

2016 No. 708

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Civil and Criminal Legal Aid (Financial Eligibility and Contributions) (Amendment) Regulations 2016

<i>Made</i>	- - - -	<i>5th July 2016</i>
<i>Laid before Parliament</i>		<i>7th July 2016</i>
<i>Coming into force</i>		<i>28th July 2016</i>

The Lord Chancellor makes these Regulations in exercise of the powers conferred by sections 7, 17A and 25(8) of, and paragraph 3B of Schedule 3 to, the Access to Justice Act 1999^(a) and sections 21(2), 23(1), (2) and (6), and 41(1) and (2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012^(b).

Citation and commencement

1. These Regulations may be cited as the Civil and Criminal Legal Aid (Financial Eligibility and Contributions) (Amendment) Regulations 2016 and come into force on 28th July 2016.

Amendments to the Community Legal Service (Financial) Regulations 2000

2.—(1) The Community Legal Service (Financial) Regulations 2000^(c) are amended as follows.

(2) In regulation 4(2) (financial eligibility), in sub-paragraph (e), after “2012” insert “or Part 2 of the Welfare Reform (Northern Ireland) Order 2015^(d)”.

(3) In regulation 19 (calculation of income)—

(a) in paragraph (h), after “(2006)” insert “or by or under the Welsh Independent Living Grant”;

(b) in paragraph (j), after “2012” insert “or Part 5 of the Welfare Reform (Northern Ireland) Order 2015”, and

(c) after paragraph (j), insert—

“(k) payments made under Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations 2013^(e) or Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016^(f);

(a) 1999 c. 22. Section 26 provides that in Part 1 of that Act “regulations” means regulations made by the Lord Chancellor. That Act has been repealed, subject to savings provisions in S.I. 2013/534.
(b) 2012 c. 10. Section 42(1) provides that in Part 1 of that Act “regulations” mean regulations made by the Lord Chancellor.
(c) S.I. 2000/516; relevant amending instruments are: S.I. 2001/3663, 2005/589, 2006/713, 2007/2442, 2008/1879, 2009/1894, 2013/626 and 2013/630. This instrument has been revoked subject to savings provisions in S.I. 2013/534.
(d) S.I. 2015/2006 (N.I. 1).
(e) S.I. 2013/383, amended by S.I. 2013/1508, 2014/2888, 2015/1754 and 2015/1985.
(f) S.R. (NI) 2016 No 223.

- (l) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014^(a) or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016^(b).”.
- (4) In regulation 33 (calculation of capital)—
 - (a) at the end of paragraph (a) omit “and”;
 - (b) in paragraph (c), after “Funds” insert “or by or under the Welsh Independent Living Grant”, and
 - (c) after paragraph (c) insert—
 - “(d) payments made under Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations 2013 or Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016; and
 - (e) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016.”.

Amendments to the Criminal Defence Service (General) (No.2) Regulations 2001

3.—(1) The Criminal Defence Service (General) (No.2) Regulations 2001^(c) are amended as follows.

- (2) In regulation 5 (advice and assistance – financial eligibility)—
 - (a) in paragraph (8)(g), after “2012” insert “or Part 2 of the Welfare Reform (Northern Ireland) Order 2015”, and
 - (b) in paragraph (9), after “support allowance” insert “or universal credit under Part 1 of the Welfare Reform Act 2012 or Part 2 of the Welfare Reform (Northern Ireland) Order 2015”.
- (3) In paragraph 8(1) of Schedule 1 (assessment of resources)—
 - (a) at the end of paragraph (f), after “2012” insert “or Part 5 of the Welfare Reform (Northern Ireland) Order 2015”, and
 - (b) after paragraph (f) insert—
 - “(g) payments made under Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations 2013 or Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016; and
 - (h) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016.”.

Amendments to the Criminal Defence Service (Financial Eligibility) Regulations 2006

4.—(1) The Criminal Defence Service (Financial Eligibility) Regulations 2006^(d) are amended as follows.

- (2) In regulation 2(1) (interpretation), in the definition of “gross annual income”—
 - (a) in sub-paragraph (e), after “payments” insert “or payments made by or under the Welsh Independent Living Grant”;
 - (b) at the end of sub-paragraph (g) omit “and”;
 - (c) after sub-paragraph (g)—

(a) S.I. 2014/1230, to which there are amendments not relevant to this instrument.

(b) S.R. (NI) 2016 No 226.

(c) S.I. 2001/1437; relevant amending instruments are: S.I. 2008/1879, 2013/630 and 2013/626. This instrument has been revoked subject to savings provisions in S.I. 2013/534.

(d) S.I. 2006/2492; relevant amending instruments are: S.I. 2007/2937, 2008/1879, 2013/591, 2013/626 and 2013/630.

- (i) omit sub-paragraph (f), and
- (ii) insert—

- “(h) any personal independence payment paid under Part 4 of the Welfare Reform Act 2012^(a) or Part 5 of the Welfare Reform (Northern Ireland) Order 2015;
- (i) payments made under Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations 2013 or Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016; and
- (j) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016.”.

(3) In regulation 5(4) (assessment by representation authority), at the end of sub-paragraph (e) insert “or Part 2 of the Welfare Reform (Northern Ireland) Order 2015”.

Amendments to the Criminal Defence Service (Contribution Orders) Regulations 2009

5. Regulation 2(1) (interpretation) of the Criminal Defence Service (Contribution Orders) Regulations 2009^(b) is amended as follows—

- (a) in the definition of “gross annual income”—
 - (i) in sub-paragraph (e) after “payments” insert “or payments made by or under the Welsh Independent Living Grant”;
 - (ii) at the end of sub-paragraph (h) omit “and”;
 - (iii) in sub-paragraph (i), after “2012” insert “or Part 2 of the Welfare Reform (Northern Ireland) Order 2015”;
 - (iv) after sub-paragraph (i) insert—
 - “(j) payments made under Part 2 or Part 3 of the Social Security (Payments on Account of Benefit) Regulations 2013 or Part 2 or Part 3 of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016; and
 - (k) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016;”, and
- (b) in the definition of “qualifying benefit”, in sub-paragraph (e), after “2012” insert “or Part 2 of the Welfare Reform (Northern Ireland) Order 2015”.

Amendments to the Criminal Legal Aid (Financial Resources) Regulations 2013

6.—(1) The Criminal Legal Aid (Financial Resources) Regulations 2013^(c) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) after the definition of “the 2012 Act” insert—
 - “the 2013 Regulations” means the Social Security (Payments on Account of Benefit) Regulations 2013;
 - “the 2015 (Northern Ireland) Order” means the Welfare Reform (Northern Ireland) Order 2015;

(a) 2012 c. 12; relevant amending instruments are: S.I. 2013/358, 2013/377, 2013/387 and 2013/1250.

(b) S.I. 2009/3328; relevant amending instruments are: S.I. 2013/591, 2013/626 and 2013/630.

(c) S.I. 2013/471; relevant amending instruments are: S.I. 2013/591 and 2013/2791.

“the 2016 (Northern Ireland) Regulations” means the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016;”, and

(b) in the definition of “qualifying benefit”, in paragraph (e), after “Act” insert “or Part 2 of the 2015 (Northern Ireland) Order”.

(3) In regulation 11(3) (disposable income: deductions)—

(a) in sub-paragraph (h), after “Act” insert “or Part 5 of the 2015 (Northern Ireland) Order”, and

(b) after sub-paragraph (i) insert—

“(j) payments made under Part 2 or 3 of the 2013 Regulations or Part 2 or 3 of the 2016 (Northern Ireland) Regulations; and

(k) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016.”.

(4) In regulation 20(2) (assessment of resources: gross annual income)—

(a) in sub-paragraph (d), after paragraph (viii) insert—

“(ix) payments made by or under the Welsh Independent Living Grant;

(x) payments made under Part 2 or 3 of the 2013 Regulations or Part 2 or 3 of the 2016 (Northern Ireland) Regulations;

(xi) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016;”, and

(b) in sub-paragraph (h), after “Act” insert “or Part 5 of the 2015 (Northern Ireland) Order”.

Amendments to the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

7.—(1) The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013(a) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “the Act” insert—

““the 2013 Regulations” means the Social Security (Payments on Account of Benefit) Regulations 2013;

“the 2015 (Northern Ireland) Order” means the Welfare Reform (Northern Ireland) Order 2015;

“the 2016 (Northern Ireland) Regulations” means the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016;”.

(3) In regulation 6(2) (individuals in receipt of certain support), in sub-paragraph (e), after “2012” insert “or Part 2 of the 2015 (Northern Ireland) Order”.

(4) In regulation 24(1) (payments to be disregarded from calculation of disposable income or gross income)—

(a) in sub-paragraph (m), after “2006” insert “or by or under the Welsh Independent Living Grant”;

(b) in sub-paragraph (n), after “2012” insert “or Part 5 of the 2015 (Northern Ireland) Order”, and

(c) after sub-paragraph (o) insert—

“(p) payments made under Part 2 or 3 of the 2013 Regulations or Part 2 or 3 of the 2016 (Northern Ireland) Regulations; and

(a) S.I. 2013/480; relevant amending instruments are: S.I. 2013/591, 2015/643, 2015/838 and 2015/1416.

- (q) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016.”.
- (5) In regulation 40 (certain payments to be disregarded)—
 - (a) in paragraph (b)—
 - (i) at the end of sub-paragraph (ii) for “and” substitute “or”;
 - (ii) after paragraph (ii) insert—
 - “(iii) payments made under Part 2 or 3 of the 2013 Regulations or Part 2 or 3 of the 2016 (Northern Ireland) Regulations; and”, and
 - (b) in paragraph (c), after “2006” insert “or by or under the Welsh Independent Living Grant”.

Amendments to the Criminal Legal Aid (Contribution Orders) Regulations 2013

8.—(1) The Criminal Legal Aid (Contribution Orders) Regulations 2013(a) are amended as follows.

- (2) In regulation 2 (interpretation), after the definition of “the Act” insert—
 - ““the 2015 (Northern Ireland) Order” means the Welfare Reform (Northern Ireland) Order 2015;”.
- (3) In regulation 9(3) (individuals not liable to make a payment), in sub-paragraph (e), after “2012” insert “or Part 2 of the 2015 (Northern Ireland) Order”.
- (4) In regulation 10(2) (calculation of gross annual income)—
 - (a) in sub-paragraph (d), after paragraph (viii) insert—
 - “(ix) payments made by or under the Welsh Independent Living Grant;
 - (x) payments made under Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations 2013 or Part 2 or 3 of the Social Security (Payments on Account of Benefit) Regulations (Northern Ireland) 2016;
 - (xi) payments made under regulation 17 of the Universal Credit (Transitional Provisions) Regulations 2014 or regulation 17 of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016;”, and
 - (b) in sub-paragraph (i), after “2012” insert “or Part 5 of the 2015 (Northern Ireland) Order”.

Amendment to the Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013

9. In regulation 2 of the Criminal Legal Aid (Recovery of Defence Costs Orders) Regulations 2013(b) (interpretation), in paragraph (e) of the definition of “qualifying benefit”, after “2012” insert “or Part 2 of the Welfare Reform (Northern Ireland) Order 2015”.

5th July 2016

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

(a) S.I. 2013/483; relevant amending instruments are: S.I. 2015/643, 2015/838 and 2015/710.
(b) S.I. 2013/511.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument amends regulations made under the Access to Justice Act 1999 (c. 22) (“the 1999 Act”) and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) (“the 2012 Act”) which deal with an individual’s financial eligibility for criminal and civil legal aid and for the liability of an individual to pay a contribution towards the cost of services received. The amendments reflect changes to the benefits system made by the Welfare Reform Act 2012 (c. 5) and the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)), which introduced universal credit in England and Wales, and Northern Ireland, respectively.

This instrument adds universal credit in England and Wales and Northern Ireland to the list of qualifying benefits in regulations made under the 2012 Act. The effect of that amendment is that a person who is in receipt of universal credit will be financially eligible for legal aid without making any contributions. It also adds payments on account of benefit, personal independence payments, transfer advances for universal credit and payments made by or under the Welsh Independent Living Grant to the list of income payments to be disregarded for the purposes of income calculation tests relating to legal aid under the 2012 Act.

This instrument makes similar changes to regulations made under the 1999 Act, which governs cases that pre-date the coming into force of the 2012 Act.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.