

2013 No. 2877

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil Legal Aid (Remuneration) (Amendment) Regulations
2013**

<i>Made</i>	- - - -	<i>7th November 2013</i>
<i>Laid before Parliament</i>		<i>11th November 2013</i>
<i>Coming into force</i>	- -	<i>2nd December 2013</i>

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

PART 1

GENERAL AND AMENDMENTS

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Remuneration) (Amendment) Regulations 2013 and come into force on 2nd December 2013.

Amendment to the Civil Legal Aid (Remuneration) Regulations 2013

2.—(1) The Civil Legal Aid (Remuneration) Regulations 2013(c) are amended as follows.

(2) In regulation 7—

- (a) in paragraph (2), for “(3) and (4)” substitute “(3) to (4A)”;
- (b) for paragraph (3) substitute—

“(3) The Lord Chancellor may pay an enhancement to the hourly rates set out in Table 1 of Schedule 2 where—

- (a) the work was done with exceptional competence, skill or expertise;
- (b) the work was done with exceptional speed; or
- (c) the case involved exceptional circumstances or complexity.

(3A) Subject to paragraph (3B), when calculating the percentage by which the hourly rates may be enhanced under paragraph (3), the Lord Chancellor must have regard to the—

- (a) degree of responsibility accepted by the barrister;

(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. 2013/422.

- (b) care, speed and efficiency with which the barrister prepared the case; and
 - (c) novelty, weight and complexity of the case.
- (3B) The Lord Chancellor must not pay an enhancement which exceeds—
- (a) 100% for proceedings in the Upper Tribunal or High Court; or
 - (b) 50% for all other proceedings.”;
- (c) for paragraph (4) substitute—
- “(4) Where a barrister in independent practice who is not a Queen’s Counsel provides civil legal services in a category not listed in Table 1 or Table 2 in Schedule 2, in considering the rate at which to remunerate the barrister for the services provided, the Lord Chancellor must have regard to the rates set out in Table 1 and the provisions relating to enhancement under paragraphs (3) to (3B).”;
- (d) after paragraph (4) insert—
- “(4A) Where a barrister in independent practice who is a Queen’s Counsel provides civil legal services in a category not listed in Table 2 in Schedule 2, in considering the rate at which to remunerate the barrister for the services provided, the Lord Chancellor must have regard to the rates set out in that Table.”; and
- (e) for paragraph (5) substitute—
- “(5) For the purpose of this regulation—
- (a) in determining what is exceptional, the Lord Chancellor may have regard to the generality of proceedings to which the relevant rates apply;
 - (b) “care” includes the skill with which the barrister has carried out the work and, in particular, the care with which the barrister has dealt with a vulnerable client; and
 - (c) “weight” means the—
 - (i) volume of documentation or other material in a case;
 - (ii) number of issues arising in a case; or
 - (iii) importance of the case to the client.”.

(3) In regulation 9—

- (a) in paragraph (4), for subparagraphs (a) and (b) substitute “in accordance with the payment rates set out in Part 2 of Schedule 2 to the Criminal Defence Service (Very High Cost Cases) (Funding) Order 2013(a)”;
- (b) omit paragraph (6).

(4) In Part 2 of Schedule 1—

- (a) omit table 8(b); and
- (b) for the heading of table 8(c), substitute—

“Table 8(c): Controlled Legal Representation – Immigration and Asylum hourly rates cases”.

- (5) For Schedule 2 substitute Schedule 2 as set out in Schedule 1 to these Regulations.
- (6) For the table in Schedule 5 substitute the table as set out in Schedule 2 to these Regulations.

(a) S.I. 2013/2804.

PART 2

TRANSITIONAL PROVISIONS

Application

3. The amendments made by regulation 2(2) and (4) to (6) do not apply to a pre-commencement application for civil legal services.

Pre-commencement applications for civil legal services

4. In this Part, a “pre-commencement application for civil legal services” means an application for civil legal services that is—

- (a) made before 2nd December 2013; or
- (b) a new application for civil legal services within the meaning of regulation 6.

5.—(1) For the purpose of regulation 4(a), an application, other than an application made to the CLA, is made before 2nd December 2013 if the application is—

- (a) for Controlled Work and the application is signed and dated before 2nd December 2013;
- (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 2nd December 2013 and received by the Director by 5.00pm on 9th December 2013; or
 - (ii) submitted through the Client and Cost Management System before 2nd December 2013; or
- (c) for emergency representation and the application—
 - (i) results in a determination being made by a provider before 2nd December 2013 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 2nd December 2013; or
 - (iii) is submitted through the Client and Cost Management System before 2nd December 2013.

(2) For the purpose of regulation 4(a), an application that is made to the CLA is made before 2nd December 2013 if—

- (a) the individual makes the application to a CLA Specialist Telephone Provider before 12.30pm on 30th November 2013; or
- (b) the CLA Operator Service transfers the individual to a CLA Specialist Telephone Provider before 12.30pm on 30th November 2013 and—
 - (i) the call is not answered by the CLA Specialist Telephone Provider before 12.30pm on 30th November 2013;
 - (ii) the individual leaves a message with the CLA Specialist Telephone Provider before 12.30pm on 30th November 2013; and
 - (iii) the individual makes the application to a CLA Specialist Telephone Provider within two weeks of leaving the message.

(3) In this regulation—

- (a) “the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
- (b) “CLA” means the Civil Legal Advice Operator Service and the CLA Specialist Telephone Providers;

- (c) “CLA Specialist Telephone Provider” means a provider under the 2013 CLA Contract^(a) between a provider and the Lord Chancellor;
- (d) “Client and Cost Management System” means the client and cost management system used by the Director in relation to applications for civil legal services;
- (e) “emergency representation” means—
 - (i) legal representation (within the meaning of regulation 18 of the Merits Criteria Regulations) that is not Controlled Work; or
 - (ii) family help (higher) (within the meaning of regulation 15(3) of the Merits Criteria Regulations),
which is provided following a determination made on an urgent application;
- (f) “provider” means a person who provides civil legal services under Part 1 of the Act (legal aid); and
- (g) “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday for purposes of paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971^(b).

6.—(1) An application is a new application for civil legal services referred to in regulation 4(b) if either paragraph (2) or (3) applies.

(2) This paragraph applies where an individual makes an application for civil legal services on or after 2nd December 2013 and the following conditions are met—

- (a) civil legal services have been provided to that individual as a result of a pre-commencement application for civil legal services under regulation 4(a) (“the original application”);
- (b) the further application for civil legal services relates to the same case for which civil legal services were provided as a result of the original application; and
- (c) the further application for civil legal services is—
 - (i) for a different form of civil legal services to that provided as a result of the original application; and
 - (ii) the different form of civil legal services falls within the same variety of work as the form of service for which civil legal services were provided as a result of the original application.

(3) This paragraph applies where an individual makes an application for civil legal services on or after 2nd December 2013 and the following conditions are met—

- (a) civil legal services that are Licensed Work have been provided to that individual as a result of a pre-commencement application for civil legal services under regulation 4(a) (“the original application”);
- (b) the further application for civil legal services relates to the case for which civil legal services were provided as a result of the original application; and
- (c) as a result of the further application for civil legal services, the Director has decided in accordance with regulation 37(3)(b) of the Procedure Regulations that the certificate should cover more than one set of proceedings.

(4) In this regulation “variety of work” means one of the following—

- (a) Controlled Work; or
- (b) Licensed Work.

^(a) The contract is 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.

^(b) 1971 c. 80.

Interpretation of Part 2

7. In this Part—

“the Procedure Regulations” means the Civil Legal Aid (Procedure) Regulations 2012(a);

“the Merits Criteria Regulations” means the Civil Legal Aid (Merits Criteria) Regulations 2013(b);

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

“form of civil legal services” has the meaning given in regulation 12(3) of the Merits Criteria Regulations; and

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

Signed by authority of the Lord Chancellor

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

7th November 2013

SCHEDULE 1

Regulation 2(5)

“SCHEDULE 2

Regulation 7

Remuneration of barristers in independent practice in relation to work that is not Controlled Work, advocacy services in family proceedings or other legal services in relation to inquests

Interpretation

1. For the purpose of this Schedule—

“junior counsel” means a barrister in independent practice of less than 10 years call; and

“senior counsel” means a barrister in independent practice of 10 years call or more.

Table 1: Rates in the County Court, High Court or Upper Tribunal other than for Queen’s Counsel

<i>Category</i>	<i>Hourly Rate</i>
Preparation and attendance in the High Court or Upper Tribunal	£71.55 (London rate) £67.50 (Non-London rate)
Preparation and attendance in the County Court	£63.00 (London rate) £59.40 (Non-London rate)
Attendance at court or conference in the High Court or Upper Tribunal	£33.30
Attendance at court or conference in the County Court	£29.25
Advocacy in the High Court or Upper Tribunal	£67.50

(a) S.I. 2012/3098.

(b) S.I. 2013/104, to which there are amendments not relevant to these Regulations.

Tribunal	
Advocacy in the County Court	£59.40
Travel and waiting in the High Court or Upper Tribunal	£29.93
Travel and waiting in the County Court	£26.28

Table 2: Rates in the Court of Appeal or Supreme Court and for Queen’s Counsel (in any court)

<i>Category</i>	<i>Hourly Rate</i>
Led junior counsel in the Court of Appeal or the Supreme Court	£112.50
Leading senior counsel in the Court of Appeal	£157.50
Queen’s Counsel (where approved for briefing or instruction by the Lord Chancellor) in the High Court or Court of Appeal	£180
Leading senior counsel in the Supreme Court	£180
Queen’s Counsel (where approved for briefing or instruction by the Lord Chancellor) in the Supreme Court	£225
Noter/Pupil/2nd led junior counsel in the Court of Appeal or Supreme Court	£36”

SCHEDULE 2

Regulation 2(6)

“Table

<i>Expert</i>	<i>Non-London - hourly rate unless stated to be a fixed fee</i>	<i>London - hourly rate unless stated to be a fixed fee</i>
A&E consultant	£100.80	£108
Accident reconstruction	£72	£54.40
Accountant	£64	£64
Accountant (general staff)	£40	£40
Accountant (manager)	£86.40	£86.40
Accountant (partner)	£108	£115.20
Anaesthetist	£108	£108
Architect	£79.20	£72
Cardiologist	£115.20	£115.20
Cell telephone site analysis	£72	£72
Child psychiatrist	£108	£108
Child psychologist	£100.80	£100.80
Computer expert	£72	£72
Consultant engineer	£72	£54.40
Dentist	£93.60	£93.60

Dermatologist	£86.40	£86.40
Disability consultant	£54.40	£54.40
DNA (testing of sample)	£252 per test	£252 per test
DNA (preparation of report)	£72	£72
Doctor (GP)	£79.20	£72
Employment consultant	£54.40	£54.40
Enquiry agent	£25.60	£18.40
ENT surgeon	£100.80	£100.80
General surgeon	£108	£72
Geneticist	£86.40	£86.40
GP (records report)	£50.40 fixed fee	£72 fixed fee
Gynaecologist	£108	£72
Haematologist	£97.60	£72
Handwriting expert	£72	£72
Interpreter	£28	£25
Lip reader/Signer	£57.60	£32.80
Mediator	£100.80	£100.80
Medical consultant	£108	£72
Medical microbiologist	£108	£108
Meteorologist	£100.80	£144 fixed fee
Midwife	£72	£72
Neonatologist (non-clinical negligence cerebral palsy case)	£108	£108
Neonatologist (clinical negligence cerebral palsy case)	£180	£180
Neurologist (non-clinical negligence cerebral palsy case)	£122.40	£72
Neurologist (clinical negligence cerebral palsy case)	£200	£200
Neuropsychiatrist	£126.40	£72
Neuroradiologist (non-clinical negligence cerebral palsy case)	£136.80	£136.80
Neuroradiologist (clinical negligence cerebral palsy case)	£180	£180
Neurosurgeon	£136.80	£72
Nursing expert	£64.80	£64.80
Obstetrician	£108	£108
Occupational therapist	£54.40	£54.40
Oncologist	£112	£112
Orthopaedic surgeon	£115.20	£115.20
Paediatrician	£108	£72
Pathologist	£122.40	£432 fixed fee

Pharmacologist	£97.60	£97.60
Photographer	£25.60	£18.40
Physiotherapist	£64.80	£64.80
Plastic surgeon	£108	£108
Process server	£25.60	£18.40
Psychiatrist	£108	£108
Psychologist	£93.60	£93.60
Radiologist	£108	£108
Rheumatologist	£108	£108
Risk assessment expert	£50.40	£50.40
Speech therapist	£79.20	£79.20
Surveyor (housing disrepair)	£85	£115
Surveyor (non-housing disrepair)	£40	£40
Telecoms expert	£72	£72
Toxicologist	£108	£108
Urologist	£108	£108
Vet	£72	£72
Voice recognition	£93.60	£72

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/422) (“the Remuneration Regulations”), which make provision about payment by the Lord Chancellor to providers of civil legal services under arrangements made for the purpose of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the Act”).

Regulation 2(2) and (5) and Schedule 1 provide for remuneration of barristers in independent practice and for enhancement of the rates payable. Schedule 1 inserts a new Schedule 2 in the Remuneration Regulations.

Regulation 2(3) makes an amendment consequential to the Criminal Defence Service (Very High Cost Cases) (Funding) Order 2013 (S.I. 2013/2804) (“the Funding Order”). Regulation 9(4) of the Remuneration Regulations provides that in exceptional circumstances, if the Lord Chancellor considers it reasonable to do so, the Lord Chancellor may pay remuneration for civil legal services provided in relation to an inquest in accordance with the payment rates applicable under the 2010 VHCC contracts between the Lord Chancellor and a person for the provision of representation for the purposes of criminal proceedings under section 16 of the Act. The applicable rates are now set out in Part 2 of Schedule 2 to the Funding Order. Regulation 2(3) therefore amends the Remuneration Regulations to refer to that Order. No change is made to the applicable rates. This consequential amendment will apply in all cases from 2nd December 2013.

Regulation 2(4) omits Table 8(b) in Part 2 of Schedule 1 to the Remuneration Regulations, the effect of which is that the remuneration of providers in respect of all legal representation in immigration and asylum cases (other than those to which escape fees apply) which is Controlled Work will be at the rates set out in Table 8(c) of that Schedule.

Regulation 2(6) and Schedule 2 provide for the rates and fees to be paid to experts, including specific provision for certain experts in clinical negligence cerebral palsy cases. Schedule 2 inserts a new table in Schedule 5 to the Remuneration Regulations.

Regulation 3 provides that the amendments made by regulation 2(2) and (4) to (6) do not apply to pre-commencement applications for civil legal services. Regulations 5 to 6 define a “pre-commencement application”.

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/>.

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