

1980 No. 1894**LEGAL AID AND ADVICE, ENGLAND
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The Lord Chancellor, in exercise of the powers conferred on him by sections 7(6), 8(3), 9(6), 11, 14 and 20 of the Legal Aid Act 1974(a) and all other powers enabling him in that behalf, and with the concurrence of the Treasury, hereby makes the following Regulations:—

PART I
GENERAL

Title and commencement

1. These Regulations may be cited as the Legal Aid (General) Regulations 1980 and shall come into operation on 1st January 1981.

Revocations

2. The Regulations specified in Schedule 1 are hereby revoked.

Interpretation

3. In these Regulations, unless the context otherwise requires:—

“the Act” means the Legal Aid Act 1974;

“affidavit of costs and resources” means an affidavit which includes the matters specified in Schedule 4 and which is sworn by a person in support of his application for an order under section 13 of the Act;

“appropriate area committee” means the area committee in whose area an application for a certificate has been granted or refused;

“area committee” means an area committee appointed by the Council of The Law Society under the provisions of a scheme;

“assessment officer” means a person authorised by the Secretary of State to determine the disposable income and disposable capital of the person concerned and to determine the maximum amount of his contribution to the legal aid fund in respect of any proceedings;

“assisted person” means a person in respect of whom a certificate is in force and for the purposes of Part XI only includes a person in respect of whom a certificate has been, but is no longer, in force;

“authorised summary proceedings” means proceedings in a magistrates’ court for which legal aid may be given, as mentioned in Part I of Schedule 1 to the Act;

“certificate” means a legal aid certificate issued in accordance with these Regulations or any regulations revoked by these Regulations and includes an amendment to a certificate issued under Part VII and unless the context otherwise requires an emergency certificate;

“court” in relation to proceedings tried or heard at first instance by a Master of the Supreme Court, a Registrar of the Family Division of the High Court or the Registrar of a county court includes that Master or Registrar;

“EEC lawyer” has the same meaning as in the European Communities (Services of Lawyers) Order 1978(b);

“emergency certificate” means a certificate issued under Part III of these Regulations;

“fund” means the legal aid fund;

(a) 1974 c. 4, as amended by the Legal Aid Act 1979 (c. 26) and the Social Security Act 1980 (c. 30).
(b) S.I. 1978/1910.

“general committee” means a general committee appointed by an area committee;

“legal aid” means legal aid under Part I of the Act;

“legal executive” means a fellow of the Institute of Legal Executives;

“master” in relation to an application for an order under section 13 of the Act in respect of proceedings in or on appeal from the Chancery or Queen’s Bench Division of the High Court, means a Taxing Master of the Supreme Court or a District Registrar of the High Court; and in relation to such an application made in respect of proceedings in or on appeal from the Family Division of the High Court, means a Registrar of the said Division or a District Registrar of the High Court;

“matrimonial proceedings” means—

(a) any proceedings with respect to which rules may be made under section 50 of the Matrimonial Causes Act 1973(a); or

(b) any proceedings in a county court under section 17 of the Married Women’s Property Act 1882(b) or section 1 or 7 of the Matrimonial Homes Act 1967(c); or

(c) any proceedings under the Domestic Violence and Matrimonial Proceedings Act 1976(d);

“patient” means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1959(e), is incapable of managing and administering his property and affairs;

“registrar”, in relation to an application for an order under section 13 of the Act made in respect of proceedings in or on appeal from a county court, means the registrar of that county court;

“scheme” means a scheme made under section 15 of the Act;

“secretary” means the secretary of the appropriate area committee and includes any person duly authorised to act on the secretary’s behalf to the extent that he is so authorised;

“substantive certificate” means a certificate issued to replace an emergency certificate which is still in force.

Powers exercisable by judges and judicial officers

4. Where a power to do any act or exercise any jurisdiction or discretion is conferred by any provision of these Regulations on a court, it may, unless it is exercisable only during the trial or hearing of the action, cause or matter, be exercised—

(a) by a judge, master or district registrar; or

(b) in the Family Division of the High Court or in a county court, by the registrar; or

(c) in the House of Lords, by the Clerk of the Parliaments.

Powers exercisable by secretaries

5.—(1) Where an area committee or a general committee is required or entitled to perform any function under these Regulations, that function may, subject to paragraph (2), be performed on behalf of either committee by the secretary.

(a) 1973 c. 18.
(c) 1967 c. 75.
(e) 1959 c. 72.

(b) 1882 c. 75.
(d) 1976 c. 50.

- (2) Paragraph (1) shall not empower a secretary to—
- (a) refuse an application for a certificate except under regulation 20 or 28(1); or
 - (b) determine an appeal under regulation 40; or
 - (c) discharge or revoke a certificate except under regulation 77(1) or regulation 81(a), (b) or (c)(i), (iii) or (iv).

Forms

6. The forms in Schedule 2 shall be used where applicable with such variations as the circumstances of the particular case require.

Procedure of courts

7. Save as is otherwise provided by these Regulations, in any proceedings in any court to which an assisted person is a party the procedure shall be regulated by the rules of procedure for that court.

Service of notices

8. Any notice required to be served under any provision of these Regulations shall be served either—

- (a) personally; or
- (b) by sending it by prepaid post to the last known address of the person required to be served; or
- (c) if served together with any process of a court, by any mode of service authorised by rules of court for service of that process.

Availability of documents to the court

9. Any document sent to a court office or registry or filed or exhibited under the provisions of these Regulations shall be bespoken or made available for use of the court at any stage of the proceedings.

PART II

APPLICATIONS FOR CERTIFICATES

Committees to which application may be made

10. Any person desiring legal aid in respect of any proceedings may apply for a certificate—

- (a) if resident in the United Kingdom or in the Republic of Ireland, to any general committee; or
- (b) if resident elsewhere, to a general committee in London.

Form and lodgment of application

11. Every application—

- (a) shall be made in writing on a form approved by The Law Society or in such other manner, being in writing, as the secretary may accept as sufficient in the circumstances of the case; and
- (b) shall be lodged with the secretary.

Undertaking to pay contribution for summary proceedings

12. An applicant for legal aid in connection with authorised summary proceedings may, with a view to expediting the issue to him of a certificate, lodge

with the secretary, at the time of applying for the certificate or at any time before it is issued, an undertaking in a form approved by The Law Society to pay any contribution that may be assessed in accordance with Regulations made under the Act.

Contents of application and supporting documents, etc.

13.—(1) Every application shall state the name of the solicitor selected by the applicant to act for him and shall also contain such information and shall be accompanied by such documents including any welfare report as may be requisite to enable—

- (a) the general committee to determine—
 - (i) the nature of the proceedings in connection with which legal aid is sought; and
 - (ii) whether it is reasonable that a certificate should be granted; and
- (b) the assessment officer to determine the disposable income, disposable capital and maximum contribution of the applicant.

(2) An applicant, including a person to whom a certificate has been issued on a form of undertaking under regulation 12, shall, if required by the assessment officer to do so for the purpose of providing additional material, attend for an interview or supply such further information or documents as may be required.

Applications by persons resident outside United Kingdom

14.—(1) Where the applicant resides outside the United Kingdom and cannot be present there when his application is considered, the application which shall be in English or in French, shall, subject to paragraph (2), be sworn—

- (a) if the applicant resides within the Commonwealth or the Republic of Ireland, before any justice of the peace or magistrate or any person for the time being authorised by law in the place where he is to administer an oath for any judicial or other legal purpose, or
- (b) if the applicant resides elsewhere, before a consular officer in the service of Her Majesty's Government in the United Kingdom, or any other person for the time being authorised to exercise the functions of such an officer or having authority to administer an oath in that place,

and shall be accompanied by a statement in writing, signed by some responsible person who has knowledge of the facts, certifying that part of the application which relates to the applicant's disposable income and disposable capital.

(2) The requirements of paragraph (1) may be waived by the secretary where compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the requirements of regulations 11 and 13.

Application on behalf of minors and patients

15.—(1) Subject to paragraph (5), an application for legal aid for a minor or patient shall be made on his behalf by a person of full age and capacity and, where the application relates to proceedings which are required by rules of court to be brought or defended by a next friend or guardian *ad litem*, that person shall be the next friend or guardian *ad litem*, or, where the application relates to proceedings which have not actually begun, a person who, subject to any contrary order of the court, intends to act in either capacity when the proceedings begin.

(2) Except where application is made by the Official Solicitor, the general committee shall not issue a certificate applied for by a person on behalf of a minor or patient unless that person has signed an undertaking to pay to The Law Society (if called upon to do so) any sum which, by virtue of any provision of the Act or these Regulations, the committee may require an assisted person of full age and capacity to pay upon the issue or during the currency or upon the discharge or revocation of the certificate.

(3) Any certificate issued to a minor or patient shall be in his name, stating the name of the person who has applied on his behalf.

(4) In any matter relating to the issue, amendment, revocation or discharge of a certificate issued to a minor or patient, and in any other matter which may arise between an assisted person who is a minor or patient and the general committee, the person who is named in the certificate as the next friend or guardian *ad litem* of the minor or patient shall be treated for all purposes (including the receipt of notices) as the agent of the minor or patient.

(5) A general committee may, where the circumstances appear to make it desirable, waive all or any of the requirements of the preceding paragraphs of this regulation.

Power to transfer application to another committee

16. If it appears to a general committee that an application could, without prejudice to the applicant, be more conveniently or appropriately considered by another general committee, the papers relating to the application shall be transferred to that other committee.

Reference to the assessment officer for assessment of resources

17. Unless it has previously refused the application, the general committee shall (subject to regulation 18) submit to the assessment officer so much of it as is relevant to the determination of the applicant's disposable income and disposable capital; and (subject to regulations 18 and 20) no application shall be approved until the assessment officer has determined the applicant's disposable income, disposable capital and maximum contribution, in accordance with Regulations made under the Act.

Cases where re-assessment not required

- 18.—(1) Where a general committee approves an application relating to—
- (a) proceedings in the House of Lords or on appeal from a magistrates' court in any action, cause or matter in which the applicant was an assisted person in the court below; or
 - (b) proceedings by way of a new trial ordered by a court before whom the applicant was an assisted person;

it shall not, subject to paragraph (2), require the assessment officer to redetermine the applicant's disposable income and disposable capital.

(2) If, since the last determination by the assessment officer of the disposable income and disposable capital of the applicant, his circumstances have altered otherwise than as a result of the payment of a contribution in respect of the previous proceedings, the general committee may require the assessment officer to redetermine the applicant's disposable income and disposable capital and shall take into account any increase greater than £156 or any decrease greater than £78 in the amount of his disposable income and any increase greater than £120 in the amount of his disposable capital.

PART III
EMERGENCY CERTIFICATES

Application for emergency certificate

19.—(1) Any person who desires legal aid as a matter of urgency may apply to the general committee for an emergency certificate on a form approved by The Law Society or in such other manner as the general committee may accept as sufficient in the circumstances of the case.

(2) Subject to paragraph (3), an application for an emergency certificate shall contain such information and shall be accompanied by such documents as may be necessary to enable the general committee to determine the nature of the proceedings for which legal aid is sought and the circumstances in which it is required and whether—

- (a) the applicant is likely to fulfil the conditions under which legal aid may be granted under the Act and these Regulations; and
- (b) it is in the interests of justice that the applicant should, as a matter of urgency, be granted legal aid;

and the applicant shall furnish such additional information and documents (if any) as may be sufficient to constitute an application for a certificate under Part II of these Regulations.

(3) If it appears to the general committee that the applicant cannot at the time of the application reasonably furnish the information required under paragraph (2), or any part of it, that committee shall nevertheless have the power to issue an emergency certificate subject to such conditions as to the furnishing of additional information as it thinks fit.

Issue and effect of emergency certificate

20.—(1) A general committee shall have power to approve an application made under regulation 19 and issue an emergency certificate without reference to the assessment officer.

(2) An emergency certificate shall not be issued in respect of authorised summary proceedings.

(3) Where a general committee issues an emergency certificate, it shall send the emergency certificate and one copy thereof to the solicitor selected by the applicant, and another copy to the applicant.

(4) An emergency certificate shall have the same effect in all respects as a certificate and any person holding an emergency certificate shall, while it is in force, be deemed for the purposes of Part I of the Act and these Regulations to have a disposable income and disposable capital of an amount which makes him eligible for legal aid.

Duration of emergency certificate

21. An emergency certificate shall remain in force until—

- (a) it is discharged or revoked in accordance with Part X of these Regulations; or
- (b) it is merged in a substantive certificate under regulation 22; or
- (c) the expiry of whatever period may have been allowed by the general committee for the duration of the emergency certificate, including any extension of that period granted under regulation 23(1).

Merger in substantive certificate

22.—(1) Where a substantive certificate is issued the emergency certificate shall merge in the substantive certificate, which shall take effect from the date upon which the emergency certificate was issued, in respect of the proceedings defined in the emergency certificate.

(2) Where an emergency certificate is merged in a substantive certificate the substantive certificate shall state—

- (a) the date of issue of the emergency certificate; and
- (b) that the emergency certificate has been continuously in force from that date until the date of the substantive certificate.

Extension and expiry of emergency certificate

23.—(1) The secretary, whose decision shall be final, may extend the period allowed for the duration of an emergency certificate where—

- (a) the applicant is offered a substantive certificate in respect of the proceedings to which the emergency certificate relates and either fails to signify his acceptance or appeals against the terms of the offer; or
- (b) the general committee refuses the application for a substantive certificate in respect of proceedings to which the emergency certificate relates and either notice of appeal has been given to the appropriate area committee within the time limits laid down by regulation 37 or the time limit for doing so has not expired; or
- (c) there are exceptional circumstances.

(2) Where an emergency certificate is extended under paragraph (1)(a) or (b), no further work may be done or steps taken under the certificate.

Notification of extension of emergency certificate

24.—(1) Upon an emergency certificate being extended, the general committee shall forthwith issue a notice to that effect and shall send the notice and one copy thereof to the solicitor acting for the person to whom the emergency certificate was issued and shall send a further copy to that person; and it shall be the duty of the solicitor to notify forthwith any counsel whom he may have instructed that the certificate has been extended.

(2) A solicitor who receives notice that an emergency certificate has been extended under regulation 23 shall, if proceedings have begun or otherwise upon their commencement, send a copy of the notice by prepaid post to the appropriate court office or registry, and serve notice of the fact upon any other persons who are parties to the proceedings, and, if any other person becomes a party to the proceedings, serve similar notice upon that person.

PART IV

DETERMINATION OF APPLICATIONS

Power to notify other parties of application

25.—(1) On receiving an application for a certificate, the general committee may, if it thinks fit—

- (a) notify any party to the proceedings in respect of which the application is made; and
- (b) ask that party whether he is willing to delay taking any further step in, or in relation to, the proceedings until the application has been determined.

(2) If the general committee exercises the power conferred on it by paragraph (1) in respect of any party, it shall forthwith inform that party when it has determined the application in question.

Power of secretary to approve applications

26. An application for a certificate shall be considered by the secretary, who, after having regard to the determination made by the assessment officer or the terms of any undertaking lodged by the applicant under regulation 12 may (save in the circumstances mentioned in regulation 28(2)) approve the application on behalf of the general committee.

Other applications to be determined by committee

27. In every case in which the secretary does not approve an application under regulation 26, he shall refer the application to the general committee for its consideration and approval or refusal.

Financial eligibility

28.—(1) Where the assessment officer determines that an applicant has disposable income of an amount which makes him ineligible for legal aid, the general committee shall refuse the application.

(2) Where the assessment officer determines that an applicant, having disposable income of an amount which makes him eligible for legal aid, has disposable capital of an amount which renders him liable to be refused legal aid, the general committee shall refuse the application if it appears to it that the probable costs of the applicant in the proceedings in respect of which the application was made would not exceed the maximum contribution payable by the applicant under the Act.

Eligibility on the merits

29. Without prejudice to the generality of section 7(5) or (5A) of the Act (which provides that a person shall not be given legal aid unless he has reasonable grounds for taking, defending or being a party to proceedings, and may also be refused legal aid if it appears unreasonable that he should receive it in the particular circumstances of the case), an application for a certificate shall not be approved except after consideration by the general committee of all questions of fact or law arising out of the action, cause or matter to which the application relates and the circumstances in which it was made.

Refusal where advantage trivial or proceedings simple

30. Without prejudice to regulations 29 and 33 an application may be refused where it appears to the general committee that only a trivial advantage would be gained by the applicant from the proceedings to which the application relates, or that on account of the simple nature of the proceedings a solicitor would not ordinarily be employed.

Refusal where other rights or facilities available

31.—(1) Without prejudice to regulation 29 an application may be refused where it appears to the general committee that the applicant has available rights or facilities making it unnecessary for him to obtain legal aid or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, and has failed to take all reasonable steps to enforce or obtain such rights, facilities or help including permitting the committee to take those steps on his behalf.

(2) Where it appears that the applicant has a right to be indemnified against expenses incurred in connection with any proceedings, it shall not, for the purposes of paragraph (1), be deemed a failure to take reasonable steps if he has not taken proceedings to enforce that right, whether for a declaration as to that right or otherwise.

Assessment of payable contribution

32.—(1) When considering an application under regulation 26 or 27, the general committee shall assess the amount of the contribution, if any, which is payable in respect of a certificate and, in so doing, shall have regard to the probable cost of the proceedings and, save as is provided by these Regulations, shall not assess an amount in excess of any maximum amount of contribution determined by the assessment officer.

(2) Save as is provided by these Regulations, where the probable cost of the proceedings exceeds the maximum amount of contribution determined, the general committee shall assess the maximum amount as the amount of contribution payable in respect of the proceedings.

Proceedings in which others have an interest

33.—(1) In determining an application, the general committee shall consider whether it is reasonable and proper for persons concerned jointly with or having the same interest as the applicant to defray so much of the costs as would be payable from the fund in respect of the proceedings if a certificate were issued.

(2) In determining an application made by, or on behalf of, a person in connection with an action, cause or matter in which—

- (i) numerous persons have the same interest, and
- (ii) in accordance with the rules of court, one or more persons may sue or be sued, or may be authorised by a court to defend any such action, cause or matter on behalf of or for the benefit of all persons so interested,

the general committee shall consider whether the rights of the applicant would be substantially prejudiced by the refusal of his application.

(3) Where an application has been approved and the general committee considers that it is reasonable that persons concerned jointly with or having the same interest as the applicant should contribute to the cost of the proceedings, it shall add the amount which should be payable by such persons to the contribution (if any) payable by the applicant and shall so notify him under regulation 44(3).

(4) The general committee may subsequently reassess the amount of any additional contribution payable under paragraph (3) where it is satisfied that the applicant has, without success, taken all reasonable steps (including permitting the committee to take those steps on his behalf) to obtain such payment.

Application in representative, fiduciary or official capacity

34. Where an application is made in a representative, fiduciary or official capacity, the general committee—

- (a) shall take into account the value of any property or estate or the amount of any fund out of which the applicant is entitled to be indemnified and the disposable income and disposable capital and maximum contributions of any persons (including the applicant if appropriate) who might benefit from the proceedings; and, having done so,

- (b) may (without prejudice to regulation 29) either—
- (i) approve the application, subject to the payment from the property or resources specified in sub-paragraph (a) of any contribution which it may in its discretion determine, or
 - (ii) refuse the application, if it concludes that to do so would not cause hardship.

PART V

REFUSAL OF APPLICATIONS

Notification of refusal

35.—(1) If a general committee refuses an application for a certificate, it shall notify the applicant, stating that the application has been refused on one or more of the following grounds, that—

- (a) the assessment officer has determined that the applicant has disposable income which makes him ineligible for legal aid; or
- (b) the assessment officer has determined that the applicant, having disposable income of an amount which makes him eligible for legal aid, has disposable capital of an amount which renders him liable to be refused legal aid and it appears to the committee that, without legal aid, the probable costs to the applicant of the proceedings in respect of which the application was made would not exceed the maximum contribution payable by the applicant under the Act; or
- (c) the proceedings to which the application relates are not proceedings for which legal aid may be given; or
- (d) the applicant has not shown that he has reasonable grounds for taking, defending or being a party to the proceedings; or
- (e) it appears unreasonable that the applicant should receive legal aid in the particular circumstances of the case,

and shall inform him of the provisions, if any, of these Regulations which relate to the circumstances in which he may appeal to the appropriate area committee for the decision to be reviewed.

(2) Where an application is refused on either of the grounds specified in sub-paragraphs (d) and (e) of paragraph (1), the notification given under that paragraph shall include a brief statement of the reasons why that ground applies to the applicant's case.

Right of appeal against refusal

36.—(1) Where a general committee refuses an application for a certificate in respect of proceedings other than authorised summary proceedings or an applicant is dissatisfied with the terms upon which the general committee would be prepared to issue it, the applicant may, subject to paragraph (2), appeal to the appropriate area committee.

- (2) No appeal shall lie to an area committee from—
- (a) any determination of the assessment officer; or
 - (b) any decision by the general committee as to the amount of any contribution or the method by which it shall be paid, unless such contribution has been assessed under regulations 33(3) or 34.

Time and form of appeal

37. Every appeal shall be brought by giving to the appropriate area committee, within 14 days of the date of notice of refusal of a certificate or of the terms upon which a certificate would be issued (or such longer period as the appropriate area committee may allow), notice of appeal in writing either on a form approved by The Law Society or in such other manner, being in writing, as the secretary may accept as sufficient in the circumstances of the case.

Nature of appeal

38. Every appeal shall be by way of reconsideration of the application.

Representation at appeal or other final application

39.—(1) Upon an appeal the appellant may—

- (a) furnish further statements, whether oral or in writing, in support of his application; and
- (b) conduct the appeal himself, with or without the assistance of any person whom he may appoint for the purpose, or be represented by counsel or a solicitor or legal executive.

(2) Paragraph (1) shall apply, with the necessary modifications, to any other appeal to an area committee on which the committee finally determines the applicant's right to receive legal aid.

Determination of appeal

40.—(1) The area committee shall determine the appeal in such manner as seems to it to be just and, without prejudice to the generality of the foregoing, may—

- (a) dismiss the appeal; or
- (b) direct the general committee to offer a certificate subject to such terms and conditions as the area committee thinks fit, or
- (c) instead of itself settling such terms and conditions, direct the general committee to do so; or
- (d) refer the matter or any part of it back to the general committee for its determination or report.

(2) Any decision of an area committee with regard to an appeal shall be final, and it shall give notice of its decision, and the reasons for it, to the appellant and to any solicitor acting for him in a form approved by The Law Society.

Repeated refusal of certificates

41.—(1) Where a person has applied for and been refused a certificate on three separate occasions and it appears to the general committee to whom such person applies that his conduct may amount to an abuse of the facilities provided by the Act, then the committee may report thereon to the appropriate area committee.

(2) If a report under paragraph (1) has been made, the area committee may—

- (a) enquire whether any other general committee has received an application from the person referred to;
- (b) call for a report as to the circumstances of any such other application; and

- (c) if it considers that the person named in the report has abused the facilities provided by the Act, report thereon to The Law Society, making such recommendations as seem to the area committee to be just.

Power to make prohibitory direction

42.—(1) The Law Society, on receipt of a report made under regulation 41(2)(c), shall give the person referred to therein an opportunity of making (either by himself or by some other person acting on his behalf) representations in writing on the matter, and shall make such other enquiries as seem to be necessary; and, if they are satisfied that his conduct has amounted to an abuse of the facilities provided by the Act, may make a direction (in this regulation referred to as a “prohibitory direction”) that no consideration shall, for a period not exceeding five years, be given by any general committee either—

- (a) to any future application by that person for a certificate with regard to any particular matter; or
(b) in exceptional circumstances, to any future application by him whatsoever.

(2) The Law Society may in their discretion—

- (a) include within the terms of any prohibitory direction any receiver, next friend or guardian *ad litem* applying for a certificate on behalf of the person referred to in the prohibitory direction; and
(b) at any time vary or revoke any prohibitory direction in whole or in part.

(3) Where The Law Society make a prohibitory direction they shall inform the Lord Chancellor thereof and shall, if so requested, give him their reasons for making it.

PART VI

ISSUE AND EFFECT OF CERTIFICATES

Issue of certificate where no contribution payable

43. Where an application is approved relating to—

- (a) authorised summary proceedings where either an undertaking has been lodged in accordance with regulation 12 or where no contribution will be payable; or
(b) proceedings, other than authorised summary proceedings, where no contribution will be payable,

the general committee shall issue a certificate and shall send the certificate and one copy of it to the solicitor selected by the applicant and one copy to the applicant, and shall draw the attention of the applicant to the provisions of section 8(1)(e) of the Act (which limits the liability of an assisted person under an order for costs made against him).

Offer of certificate where contribution payable

44.—(1) Where an application is approved for any proceedings other than those referred to in regulation 43, the general committee shall require—

- (a) any contribution payable out of capital to be paid forthwith if the sum is readily available or, if it is not, by such time as seems to it reasonable in all the circumstances; and

(b) any contribution payable out of income to be paid by instalments at a rate which would, if the maximum contribution from income was required, secure that it would be paid within the twelve months next ensuing, or within the period in relation to which the disposable income has been computed, whichever is the later.

(2) Where the certificate relates to any of the proceedings specified in regulation 18(1) and for that reason the assessment officer has not redetermined the applicant's disposable income and disposable capital, and the maximum contribution has not been required in respect of the previous proceedings, the general committee may increase the contribution required to the maximum amount of contribution determined by the officer in relation to the previous proceedings; and

(3) The general committee shall notify the applicant—

(a) of the maximum amount of his contribution, as determined by the assessment officer and the payable contribution as assessed under regulation 32 or paragraph (2) of this regulation, and

(b) of the terms upon which a certificate will be issued to him; and

(c) except in the case of authorised summary proceedings, of the provisions of section 8(1)(e) of the Act.

Undertaking to account for sums received from third party

45. Where the applicant appears to be a member of a body which might reasonably have been expected to give him financial help towards the cost of the proceedings, but does not appear to have any right to be indemnified by them against expenses incurred in connection therewith, the general committee shall require the applicant, as a term upon which a certificate will be issued to him, to sign an undertaking to pay to The Law Society, in addition to his contribution, if any, any sum received from that body on account of the cost of the proceedings.

Acceptance and issue of certificate where contribution payable

46.—(1) An applicant who desires that a certificate should be issued to him on the terms notified to him by a general committee shall, within 28 days of being so notified, or within such other period as the committee may allow—

(a) signify his acceptance of those terms on a form approved by The Law Society and lodge it with The Law Society; and

(b) if those terms require a contribution to be made, give an undertaking, on a form approved by The Law Society, to pay the contribution by the method stated in the terms and, if the contribution or part of it is required to be paid before the certificate is issued, make that payment accordingly.

(2) When an applicant has complied with as much of paragraph (1) as is relevant to his case, the general committee shall issue a certificate and send it to the solicitor selected by the applicant.

(3) Where an application is approved relating to authorised summary proceedings in which an undertaking has been lodged the general committee may defer issuing a certificate until a contribution has been paid.

Scope of certificates

47.—(1) A certificate may be issued in respect of the whole or part of proceedings and may be extended to cover appellate proceedings other than those mentioned in paragraph (2).

(2) A certificate shall not be extended to cover proceedings in the House of Lords or on appeal from a magistrates' court, but a separate certificate may be issued in respect of those proceedings.

(3) A certificate shall not relate to more than one action, cause or matter except in the case of—

- (a) authorised summary proceedings; or
- (b) matrimonial proceedings; or
- (c) an application for a grant of representation which is necessary to enable the action, which is the subject matter of the certificate, to be brought; or
- (d) proceedings, which under section 7 of the Act, may be taken to enforce or give effect to any order or agreement made in the proceedings to which the certificate relates; and for the purposes of this subparagraph proceedings to enforce or give effect to an agreement or order shall include proceedings in bankruptcy or to wind-up a company.

Certificates to specify parties to proceedings

48. A certificate other than one relating to matrimonial proceedings or authorised summary proceedings shall specify the parties to the proceedings in respect of which it is issued.

Power to restrict costs allowable to distant solicitor

49.—(1) Where the solicitor selected by the applicant to whom a certificate is issued carries on his practice at a place which is so far away from where his services will be required in acting under the certificate that his selection will result in significantly greater expense to the fund than would have been incurred if the applicant had selected another solicitor, the certificate may provide that the solicitor shall not be entitled to payment in respect of any additional costs or disbursements incurred by reason of the fact that he does not carry on his practice at or near the place where his services are required in acting under the certificate.

(2) If a certificate contains the provision authorised by paragraph (1), no payment of the additional costs or disbursements therein mentioned shall be allowed on any taxation in accordance with Schedule 2 to the Act or on any assessment by an area committee in accordance with regulation 99 or 100.

Effect of certificates

50.—(1) Legal aid shall be available to any person to whom a certificate has been issued in accordance with these Regulations.

(2) Any document purporting to be a certificate issued in accordance with these Regulations shall, until the contrary is proved, be deemed to be a valid certificate issued to the person named therein and for the purposes there set out.

Notification of issue of certificates

51.—(1) Whenever an assisted person becomes a party to proceedings, or a party to proceedings becomes an assisted person, his solicitor shall forthwith—

- (a) serve all other parties to the proceedings with notice of the issue of a certificate; and
- (b) if at any time thereafter any other person becomes a party to the proceedings, forthwith serve similar notice on that party.

(2) Copies of the notices referred to in paragraph (1) shall form part of the papers for the use of the court in the proceedings.

(3) Where an assisted person's solicitor—

(a) commences any proceedings for the assisted person in the county court; or

(b) commences proceedings in accordance with Order 112, rule 3 or 4, of the Rules of the Supreme Court^(a) or rules 101 or 103 of the Matrimonial Causes Rules 1977^(b);

and at the same time files a copy of the notice to be served in accordance with paragraph (1), the registrar shall annex a copy of the notice to the originating process for service.

(4) A solicitor who receives a certificate from a general committee shall, if proceedings have begun, or otherwise upon their commencement, send a copy of it by prepaid post to the appropriate court office or registry.

(5) Paragraphs (1) to (4) shall not apply to authorised summary proceedings and, where an assisted person is a party to such proceedings, his solicitor shall, before or at the first hearing that takes place after the certificate has been issued, file the certificate with the clerk to the justices.

PART VII

AMENDMENT OF CERTIFICATE AND ADJUSTMENT OF CONTRIBUTION

Power to amend certificates

52. The general committee may amend a certificate where in its opinion—

(a) there is some mistake in the certificate; or

(b) it has become desirable for the certificate to extend to:

(i) proceedings; or

(ii) other steps; or

(iii) subject to regulation 47(3), other proceedings; or

(iv) proceedings which under section 7 of the Act may be taken to enforce or give effect to any order or agreement made in the proceedings in respect of which it was issued; or

(v) the bringing of an interlocutory appeal; or

(vi) proceedings in the Court of Justice of the European Communities on a reference to that Court for a preliminary ruling; or

(vii) representation by an EEC lawyer; or

(c) it has become desirable to add or substitute parties to the proceedings in respect of which it was issued; or

(d) it has become desirable for the certificate to extend to any steps having the same effect as a cross-action or a reply thereto, or a cross-appeal; or

(e) it has become desirable for the certificate not to extend to certain of the proceedings in respect of which it was issued; or

(f) a change of solicitor should be authorised.

(a) S.I. 1965/1776.

(b) S.I. 1977/344.

Power to amend on change of circumstances or contribution

53. Without prejudice to regulation 52, the general committee may amend a certificate—

- (a) where the circumstances upon which the assessment officer has determined an assisted person's disposable income or disposable capital have altered so that—
 - (i) his disposable income has increased by an amount greater than £156 or decreased by an amount greater than £78; or
 - (ii) his disposable capital has increased by an amount greater than £120; or
- (b) where, under these Regulations, it alters the amount of an assisted person's contribution.

Making and determination of applications for amendment

54. Parts II and V of these Regulations shall apply, so far as appropriate, to applications for the amendment of certificates as they apply to applications for certificates.

Procedure on issue of amendment

55.—(1) Where a general committee amends a certificate, it shall send two copies of the amendment to the assisted person's solicitor and a further copy thereof to the assisted person.

(2) A solicitor who receives an amendment sent to him under paragraph (1) shall forthwith—

- (a) if proceedings have begun or otherwise upon their commencement send a copy of the amendment by prepaid post to the appropriate court office or registry, and
- (b) except in the case of an amendment issued under regulation 53, serve notice of the fact upon all other parties to the proceedings, and, if any other person becomes a party to the proceedings, serve similar notice upon that person.

(3) The copy of the amendment sent to the appropriate court office or registry shall form part of the papers for the court in the proceedings.

(4) Paragraphs (2) and (3) shall not apply to authorised summary proceedings and, where an assisted person is a party to such proceedings, his solicitor shall, before or at the first hearing that takes place after the amendment has been issued, file the amendment with the clerk to the justices.

Right to show cause on application to remove limitation

56. A general committee shall not refuse an application to amend a certificate other than an emergency certificate by removing a limitation imposed upon it until—

- (a) notice has been served on the assisted person that the application may be refused and his certificate discharged and that he may show cause why the application should be granted; and
- (b) the assisted person has been given an opportunity to show cause why his application should be granted.

Procedure on refusal of amendment

57. Where a general committee refuses an application for the amendment of a certificate, it shall notify the assisted person's solicitor in writing, stating its reasons for so doing.

Decision of general committee on amendment final

58. The decision of a general committee on any question relating to the amendment of a certificate shall be final.

Increase of contribution under certificate

59. Where the general committee has assessed the amount of the payable contribution at a sum less than the maximum amount determined or redetermined by the assessment officer and it appears that the costs incurred or likely to be incurred under the certificate are likely to exceed the contribution so assessed, the general committee shall increase the amount of contribution up to the amount or likely amount of those costs or to the maximum contribution determined or redetermined, whichever amount is the less.

PART VIII

AUTHORITY TO INCUR COSTS

Instructing counsel

60.—(1) Where it appears to an assisted person's solicitor that the proper conduct of the proceedings so requires, counsel may be instructed; but, unless authority has been given in the certificate or by the general committee—

- (a) counsel shall not be instructed in authorised summary proceedings; and
- (b) a Queen's Counsel or more than one counsel shall not be instructed.

(2) Every set of papers delivered to counsel instructed by virtue of paragraph (1) shall include a copy of the certificate, any amendments to it and any authority to incur costs under this Part of the Regulations, and shall be endorsed with the legal aid reference number and in the case of authorised summary proceedings shall show the authority for counsel to be instructed, as appropriate; and no fees shall be marked thereon.

Power of Law Society to give general authority

61. The Law Society may give general authority to solicitors acting for assisted persons in any particular class of case to incur costs by—

- (a) obtaining a report or opinion of one or more experts or tendering expert evidence;
- (b) employing a person to provide a report or opinion (other than as an expert); or
- (c) bespeaking transcripts of shorthand notes or tape recordings of any proceedings;

and if they do so they shall authorise the maximum fee payable for any such report, opinion, expert evidence or transcript.

Other cases where authority may be sought

62.—(1) Where it appears to an assisted person's solicitor necessary for the proper conduct of the proceedings to incur costs by taking any of the steps specified in paragraph (2), he may, unless authority has been given in the

certificate, apply to the general committee for such authority; and if the committee gives authority for any of the purposes mentioned in paragraph (2)(a) to (d), it shall, if appropriate, state the number of reports or opinions that may be obtained or the number of persons who may be authorised to give expert evidence and the maximum fee to be paid.

- (2) The steps referred to in paragraph (1) are—
- (a) obtaining a report or opinion of an expert or tendering expert evidence in a case of a class not included in any general authority under regulation 61; or
 - (b) paying a person, not being an expert witness, a fee to prepare a report and give evidence if required in a case of a class not included in any general authority under regulation 61; or
 - (c) in a case of a class included in a general authority under regulation 61, paying a higher fee than that authorised by The Law Society or obtaining more reports or opinions or tendering more evidence (expert or otherwise) than has been authorised; or
 - (d) performing an act which is either unusual in its nature or involves unusually large expenditure; or
 - (e) bespeaking any transcripts of shorthand notes or tape recordings of any proceedings not included in any general authority under regulation 61.

Reasons to be given for refusing authority

63. If a general committee refuses an application for authority made under regulations 60 or 62, it shall state its reasons for doing so.

Effect of obtaining and failing to obtain authority

64.—(1) In this regulation, unless the context otherwise requires “taxation” means a taxation in accordance with Schedule 2 to the Act or an assessment by an area committee in accordance with regulation 99, 100 or 102.

(2) Subject to paragraph (3), no question as to the propriety of any step or act in relation to which prior authority has been obtained under regulations 60, 61 or 62 shall be raised on any taxation.

(3) Where costs are incurred in accordance with and subject to the limit imposed by a prior authority given under regulations 61 or 62 no question shall be raised on any taxation as to the amount of the payment to be allowed for the step or act in relation to which the authority was given unless the solicitor or the assisted person knew or ought reasonably to have known that the purpose for which the authority was given had failed or become irrelevant or unnecessary before the costs were incurred.

(4) Where costs are incurred in instructing a Queen’s Counsel or more than one counsel, without authority to do so having been given in the certificate or under regulation 60(1), as the case may be, no payment in respect of those costs shall be allowed on any taxation, unless it is also allowed on a party and party taxation.

(5) Where costs are incurred in instructing counsel or in taking any step or doing any act for which authority may be given under regulation 61 or 62, without authority to do so having been given in the certificate or under regulation 60, 61 or 62, as the case may be, payment in respect of those costs may still be allowed on a taxation.

Restriction on payment otherwise than from the fund

65. Where a certificate has been issued in connection with any proceedings, the assisted person's solicitor or counsel shall not receive or be a party to any payment for work done in those proceedings during the currency of that certificate (whether within the scope of the certificate or otherwise) except such payments as may be made out of the fund.

PART IX

CONDUCT OF PROCEEDINGS

Restrictions on entrusting case to others

66.—(1) No solicitor or counsel acting for an assisted person shall entrust the conduct of any part of the case to any other person save to a solicitor or counsel who may be selected under section 12(1) of the Act to act for a person entitled to receive legal aid.

(2) Nothing in paragraph (1) shall prevent a solicitor from entrusting the conduct of any part of the case to a person who is his partner or who is employed in his office.

Duty to report changes of circumstances

67. The assisted person shall forthwith inform his solicitor of any change in his circumstances, or in the circumstances of his case, which he has reason to believe might affect the terms or the continuation of his certificate.

Duty to report abuse of legal aid

68.—(1) Where an assisted person's solicitor or counsel has reason to believe that the assisted person has—

- (a) required his case to be conducted unreasonably so as to incur an unjustifiable expense to the fund or has required unreasonably that the case be continued; or
- (b) wilfully failed to comply with any regulation as to the information to be furnished by him or in furnishing such information has knowingly made a false statement or false representation,

the solicitor or counsel shall forthwith report the fact to the general committee.

(2) Where the solicitor or counsel is uncertain whether it would be reasonable for him to continue acting for the applicant he may report the circumstances to the general committee.

Power of court to refer abuse to general committee

69.—(1) Subject to paragraph (2), at any time during the hearing of any proceedings to which an assisted person is a party, the court may, on the application of The Law Society or otherwise make an order referring to the general committee the question whether the assisted person's certificate should continue where the court considers that the assisted person has—

- (a) in relation to any application for a certificate, made an untrue statement as to his resources or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after the issue of the certificate and notwithstanding that it was made or occurred in relation to an application to another general committee in connection with the same proceedings; or

- (b) wilfully failed to comply with these Regulations by not furnishing to his solicitor or the general committee any material information concerning anything other than his resources; or
 - (c) knowingly made an untrue statement in furnishing such information;
- and shall notify the committee of the order.

(2) No order shall be made under paragraph (1) by reason of any mis-statement or failure such as is referred to in sub-paragraph (a) thereof if the assisted person satisfies the court that he used due care or diligence to avoid such mis-statement or failure.

Duty to report on refusing or giving up case

70.—(1) A solicitor shall, if required to do so, inform the general committee of his reasons for refusing to act or for giving up a case after being selected.

(2) Counsel, where he has been selected to act or is acting for an assisted person, shall, if required to do so, inform the general committee of his reasons for refusing to accept instructions or for giving up the case or entrusting it to another.

(3) Without prejudice to any other right of a solicitor or counsel to give up a case, any solicitor or counsel may give up an assisted person's case in the circumstances specified in regulation 68.

(4) Where any solicitor or counsel exercises his right to give up an assisted person's case in the circumstances specified in regulation 68, the solicitor shall make a report to the general committee of the circumstances in which that right was exercised.

(5) Where the general committee to whom a report is made under paragraph (4) does not discharge or revoke the assisted person's certificate, it shall require the assisted person to select another solicitor to act for him.

Duty to report progress of proceedings

71. An assisted person's solicitor and his counsel (if any) shall give the general committee such information regarding the progress and disposal of the proceedings to which the certificate relates as the committee may from time to time require for the purpose of performing its functions under the scheme.

Duty to report death etc., of assisted person

72. A solicitor who has acted or is acting for an assisted person shall, on being satisfied that the assisted person—

- (a) has died; or
 - (b) has had a receiving order made against him,
- report the facts to the general committee.

Duty to report completion of case

73. A solicitor shall report forthwith to the general committee either upon the completion of the case if he has completed the work authorised by the certificate or if for any reason he is unable to do so.

Privilege, etc., not to prevent disclosure

74.—(1) No solicitor or counsel shall be precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client,

from disclosing to a general committee or an area committee any information, or from giving any opinion, which he is required to disclose or give to that committee under the Act or these Regulations, or which may enable that committee to perform its functions under the Act or these Regulations.

(2) For the purpose of providing information under the Act or these Regulations or to enable a general committee or an area committee to perform its functions under the Act or these Regulations, any party may disclose to a general committee or an area committee communications in relation to the proceedings concerned sent to or by the assisted person's solicitor, whether or not expressed to be "without prejudice".

PART X

REVOCATION AND DISCHARGE OF CERTIFICATES

Effect of revocation and discharge

75.—(1) A general committee may terminate a certificate by revoking or by discharging it under this Part of these Regulations.

(2) Subject to this Part of these Regulations, a person whose certificate is revoked shall be deemed never to have been an assisted person in relation to those proceedings except for the purposes of section 13 of the Act; and a person whose certificate is discharged shall, from the date of the discharge, cease to be an assisted person in the proceedings to which the certificate related.

Revocation or discharge of emergency certificate

76.—(1) The general committee shall revoke an emergency certificate where the assessment officer determines that the person to whom it was issued has disposable income of an amount which makes him ineligible for legal aid.

(2) The general committee shall revoke an emergency certificate where the assessment officer determines that the person to whom it was issued, having disposable income of an amount which makes him eligible for legal aid, has disposable capital of an amount which renders him liable to be refused legal aid, and it appears to the general committee that, without legal aid, the probable cost to him of the proceedings in respect of which the emergency certificate was issued would not exceed the maximum contribution payable by him under the Act.

(3) The general committee may revoke or discharge an emergency certificate if it is satisfied that the assisted person has failed to attend for an interview or provide information or documents when so required under these Regulations, or has failed to accept an offer of a substantive certificate.

(4) The general committee may revoke or discharge an emergency certificate upon the expiry of such period as it may have allowed for the duration of the certificate including any extension of that period granted under regulation 23(1).

Discharge of certificate on financial grounds

77.—(1) The general committee shall discharge a certificate (other than an emergency certificate) from such date as it considers appropriate where the assessment officer determines that the person to whom it was issued has disposable income of an amount which makes him ineligible for legal aid.

(2) The general committee shall discharge a certificate (other than an emergency certificate) from such date as it considers appropriate where the assessment officer determines that the person to whom it was issued has disposable capital of an amount which renders him liable to be refused legal aid, and it appears to the committee that, without legal aid, the probable cost to him of continuing the proceedings in respect of which the certificate was issued would not exceed the maximum contribution payable under the Act.

(3) Where a certificate is still in force after the expiry of the period of computation, the general committee shall discharge it from such date as it considers appropriate where the current financial circumstances of the assisted person are such that it considers he could afford to proceed without legal aid; and with a view to discharging the certificate, the committee may require the assessment officer to assess the assisted person's current resources in accordance with regulations made under the Act.

Discharge on the merits

78. The general committee shall discharge a certificate from such date as it considers appropriate where, as a result of information which has come to its knowledge, it considers that—

- (a) the assisted person no longer has reasonable grounds for taking, defending or being a party to the proceedings, or for continuing to do so; or
- (b) the assisted person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the fund; or
- (c) it is unreasonable in the particular circumstances that the assisted person should continue to receive legal aid.

Power to revoke or discharge for abuse of legal aid

79.—(1) Subject to paragraph (2) the general committee may revoke or discharge a certificate where, as a result of information which has come to its knowledge, whether by a reference from the court under regulation 69 or otherwise, it appears to the committee that the assisted person has—

- (a) in relation to any application for a certificate, made an untrue statement as to his resources or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after the issue of the certificate and notwithstanding that it was made or occurred in relation to an application to another general committee in connection with the same proceedings; or
- (b) wilfully failed to comply with these Regulations by not furnishing to the general committee or the solicitor any material information concerning anything other than his resources; or
- (c) knowingly made an untrue statement in furnishing such information.

(2) No certificate shall be revoked or discharged under paragraph (1) by reason of any mis-statement or failure such as is referred to in sub-paragraph (a) thereof if the assisted person satisfies the general committee that he used due care or diligence to avoid such mis-statement or failure.

Power to revoke or discharge for failure to provide information etc.

80. The general committee may revoke or discharge a certificate if it is satisfied that the assisted person has failed to attend for an interview or to provide information or documents when so required under these Regulations.

Further power to discharge

81. The general committee may discharge a certificate from such date as it considers appropriate—

- (a) with the consent of the assisted person; or
- (b) where the assisted person has been required to make a contribution and any payment in respect thereof is more than 21 days in arrears; or
- (c) on being satisfied, by the report of the assisted person's solicitor or otherwise, that—
 - (i) the assisted person has died; or
 - (ii) the assisted person has had a receiving order made against him; or
 - (iii) the proceedings to which the certificate relates have been disposed of; or
 - (iv) the work authorised by the certificate has been completed.

Opportunity to show cause against revocation or discharge

82.—(1) Save where a certificate is discharged or revoked under regulation 77 or discharged under regulation 81, no certificate shall be revoked or discharged until—

- (a) notice has been served on the assisted person that the general committee may revoke or discharge his certificate (as the case may be) and that he may show cause why it should not do so; and
- (b) the assisted person has been given an opportunity to show cause why his certificate should not be revoked or discharged.

(2) Where a general committee revokes or discharges a certificate under paragraph (1), the assisted person may appeal to the appropriate area committee against such revocation or discharge and the provisions of regulations 37, 38, 39 and 40 shall so far as is appropriate, apply to the conduct of such appeals.

(3) Any decision with regard to an appeal under paragraph (2) shall be final, and the area committee shall give notice of its decision and the reasons for it to the appellant and to any solicitor acting for him on a form approved by The Law Society.

Notification of revocation or discharge

83.—(1) Where a general committee revokes or discharges an assisted person's certificate, it shall, unless the costs have already been taxed under Schedule 2 to the Act (which relates to the remuneration of counsel and solicitors) or assessed under regulation 99 or 100, forthwith issue a notice of revocation or a notice of discharge, as the case may be, and shall send the notice and one copy thereof to his solicitor, and shall (except where the certificate has been discharged because the assisted person has died) send a further copy of the notice to the assisted person.

(2) A solicitor who receives a notice of revocation or a notice of discharge sent to him under paragraph (1) shall either forthwith, or if an appeal has been made under regulation 82(2) which has been dismissed, forthwith upon receipt by him of a notice of dismissal—

- (a) serve notice of such revocation or discharge upon any other persons who are parties to the proceedings, and
- (b) inform any counsel, and if proceedings have been commenced, send a copy of the notice by prepaid post to the appropriate court office or registry.

(3) The copy of the notice sent to the appropriate court office or registry shall form part of the papers for the use of the court in the proceedings.

(4) Paragraphs (2) and (3) shall not apply to authorised summary proceedings and, where an assisted person is a party to such proceedings, his solicitor shall before or at the first hearing that takes place after the notice of revocation or discharge (as the case may be) has been issued, file the notice with the clerk to the justices.

(5) Where the general committee has considered revoking or discharging a certificate in consequence of information brought to its knowledge by any person, it may, if it thinks fit, inform that person whether or not the certificate has been revoked or discharged.

Effect of revocation or discharge on retainer

84.—(1) Upon receipt by him of a notice of revocation or discharge of a certificate, the retainer of any solicitor and counsel selected by or acting on behalf of the assisted person shall, subject to paragraph (2), either forthwith determine or if an appeal has been made under regulation 82(2) which has been dismissed forthwith determine after receipt by him of a notice of such dismissal.

(2) If a general committee revokes or discharges a certificate and proceedings have commenced, whether *ex parte* or *inter partes*, the retainer of the solicitor shall not determine until he has sent to the appropriate court office or registry, and (if the proceedings are *inter partes*) has served, any notice required by regulation 83.

Costs to be taxed on revocation or discharge

85. Upon the determination of a retainer under regulation 84—

- (a) the costs of the proceedings to which the certificate related, incurred by or on behalf of the person to whom it was issued, shall, as soon as practicable thereafter be taxed under Schedule 2 to the Act or assessed under regulation 99 or 100; and
- (b) the fund shall remain liable for the payment of any costs so taxed or assessed.

Operation of statutory charge

86.—(1) Where a certificate has been revoked or discharged, section 9(6) of the Act (which provides for a charge upon property recovered or preserved for an assisted person) shall apply to any property recovered or preserved as a result of the person whose certificate has been revoked or discharged continuing to take, defend or be a party to the proceedings to which the certificate related.

(2) For the purpose of paragraph (1), the reference therein to a person whose certificate has been discharged shall, where the certificate has been discharged under regulation 81(c)(i) or (ii), include his personal representatives, or his trustee in bankruptcy or the Official Receiver, as the case may be.

Right to recover costs and contribution

87.—(1) Where a certificate has been revoked—

- (a) The Law Society shall have the right to recover from the person to whom the certificate was issued the costs paid or payable under regulation 85(b) less any amount received from him by way of contribution; and

- (b) the solicitor who has acted under the certificate shall have the right to recover from that person the difference between the amount paid or payable out of the fund and the full amount of his solicitor and own client costs.

(2) Where a certificate has been discharged, the person to whom the certificate was issued shall remain liable for the payment of his maximum contribution, if any, as determined or redetermined by the assessment officer up to the amount paid or payable by The Law Society under regulation 85(b) and where he continues to take, defend or be a party to the proceedings to which the certificate related, section 8(1)(e) of the Act shall apply in so far as the costs were incurred while he was an assisted person.

PART XI

PROPERTY AND COSTS RECOVERED FOR ASSISTED PERSONS

Moneys recovered to be paid to solicitor or The Law Society

88. Subject to regulations 90 and 96, all moneys payable to an assisted person—

- (a) by virtue of any agreement or order made in connection with the action, cause or matter to which his certificate relates, whether such agreement was made before or after the proceedings were taken; or
- (b) being moneys payable in respect of the action, cause or matter to which his certificate relates upon the distribution of property of a person who had been adjudicated bankrupt or has entered into a deed of arrangement, or of a company in liquidation; or
- (c) being moneys which were paid into court by him or on his behalf in any proceedings to which his certificate relates and which have been ordered to be repaid to him; or
- (d) being moneys standing in court to the credit of any proceedings to which his certificate relates,

shall be paid or repaid, as the case may be, to the solicitor of the assisted person or, if he is no longer represented by a solicitor, to The Law Society, and only the solicitor, or, as the case may be, The Law Society, shall be capable of giving a good discharge for moneys so payable.

Notice to trustee in bankruptcy, etc.

89.—(1) Where moneys become payable under regulation 88 to the solicitor of the assisted person or The Law Society out of property of a person who has been adjudicated bankrupt, or has entered into a deed or arrangement, or of a company in liquidation, the solicitor or The Law Society, as the case may be, shall send to the trustee in bankruptcy, the trustee or assignee of the deed of arrangement or the liquidator of the company in liquidation, as the case may be, notice that a certificate has been issued to the assisted person.

(2) A notice sent under paragraph (1) shall thereupon operate as a request by the assisted person for payment of the moneys specified in that paragraph to the assisted person's solicitor or The Law Society, as the case may be, and shall be a sufficient authority for that purpose.

*Exceptions to regulation 88***90.** Notwithstanding the requirements of regulation 88—

- (a) the payment of any sum under an order for costs in favour of an assisted person in authorised summary proceedings shall be made to the clerk to the justices, who shall pay it to The Law Society or as The Law Society shall direct, and only the clerk to the justices shall be able to give a good discharge therefor; and
- (b) where any moneys recovered or preserved for an assisted person in any proceedings have been paid into or remain in court and invested for the benefit of the assisted person, such part of those moneys as are not subject to the charge created by section 9(6) of the Act in accordance with regulation 95 may be paid to the assisted person.

*Solicitor to pay moneys recovered to The Law Society***91.—**(1) An assisted person's solicitor shall forthwith—

- (a) inform the appropriate area committee of any property recovered or preserved for the assisted person; and
 - (b) subject to paragraph (2), pay all moneys received by him by virtue of an order or agreement made in the assisted person's favour to The Law Society.
- (2) Where the appropriate area committee considers that the rights of the fund will thereby be safeguarded and so directs, the assisted person's solicitor shall—
- (a) pay to The Law Society under paragraph (1)(b) only such sum as, in the opinion of the appropriate area committee, should be retained by The Law Society in order to safeguard the rights of the fund under any provisions of the Act and these Regulations; and
 - (b) pay any other moneys to the assisted person.

*Enforcement of orders, etc., in favour of assisted person***92.—**(1) Where in any proceedings to which an assisted person is a party—

- (a) an order or agreement is made providing for the recovery or preservation of property for the benefit of the assisted person and, by virtue of the Act, there is a first charge on the property for the benefit of the fund; or
- (b) an order or agreement is made for the payment of costs to the assisted person,

The Law Society may take such proceedings in their own name as may be necessary to enforce or give effect to such an order or agreement.

(2) An assisted person may, with the consent of the appropriate area committee take proceedings (being proceedings which may be taken under section 7 of the Act) to give effect to an order or agreement referred to in regulation 88(a).

(3) Where The Law Society take proceedings, they may authorise any person to swear an affidavit, file a proof, receive a dividend or take any other step in the proceedings in their name and the costs incurred by The Law Society in any such proceedings shall be a first charge on any property or sum so recovered.

Retention and payment out of moneys by The Law Society

93. Upon receipt of moneys paid to them under this Part of these Regulations, The Law Society shall retain—

- (a) subject to regulation 98, any sum paid under an order or agreement for costs made in the assisted person's favour in respect of the period covered by his certificate;
- (b) a sum equal to the amount (if any) by which any property recovered or preserved is charged for the benefit of the fund by virtue of section 9(6) of the Act; and
- (c) any costs of proceedings taken by The Law Society under regulation 92(1);

and shall pay the balance to the assisted person.

Deferment of solicitor's profit costs

94. Where an assisted person's solicitor has failed to comply with any of the provisions of these Regulations and as a result of his default or omission, there is a loss to the fund, the appropriate area committee may defer payment to the solicitor of all or part of his profit costs in connection with the proceedings until he has, in its opinion, complied with such provisions.

Operation of the statutory charge on moneys in court

95. Where any moneys recovered or preserved for an assisted person in any proceedings are ordered to be paid into or remain in court and invested for the benefit of the assisted person, the charge created by section 9(6) of the Act shall attach only to such parts of those moneys as, in the opinion of the appropriate area committee, as notified in writing to the court, will be sufficient to safeguard the rights of the fund under any provisions of the Act or these Regulations.

Exemptions from the statutory charge

96. The charge created by section 9(6) of the Act shall not apply to—

- (a) any interim payment of damages in accordance with an order made under Order 29, rule 11 or 12, of the Rules of the Supreme Court, or in accordance with an agreement having the same effect as such an order;
- (b) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependants) Act, 1975(a);
- (c) any periodical payment of maintenance, which for this purpose means money or money's worth paid towards the support of a spouse, former spouse, child or any other person for whose support the payer has previously been responsible or has made payments;
- (d) the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of—
 - (i) an order made, or deemed to be made, under the provisions of section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or (f), or 35 of the Matrimonial Causes Act 1973(b); or
 - (ii) an order made, or deemed to be made, under the provisions of section 2 or 6 of the Inheritance (Provision for Family and Dependants) Act 1975 or any provision repealed by that Act; or

(a) 1975 c. 63.

(b) 1973 c. 18.

- (iii) an order made, or deemed to be made, after 30th September 1977, under section 17 of the Married Women's Property Act 1882(a); or
- (iv) an order made, or deemed to be made, under the provisions of section 4(2)(b) of the Affiliation Proceedings Act 1957(b); or
- (v) an order for the payment of a lump sum made, or deemed to be made, under the provisions of section 53 of the Magistrates' Courts Act 1952(c); or
- (vi) an order made, or deemed to be made, under the provisions of section 2(1)(b) or (d), 6(1) or (5), 11(2)(b) or (3)(b) or 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978; or
- (vii) an order made, or deemed to be made, under section 9(2)(b), 10(1)(b)(ii) or 11(b)(ii) of the Guardianship of Minors Act 1971(d); or
- (viii) an order made, or deemed to be made, under section 34(1)(c) or 35 of the Children Act 1975(e); or
- (e) an agreement made after—
 - (i) 30th September 1977 which had the same effect as an order made, or deemed to be made, under any of the provisions specified in sub-paragraphs (c)(i) to (iii); or
 - (ii) the coming into operation of these Regulations which has the same effect as an order made, or deemed to be made, under any of the provisions specified in sub-paragraph (c)(iv) to (viii);
- (f) where the certificate was issued before 3rd May 1976, any money or property, of whatever amount or value, recovered or preserved by virtue of an order made, or deemed to be made, under any of the provisions specified in sub-paragraph (c)(i) or (ii) before 1st August 1976 or which, if made on or after that date, gives effect to a settlement entered into before that date; or
- (g) supplementary benefit paid under the Supplementary Benefits Act 1976(f) and family income supplement paid under the Family Income Supplements Act 1970(g); or
- (h) any payment of money in accordance with an order made by the Employment Appeal Tribunal.

Vesting and enforcement of the statutory charge

97.—(1) Any charge on property recovered or preserved for an assisted person arising under section 9(6) of the Act shall vest in The Law Society.

(2) The Law Society may enforce any such charge in any manner which would be available if the charge had been given *inter partes*.

(3) Any such charge affecting land shall in the case of unregistered land be a land charge of Class B within the meaning of section 2 of the Land Charges Act

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- (a) 1882 c. 75.
 - (b) 1957 c. 55, as amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22).
 - (c) 1952 c. 55.
 - (d) 1971 c. 3, as amended by the Domestic Proceedings and Magistrates' Courts Act 1978.
 - (e) 1975 c. 72, as amended by the Domestic Proceedings and Magistrates' Courts Act 1978.
 - (f) 1976 c. 71; the Act as amended (other than sections 31, 32, 35 and 36 and Schedules 4 and 6 to 8) is set out in Part II of Schedule 2 to the Social Security Act 1980 (c. 30).
 - (g) 1970 c. 55.

1972(a) and in the case of registered land shall be a registrable substantive charge.

(4) Subject to the provisions of the Land Charges Act 1925(b) and the Land Charges Act 1972, all conveyances and acts done to defeat, or operating to defeat any such charge shall, except in the case of a bona fide purchaser for value without notice, be void as against The Law Society.

PART XII

COSTS OF ASSISTED PERSONS

Legal aid granted after costs incurred

98.—(1) Where, after proceedings have been instituted in any court, any party becomes an assisted person in regard to those proceedings, the provisions of section 8(1)(e) of the Act shall apply only to so much of the costs of the proceedings as are incurred while a certificate is in force.

(2) Any solicitor who has acted on behalf of the assisted person in the proceedings to which a certificate relates before the date of the certificate, and any solicitor who has by law a lien on any documents necessary for the proceedings, and who has delivered them up subject to his lien, may give notice of the fact to the appropriate area committee.

(3) Subject to paragraph (4), if moneys are recovered for the assisted person, The Law Society shall pay to any such solicitor as is mentioned in paragraph (2) out of the sum so recovered the costs to which he would have been entitled following a taxation between solicitor and own client.

(4) In any case where the sums so recovered are insufficient to pay the solicitor's costs in full in accordance with paragraph (3) and also to meet the sums paid out or payable out of the fund on the assisted person's account, the sums recovered in the proceedings shall be divided between the fund and the solicitor in the same proportions as the solicitor's costs and the cost to the fund bear to the aggregate of the two, and the first charge for the benefit of the fund imposed by virtue of section 9(6) of the Act on property recovered or preserved in the proceedings shall take effect accordingly.

(5) In any case in which—

(a) the costs payable to a solicitor under this regulation; or

(b) the party and party costs incurred during the period in which the certificate was in force,

have not been ascertained by taxation they shall for the purpose of this regulation be fixed by the appropriate area committee.

Remuneration of counsel and solicitors in the Crown Court and magistrates' courts

99.—(1) The sums allowed to solicitors and counsel in connection with authorised summary proceedings or proceedings in the Crown Court for which legal aid is available under Part I of the Act shall be assessed by the appropriate area committee in accordance with the provisions of Schedule 3.

(2) Any solicitor or counsel who is dissatisfied with any decision on an assessment made in accordance with the provisions of Schedule 3, may make written representations to the Council of The Law Society and the Council may

(a) 1972 c. 61.

(b) 1925 c. 22.

allow such costs and fees in respect of the work to which the certificate relates as appear to it to represent fair remuneration according to the work actually and reasonably done.

(3) Regulations 100 to 105 inclusive shall not apply in respect of authorised summary proceedings or to proceedings in the Crown Court for which legal aid is available under Part I of the Act.

Assessment of costs by Area Committee

100.—(1) Where the retainer of an assisted person's solicitor or counsel is determined before proceedings are actually begun and there has been no subsequent change of solicitor or counsel under the certificate, the amount of the costs and counsel's fees (if any) shall be assessed by the appropriate area committee.

(2) Where proceedings have begun and—

(a) the solicitor is of the opinion that the total amount which he and counsel (if any) would receive after a taxation in accordance with Schedule 2 to the Act would not be more than £200; or

(b) the case of an assisted person (who is not such a person as is referred to in Order 62, rule 30, of the Rules of the Supreme Court) has been settled after the commencement of proceedings without any direction of the court as to costs on terms that include provision for an agreed sum in respect of costs to be paid to the assisted person which the solicitor and counsel (if any) is willing to accept in full satisfaction of the work done; or

(c) there are special circumstances where a taxation would be against the interest of the assisted person or would increase the amount payable from the fund; or

(d) after a direction or order that the assisted person's costs shall be taxed in accordance with Schedule 2 to the Act, the solicitor incurs the costs for the purpose of recovering moneys payable to the fund,

the solicitor may apply to the appropriate area committee for an assessment of the amount of the costs and counsel's fees (if any) in respect of the work done.

(3) On any assessment under paragraph (1) or (2) the appropriate area committee shall authorise the payment to the solicitor and counsel (if any) of such an amount as, in its opinion—

(a) where a settlement is reached within the terms of paragraph (2)(b), appears to be reasonable,

(b) where the retainer of the assisted person's solicitor or counsel was determined before proceedings were actually begun, is fair remuneration for work actually and reasonable done; and

(c) in any other case, is the amount which would have been allowed to the solicitor or counsel had the costs been taxed under Schedule 2 to the Act.

(4) Any solicitor or counsel, if he is dissatisfied with any decision on an assessment in accordance with paragraphs (1) or (2) may make written representations to the Council of The Law Society; and the Council may allow such costs and fees in respect of the work to which the certificate relates as appear to it to represent fair remuneration according to the work actually and reasonably done or, as the case may be, to be the amount which would have been allowed to the solicitor or counsel had the costs been taxed under Schedule 2 to the Act.

Taxation of costs

101.—(1) The costs of proceedings to which an assisted person is a party shall be taxed in accordance with any direction or order given or made in the proceedings irrespective of the interest (if any) of the assisted person in the taxation; and for the purpose of these Regulations, an order for the taxation of the costs of a review of taxation or of the costs of an appeal from a decision of the judge on such a review shall be deemed to be a final order.

(2) Any certificate or notice of revocation or discharge, or a copy of any such certificate or notice, shall be bespoken or made available upon taxation.

(3) Where in any proceedings to which an assisted person is a party—

- (a) judgment is signed in default of appearance or defence, the judgment shall contain a direction that the costs of any assisted person shall be taxed in accordance with Schedule 2 to the Act;
- (b) the court gives judgment or makes a final decree or order in the proceedings, the judgment, decree or order shall include a direction (in addition to any other direction as to taxation) that the costs of any assisted person shall be so taxed;
- (c) the plaintiff accepts money paid into court, the costs of any assisted person shall be taxed in accordance with Schedule 2 to the Act.

(4) Where in any proceedings to which an assisted person or a former assisted person is a party and—

- (a) the proceedings are, or have been, brought to an end without a direction having been given, whether under paragraph (3) or otherwise, as to the assisted person's costs being taxed in accordance with Schedule 2 to the Act; or
- (b) a judgment or order in favour of an opposite party, which includes a direction that the assisted person's costs be so taxed, has not been drawn up or, as the case may be, entered by him; or
- (c) a retainer is determined under regulation 84 in such circumstances as to require a taxation in accordance with the provisions of the Act and these Regulations;

the costs of that person shall be taxed in accordance with Schedule 2 to the Act on production of a copy of the notice of discharge or revocation of the certificate at the appropriate taxing office.

Agreement in respect of costs

102.—(1) Where in any proceedings to which an assisted person, or a former assisted person, is a party and which have been brought to an end by a judgment decree or final order, there has been an agreement in respect of the costs to be paid by any other party to the assisted person, or former assisted person, which that person's solicitor and counsel (if any) is willing to accept in full satisfaction of the work done, the amount of the costs shall be submitted to the appropriate taxing officer.

(2) Where a submission is made to the appropriate taxing officer under paragraph (1) he shall, in accordance with Schedule 2 to the Act, fix the amount of costs by assessment made without a taxation; and for this purpose the solicitor for the assisted person or former assisted person, shall supply the taxing officer with such documents and details as he may require.

Failure to apply for taxation

103. Where, in any proceedings to which a former assisted person was a party, an order or agreement has been made for the payment to him of costs and he had failed to ask for costs to be taxed or his certificate is discharged before taxation, The Law Society may authorise the making of the application for taxation on his behalf and the costs of the application and of taxation shall be deemed to be costs in the proceedings to which the certificate related.

Disallowance or reduction of costs

104.—(1) Without prejudice to Order 62, rules 7 and 8, of the Rules of the Supreme Court or to Order 47, rule 50, of the County Court Rules, on any taxation of an assisted person's costs in connection with proceedings (except authorised summary proceedings and proceedings in the Crown Court), any costs wasted by failure to conduct the proceedings with reasonable competence and expedition shall be disallowed or reduced, and where the solicitor has without good reason delayed putting in his bill for taxation the whole of the costs may be disallowed or reduced.

(2) No costs shall be disallowed or reduced under paragraph (1) until notice has been served by the taxing officer on the solicitor whose name appears on the assisted person's certificate and, in a case where those costs relate to counsel's fees, on the assisted person's counsel, requiring the solicitor or, as the case may be, counsel to show cause orally or in writing why those costs should not be disallowed or reduced.

(3) The assisted person's solicitor shall forthwith inform counsel of any reduction of his fees on taxation.

Solicitor's duty to safeguard the interests of the fund

105. It shall be the duty of an assisted person's solicitor to safeguard the interests of the fund on any taxation as between party and party pursuant to an order for costs made in favour of the assisted person where that person may himself have no interest in the result of the taxation, and for this purpose to take such steps as may appear to the solicitor to be necessary to obtain a review of taxation under regulation 107 or 108.

Costs of applications, reports etc., under these Regulations

106. Costs incurred by reason of any application made under Part VIII and of any report made by an assisted person's solicitor under Part IX of these Regulations shall be taxed in accordance with Schedule 2 to the Act and costs incurred by reason of regulation 24, 51, 55, 83 or 117 shall be costs in the cause.

Application to carry in objections to the taxation

107. Where—

- (a) an assisted person is dissatisfied with any decision of a taxing officer in regard to the amount which he is entitled to recover by virtue of an order or agreement for costs made in his favour or for which he is liable by virtue of an order for costs made against him; or
- (b) the assisted person's solicitor is dissatisfied with any decision of the taxing officer—
 - (i) on a taxation as between party and party pursuant to an order for costs made in favour of the assisted person, or
 - (ii) on a taxation in accordance with Schedule 2 to the Act,

the solicitor shall apply to the appropriate area committee for authority to carry in objections to the taxation; and if the area committee give authority, but not otherwise, the solicitor may thereupon carry in objections in accordance with rules of court.

Application to judge to review taxation

108. Where the assisted person or his solicitor, as the case may be, is dissatisfied with the decision of the taxing officer on any matter to which objection has been taken as aforesaid, the solicitor shall apply to The Law Society for authority to have the taxation reviewed; and, if the Society give authority, but not otherwise, the solicitor may thereupon apply to a judge either personally or by counsel to review the taxation in accordance with rules of court.

Appeal from review of taxation

109.—(1) Subject to paragraph (2), an assisted person's solicitor may, with the authority of The Law Society, appeal from the decision of the judge on a review of taxation under regulation 108 and shall be entitled to appear by counsel and be heard on an appeal by any other party notwithstanding that the assisted person may have no interest in the appeal or would, save for regulation 113, have an interest adverse to that of his solicitor.

(2) Nothing in this regulation shall be deemed to confer a right of appeal where there is no such right in proceedings to which an assisted person is not a party.

(3) Where an assisted person's solicitor applies for authority under paragraph (1), he shall do so before the expiration of the time allowed by rules of court for appeal from the decision of the judge and thereupon the time so allowed shall be extended by one month.

Counsel dissatisfied with taxation

110. Where counsel acting for an assisted person is dissatisfied with any decision on a taxation in accordance with Schedule 2 to the Act, it shall be the duty of the assisted person's solicitor to report the matter to the appropriate area committee or to The Law Society, as the case may be, and, if the committee or The Law Society give authority in that behalf, to carry in objections to the taxation, to apply to a judge to review the taxation or to appeal from the decision of the judge, as the case may be, and regulations 107, 108, 109 and 112 shall apply as if the solicitor were the person dissatisfied.

Objection by other party

111. If, in proceedings to which an assisted person is a party, any other party carries in objections to a taxation as between party and party or applies to a judge to review the taxation, the assisted person's solicitor may be heard on the objection or review notwithstanding that the assisted person himself may have no interest in the taxation.

Costs to be paid out of the fund

112. Any proceedings under regulations 107 to 111 shall be deemed to be proceedings to which the assisted person's certificate relates, whether or not it has been discharged or revoked, and the costs of such proceedings shall be paid out of the fund.

Assisted person having no interest or adverse interest

113. Where the assisted person has no interest in the taxation or would, save for the provisions of this regulation, have an interest adverse to that of his solicitor—

- (a) it shall be the duty of the solicitor carrying in objections under regulation 107 or applying for a review under regulation 108 to ensure that all matters which are proper to be taken into account in consideration of the objections or on the review are placed before the taxing officer or judge as appropriate;
- (b) the assisted person shall not be required to make any contribution to the fund on account of the costs of any proceedings arising under regulations 107 to 111 or in consequence of any order made thereon; and
- (c) the charge created by section 9(6) of the Act shall not apply as regards any resulting increase in the net liability of the fund.

Time limits

114. Where any party to a taxation is an assisted person, the certificate or allocatur shall not, save by consent, be signed within 21 days after the taxing officer's decision; and where an assisted person's solicitor applies under regulation 107 or 108 for authority to carry in objections or to have a taxation reviewed, he shall do so before the expiration of the time allowed by rules of court for applying to the taxing officer for a reconsideration or review of a taxation and shall thereupon give notice of his application to the taxing officer and to the opposite party, and the time so allowed shall thereupon be extended by one month, or such longer period as the taxing officer shall allow.

Appointment of solicitor to intervene

115.—(1) The Lord Chancellor may appoint a solicitor to intervene for the purposes hereinafter mentioned in any review by a judge of a taxation of the costs of proceedings to which an assisted person is a party, and such appointment may be made in respect of a particular review or may extend to any review of taxation during the period for which the solicitor is appointed.

(2) Whenever The Law Society give authority to an assisted person's solicitor to apply to a judge to review a taxation, they shall notify the Lord Chancellor and inform him of the name and address of the assisted person's solicitor.

(3) If, in proceedings to which an assisted person is a party, any other party applies to a judge to review a taxation between party and party or the assisted person's solicitor applies to a judge to review any such taxation as is referred to in regulation 107, the assisted person's solicitor shall inform The Law Society of the fact and the Society shall notify the Lord Chancellor and inform him of the name and address of the assisted person's solicitor and, where the taxation to be reviewed is as between party and party, the name and address of the solicitor acting for the other party.

(4) The solicitor appointed by the Lord Chancellor to intervene in a review of taxation shall be entitled to production of all documents relevant to the matters in issue before the judge and to delivery of copies thereof and to appear by counsel and be heard on the review, with a view to ensuring that all considerations which are proper to be taken into account are placed before the court, whether they relate to the interests of the fund or of the assisted person or to the fair remuneration of solicitors and counsel acting for assisted persons.

(5) On any review in which the solicitor appointed by the Lord Chancellor has intervened the judge may make such order as may be just for the payment to or by that solicitor of the costs incurred by him or any other party, so however that any sum due to the solicitor by virtue of any such order shall be paid by him to The Law Society and any sum so payable by the solicitor shall be paid out of the fund, and the solicitor shall be entitled to receive from the fund his costs of a review in which he has intervened.

(6) The solicitor appointed by the Lord Chancellor under paragraph (1) may appeal from the decision of the judge on a review of taxation under regulation 109 and paragraphs (2) to (5) shall apply to an appeal as it applies to a review.

PART XIII

COSTS AWARDED AGAINST AN ASSISTED PERSON

Security for costs given by assisted person

116. Where in any proceedings an assisted person is required to give security for costs the amount of such security shall not exceed the amount which could be ordered under section 8(1)(e) of the Act.

Assisted person's liability for costs

117.—(1) Where proceedings have been concluded in which an assisted person (including, for the purpose of this regulation, a person who was an assisted person in respect of those proceedings) is liable or would have been liable for costs if he had not been an assisted person, no costs attributable to the period during which his certificate was in force shall be recoverable from him until the court has determined the amount of his liability in accordance with section 8(1)(e) of the Act.

(2) Where the assisted person's certificate does not relate to, or has been amended so that it no longer relates to the whole of the proceedings, the court shall nevertheless make a determination under section 8(1)(e) of the Act in respect of that part of the proceedings to which the certificate relates.

Affidavit of means by unassisted party

118.—(1) Any person, not being himself an assisted person, who is a party to proceedings (other than authorised summary proceedings) to which an assisted person is a party, may file in the appropriate court office or registry an affidavit exhibiting thereto a statement setting out the rate of his own income and amount of his own capital and any other facts relevant to the determination of his means in accordance with section 8(1)(e) of the Act.

(2) Any person filing an affidavit under paragraph (1) shall serve a copy thereof, together with the exhibit, upon the assisted person's solicitor, who shall forthwith serve him with a copy of the certificate and shall send a copy of the affidavit to the secretary.

Determination of liability for costs

119. In determining the amount of the assisted person's liability—

- (a) his dwelling-house and household furniture and the tools and implements of his trade shall be left out of account to the like extent as they are left out of account by the assessment officer in determining his disposable income and disposable capital; and

- (b) any document which may have been sent to the court office or registry or filed or exhibited under these Regulations shall, subject to regulation 121, be evidence of the facts stated therein.

Postponement, adjournment or referral of determination

120. The court may, if it thinks fit—

- (a) postpone or adjourn the determination for such time and to such place, including chambers, as the court thinks fit, so however that the determination shall, unless otherwise directed, take place before the judge, official referee, master or registrar before whom the trial or hearing took place; or
- (b) refer to a master, registrar or the Clerk of the Parliaments or, in the case of an appeal from a decision of the Crown Court or a court of summary jurisdiction, to the chief clerk or clerk to the justices respectively of the court from which the appeal is brought, for investigation in chambers or elsewhere, any question of fact relevant to the determination, requiring him to report his findings on that question to the court.

Oral examination of parties

121. The court may, if it thinks fit, order the assisted person and any party who has filed an affidavit pursuant to regulation 118 to attend for oral examination as to his means and as to any other facts (whether stated in any document before the court or otherwise) relevant to the determination of the amount of the assisted person's liability and may permit any party to give evidence and call witnesses thereon.

Order for costs

122. The court may direct—

- (a) that payment under the order for costs shall be limited to such amount, payable in instalments or otherwise, including an amount to be determined on taxation, as the court thinks reasonable having regard to all the circumstances; or
- (b) where the court thinks it reasonable either for payment under subparagraph (a) not to be made immediately or for the assisted person to have no liability for payment, that payment under the order for costs be suspended either until such date as the court may determine or indefinitely.

Variation of order for costs

123. The party in whose favour the order for costs is made may, within six years from the date thereof, apply to the court for the order to be varied on the ground that—

- (a) material additional information as to the assisted person's means, being information which could not have been obtained by that party with reasonable diligence at the time the order was made, is available; or
- (b) there has been a change in the assisted person's circumstances since the date of the order;

and on any such application the order may be varied as the court thinks fit; but save as aforesaid the determination of the court shall be final.

Assisted person acting in representative, fiduciary or official capacity

124. Where an order for costs is made against an assisted person who is concerned in the proceedings in a representative, fiduciary or official capacity, he shall have the benefit of section 8(1)(e) of the Act and his personal resources shall not (unless there is reason to the contrary) be taken into account for that purpose, but regard shall be had to the value of the property or estate, or the amount of the fund out of which he is entitled to be indemnified.

Assisted person a minor

125. Where a minor is an assisted person, his means for the purpose of determining his liability for costs under section 8(1)(e) of the Act shall be taken as including the means of any person whose resources have been taken into account under Regulations made under the Act, by the assessment officer in determining the disposable income and disposable capital of the minor.

Order against next friend or guardian ad litem

126. Where an order for costs is made against a next friend or guardian *ad litem* of an assisted person who is a minor or patient, he shall have the benefit of section 8(1)(e) of the Act in like manner as it applies to an assisted person and the means of the next friend or guardian *ad litem* shall be taken as being the means of the minor as defined in regulation 125 or, as the case may be, of the patient.

PART XIV

COSTS OF UNASSISTED PARTIES OUT OF THE FUND

Time and form of application

127.—(1) An application for an order under section 13 of the Act may be made at any time and in any manner in which an application for an order for costs might be made in respect of the same proceedings if neither party were receiving legal aid.

(2) Any proceedings in respect of which a separate certificate could properly be issued shall be treated as separate proceedings for the purposes of section 13 of the Act.

Unassisted party acting in representative, fiduciary or official capacity

128. Where an unassisted party is concerned in proceedings only in a representative, fiduciary or official capacity, then for the purposes of section 13(3)(b) of the Act the court shall not take into account his personal resources, but shall have regard to the value of the property, estate or fund out of which the unassisted party is entitled to be indemnified and may in its discretion also have regard to the resources of the persons, if any, including the unassisted party where appropriate, who are beneficially interested in that property, estate or fund.

Appearance by unassisted party and secretary

129.—(1) The unassisted party and the secretary may appear at any hearing or inquiry under Parts XIII and XIV of these Regulations.

(2) The secretary may, instead of so appearing, submit written representations concerning the application and such representations shall be—

(a) supported by an affidavit sworn by the secretary; and

- (b) sent to the proper officer of the court, and copies thereof sent to the unassisted party, not less than 7 days before the hearing or inquiry to which they relate.

Applications in respect of magistrates' court proceedings

130.—(1) On an application for an order under section 13 of the Act being made in respect of authorised summary proceedings, the court shall not make an order forthwith, but may in its discretion either—

- (a) adjourn the hearing of the application; or
(b) dismiss the application forthwith.

(2) If the court adjourns the hearing of the application, the unassisted party shall swear an affidavit of costs and resources, which he shall produce at the adjourned hearing and, not less than 21 days before the adjourned hearing, the unassisted party shall serve notice of the date and time thereof on the secretary, together with a copy of his affidavit of costs and resources.

(3) The unassisted party need not serve on the secretary any exhibit to or document supporting his affidavit of costs and resources, but the secretary may call on the unassisted party to produce any such exhibit or document for inspection.

Applications in respect of county court proceedings

131. On an application for an order under section 13 of the Act made in respect of proceedings in or on appeal from a county court, the court shall not make an order under section 13 of the Act forthwith, but may in its discretion—

- (a) refer the application to the registrar for hearing and determination; or
(b) adjourn the application; or
(c) dismiss the application forthwith.

Procedure where application referred to registrar for determination

132. Where a court in accordance with regulation 131(a) refers an application to the registrar for hearing and determination—

- (a) the provisions of regulation 135 shall thereafter apply as if the registrar were the court and the court had adjourned the hearing of the application to a date to be fixed; and
(b) the unassisted party or the secretary may appeal to the judge on a point of law from the registrar's determination within 14 days thereof.

Reference to registrar for inquiry and report

133.—(1) The court may, if it adjourns the hearing of an application in accordance with regulation 131(b), make an order referring it to the registrar for inquiry and report; and if it does so, then—

- (a) the court shall serve a copy of its order on the unassisted party;
(b) within 21 days of the court making its order (or such longer time as the court may allow), the unassisted party shall file an affidavit of costs and resources together with a copy thereof; and
(c) the court shall thereupon serve a copy of the order of the court and of the unassisted party's affidavit of costs and resources on the secretary.

(2) In complying with paragraph (1)(c) the court need not serve on the secretary any exhibit to or document supporting the unassisted party's affidavit of costs and resources; but the secretary may inspect at the county court office any such exhibit or document, and may bespeak a copy thereof.

Procedure on inquiry and report

134.—(1) As soon as a copy of the order of the court and the affidavit of costs and resources have been served on the secretary in accordance with regulation 133(1)(c), the registrar shall give the unassisted party and the secretary not less than 21 days' notice of the date and time when he proposes to conduct his inquiry.

(2) In exercising his functions under this regulation, the registrar shall have all the same powers as a taxing officer has in the exercise of his functions under the County Court Rules 1936(a).

(3) On completing his inquiry, the registrar shall report to the court in writing, and shall at the same time send a copy of his report to the unassisted party and the secretary.

(4) When the court has received the registrar's report, it shall send to the unassisted party and the secretary notice of an appointment before the court for the hearing and determination of the application in chambers, giving not less than 21 days' notice thereof.

Procedure where application adjourned otherwise

135.—(1) If the court adjourns the hearing of an application in accordance with regulation 131(b) but does not refer it to the registrar for inquiry and report, then—

- (a) within 21 days of the adjournment the unassisted party shall file an affidavit of costs and resources together with a copy thereof; and
- (b) not less than 21 days before the adjourned hearing the court shall serve on the secretary notice of the date thereof together with a copy of the unassisted party's affidavit of costs and resources.

(2) In complying with paragraph (1)(b) the court need not serve on the secretary any exhibit or document supporting the affidavit of costs and resources but he may inspect any such exhibit or document at the office of the registrar and may bespeak a copy thereof.

Applications in respect of proceedings in the Supreme Court and House of Lords

136.—(1) On an application for an order under section 13 of the Act being made in respect of proceedings in the Supreme Court or House of Lords, the court shall not make an order forthwith, but it may in its discretion—

- (a) refer the application to a master or registrar for hearing and determination; or
- (b) adjourn the hearing of the application; or
- (c) dismiss the application forthwith.

(2) Where the application is referred to a registrar under paragraph (1)(a) the provisions of regulations 132 to 135 shall apply as appropriate.

(a) S.I. 1936/626.

Procedure where application referred to master for determination

137. Where the court in accordance with regulation 136(1)(a) refers the application to a master for hearing and determination—

- (a) the provisions of regulation 140 shall thereafter apply as if the master were the court and the court had adjourned the hearing of the application to a date to be fixed; and
- (b) the master shall have all the same powers as a taxing officer has in the exercise of his functions under Order 62 of the Rules of the Supreme Court (Revision) 1965(a); and
- (c) the unassisted party or the secretary may appeal to a judge sitting in chambers on a point of law from the determination of the master within 14 days thereof.

Reference to master for inquiry and report

138.—(1) The court may, if it adjourns the hearing of an application in accordance with regulation 136(1)(b), make an order referring it to the master for inquiry and report; and if it does so, then within 21 days of the court making the order (or such longer time as the master shall allow) the unassisted party shall—

- (a) file an affidavit of costs and resources;
- (b) lodge a copy of the order of the court and of his affidavit of costs and resources, together with original exhibits and any other documents necessary to support the affidavit, with the master; and at the same time
- (c) serve a copy of the order of the court and of his affidavit of costs and resources on the secretary.

(2) In complying with paragraph (1)(c), the unassisted party need not serve on the secretary any exhibit or document supporting his affidavit of costs and resources, but the secretary may inspect at the office of the master any such exhibit or document, and may bespeak a copy thereof.

Procedure on inquiry and report

139.—(1) Where the unassisted party has complied with the requirements of regulation 138(1), the master shall fix a date and time when he proposes to conduct his inquiry, and he shall give the unassisted party and the secretary not less than 21 days' notice thereof.

(2) In exercising his functions under this regulation, the master shall have all the same powers as a taxing officer has in the exercise of his functions under Order 62 of the Rules of the Supreme Court (Revision) 1965.

(3) On completing his inquiry, the master shall report to the court in writing, and shall at the same time send a copy of his report to the unassisted party and to the secretary.

(4) When the court has received the report of the master, the unassisted party shall take an appointment before the court for the hearing and determination of the application in chambers, and shall give to the secretary not less than 21 days' notice of the date and time of that appointment.

Procedure where application adjourned otherwise

140.—(1) If the court adjourns the hearing of an application in accordance with regulation 136 but does not refer it for inquiry and report, then—

- (a) within 21 days of the adjournment the unassisted party shall file an affidavit of costs and resources together with original exhibits and any other documents necessary to support the affidavit; and
- (b) not less than 21 days before the adjourned hearing, the unassisted party shall serve notice on the secretary of the date and time of the adjourned hearing together with a copy of his affidavit of costs and resources.

(2) In complying with paragraph (1)(b), the unassisted party need not serve on the secretary any exhibit to or document supporting his affidavit of costs and resources; but the secretary may inspect at the appropriate office of the court any such exhibit or document, and may bespeak a copy thereof.

PART XV

PARTICULAR COURTS AND TRIBUNALS

The Lands Tribunal

141.—(1) In this regulation—

“the tribunal” means the Lands Tribunal as established by section 1(1)(b) of the Lands Tribunal Act 1949(a) and

“the registrar” means the registrar of the tribunal.

(2) Except in so far as otherwise provided by this regulation, these Regulations shall apply to applications for legal aid for proceedings in the tribunal and to the conduct of all proceedings in it for which a certificate is granted in like manner as they apply to applications for legal aid for, and the conduct of, proceedings in any court.

(3) Where any power to do any act or exercise any jurisdiction or discretion is conferred by these Regulations on a court it shall be exercised by the tribunal and may, unless it is exercisable only during the hearing of the proceedings, be exercised by the registrar.

(4) The provisions of Schedule 2 to the Act shall apply to proceedings in the tribunal as they apply to proceedings in a county court.

(5) Notwithstanding anything in regulation 100 or 101, the following provisions shall have effect in relation to proceedings in the tribunal to which an assisted person is a party—

- (a) where a final decision is given in writing by the tribunal, it shall, in addition to any direction as to costs, contain a direction that the costs of any assisted person shall be taxed in accordance with the provisions of Schedule 2 to the Act and the costs shall be so taxed by the registrar;
- (b) where the proceedings are brought to an end without a direction having been given under sub-paragraph (a) the costs of any assisted person shall be taxed by the registrar in accordance with Schedule 2 to the Act; and
- (c) in taxing the costs of any assisted person the registrar shall have power to determine the appropriate scale for the taxation, being a scale of costs prescribed by the Rules of the Supreme Court or by the County Court Rules.

(a) 1949 c. 42.

The Employment Appeal Tribunal

142.—(1) In this regulation—

“the appeal tribunal” means the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975(a); and

“the registrar” means the registrar of the Appeal Tribunal and includes any officer of the appeal tribunal authorised to act on behalf of the registrar.

(2) Except in so far as otherwise provided by this regulation, these Regulations shall apply to applications for legal aid for proceedings in the appeal tribunal and to the conduct of all proceedings in it for which a certificate is granted, in the same way as they apply to applications for legal aid for, and the conduct of, proceedings in any court.

(3) Where any power to do any act or exercise any jurisdiction or discretion is conferred by these Regulations on a court, it shall, in relation to proceedings in the appeal tribunal, be exercised by that tribunal and may, unless it is exercisable only during the hearing of the proceedings by a judge or member of the appeal tribunal or by the appeal tribunal as required to be constituted by paragraph 16 of Schedule 11 to the Employment Protection (Consolidation) Act 1978(b) be exercised by the registrar.

(4) Where it appears to the general committee that an application for a certificate relates to proceedings in the appeal tribunal which are likely to be conducted in Scotland, it shall transmit the application forthwith to the Secretary of the Legal Aid Central Committee of The Law Society of Scotland and shall notify the applicant and his solicitor that it has done so.

(5) Where it appears to the general committee doubtful whether the proceedings to which an application for a certificate relates will be conducted in the appeal tribunal when sitting in England and Wales or in Scotland, it shall request the registrar to determine that question and that determination shall be binding upon the committee.

(6) Where a certificate has been issued and there is a change of circumstances regarding the conduct of the proceedings in that, by direction of the appeal tribunal, they will be wholly or partly conducted in Scotland—

(a) the certificate shall remain in force;

(b) the assisted person shall continue to be represented in the proceedings in Scotland by the solicitor who represented him in England and that solicitor may instruct either a member of the English or the Scottish Bar; and

(c) no question as to the propriety of appearing in Scotland shall be raised on a taxation in accordance with the provisions of Schedule 2 to the Act or on an assessment by an area committee in accordance with regulation 100.

(7) The provisions of Schedule 2 to the Act shall apply to proceedings in the appeal tribunal as they apply to proceedings in the House of Lords, the Court of Appeal and the High Court.

(8) The costs of an assisted person in respect of proceedings in the appeal tribunal shall be assessed by an area committee in accordance with regulation 100 or taxed in accordance with Schedule 2 to the Act by a Taxing Master of the Supreme Court and the provisions of Order 62 of the Rules of the Supreme Court shall apply, with the necessary modifications, to the taxation of those

(a) 1975 c. 71.

(b) 1978 c. 44.

costs as if the proceedings in the appeal tribunal were a cause or matter in the Supreme Court.

The Commons Commissioners

143.—(1) In this regulation, “a commissioner” means a Commons Commissioner appointed under section 17(1) of the Commons Registration Act 1965(a).

(2) Except in so far as otherwise provided by this regulation, these Regulations shall apply to applications for legal aid for proceedings before a commissioner and to the conduct of all proceedings before him for which a certificate is granted, in the same way as they apply to proceedings for legal aid for, and the conduct of, proceedings in any court.

(3) Where any power to do any act or exercise any jurisdiction or discretion is conferred on a court by these Regulations it shall, in relation to proceedings before a commissioner, be exercised by him.

(4) The provisions of Schedule 2 to the Act shall apply to proceedings before a commissioner as they apply to proceedings in a county court.

The Restrictive Practices Court

144.—(1) In this regulation—

“the Court” means the court established by section 2 of the Restrictive Trade Practices Act 1956(b), and

“the proper officer of the Court” shall have the same meaning as in the Restrictive Practices Court Rules 1976(c).

(2) Except in so far as otherwise provided by this regulation, these Regulations shall apply to applications for legal aid for proceedings in the Court under Part III of the Fair Trading Act 1973(d) and to any proceedings in the Court in consequence of an order made, or undertaking given to the Court, under that Part of that Act, and to the conduct of all such proceedings for which a certificate is granted, in the same way as they apply to applications for legal aid for, and the conduct of, proceedings in any court.

(3) Where any power to do any act or exercise any jurisdiction or discretion is conferred by these Regulations on a court it shall in relation to proceedings in the Court, be exercised by that Court and may, unless it is exercisable only during the hearing of the proceedings by a judge or by the Court, be exercisable by the proper officer of the Court.

(4) Where it appears to the general committee that an application for a certificate relates to proceedings in the Court which are likely to be conducted in Scotland or Northern Ireland, it shall transmit the application forthwith to the Secretary of the Legal Aid Central Committee of the Law Society of Scotland or the Secretary of the Legal Aid Department of the Incorporated Law Society of Northern Ireland, as the case may be, and shall notify the applicant and his solicitor that it has done so.

(5) Where it appears to the general committee doubtful whether the proceedings to which an application for a certificate relates will be conducted in the Court when sitting in England and Wales or in Scotland or Northern Ireland, it shall request the proper officer of the Court to determine that question and that determination shall be binding upon the committee.

(a) 1965 c. 64.
(c) S.I. 1976/1897.

(b) 1956 c. 68.
(d) 1973 c. 41.

(6) Where a certificate has been issued and there is a change of circumstances regarding the conduct of the proceedings in that, by order of the Court, they will be wholly or partly conducted in Scotland or Northern Ireland—

- (a) the certificate shall remain in force; and
- (b) for any proceedings in Scotland—
 - (i) the assisted person shall continue to be represented in the proceedings by the solicitor who represented him in England and Wales and that solicitor may instruct a member of the bar of England and Wales or of Scotland; and
 - (ii) no question as to the propriety of appearing in Scotland shall be raised on a taxation in accordance with the provisions of Schedule 2 to the Act or on an assessment by an area committee in accordance with regulation 100; and
- (c) for any proceedings in Northern Ireland, the assisted person shall continue to be represented in the proceedings by the solicitor who represented him in England and Wales and that solicitor shall instruct as his agent a solicitor on the panel maintained by the Incorporated Law Society of Northern Ireland of solicitors willing to act for assisted persons before the Court.

(7) The provisions of Schedule 2 to the Act shall apply to proceedings in the Court as they apply to proceedings in the House of Lords, the Court of Appeal and the High Court.

(8) The costs of an assisted person in respect of proceedings in the Court shall be assessed by an area committee in accordance with regulation 100 or taxed in accordance with Schedule 2 to the Act by a Taxing Master of the Supreme Court, and the provisions of Order 62 of the Rules of the Supreme Court shall apply, with the necessary modifications, to the taxation of those costs as if the proceedings in the Court were a cause or matter in the Supreme Court.

Dated 1st December 1980.

Hailsham of St. Marylebone, C.

We concur,

Dated 2nd December 1980.

John MacGregor,
Peter Morrison,
Two of the Lords Commissioners
of Her Majesty's Treasury.

SCHEDULE 1

Regulation 2

REGULATIONS REVOKED

<i>Title</i>	<i>Reference</i>
The Legal Aid (Costs of Successful Unassisted Parties) Regulations 1964	S.I. 1964/1276
The Legal Aid (General) Regulations 1971	S.I. 1971/62
The Legal Aid (General) (Amendment) Regulations 1971	S.I. 1971/1877
The Legal Aid (General) (Amendment) Regulations 1972	S.I. 1972/1749
The Legal Aid (General) (Amendment) Regulations 1973	S.I. 1973/2036
The Legal Aid (General) (Amendment) Regulations 1976	S.I. 1976/338
The Legal Aid (General) (Amendment No. 2) Regulations 1976	S.I. 1976/628
The Legal Aid (General) (Amendment) Regulations 1977	S.I. 1977/1293
The Legal Aid (General) (Amendment No. 2) Regulations 1977	S.I. 1977/1715
The Legal Aid (General) (Amendment) Regulations 1979	S.I. 1979/263
The Legal Aid (General) (Amendment) Regulations 1980	S.I. 1980/1629

SCHEDULE 2

Regulation 6

FORM 1

THE LAW SOCIETY

LEGAL AID ACT 1974

NOTICE OF ISSUE OF CERTIFICATE

No.

In the

[

Division]

Between

[Plaintiff] [Petitioner]

and

[Defendant] [Respondent]

TAKE notice that [an Emergency] [a Legal Aid] Certificate No. dated the day of 19 has been issued in Area No. to

in connection with the following proceedings:—

TAKE further notice that, in consequence thereof, the in these proceedings is and has been from that date an assisted person.

Dated this day of 19 .

(Signed)
of
Solicitor for

To

FORM 2

THE LAW SOCIETY

LEGAL AID ACT 1974

NOTICE OF AMENDMENT,
DISCHARGE OR REVOCATION OF CERTIFICATE

No.

In the
[

Division]

Between

[Plaintiff] [Petitioner]

and

[Defendant] [Respondent]

TAKE notice that [a Legal Aid] [an Emergency] Certificate [dated the day of
19 , issued in respect of the proceedings hitherto covered by an Emergency
Certificate] [dated the day of 19 , issued to the above-named*
] has, on the , been [amended] [discharged]
[revoked].

(The amendment provides:
the following proceedings:—

that the Certificate shall [not] extend to

]

Dated this day of 19 .

(Signed)
of
Solicitor for

To

* Insert Plaintiff, Petitioner, Defendant, Respondent, etc., as the case may require.

SCHEDULE 3

Regulation 99

REMUNERATION OF COUNSEL AND SOLICITORS GIVING LEGAL AID IN PROCEEDINGS IN THE CROWN COURT AND MAGISTRATES' COURTS

1. Subject to paragraph 6—

(1) There shall be allowed to the solicitor acting under a certificate on behalf of an assisted person—

- (a) where the hearing takes place in a magistrates' court, a fee of not less than £6.30 and not exceeding £36.75 and, in addition, a further fee not exceeding £12.60 in respect of every day on which an adjourned hearing takes place; or
- (b) where the hearing takes place in the Crown Court, a fee of not less than £8.40 and not exceeding £36.75 and, in addition, a further fee not exceeding £12.60 in respect of every day on which an adjourned hearing takes place or, if the court is one in which a party may appear by a solicitor and counsel has not been instructed, a fee not exceeding £18.40.

(2) In addition to any fee payable under sub-paragraph (1) of this paragraph the solicitor shall be allowed—

- (a) expenses actually and reasonably incurred by him or his clerk in travelling to and from the court in which the hearing takes place and to and from any place visited for the purpose of preparing or conducting the case; and
- (b) any other out-of-pocket expenses actually and reasonably incurred.

2. Subject to paragraph 6—

(1) There shall be allowed to counsel acting under a certificate on behalf of an assisted person a fee of not less than £6.55 (except where the hearing takes place in the Crown Court, where the fee shall not be less than £8.66) and not exceeding £37.75.

(2) Where a hearing has not been concluded at the end of the first relevant period thereof, there shall be allowed to counsel in respect of each relevant period, or, in the case of an incomplete period, part thereof, after the first, a refresher fee.

(3) In this paragraph—

- (a) "relevant period" means, either, as The Law Society may determine generally, or as the appropriate area committee may determine in relation to any particular hearing, and day during any part of which the hearing continues or any period of five hours, whether continuous or not, during which the hearing continues;
- (b) "refresher fee" means such fee in addition to the fee allowed under the foregoing paragraph, not exceeding half the fee allowed as aforesaid, as appears to be proper in all the circumstances of the case.

(4) There shall be allowed to counsel in addition to any fees allowed under the foregoing paragraphs—

- (a) in respect of any conference or consultation in chambers or elsewhere lasting not more than half-an-hour, a fee of £2.35;
- (b) in respect of any conference or consultation in chambers or elsewhere lasting more than half-an-hour, such fee as appears to be proper in all the circumstances of the case;
- (c) in respect of any application to the court for a case, which is in a list of cases to be heard on any particular day, not to be heard on that day, such fee as appears to be proper in all the circumstances of the case;
- (d) for advice in writing, if in the opinion of the appropriate area committee it was reasonably necessary to obtain counsel's advice in writing, a fee not exceeding £11.00.

3.—(1) Subject to the provisions of this schedule, the appropriate area committee in assessing the sums payable to a solicitor or counsel shall take into account all the relevant circumstances, including the nature, importance, complexity or difficulty of the work, and the time involved, including time spent at the court on any day waiting for the case to be heard, if the case was in that day's list, and shall allow such amounts as appear to them to represent fair remuneration for the work actually and reasonably done.

(2) In assessing as aforesaid, the appropriate area committee shall not allow any sum in respect of any conference, consultation, attendance or visit unless it is satisfied that such conference, consultation, attendance or visit was reasonably necessary—

- (a) if, in assessing sums payable to a solicitor or counsel, it considers that the proper conduct of the proceedings required counsel, allow to the solicitor and counsel such fees as it shall assess in accordance with the preceding provisions of this schedule; or
- (b) if, in assessing such sums, it considers that the proper conduct of the proceedings did not require counsel, allow fees of such total amount as it would have considered proper to allow to the solicitor under paragraph 1 if counsel had not been instructed and the solicitor had conducted the case alone; and in such case the committee shall determine the amount which it would have allowed to counsel under paragraph 2 had counsel been authorised and such amount shall (to the extent that the total amount suffices) be paid to counsel and the balance, if any, of the total amount shall be paid to the solicitor.

4. If it appears to the appropriate area committee in assessing the sums payable to a solicitor or counsel that for any reason, including the exceptional length, difficulty or complexity of the case in respect of which the certificate was granted, the sums payable by virtue of this schedule would not provide fair remuneration according to the work actually and reasonably done, it shall certify accordingly, and where it so certifies any limitation contained in this schedule on the amount of any fee payable shall not apply, and the appropriate area committee shall, after taking into account all the relevant circumstances of the case and having regard to the considerations mentioned in the preceding paragraph, allow such fees in respect of the work to which the certificate relates as appear to it to represent fair remuneration according to the work actually and reasonably done.

5. Where a solicitor acting on behalf of an assisted person under a certificate reasonably undertakes work in giving notice of appeal or in applying for a case to be stated and in matters preliminary thereto, being work done within the ordinary time for giving notice or making an application, there shall, in addition to the fees which may be paid to him under the foregoing provisions of this schedule and his disbursements on the said work, be allowed to him a fee not exceeding £10·50 in respect of the said work and in any case where counsel's opinion is required, a fee not exceeding £11·00 shall be allowed to counsel for his opinion.

6. Where a solicitor who is acting on behalf of an assisted person has instructed counsel without obtaining authority in accordance with these regulations, the area committee shall—

- (a) if, in assessing sums payable to a solicitor or counsel, it considers that the proper conduct of the proceedings required counsel, allow to the solicitor and counsel such fees as it shall assess in accordance with the preceding provisions of this schedule; or
- (b) if, in assessing such sums, it considers that the proper conduct of the proceedings did not require counsel, allow fees of such total amount as it would have considered proper to allow to the solicitor under paragraph 1 if counsel had not been instructed and the solicitor had conducted the case alone; and in such case the committee shall determine the amount which it would have allowed to counsel under paragraph 2 had counsel been authorised, and such amount shall (to the extent that the total amount suffices) be paid to counsel and the balance, if any of the total amount shall be paid to the solicitor.

Regulation 3

SCHEDULE 4

MATTERS TO BE INCLUDED IN AN AFFIDAVIT OF COSTS AND RESOURCES

1. An estimate of the unassisted party's costs as between party and party of the proceedings in respect of which his application is made, supported by:—

- (a) particulars of the estimated costs in the form of a summary bill of costs; and
- (b) all necessary documentary evidence to substantiate each item therein.

2. A statement, supported by evidence, of the unassisted party's financial resources of every kind during the period beginning three years before his application is made, and of his estimated future financial resources and expectations.

3. A declaration that to the best of his knowledge and belief the unassisted party has not, and at any relevant time has not had and will not have any financial resources or expectations not specified in the statement described in paragraph 2 above.

4. A declaration that the unassisted party has not at any time deliberately foregone or deprived himself of any financial resources or expectations with a view to furthering his application.

5. A statement supported by evidence of the unassisted party's reasonable financial commitments during the period covered by his statement described in paragraph 2 above, including, if desired, his estimated solicitor and own client costs of the proceedings in respect of which his application is made.

6. If the unassisted party has, or at any relevant time has had, a spouse, his statements and declarations described in paragraphs 2 to 5 above shall also take account of and (to the best of his knowledge and belief) specify that spouse's financial resources, expectations and commitments, unless she had a contrary interest to the unassisted party in the proceedings in respect of which his application is made, or the unassisted party and his spouse are or at the relevant time were living separate and apart, or for some other reason it would be either inequitable or impracticable for the unassisted party to comply with the requirement of this paragraph.

7. Full particulars of any application for legal aid made by the unassisted party in connection with the proceedings in respect of which his application is made, including the date and reference number of any such application and the committee to which it was made.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations consolidate with amendments the Legal Aid (General) Regulations 1971, the Legal Aid (Costs of Successful Unassisted Parties) Regulations 1964 and subsequent amending Regulations. These Regulations take into account the changes made by the Legal Aid Scheme 1980 and the other more important amendments are:—

- (i) regulation 25, which expressly enables a general committee to notify any party to proceedings that another party to those proceedings has applied for legal aid to seek agreement to the delaying of proceedings pending the determination of the application for legal aid;
- (ii) regulation 34(b)(i), which allows a contribution to be sought out of any property, estate or fund out of which a person acting in a representative fiduciary or official capacity is entitled to be indemnified;
- (iii) regulation 47, which allows a legal aid certificate to be extended to cover all appeals except those from magistrates' courts and to the House of Lords;
- (iv) regulation 49, which enables a general committee to limit a legal aid certificate so as to exclude any extra costs caused by the fact that the solicitor instructed practises far away from where his services will be required;

- (v) regulation 52, which adds to the purposes for which a legal aid certificate may be amended the bringing of an interlocutory appeal and a reference to the Court of Justice of the European Communities on a preliminary point of law;
- (vi) regulation 56, which confers a right on an assisted person to be heard before a general committee refuses to amend a legal aid certificate by removing a limitation;
- (vii) regulation 63, which imposes a duty on a general committee to give reasons for refusing its authority to the incurring of certain costs, such as those of instructing counsel in summary proceedings or obtaining the report of an expert;
- (viii) regulation 64(3), which prevents a taxing officer questioning costs incurred with the authority of The Law Society or a general committee unless at the time the costs were incurred, the solicitor or the assisted person knew, or ought reasonably to have known, that the purpose for which the costs were incurred had failed or become irrelevant or unnecessary;
- (ix) regulation 67, which extends the duty imposed on an assisted person to report changes in his disposable income and disposable capital to a duty to report any change in his circumstances or the circumstances of the case which he has reason to believe might affect the terms or continuation of his legal aid certificate;
- (x) regulation 68, which imposes a general duty on an assisted person's solicitor and counsel to report abuses of legal aid by the assisted person;
- (xi) regulation 69, which empowers the court to refer to a general committee the question whether a legal aid certificate should continue following the making of an untrue statement or the non-disclosure of information by an assisted person in relation to any application for legal aid;
- (xii) regulation 74, which removes the bar of privilege from the disclosure of all information which a solicitor or counsel is required to disclose to a legal aid committee under the Act or the Regulations, or which may enable a committee to perform its functions under the Act or the Regulations;
- (xiii) regulation 75(2), which provides amongst other things that the revocation of a legal aid certificate shall not affect the rights of an unassisted person to seek his costs out of the Legal Aid Fund under section 13 of the Act;
- (xiv) regulation 82, which confers a wide right of appeal against the decisions of a general committee to discharge or revoke a legal aid certificate;
- (xv) regulation 96, which adds to the classes of property recovered or preserved in proceedings which are totally or partially exempted from the operation of the statutory charge under section 9(6) of the Legal Aid Act 1974;
- (xvi) regulation 104, which empowers a taxing officer to disallow or reduce costs where the solicitor has, without good reason, delayed putting in his bill; and,
- (xvii) regulation 116, which provides that orders for security of costs made against an assisted person shall not exceed the order for costs which could be made against that assisted person under section 8(1)(e) of the Act.

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