
STATUTORY INSTRUMENTS

2013 No. 534

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013

Citation, commencement and interpretation

1. These Regulations may be cited as the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013 and come into force on 1st April 2013.

2. In these Regulations—

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

“the 1999 Act” means the Access to Justice Act 1999(1);

“certificate” means a certificate issued under the Funding Code;

“Certificated Work” means Licensed Work and Individual Case Contracts, which are further defined in Part A of Part 2 of the Funding Code (Funding Code: Procedures);

“the CLA Helpline” means the CLA Operator Service and the CLA Specialist Telephone Advisers;

“the CLA Operator Service” means the Community Legal Advice Operator Service;

“CLA Specialist Telephone Adviser” means a specialist telephone adviser under any of the following so named contracts(2) between a provider and the Commission—

(a) CLA Specialist Telephone Advice Contracts 2000;

(b) CLA Specialist Telephone Advice Family Contracts 2009; or

(c) CLA Specialist Telephone Advice Contracts 2013;

“the Commission” means the Legal Services Commission established under section 1 of the Access to Justice Act 1999;

“Community Legal Service” means the Community Legal Service described in section 4 of the 1999 Act;

“Criminal Defence Service” means the Criminal Defence Service described in section 12 of the 1999 Act;

“funded services” means services that are provided directly for an individual and funded for that individual as part of the Community Legal Service or as part of the Criminal Defence Service under Part 1 of the 1999 Act;

“the Funding Code” means the Funding Code approved under section 9 of the 1999 Act;

“levels of service” means the levels of service set out in paragraph 1.1, and further defined in paragraph 2.1, of Part 1 of the Funding Code (Funding Code: Criteria) and for the purpose

(1) 1999 c. 22.

(2) The contracts are available at www.justice.gov.uk/legal-aid. Copies can be inspected at the Legal Aid Agency (Head Office) at 102 Petty France, London, SW1H 9AJ.

of these Regulations Family Help (Lower) and Family Help (Higher) are treated as different levels of service;

“pre-commencement case” means a case—

- (a) in which advice, assistance, mediation or representation is provided by the Commission under the Legal Aid Act 1988⁽³⁾ in accordance with article 5 of the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000⁽⁴⁾ or article 4 of, and Schedule 2 to, the Access to Justice Act (Commencement No. 7, Transitional Provisions and Savings) Order 2001⁽⁵⁾;
- (b) where an application for funding under the Criminal Defence Service is granted before 1st April 2013; or
- (c) where there is a pre-commencement application for funding under the Community Legal Service within the meaning of regulation 3;

“provider” means a person who provides or is seeking to provide services as part of the Community Legal Service; and

“Variety of Funded Work” means one of the following—

- (a) Certificated Work;
- (b) Controlled Work; or
- (c) Other Grant or Contract Work,

and “Controlled Work” and “Other Grant or Contract Work” are defined in Part A of Part 2 of the Funding Code (Funding Code: Procedures).

Commencement Information

- 11** Reg. 1 in force at 1.4.2013, see [reg. 1](#)
- 12** Reg. 2 in force at 1.4.2013, see [reg. 1](#)

Pre-commencement application for funding under the Community Legal Service

3. A “pre-commencement application for funding under the Community Legal Service” means an application for funding under the Community Legal Service that—

- (a) is made before 1st April 2013; or
- (b) is a new application for funding under the Community Legal Service described in regulation 5.

4.—(1) For the purpose of regulation 3(a) an application, other than an application made to the CLA Helpline, is made before 1st April 2013—

- (a) if the application is for Controlled Work and the application is signed and dated before 1st April 2013;
- (b) if the application is in paper form for Certificated Work, other than an application for emergency representation, and the application—
 - (i) is signed and dated before 1st April 2013; and

⁽³⁾ 1988 c. 34. The provisions of the Legal Aid Act 1988 relevant to these Regulations were repealed for certain purposes on 1st April 2000 and for remaining purposes on 2nd April 2001, subject to transitional provisions and savings.

⁽⁴⁾ S.I. 2000/774 (C. 16).

⁽⁵⁾ S.I. 2001/916 (C. 32).

- (ii) is received by the Commission or, after 31st March 2013, by the Director, by 5.00pm on 8th April 2013;
 - (c) if the application is in electronic form for Certificated Work and the application is recorded on the Commission’s Client and Cost Management System as having been submitted through that system before 1st April 2013; or
 - (d) if the application is for exceptional funding under the 1999 Act and the application—
 - (i) is signed and dated before 1st April 2013; and
 - (ii) received by the Commission or, after 31st March 2013, by the Director, by 5.00pm on 8th April 2013.
- (2) For the purpose of regulation 3(a) an application that is made to the CLA Helpline is made before 1st April 2013 if—
- (a) the individual makes the application to a CLA Specialist Telephone Adviser before 12.30pm on 30th March 2013; or
 - (b) the CLA Operator Service transfers the individual to a CLA Specialist Telephone Adviser before 12.30pm on 30th March 2013 and—
 - (i) the call is not answered by the CLA Specialist Telephone Adviser before 12.30pm on 30th March 2013;
 - (ii) the individual leaves a message with the CLA Specialist Telephone Adviser before 12.30pm on 30th March 2013; and
 - (iii) the individual makes the application to a CLA Specialist Telephone Adviser within two weeks of leaving the message.
- (3) For the purpose of regulation 3(a) an application for emergency representation is treated as having been made before 1st April 2013 if—
- (a) the application—
 - (i) is granted by a provider before 1st April 2013; and
 - (ii) notified within five working days of the grant to the Commission or, after 31st March 2013, to the Director; or
 - (b) the application is faxed to, and received by, the Commission before 1st April 2013.
- (4) In this regulation—
- (a) an “application for emergency representation” means an application made under Section 3 of Part C of Part 2 of the Funding Code (Funding Code: Procedures); and
 - (b) an “application for exceptional funding under the 1999 Act” means an application under section 6(8)(b) of the 1999 Act made in accordance with paragraphs 15.1 to 15.3 of Part 2 of the Funding Code (Funding Code: Procedures).

5.—(1) An application is a new application for funding referred to in regulation 3(b) if either paragraph (2) or (3) applies.

(2) This paragraph applies where a further application for funding is made after 31st March 2013 and the following conditions are met—

- (a) funded services have been provided as a result of a pre-commencement application for funding under the Community Legal Service (“the original application”);
- (b) the further application for funding relates to the same case for which the funded services were provided as a result of the original application; and
- (c) the further application for funding is—

- (i) for a different level of service to that provided as a result of the original application; and
- (ii) the different level of service falls within the same Variety of Funded Work as the level of service for which funding was provided as a result of the original application.

(3) This paragraph applies where a further application for funding under the Community Legal Service is made after 31st March 2013 and the following conditions are met—

- (a) funded services that are Certificated Work have been provided as a result of a pre-commencement application for funding under the Community Legal Service (“the original application”);
- (b) the further application for funding relates to the case for which the funded services were provided as a result of the original application; and
- (c) as a result of the further application for funding, it is decided under paragraph 35.1 of Part C of Part 2 of the Funding Code (Funding Code: Procedures) that the certificate should cover more than one set of proceedings.

Commencement Information

- I3** Reg. 3 in force at 1.4.2013, see [reg. 1](#)
- I4** Reg. 4 in force at 1.4.2013, see [reg. 1](#)
- I5** Reg. 5 in force at 1.4.2013, see [reg. 1](#)

Saving and transitional provisions

6.—(1) The provisions commenced by article 3(a) and (e) to (i) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 6) Order 2013(6) (“the Commencement No. 6 Order”), with the exception of section 38(1) of the Act (abolition of the Legal Services Commission), do not apply to a pre-commencement case.

(2) Paragraph (1) is subject to paragraphs (4) and (5) and regulations 7 to 13.

(3) Accordingly, the following continue to apply to a pre-commencement case—

- (a) Part 1 of the 1999 Act and the Legal Aid Act 1988 and all orders, regulations, guidance, directions or authorisations made or given under them, in so far as they were in force immediately before 1st April 2013;
- (b) any power or duty to make orders or regulations (including orders in relation to the payment of remuneration for funded services) or to give guidance, directions or authorisations; and
- (c) delegations conferred by the Commission before 1st April 2013 in relation to the powers, duties or other functions of the Commission described in regulation 7(2) and (3).

(4) The repeal on 1st April 2013 of the following provisions of the 1999 Act by article 3(a) and (e) to (i) of the Commencement No. 6 Order takes effect in relation to a pre-commencement case—

- (a) section 1 and Schedule 1 (Legal Services Commission);
- (b) section 2 (power to replace Commission with two bodies);
- (c) section 4(4)(a) (duty on persons exercising functions relating to the Community Legal Service);
- (d) section 4(6) (duty of Commission to inform itself about services);

- (e) section 5 (funding of services);
- (f) section 8(8) and (9) (code about provision of funded services);
- (g) section 16(4) (code of conduct);
- (h) section 18 (funding); and
- (i) section 25(2) to (4) (requirements prior to making remuneration orders).

(5) The following provisions of Schedule 5 to the Act (legal aid: consequential amendments) commenced by article 3(a) and (e) to (i) of the Commencement No. 6 Order take effect in relation to a pre-commencement case—

- (a) paragraph 1 (Public Records Act 1958**(7)**);
- (b) paragraph 2 (Parliamentary Commissioner Act 1967**(8)**);
- (c) paragraph 10 (House of Commons Disqualification Act 1975**(9)**);
- (d) paragraph 11 (Northern Ireland Assembly Disqualification Act 1975**(10)**);
- (e) paragraph 55 (Freedom of Information Act 2000**(11)**);
- (f) paragraph 66 (Domestic Violence, Crime and Victims Act 2004**(12)**);
- (g) paragraph 70 (Equality Act 2010**(13)**);
- (h) paragraph 71 (Terrorist Asset-Freezing etc. Act 2010**(14)**); and
- (i) the entries in the Table in Part 2 of Schedule 5 (repeals consequential on Part 1 of this Schedule) relating to paragraphs 1, 11 and 12 of Schedule 4 to the 1999 Act.

7.—(1) After 31st March 2013, any power, duty (or other function) of the Commission to which paragraph (2) applies may be exercised in relation to a pre-commencement case—

- (a) by the Director, to the extent that the power, duty or other function relates to a decision in an individual case about any of the following—
 - (i) whether to fund, or continue to fund, funded services for an individual;
 - (ii) whether to request an authorisation from the Lord Chancellor under section 6(8)(b) of the 1999 Act;
 - (iii) the terms of the provision of the funded services;
 - (iv) the grant (including the provisional grant) or withdrawal of a right to representation, under section 14 of, and Schedule 3 to, the 1999 Act;
 - (v) liability to a contribution order under section 17A of the 1999 Act;
 - (vi) whether the case should be referred under paragraph 23.1 of Part C of Part 2 of the Funding Code (Funding Code: Procedures) or whether a direction should be made under paragraph 26 of Part C of Part 2 of the Funding Code (Funding Code: Procedures);
 - (vii) whether the case should be classified as a Very High Cost Case under regulation 2 of the Criminal Defence Service (Funding) Order 2007**(15)**; and
- (b) otherwise by the Lord Chancellor,

(7) 1958 c. 51.
(8) 1967 c. 13.
(9) 1975 c. 24.
(10) 1975 c. 25.
(11) 2000 c. 36.
(12) 2004 c. 28.
(13) 2010 c. 15.
(14) 2010 c. 38.
(15) S.I. 2007/1174.

and any reference to the Commission, or to any person exercising a power, duty or other function on behalf of the Commission, in any enactment and in the Funding Code, authorisations, directions and guidance made under Part 1 of the 1999 Act must be construed accordingly.

(2) This paragraph applies to any power, duty or other function of the Commission that remains in force on 1st April 2013 and that before that date was exercisable by the Commission under Part 1 of the 1999 Act or under the Funding Code, orders, regulations, directions, authorisations or guidance made under that Part of that Act, including one exercised by another person on behalf of the Commission.

(3) Any power, duty or other function of the Commission that remains in force on 1st April 2013 and that before that date was exercisable by the Commission in relation to advice, assistance, mediation and representation under the Legal Aid Act 1988, may be exercised after 31st March 2013 in relation to a pre-commencement case—

- (a) by the Director, if the power, duty or other function is equivalent to one referred to in paragraph (1)(a); and
- (b) otherwise by the Lord Chancellor.

(4) A power, duty or other function exercisable by the Director or by the Lord Chancellor in accordance with paragraphs (1) and (3) may be exercised by a person authorised for that purpose by, respectively, the Director or the Lord Chancellor, or an employee of that person.

(5) Delegations referred to in regulation 6(3)(c) continue to apply in relation to a pre-commencement case as if they were authorisations made by the Director or the Lord Chancellor under paragraph (4).

8. After 31st March 2013, in relation to a pre-commencement case—

- (a) any reference to the Community Legal Service Fund⁽¹⁶⁾ in any enactment and in the Funding Code, authorisations, directions and guidance made under Part 1 of the 1999 Act must be construed as a reference to the Lord Chancellor or, in relation to costs payable out of the Community Legal Service Fund, as a reference to costs payable by the Lord Chancellor in relation to funded services provided under the Community Legal Service;
- (b) in paragraph 6.4 of Section 6 of Part 1 of the Funding Code (Funding Code: Criteria) the reference to “Central Budget” must be construed as a reference to the Lord Chancellor;
- (c) any reference in the Funding Code, orders, regulations, authorisations, directions and guidance made under Part 1 of the 1999 Act to an Independent Funding Adjudicator appointed by the Commission must be construed as if it were a reference to an independent funding adjudicator appointed by the Lord Chancellor under section 2(1) of the Act (arrangements); and
- (d) any reference in the Funding Code, orders, regulations, authorisations, directions and guidance made under Part 1 of the 1999 Act to the Special Controls Review Panel appointed by the Commission must be construed as if it were a reference to the special controls review panel appointed by the Lord Chancellor under section 2(1) of the Act.

Commencement Information

- I6** Reg. 6 in force at 1.4.2013, see [reg. 1](#)
- I7** Reg. 7 in force at 1.4.2013, see [reg. 1](#)
- I8** Reg. 8 in force at 1.4.2013, see [reg. 1](#)

⁽¹⁶⁾ Under section 5(1) of the Access to Justice Act 1999 (repealed by [S.I. 2013/453 \(C. 19\)](#)), the Legal Services Commission was required to establish and maintain a fund known as the Community Legal Service Fund.

Assessment of resources

9.—(1) In this regulation—

- (a) “Legal Aid Assessment Regulations” means the Civil Legal Aid (Assessment of Resources) Regulations 1989⁽¹⁷⁾;
- (b) “CLS Financial Regulations” means the Community Legal Service (Financial) Regulations 2000⁽¹⁸⁾; and
- (c) “the 2013 Regulations” means the Civil Legal Aid (Financial Resources and Payments for Services) Regulations 2013⁽¹⁹⁾.

(2) After 31st March 2013, on any assessment, re-assessment, further assessment or amended assessment of resources under the Legal Aid Assessment Regulations or under the CLS Financial Regulations in respect of funded services provided in a pre-commencement case—

- (a) the individual’s financial eligibility and contribution must be calculated by reference to the higher of the relevant figures in the Legal Aid Assessment Regulations or, as the case may be, the CLS Financial Regulations and the equivalent figures for the time being in the 2013 Regulations, as set out in the table; and
- (b) regulation 25 (deductions in respect of a partner and dependants of the individual) of the 2013 Regulations applies.

Table

<i>Legal Aid Assessment Regulations</i>	<i>CLS Financial Regulations</i>	<i>The 2013 Regulations</i>
regulation 4(2)	regulation 5(2)	regulation 8(2)
regulation 4(2)(a)	regulation 5(2)	regulation 8(2)
regulation 4(3)	regulation 5(2)	regulation 8(2)
regulation 4(3)(a)	regulation 5(2)	regulation 8(2)
	regulation 5A	regulation 7
regulation 4(4)(a)	regulation 38(2)(b)	regulation 44(2)(b)
regulation 4(4)(b)	regulation 38(2A)(b)	regulation 44(3)(b)
	regulation 23(1)(a)	regulation 27(1)(a)
	regulation 24(7)	regulation 28(7)
paragraph 10(a) Schedule 3	of regulation 32(2)	regulation 37(2)
	regulation 32A(2)	regulation 38(2)
paragraph 10(b) Schedule 3	of regulation 32B(2)	regulation 39(2)
	regulation 35(1)(c)	regulation 41(1)(b)

(17) [S.I. 1989/338](#). This instrument lapsed on 1st April 2000 on the repeal of the enabling provision, subject to savings in relation to certain existing cases by virtue of article 5 of [S.I. 2000/774](#).

(18) [S.I. 2000/516](#).

(19) [S.I. 2013/480](#).

Commencement Information

19 Reg. 9 in force at 1.4.2013, see [reg. 1](#)

[^{F1}Costs

9A.—(1) This regulation applies if a legally aided party has received in a pre-commencement case funded services made available under the Community Legal Service in connection with relevant proceedings.

(2) Where this regulation applies, the Civil Legal Aid (Costs) Regulations 2013 must be applied with the following modifications—

- (a) in regulation 7 (cost protection in relation to legal help, help with family mediation or family help (lower)), the references to legal help and family help (lower) include the following levels of service—
 - (i) Legal Help; and
 - (ii) Family Help (Lower);
- (b) in regulation 8(1) (periods during which cost protection applies), the reference to civil legal services includes funded services (other than Help at Court) made available under the Community Legal Service; and
- (c) in regulation 10(4) (costs order against the Lord Chancellor), the references to civil legal services include funded services made available under the Community Legal Service.

(3) In paragraph (1), “legally aided party” and “relevant proceedings” have the same meaning as in the Civil Legal Aid (Costs) Regulations 2013.]

F1 [Reg. 9A](#) inserted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential, Transitional and Saving Provisions\) \(Amendment\) Regulations 2013 \(S.I. 2013/621\)](#), [regs. 1, 3](#)

Statutory charge

10.—(1) This regulation applies if a legally aided party has received in a pre-commencement case funded services made available under the Community Legal Service in connection with a relevant dispute or relevant proceedings.

(2) Where this regulation applies, section 25(2)(a) of the Act (charges on property in connection with civil legal services) is modified so that the amounts expended by the Lord Chancellor in securing the provision of the services include the amounts expended in providing funded services under the Community Legal Service.

(3) Where this regulation applies, the Civil Legal Aid (Statutory Charge) Regulations 2013(**20**) must be applied with the following modifications—

- (a) in regulation 4(1), the reference to the cost to the Lord Chancellor of providing the forms of civil legal services set out in regulation 4(1)(a) to (e) includes the cost of providing the following levels of service—
 - (i) Legal Help;
 - (ii) Help at Court;
 - (iii) Family Help (Lower); or

- (iv) Family Mediation; and
- (b) in regulation 4(2), the reference to the cost to the Lord Chancellor of providing legal help, help at court, family help (lower) and family mediation includes the cost of providing the following levels of service—
 - (i) Legal Help;
 - (ii) Help at Court; or
 - (iii) Family Help (Lower).

(4) In a case to which this regulation applies, the statutory charge created by section 25(1) of the Act does not include any amount that has been recovered or charged under the charge arising under section 10(7) of the 1999 Act.

(5) In this regulation “legally aided party”, “relevant dispute” and “relevant proceedings” have the same meaning as in the Civil Legal Aid (Statutory Charge) Regulations 2013.

Commencement Information

I10 Reg. 10 in force at 1.4.2013, see [reg. 1](#)

Criminal legal aid

11. Where an application for advice and assistance under section 13 of the 1999 Act (advice and assistance) or an application for a grant of a right to representation under section 14 of the 1999 Act (representation) is not considered until after 31st March 2013, the application must be treated as an application for advice and assistance under section 13 or 15 of the Act or as an application for representation for the purposes of criminal proceedings under section 16 of the Act.

12. Where both—

- (a) a grant to a right to representation under section 14 of the 1999 Act which was granted before 1st April 2013; and
- (b) a determination for representation for the purposes of criminal proceedings under section 16 of the Act,

exist in the same proceedings, the Criminal Defence Service (Funding) Order 2007 applies and the Criminal Legal Aid (Remuneration) Regulations 2013(**21**) do not apply.

Commencement Information

I11 Reg. 11 in force at 1.4.2013, see [reg. 1](#)

I12 Reg. 12 in force at 1.4.2013, see [reg. 1](#)

Exclusion from legal aid work

13.—(1) After 31st March 2013, the exclusion from legal aid work or from providing representation funded by the Commission as part of the Criminal Defence Service before that date of any barrister by virtue of section 42 of the Administration of Justice Act 1985(**22**) or of any solicitor by virtue of section 47 of the Solicitors Act 1974(**23**) also takes effect as an exclusion from criminal legal aid work.

(21) S.I. 2013/435.

(22) 1985 c. 61.

(23) 1974 c. 47.

(2) In paragraph (1)—

- (a) “criminal legal aid work” means the provision under arrangements made for the purposes of Part 1 of the Act of the types of advice, assistance and representation that are required to be made available under sections 13 (advice and assistance for individuals in custody), 15 (advice and assistance for criminal proceedings) and 16 (representation for criminal proceedings) of the Act; and
- (b) “legal aid work” means the provision of services under the Legal Aid Act 1988.

Commencement Information

I13 Reg. 13 in force at 1.4.2013, see [reg. 1](#)

Consequential amendments to secondary legislation

14.—(1) Subject to paragraph (2), the consequential amendments set out in the Schedule take effect.

(2) The consequential amendments set out in Part 2 of the Schedule do not apply to a pre-commencement case.

(3) The amendments to rule 18(a)(i) (notice of funding of legal services) of the Tribunal Procedure (Upper Tribunal) Rules 2008(**24**) made by rule 55 of the Tribunal Procedure (Amendment) Rules 2013(**25**) do not apply to a pre-commencement case.

(4) In the Civil Procedure Rules 1998(**26**)—

- (a) references to an assisted person and LSC funded client have the same meaning as in rule 43.2 of those Rules as it was in force immediately before 1st April 2013; and
- (b) in paragraph (2)(a)(i) of rule 46.2, “legal aid” includes funded services under the Community Legal Service.

Commencement Information

I14 Reg. 14 in force at 1.4.2013, see [reg. 1](#)

Signed by authority of the Lord Chancellor

McNally
Minister of State
Ministry of Justice

(24) S.I. 2008/2698.

(25) S.I. 2013/477 (L. 2).

(26) S.I. 1998/3132 (L. 17). Rule 43.2 is revoked, and rule 46.2(2)(a)(i) is substituted, on 1st April 2013 by S.I. 2013/262 (L. 1).

Changes to legislation:

There are currently no known outstanding effects for the The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Consequential, Transitional and Saving Provisions) Regulations 2013.