

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

## DRAFT CIVIL LEGAL AID (MERITS CRITERIA AND INFORMATION ABOUT FINANCIAL RESOURCES) (AMENDMENT) REGULATIONS 2015

*Monday 23 November 2015*

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STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY  
FACILITATE THE PROMPT PUBLICATION OF  
THE BOUND VOLUMES OF PROCEEDINGS  
IN GENERAL COMMITTEES

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**The Committee consisted of the following Members:**

*Chair:* GERAINT DAVIES

- |  |   |
|--|---|
| † Baker, Mr Steve ( <i>Wycombe</i> ) (Con)             | † Phillips, Stephen ( <i>Sleaford and North Hykeham</i> ) (Con)                   |
| † Campbell, Mr Alan ( <i>Tynemouth</i> ) (Lab)         | † Pow, Rebecca ( <i>Taunton Deane</i> ) (Con)                                     |
| † Costa, Alberto ( <i>South Leicestershire</i> ) (Con) | Rees, Christina ( <i>Neath</i> ) (Lab)  |
| † Davies, Glyn ( <i>Montgomeryshire</i> ) (Con)        | Sheerman, Mr Barry ( <i>Huddersfield</i> ) (Lab/Co-op)                            |
| † Doyle-Price, Jackie ( <i>Thurrock</i> ) (Con)        | † Slaughter, Andy ( <i>Hammersmith</i> ) (Lab)                                    |
| † Flynn, Paul ( <i>Newport West</i> ) (Lab)            | † Vara, Mr Shailesh ( <i>Parliamentary Under-Secretary of State for Justice</i> ) |
| Jarvis, Dan ( <i>Barnsley Central</i> ) (Lab)          | Ben Williams, <i>Committee Clerk</i>  |
| † Jenrick, Robert ( <i>Newark</i> ) (Con)              | † <b>attended the Committee</b>   |
| † Lord, Jonathan ( <i>Woking</i> ) (Con)               |   |
| † Morton, Wendy ( <i>Aldridge-Brownhills</i> ) (Con)   |   |

## Third Delegated Legislation Committee

Monday 23 November 2015

[GERAINT DAVIES *in the Chair*]

### Draft Civil Legal Aid (Merits Criteria and Information about Financial Resources) (Amendment) Regulations 2015

4.30 pm

**The Parliamentary Under-Secretary of State for Justice (Mr Shailesh Vara):** I beg to move,

That the Committee has considered the draft Civil Legal Aid (Merits Criteria and Information about Financial Resources) (Amendment) Regulations 2015.

May I say what a pleasure it is to serve under your chairmanship, Mr Davies? I think this is the second time in almost the same number of weeks.

**The Chair:** The pleasure is all mine.

**Mr Vara:** We are flattered, Sir.

The statutory instrument before us amends the Civil Legal Aid (Merits Criteria) Regulations 2013—hereafter referred to as the merits criteria regulations—to specify the merits criteria that must be met to qualify for civil legal aid for applications for post-adoption contact. The statutory instrument also makes amendments to the Legal Aid (Information about Financial Resources) Regulations 2013, hereafter referred to as the information regulations.

The amendments provide that the director of legal aid casework at the Legal Aid Agency may make an information request to the relevant Secretary of State to find out whether a legal aid applicant is in receipt of direct payments for special educational needs or direct payments under section 17A of the Children Act 1989. That information is relevant for the purposes of the means assessment that the director must carry out.

Orders for post-adoption contact were introduced by the Children and Families Act 2014, which inserted sections 51A and 51B into the Adoption and Children Act 2002. Applications can now be made for a post-adoption contact order when the court is making an adoption order or when an adoption order has been made. The provisions came into effect on 22 April 2014. The 2014 Act also amended part 1 of schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012. That means that legal aid may be available for any application for post-adoption contact where the person applying for legal aid provides evidence of domestic violence or child abuse, or where they are a child who is a party to the proceedings.

The merits criteria regulations set out the merits criteria that must be applied by the director of legal aid casework at the Legal Aid Agency when determining whether an applicant qualifies for civil legal aid under part 1 of schedule 1 to LASPO. Broadly speaking, the criteria provide the basis for deciding whether it is

justified to provide or continue to provide public funds in an individual case. The factors to be considered are similar to those that would influence a privately paying client of moderate means when considering whether to become involved in proceedings.

Regulation 2 of the merits criteria regulations sets out the interpretation and definition of terms used. The statutory instrument adds certain civil proceedings in relation to post-adoption contact orders to the definition of “private law children case”. As a result, the merits criteria, which apply to such proceedings when determining an individual’s eligibility for legal representation, will be those set out in regulations 64 and 68. That means that some elements of the standard merits test will not apply, such as the requirement for the case to be unsuitable for a conditional fee arrangement.

Separately, regulation 69 of the merits criteria regulations sets out the criteria for determinations for legal representation in relation to family cases to which specific merits criteria apply, other than those specifically provided for elsewhere in the merits criteria regulations. The amendments made by the statutory instrument will also exclude determinations in relation to certain post-adoption contact orders proceedings from the scope of regulation 69. That exclusion is necessary because, as I have already mentioned, the applicable criteria for such matters will be those in regulations 64 and 68.

I will now turn to the amendments to the information regulations. A child with a special educational need may be eligible for an education health care plan, which brings their education, health and social care needs into a single, legally binding document. Direct cash payments may be made to the child’s parent or guardian, or to the young person or their nominee, allowing them to arrange the provision of necessary services, such as transport, as identified in the individual’s plan. The direct payments are currently made under the Special Educational Needs (Personal Budgets) Regulations 2014, made under section 49(3) of the 2014 Act. Direct payments may also be made under section 17A of the Children Act 1989 to parents of disabled children, a disabled person with parental responsibility for a child, or disabled children aged 16 or 17, to meet their assessed needs.

The direct payments are disregarded for the purposes of a legal aid financial eligibility assessment following amendments previously made by the Legal Aid, Community Legal Service and Criminal Defence Service (Amendment) Regulations 2015, which came into force on 13 April 2015. Therefore, the direct payments are not included when calculating a person’s disposable income.

The information regulations give the director of legal aid casework the power to request information from the relevant Secretary of State about a prescribed benefit that an individual is receiving, in order to make a financial assessment of legal aid eligibility. It is the Government’s intention that the director be able to make an information request to the Secretary of State to find out whether a legal aid applicant is in receipt of direct payments that are disregarded for the purposes of the legal aid financial eligibility assessment. The amendment to the information regulations will enable the director to make such a request.

The statutory instrument makes relatively minor, but none the less important, changes to the civil legal aid scheme to provide for the application of specific merits criteria when determining a person’s eligibility for legal

aid for applications for post-adoption contact, and to provide for efficiency in the assessment of legal aid eligibility through the power to make information requests. I commend the statutory instrument to the Committee.

4.37 pm

**Andy Slaughter** (Hammersmith) (Lab): It is a great pleasure to serve under your chairmanship for the first time, Mr Davies. It is also a pleasure to be opposite the Minister. I have missed our debates on legal aid regulations a great deal, and I had to ask my hon. Friend the Member for Kingston upon Hull East (Karl Turner) to give me this opportunity as I was having such withdrawal symptoms—I find the debates so racy.

The Minister is right that the amendments are minor but important to the scheme set out under LASPO. One might also add that they are fairly technical. It is the Opposition's view, and also the view, I think, of the non-governmental organisations I have spoken with that work in the field, such as Resolution, that the changes are, as the Minister says, necessary and positive. We therefore do not oppose them.

I have nothing to say about the detail of the regulations, but I will make just two points. The first point, as I think the Minister knows of old, is that our objection is not so much to the way in which he is amending the scope for civil legal aid under LASPO, but to the fact that the scheme itself, as set out in the Act, puts us in the position of constantly having to make such amendments. The scheme's very nature, with the move from matters being within scope and less being excluded to everything being out of scope but included, inevitably leads to a plethora of such amendments arising out of new legislation, changes to the policy or mistakes made in the original drafting or in included provisions.

The Minister might not be able to answer this question today, but I am sure that he will let me know his response: how many pieces of secondary legislation that have necessitated alterations to the scope have had to go through Committee since LASPO was enacted? That is important, and not just to show how the scheme works or does not work, but because every further amendment complicates the legal aid regime, and the more complicated it becomes, the more difficult it becomes—even for experienced practitioners—regarding cost, navigating the scheme and ensuring that people have a proper entitlement. I therefore hope not only that the amendment is made in statute, but that it is properly publicised so that those who can take advantage of the changes are aware of them.

The other point that I would like the Minister to comment on relates to regulation 3, which was brought to the attention of the Joint Committee on Statutory Instruments. It was originally—and erroneously—made by negative process and subsequently had to be revoked.

I am sometimes puzzled by why a particular provision goes through the affirmative or negative process, but that clearly has consequences for how it is debated and what scrutiny it comes under. In this case, can the Minister shed a little more light on what happened? That is clearly an important point, and I do not say that for point scoring, as such things are not always immediately apparent, but, as it is difficult enough for parliamentarians to follow the process, we would hope that the experts who draft and allocate statutory instruments know where they are to go. I am glad that was picked up and dealt with, but any light that can be shed on why it happened in the first place would be helpful.

4.41 pm

**Mr Vara:** May I say what a pleasure it is to serve again with the hon. Member for Hammersmith? I am flattered that he has been suffering withdrawal symptoms, but I am minded to say that he should keep that relatively quiet, because we do not want word of that getting around. It had been a pleasure to deal with the hon. Member for Kingston upon Hull East.

**The Chair:** For the record.

**Mr Vara:** For the record—I would not want to upset him. As the hon. Member for Hammersmith is aware, LASPO is a major piece of legislation and the Government committed to review it between three and five years of its implementation. That review will be in the not-too-distant future.

On the number of SIs that have gone through as a consequence of LASPO, I hope that the hon. Gentleman will appreciate that it is a major piece of legislation and, as such, it is necessary to deal accordingly with consequential changes. That is why we have had such a number of SIs. I do not know the number offhand, but I am minded to say that other major pieces of legislation are likely to have had a large number of consequential statutory instruments as well.

The hon. Gentleman mentioned the technicality of the use of the negative SI process. I must apologise to the Committee for that technical error. I am happy to assure the Committee that as a consequence no individuals who were eligible for legal aid before this debate missed out, so there has been no impact on the public. I apologise for that technical error, which we are now putting right by considering this affirmative statutory instrument.

I believe that this is a worthwhile measure and I am pleased that the hon. Gentleman agrees with it.

*Question put and agreed to.*

4.43 pm

*Committee rose.*

