

2008 No. 666

LEGAL SERVICES, ENGLAND AND WALES

The Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008

<i>Made</i>	- - - -	<i>10th March 2008</i>
<i>Laid before Parliament</i>		<i>11th March 2008</i>
<i>Coming into force</i>	- -	<i>1st April 2008</i>

The Lord Chancellor makes this Order in exercise of the powers conferred by section 6(4) of the Access to Justice Act 1999(a). He has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act and has had regard to the matters specified in section 25(3) of that Act.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2008 and comes into force on 1st April 2008.

(2) In this Order a reference to an article by number alone is a reference to the article so numbered in the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001(b).

Amendments to the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001

2. The Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 is amended as follows.

3. In article 2 (Interpretation)—

- (a) for the definition of “Advocates Meeting” substitute—

““Advocates’ Meeting” means an Advocates’ Meeting held face to face under paragraph 4.5 or 5.2 of the Children Act Protocol or stage 2 or 3 of the Public Law Outline;”;
- (b) in the definition of “Case Management Conference” omit “Draft”;
- (c) omit the definition of “Draft Public Law Outline”;
- (d) in the definition of “Issues Resolution Hearing” omit “Draft”;

(a) 1999 c.22. The powers were transferred from the Lord Chancellor to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887) and transferred back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429).

(b) S.I. 2001/1077; relevant amending instruments are S.I. 2003/2590, 2005/184, 2005/2114, 2005/3504, 2006/2364, 2007/2443 and 2007/3169.

- (e) after the definition of “the primary hearing unit” insert—
- ““Public Law Outline” means the outline set out in the table following paragraph 9 of the Practice Direction, Guide to Case Management in Public Law Proceedings, made by the President of the Family Division on 15th January 2008(a);”.
- 4.** In article 2D (Function F4)—
- (a) in paragraph (1) after “video conference” insert “, or an Advocates’ Meeting under the Public Law Outline in proceedings other than care proceedings”;
- (b) in paragraph (3) for “and advice” substitute “, advising and drafting”.
- 5.** In article 2E(1)(b)(ii) (Function F5) omit “Draft”.
- 6.** After article 6(1) (Mixed and multiple claims) insert—
- “(1A) For the purposes of paragraph (1), work carried out in connection with an Advocates’ Meeting referred to in article 2D(1) shall be excluded.”.
- 7.** For article 8(1) (Hearing units) substitute—
- “(1) Where—
- (a) preparatory work for a hearing is carried out but that hearing does not take place; or
- (b) preparatory work for the main hearing is carried out but counsel is prevented from representing his client because—
- (i) he has withdrawn from the proceedings with the permission of the court because of his professional code of conduct or to avoid embarrassment in the exercise of his profession; or
- (ii) he has been dismissed by his client,
- one half of a single relevant hearing unit fee, without special issue payments or court bundle payments, shall be paid.
- (1A) For the purposes of paragraph (1)(a) “hearing” in care proceedings includes—
- (a) a Case Management Conference;
- (b) a Pre-Hearing Review;
- (c) an Issues Resolution Hearing.
- (1B) Where, in care proceedings, the advocates concerned are able to discuss all relevant matters without the need for an Advocates’ Meeting under paragraph 5.2 of the Children Act Protocol or stage 2 or 3 of the Public Law Outline, one half of a single function F3 hearing unit fee, without special issue payments or court bundle payments, shall be paid.”.
- 8.** In article 8(3)—
- (a) in sub-paragraph (d)(ii) omit “Draft”;
- (b) after sub-paragraph (d) insert—
- “(dd) where, in care proceedings, there is more than one Issues Resolution Hearing, sub-paragraph (d) applies only to the first such Hearing;”.
- 9.** After article 9(2) (Special issue payments) insert—
- “(2A) Where work is carried out under function F3 or F4 in connection with an Advocates’ Meeting, the relevant hearing under paragraph (2) is the associated Case Management Conference, Issues Resolution Hearing or Pre-Hearing Review, as the case may be .”.

(a) http://www.judiciary.gov.uk/docs/public_law_outline.pdf.

Signed by authority of the Lord Chancellor

10th March 2008

Hunt
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 (S.I. 2001/1077), which sets out the system for the payment of graduated fees for counsel for work in family proceedings. The Order make consequential changes to the 2001 Order following the introduction of the Public Law Outline, a new case management system for certain public law cases involving children, which had been the subject of a pilot scheme.

Articles 3, 5, 7 and 8 introduce references to the Public Law Outline. Articles 4 and 6 provide for fees for Advocates' Meetings held other than in care proceedings. Article 7 also amends article 8 of the 2001 Order to correct an error in the drafting of article 6 of the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment No. 2) Order 2007 (S.I. 2007/3169). Article 8 also clarifies what fee is payable where there is more than one Issues Resolution Hearing under the Public Law Outline. Article 9 clarifies the procedure for obtaining a special issues payment in respect of work done in connection with an Advocates' Meeting.

A regulatory impact assessment has been prepared entitled 'Final Regulatory Impact Assessment: The Review of the Child Care Proceedings System in England and Wales' and available from Civil Legal Aid Strategy Division, Ministry of Justice, 54 Victoria Street, London, SW1E.6QW or at http://www.dca.gov.uk/publications/reports_reviews/childcare_psria.pdf.

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