STATUTORY INSTRUMENTS

2017 No. 1319

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Criminal Legal Aid (Amendment) Regulations 2017

Made - - - -	*19th December 2017*
Laid before Parliament	*21st December 2017*
Coming into force - -	*21st February 2018*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 2(3), 15(1), 21(2) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**a**).

In making these Regulations, in accordance with section 15(3) of that Act, the Lord Chancellor has had regard, in particular, to the interests of justice.

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Amendment) Regulations 2017 and come into force on 21st February 2018.

Amendments to the Criminal Legal Aid (General) Regulations 2013

2.—(1) Regulation 12 (prescribed conditions)(**b**) of the Criminal Legal Aid (General) Regulations 2013 is amended as follows.

(2) At the end of paragraph (2)(d)(i), omit "or".

(3) After paragraph (2)(d)(ii), insert—

"(iii) a review of a prisoner's classification pursuant to rule 7 (classification of prisoners)(**c**) of the Prison Rules as a Category A Prisoner;

(iv) the application of rule 46 (close supervision centres)(**d**) of the Prison Rules, which provides for directions by the Secretary of State in relation to a prisoner's placement in a close supervision centre of a prison; or

(v) the application of rule 46A (separation centres)(**e**) of the Prison Rules, which provides for directions by the Secretary of State in relation to a prisoner's placement in a separation centre within a prison;".

(4) In paragraph (2)(g), omit "where the Parole Board has the power to direct that individual's release".

(**a**) 2012 c. 10. Section 42(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) provides that in Part 1 of the Act "regulations" means regulations made by the Lord Chancellor.
(**b**) S.I. 2013/9, amended by S.I. 2013/2790.
(**c**) S.I. 1999/728, amended by S.I. 2014/2169.
(**d**) As amended by S.I. 2000/1794.
(**e**) As amended by S.I. 2017/576.

(5) Before paragraph (3)(a), insert—

"(za) "the Prison Rules" means the Prison Rules 1999;

(zb) "Category A Prisoner" means a prisoner whose escape would be highly dangerous to the public, the police or national security, and for whom the aim is to make escape impossible;

(zc) "close supervision centre" means any cell or other part of a prison designated by the Secretary of State for holding prisoners who are subject to a direction given under rule 46(1) of the Prison Rules;".

(6) At the end of paragraph (3)(a), omit "and".

(7) After paragraph (3)(a), insert—

"(aa) "separation centre" means any part of a prison for the time being used for holding prisoners who are subject to a direction under rule 46A(1) of the Prison Rules; and ".

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

3.—(1) Regulation 7 (advocacy assistance for individuals in prison)(**a**) of the Criminal Legal Aid (Financial Resources) Regulations 2013 is amended as follows.

(2) At the end of paragraph (1)(a), omit "or".

(3) At the end of paragraph (1)(b), for ",", substitute "; or".

(4) After paragraph (1)(b), insert—

"(c) in relation to a review of the individual's classification pursuant to rule 7 (classification of prisoners) of the Prison Rules 1999 as a Category A Prisoner,".

(5) After paragraph (2), insert—

"(3) In this regulation, a "Category A Prisoner" means a prisoner whose escape would be highly dangerous to the public, the police or national security, and for whom the aim is to make escape impossible.".

Amendments to the Criminal Legal Aid (Remuneration) Regulations 2013

4.—(1) Paragraph 11(3) of Schedule 4 (rates payable for advice and assistance provided in prison law cases)(**b**) to the Criminal Legal Aid (Remuneration) Regulations 2013 is amended as follows.

(2) After "Advocacy Assistance in Disciplinary Cases", insert "and Sentence Cases".

(3) For the title of the first table, substitute—

"Hourly rates in Disciplinary Cases and Sentence Cases for determining application of Standard Fees".

(4) For the title of the second table, substitute—

"Higher and Lower Standard Fees table for Disciplinary Cases and Sentence Cases".

Transitional provision

5. The amendments made by these Regulations do not apply to matters in which a determination under section 15 (advice and assistance for criminal proceedings) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is made before 21st February 2018.

(**a**) S.I. 2013/471, amended by S.I. 2013/2791.
(**b**) S.I. 2013/435; amended by S.I. 2016/313.

Dominic Raab
Minister of State
Ministry of Justice

19th December 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the following subordinate criminal legal aid legislation made under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) ("the Act"): (i) the Criminal Legal Aid (General) Regulations 2013 (S.I. 2013/9) (the "General Regulations"); (ii) the Criminal Legal Aid (Financial Resources) Regulations 2013 (S.I. 2013/471) (the "Financial Resources Regulations"); and (iii) the Criminal Legal Aid (Remuneration) Regulations (S.I. 2013/435) (the "Remuneration Regulations"). The amendments made by these Regulations expand the scope of criminal legal aid to include (i) advice and assistance regarding reviews of a prisoner's classification as a Category A Prisoner (a "Category A Prisoner" being a prisoner whose escape would be highly dangerous to the public, the police or national security, and for whom the aim is to make escape impossible); (ii) advice and assistance regarding directions as to a prisoner's placement in a close supervision centre of a prison; (iii) advice and assistance regarding directions as to a prisoner's placement in a separation centre within a prison; and (iv) all proceedings before the Parole Board.

Regulation 2 amends regulation 12 of the General Regulations. Regulation 12(2) of the General Regulations sets out the prescribed conditions that must be met before advice and assistance may be made available to an individual under section 15 of the Act (advice and assistance for criminal proceedings). Regulations 2(2) to (3) and 2(5) to (7) expand the prescribed conditions relating to an individual's sentence. Regulation 2(4) expands the prescribed conditions to include all proceedings before the Parole Board.

Regulation 3 amends the Financial Resources Regulations. Regulation 7(1) of the Financial Resources Regulations sets out the categories of work for which the Director of Legal Aid Casework must make a determination that an individual's financial resources are such that the individual is eligible for advocacy assistance under section 15(2)(c) of the Act (provided that certain additional criteria are met). Regulation 3 expands these circumstances to include reviews of an individual's classification as a Category A Prisoner.

Regulation 4 amends Schedule 4 to the Remuneration Regulations. Schedule 4 to the Remuneration Regulations sets out the rates to be paid for advice and assistance provided pursuant to a determination made under certain provisions of the Act, including section 15 (advice and assistance for criminal proceedings). Regulation 4 amends Schedule 4 of the Remuneration Regulations in order to provide for appropriate fees for advocacy assistance for matters regarding an individual's sentence.

Regulation 5 provides that the amendments made by these Regulations only apply to matters in which a determination under section 15 (advice and assistance for criminal proceedings) of the Act is made on or after the Regulations come into force.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Ministry of Justice, 102 Petty France, London, SW1H 9AJ and is published with an Explanatory Memorandum alongside the instrument on https://legislation.gov.uk.

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