time limit of twenty-four months for certain types of evidence of child abuse, or risk of child abuse.

Regulation 2(4) substitutes a new regulation 42(1)(k) which widens the Director of Legal Aid Casework’s power to withdraw a determination in circumstances where the evidence submitted with the application was a court order that has subsequently been set aside and where the evidence was in the form of a letter from a domestic violence support organisation or housing officer and a public authority subsequently confirms that it is satisfied there was no domestic violence.

Regulation 2(5) inserts new Schedules 1 and 2 describing the forms of evidence referred to in regulations 33 and 34.

Regulation 3 provides that the amendments made by regulation 2 do not apply to an application for civil legal services made before these Regulations come into force.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Ministry of Justice, 102 Petty France, London SW1H 9AJ and is published with an Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.