

2014 No.

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil Legal Aid (Procedure) (Amendment) (No.2)
Regulations 2014**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - *4th August 2014*

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

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Procedure) (Amendment) (No.2) Regulations 2014 and come into force on 4th August 2014.

Amendment of the Civil Legal Aid (Procedure) Regulations 2012

2.—(1) The Civil Legal Aid (Procedure) Regulations 2012(b) are amended as follows.

(2) In regulation 14 (duty scheme), for “These Regulations do not apply” substitute “Part 1A of these Regulations (but not Parts 2 to 8) applies”.

(3) After regulation 15 (applications by legal persons), insert—

“PART 1A

Residence test etc.

General

15A.—(1) This Part makes provision in relation to the evidence that must be provided to the Director in connection with an application for civil legal services which are—

- (a) civil legal services to which the residence test applies; or
- (b) civil legal services to which the residence test does not apply by virtue of an exception in paragraph 19(6), (7), (8) or (9) of Part 2 of Schedule 1 to the Act (successful asylum seeker, resettled refugee, membership of Her Majesty’s United Kingdom forces etc.).

(a) c. 10.

(b) S.I. 2012/3098. There are amendments which are not relevant to these Regulations.

(2) The Director may determine an application which does not satisfy the requirements of regulations 15B to 15I if—

- (a) the application is for civil legal services provided by a specialist telephone provider; and
- (b) the Director considers that it would be in the interests of justice to do so.

(3) The duration of any advice provided by virtue of a determination under paragraph (2) may not exceed any limit set out in arrangements made by the Lord Chancellor under section 2(1) of the Act.

(4) The Director may determine an application which does not satisfy the requirements of regulations 15B to 15I if—

- (a) the application is for civil legal services relating to a Mediation Information and Assessment meeting which is held at a court; and
- (b) the Director considers that it would be in the interests of justice to do so.

(5) If an individual is provided with civil legal services by virtue of a determination under paragraph (2) or (4), the individual or the person making the application on behalf of the individual, must provide to the Director the evidence required by regulations 15B to 15I or which is otherwise necessary to enable the Director to perform the Director's functions under this Part within the period of 5 business days, beginning on the first business day after the day on which that determination was made.

(6) In this regulation, "Mediation Information and Assessment meeting" means an assessment by a mediator of whether, in light of all the circumstances, a case is suitable for mediation.

(7) Any document which must be provided under this Part of the Regulations must be provided in its original form.

Supporting evidence: lawful residence

15B.—(1) This regulation applies to an application made by, or on behalf of, an individual ("A") for civil legal services—

- (a) to which the residence test applies; and
- (b) which is made on the basis that the residence test is (in part) satisfied because A is lawfully resident in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory on the application day ("the relevant time") (see paragraph 19(2)(a) of Part 2 of Schedule 1 to the Act).

(2) This regulation also applies to an application made by, or on behalf of, an individual ("A") for civil legal services—

- (a) to which the residence test applies; and
- (b) which is made on the basis that the residence test is (in part) satisfied because A has been lawfully resident in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory for a period of 12 consecutive months ("the relevant time") (see paragraph 19(4)(a) of Part 2 of Schedule 1 to the Act).

(3) Subject to paragraph (4) (exceptional cases), the person making the application must provide—

- (a) a passport which describes A (as either the holder, or a person named in the passport as the child of the holder), as—
 - (i) a British citizen; or
 - (ii) a citizen of the United Kingdom and Colonies who has the right of abode in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory;

- (b) a passport or national identity card showing that A (as either the holder, or a person named in the passport or card as the child of the holder), is a national of an EEA state or Switzerland;
- (c) a registration certificate, or other document which—
 - (i) has been issued by the Home Office;
 - (ii) has been issued to a national of an EEA state or Switzerland; and
 - (iii) certifies that A has (or had) the right to reside in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory at or for the relevant time;
- (d) a permanent residence card issued to A by the Home Office on the basis that A is a family member of a national of an EEA state or Switzerland;
- (e) a biometric immigration document issued by the Home Office which indicates that A is (or was) allowed to stay in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory at or for the relevant time and which is (or was) valid at or for the relevant time;
- (f) a passport endorsed to show that A—
 - (i) is exempt from immigration control; or
 - (ii) is (or was) allowed to stay in the United Kingdom, Channel Islands, the Isle of Man or a British overseas territory at or for the relevant time;
 - and which was valid at or for the relevant time;
- (g) an immigration status document issued by the Home Office with an endorsement indicating that A is (or was) allowed to stay in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory at or for the relevant time, and which was valid at or for the relevant time and a relevant information document;
- (h) a full birth certificate issued in relation to A in the United Kingdom which includes the name of at least one of A's parents and a relevant information document;
- (i) a full adoption certificate issued in relation to A in the United Kingdom which includes the name of at least one of A's adoptive parents and a relevant information document;
- (j) a birth certificate issued in relation to A in the Channel Islands, the Isle of Man, Ireland or a British overseas territory and a relevant information document;
- (k) an adoption certificate issued in relation to A in the Channel Islands, the Isle of Man, Ireland or a British overseas territory and a relevant information document;
 - or
- (l) a certificate of registration or naturalisation of A as a British citizen and a relevant information document.

(4) If the Director is satisfied that it would, by virtue of the personal circumstances of A or the person making the application on behalf of A, be impracticable for the person making the application to provide the evidence specified in paragraph (3), the Director may determine that A is lawfully resident in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory at or for the relevant time if the Director is satisfied that is or is likely to be the case, by virtue of evidence provided in connection with the application.

Supporting evidence: absence from the United Kingdom etc.

15C.—(1) This regulation applies to an application made by, or on behalf of, an individual (“A”) for civil legal services—

- (a) to which the residence test applies; and

- (b) which is made on the basis that the residence test is (in part) satisfied because the total number of days on which A was absent from the United Kingdom, the Channel Islands, the Isle of Man and the British overseas territories in a particular period did not exceed 30 (see paragraph 19(4)(b) and (5)(a)(iii) of Part 2 of Schedule 1 to the Act).

(2) The person making the application must provide a statement signed by or on behalf of A which states that the total number of days on which A was absent from the United Kingdom, the Channel Islands, the Isle of Man and the British overseas territories in that period did not exceed 30.

Supporting evidence: child less than 12 months old

15D.—(1) This regulation applies to an application made by, or on behalf of, an individual (“A”) for civil legal services—

- (a) to which the residence test applies; and
- (b) which is made on the basis that the residence test is (in part) satisfied because A is, on the application day, less than 12 months old (see paragraph 19(3) of Part 2 of Schedule 1 to the Act)

(2) Subject to paragraph (3) (exceptional cases), the person making the application must provide A’s birth or adoption certificate, which must contain A’s name and date of birth.

(3) If the Director is satisfied that it would, by virtue of the personal circumstances of A or the person making the application on behalf of A, be impracticable for the person making the application to provide the evidence specified in paragraph (2), the Director may determine that A is, on the application day, less than 12 months old if the Director is satisfied that is or is likely to be the case, by virtue of evidence provided in connection with the application.

Supporting evidence: successful asylum seeker

15E.—(1) This regulation applies to an application made by, or on behalf of, an individual (“A”) for civil legal services—

- (a) to which the residence test applies; and
- (b) which is made on the basis that the residence test is (in part) satisfied because, on the application day (“the relevant time”), A has leave to enter or to remain in the United Kingdom based on the rights described in paragraph 30(1) of Part 1 of Schedule 1 to the Act as a result of the determination of a claim for asylum in A’s favour (see paragraph 19(5)(a)(i) of Part 2 of the Schedule).

(2) This regulation also applies to an application made by, or on behalf of, an individual (“A”) for civil legal services which is made on the basis that the residence test does not apply to services provided to A (in part) because, when the services are provided or on the application day (“the relevant time”), A has leave to enter or to remain in the United Kingdom based on the rights described in paragraph 30(1) of Part 1 of Schedule 1 to the Act as a result of the determination of a claim for asylum in A’s favour (see paragraph 19(6)(b)(ii) and 19(7)(a)(i) of Part 2 of that Schedule).

(3) Subject to paragraph (4) (exceptional cases), the person making the application must provide—

- (a) a current biometric immigration document issued by the Home Office which indicates that A is allowed to stay in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory at the relevant time;
- (b) a current immigration status document issued by the Home Office with an endorsement indicating that A is allowed to stay in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory at the relevant time, and a relevant information document;

(4) If the Director is satisfied that it would, by virtue of the personal circumstances of A or the person making the application on behalf of A, be impracticable for the person making the application to provide the evidence specified in paragraph (3), the Director may determine that the test specified in paragraph (1) or (2) is met if the Director is satisfied that is or is likely to be the case, by virtue of evidence provided in connection with the application.

Supporting evidence: asylum seeker

15F.—(1) This regulation applies to an application made by, or on behalf of, an individual (“A”) for civil legal services which is made on the basis that the residence test does not apply to the services provided to A (in part) because A has made a claim for asylum (see paragraph 19(6)(a)(i) of Part 2 of Schedule 1 to the Act).

(2) Subject to paragraph (3) (exceptional cases), the person making the application must provide an application registration card issued to A by the Home Office.

(3) If the Director is satisfied that it would, by virtue of the personal circumstances of A or the person making the application on behalf of A, be impracticable for the person making the application to provide the evidence specified in paragraph (2), the Director may determine that A has, on the application day, made a claim for asylum if the Director is satisfied that is or is likely to be the case, by virtue of evidence provided in connection with the application.

Supporting evidence: resettled refugee

15G.—(1) This regulation applies to an application made by, or on behalf of, an individual (“A”) for civil legal services which is made on the basis that the residence test does not apply to services provided to A (in part) because, on the application day, A is a resettled refugee (see paragraph 19(8)(a)(i) of Part 2 of Schedule 1 to the Act).

(2) Subject to paragraph (3) (exceptional cases), the person making the application must provide a current biometric immigration document issued by the Home Office which indicates that A is, on the application day, allowed to stay in the United Kingdom, the Channel Islands, the Isle of Man or a British overseas territory on the application day.

(3) If the Director is satisfied that it would, by virtue of the personal circumstances of A or the person making the application on behalf of A, be impracticable for the person making the application to provide the evidence specified in paragraph (2), the Director may determine that A is, on the application day, a resettled refugee if the Director is satisfied that is or is likely to be the case, by virtue of evidence provided in connection with the application.

Supporting evidence: member of Her Majesty’s United Kingdom forces

15H.—(1) This regulation applies to an application made by, or on behalf of, an individual (“A”) for civil legal services which is made on the basis that the residence test does not apply to services provided to A because on the application day A is a member of Her Majesty’s United Kingdom forces (see paragraph 19(9)(a) of Part 2 of Schedule 1 to the Act).

(2) Subject to paragraph (4) (exceptional cases), the person making the application must provide—

- (a) A’s identity card issued by any of Her Majesty’s United Kingdom forces; or
- (b) both—
 - (i) a letter from the Secretary of State confirming that A is a member of any of Her Majesty’s United Kingdom forces; and
 - (ii) evidence of A’s identity in one of the forms specified in paragraph (3).

(3) The forms of evidence are—

- (a) A's passport;
- (b) A's biometric immigration document;
- (c) A's driving licence; or
- (d) A's birth or adoption certificate.

(4) If the Director is satisfied that it would, by virtue of the personal circumstances of A or the person making the application on behalf of A, be impracticable for the person making the application to provide the evidence specified in paragraph (2), the Director may determine that on the application day A is a member of Her Majesty's United Kingdom forces if the Director is satisfied that is or is likely to be the case, by virtue of evidence provided in connection with the application.

Supporting evidence: part of the immediate family of a member of Her Majesty's United Kingdom forces

15I.—(1) This regulation applies to an application for civil legal services which is made by, or on behalf of, an individual ("A") on the basis that the residence test does not apply to services provided to A because on the application day A is part of the immediate family of a member of Her Majesty's United Kingdom forces (see paragraph 19(9)(b) of Part 2 of Schedule 1 to the Act).

(2) Subject to paragraph (4) (exceptional cases), the person making the application must provide—

- (a) evidence in one or more of the forms specified in paragraph (3), that A is part of the immediate family of a member of Her Majesty's United Kingdom forces ("B");
- (b) the evidence that B would be required by regulation 15H to provide if B was, on the application day, making an application for civil legal services to which regulation 15H applies.

(3) The forms of evidence are—

- (a) a marriage certificate showing that A is married to B;
- (b) a civil partnership certificate showing that A is a civil partner of B;
- (c) a birth or adoption certificate showing that A is a child of B;
- (d) a parental responsibility agreement signed and witnessed by the court showing that A is a child of B;
- (e) a court order for parental responsibility showing that A is a child of B;
- (f) evidence that A and B have been living together in a relationship similar to a marriage or civil partnership for at least two years.

(4) If the Director is satisfied that it would, by virtue of the personal circumstances of A or the person making the application on behalf of A, be impracticable for the person making the application to provide the evidence specified required by this regulation, the Director may determine that on the application day A is part of the immediate family of a member of Her Majesty's United Kingdom forces if the Director is satisfied that is or is likely to be the case, by virtue of evidence provided in connection with the application.

Interpretation

15J. In this Part—

"application day" has the same meaning as in paragraph 19(2) of Part 2 of Schedule 1 to the Act(a);

"biometric immigration document" means a document issued in accordance with regulations made under section 5 of the UK Borders Act 2007(a);

(a) Inserted by S.I. 2014/XXXX.

“personal circumstances”, in relation to a person (“A”) includes—

- (a) circumstances such as A being homeless;
- (b) characteristics such as A’s age or disability;

“relevant information document”, in relation to A, means a document issued by—

- (a) a person who employs, or has employed, A; or
- (b) a government agency;

which indicates A’s name and, if A has one, A’s national insurance number;

“the residence test” means the exclusion in paragraph 19 of Part 2 of Schedule 1 to the Act (residence test);

“United Kingdom passport” means a United Kingdom passport within the meaning of section 33(1) of the Immigration Act 1971**(b)**.”.

(4) In regulation 27(1) (review)—

- (a) at the end of paragraph (a), omit “or”;
- (b) at the end of paragraph (b) insert—

“or

- (c) a determination that the individual no longer qualifies for Controlled Work on the basis that the individual no longer satisfies the residence test provided for in paragraph 19 of Part 2 of Schedule 1 to the Act;”.

(5) In regulation 52(1)(b) (determination: emergency representation), after “limited information and documents” insert “(including an application that does not satisfy the requirements of Part 1A of these Regulations (residence test etc.))”.

Signed by authority of the Lord Chancellor

Name
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2014 (S.I. 2014/XXXX) amends Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) to provide that civil legal aid is not to be available unless the applicant for aid satisfies a residence test, an exception applies or the application relates to a service to which the residence test does not apply.

These Regulations amend the Civil Legal Aid (Procedure) Regulations 2012 (S.I.2012/3098) (“the Regulations”), including by inserting a new Part 1A. The inserted provisions specify the evidence that must be provided by an applicant for legal aid who claims that the residence test is satisfied or does not apply because the person is lawfully resident (new regulation 15B), has not been absent for more than 30 days (new regulation 15C), a child under 12 months (new regulation 15D) a person who has been granted asylum (new regulation 15E) and an asylum seeker (new regulation 15F), a resettled refugee (new regulation 15G), a member of Her Majesty’s United Kingdom forces (new regulation 15H) or part of the immediate family of such a person (new regulation 15I).

In each of these cases (except new regulation 15D), the Regulations provide that if the Director of Legal Aid Casework is satisfied that, by virtue of the personal circumstances of the applicant for legal aid or the person on whose behalf the application is being made, that it would be

(a) 2007 c. 30.

(b) 1971 c. 77; the definition of “United Kingdom passport” was inserted by section 39(6) of, and paragraph 3 of Schedule 4 to, the British Nationality Act 1981 (c. 61).

impracticable for the applicant to provide the evidence specified in the Regulations, the Director may determine that the residence test or exception to it is satisfied on the basis of other evidence provided by the applicant.

Further guidance on what evidence should be provided that other aspects of the residence test are satisfied or that the test does not apply is provided in guidance issued by the Legal Aid Agency. (see <http://www.justice.gov.uk/legal-aid>).

The amendments to the Regulations (new regulation 15A(2) to (6) and the amendment to regulation 52) provide that the Director of Legal Aid Casework may determine an application for legal aid under Part 5 of the Regulations (which deals with emergency representation), an application to a specialist telephone provider or an application relating to a Mediation Information and Assessment meeting even if the application does not satisfy the evidential requirements specified in new Part 1A of the Regulations.

A full impact assessment of the effect of the policy implemented by this instrument on the costs of business and the voluntary sector was produced with the Government's response to consultation, Transforming Legal Aid: Next Steps, and is available at <https://consult.justice.gov.uk/>.