
STATUTORY INSTRUMENTS

1989 No. 339

The Civil Legal Aid (General) Regulations 1989

PART I
GENERAL

Citation, commencement, revocations and transitional provisions

1.—(1) These Regulations may be cited as the Civil Legal Aid (General) Regulations 1989 and shall come into force on 1st April 1989.

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

(3) Where a review by an area committee under regulation 104, 105 or 106 relates to an assessment made before 1st June 1989, paragraphs (5) and (6) of regulation 105 shall not apply and the assisted person's solicitor or counsel may, within 21 days of the area committee's decision, appeal in writing to a committee appointed by the Board.

Scope

2. These Regulations apply for the purposes of the provision of civil legal aid under Part IV of the Legal Aid Act 1988.

Interpretation

3.—(1) In these Regulations, unless the context otherwise requires,—

“the Act” means the Legal Aid Act 1988;

“affidavit of costs and resources” means an affidavit which includes the matters specified in Schedule 2 and which is sworn by a person in support of his application for an order under section 18 of the Act;

“appropriate area committee” means the area committee in whose area an application for a certificate has been granted or refused and includes an area committee to whose area an application has been transferred under these Regulations;

“area committee” means an area committee appointed by the Board in accordance with regulation 4;

“Area Director” means an Area Director appointed by the Board in accordance with regulation 4 and includes any person duly authorised to act on his behalf;

“assessment officer” means a person authorised by the Secretary of State to assess the disposable income, disposable capital and maximum contribution of the person concerned;

“assisted person” means a person in respect of whom a certificate issued under these Regulations 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 is available by virtue of Part I of Schedule 2 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;

“contribution” means the contribution payable under section 16(1) of the Act in respect of the costs of representation;

“court” includes

(a) in relation to proceedings tried or heard at first instance by a master or taxing master of the Supreme Court, a registrar of the Family Division of the High Court, a district registrar or the registrar of a county court, that master or registrar;

(b) in relation to proceedings on appeal to the Court of Appeal, the registrar of civil appeals;

“disposable capital” and “disposable income” mean the amounts of capital and income available for the making of a contribution after capital and income have been computed in accordance with the Civil Legal Aid (Assessment of Resources) Regulations 1989(1);

“EEC lawyer” has the same meaning as in the European Communities (Services of Lawyers) Order 1978(2);

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

“fund” means the legal aid fund;

“legal aid” means representation under Part IV of the Act;

“legal aid area” has the meaning assigned by regulation 4(1);

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

“master” in relation to an application for an order under section 18 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(3); or

(b) any proceedings in a county court under section 17 of the Married Women’s Property Act 1882(4) or section 1 of or Schedule 1 to the Matrimonial Homes Act 1983(5); or

(c) any proceedings under the Domestic Violence and Matrimonial Proceedings Act 1976(6);

“maximum contribution” means the amount assessed by the assessment officer as the maximum amount which an assisted person may be liable to pay on account of his contribution;

(1) S.I.1989/338.

(2) S.I. 1978/1910, amended by S.I. 1980/1964.

(3) 1973 c. 18; section 50 was amended by the Domicile and Matrimonial Proceedings Act 1973 (c. 45), section 6(2), by the Inheritance (Provision for Family and Dependents) Act 1975 (c. 63), section 26(2), Schedule, by the Children Act 1975 (c. 72), section 108, Schedule 3, paragraph 79, by the Administration of Justice Act 1977 (c. 38), Schedule 5 Part VI, by the Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22), section 89, Schedule 2, paragraph 40, by the Matrimonial Homes Act 1983 (c. 19), Schedule 2, by the County Courts Act 1984 (c. 28), section 148, Schedule 2 Part V paragraph 44, and by the Family Law Act 1986 (c. 55), sections 64, 68, Schedule 1, paragraph 15.

(4) 1882 c. 75; section 17 was amended by the Statute Law (Repeals) Act 1969 (c. 52), Schedule Part III and the Matrimonial and Family Proceedings Act 1984 (c. 42), section 43.

(5) 1983 c. 19; section 1 and Schedule 1 were amended by the Housing (Consequential Provisions) Act 1985 (c. 71), section 4, Schedule 2, paragraph 56; Schedule 1 was also amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 46, Schedule 3.

(6) 1976 c. 50.

“patient” means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1983(7), is incapable of managing and administering his property and affairs;

“standard basis” and “indemnity basis”, in relation to the taxation of costs, have the meanings assigned by Order 62, rule 12 of the Rules of the Supreme Court 1965(8);

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

(2) Any reference in these Regulations to a regulation or Schedule by number means the regulation or Schedule so numbered in these Regulations.

(3) References in these Regulations to costs shall, unless the context otherwise requires, be construed as including references to fees, charges, disbursements, expenses and remuneration.

Area committees, Area Directors and legal aid areas

4.—(1) The Board shall, for the purposes of administering the Act, appoint—

- (a) area committees, and
- (b) Area Directors,

in respect of areas (in these Regulations referred to as “legal aid areas”) to be specified by the Board.

(2) Area committees and Area Directors so appointed shall exercise functions respectively delegated to them by the Board or conferred on them by these Regulations.

Powers exercisable by courts

5. Where the 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) in respect of proceedings in a county court or the Family Division of the High Court, by the registrar;
- (b) in respect of proceedings in the Chancery or Queen’s Bench Division of the High Court, by a judge, master or district registrar;
- (c) in respect of proceedings in the Court of Appeal, by a single judge of that Court or by the registrar of civil appeals;
- (d) in respect of proceedings in the House of Lords, by the Clerk of the Parliaments;
- (e) by any person who, under any enactment or rules of court, is capable of exercising the jurisdiction of the court in relation to the proceedings in question.

Powers exercisable by Area Directors

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

(2) Paragraph (1) shall not empower an Area Director to determine an appeal under regulation 39.

Computation of time

7.—(1) Where, under these Regulations, an act is required to be done within a specified period after or from a specified date, the period of time so fixed starts immediately after that date.

(7) 1983 c. 20.

(8) S.I. 1965/1776; the relevant amending instrument is S.I. 1986/632.

(2) The period within which an act is required or authorised to be done under these Regulations may, if the Area Director thinks fit, be extended and any such period may be extended although the application for extension is not made until after the expiration of the period.

Service of notices

8.—(1) Where by virtue of these Regulations any document is required to be served (whether the expression “serve” or the expression “send” or “send by post” or any other expression is used) the document may be served—

- (a) if the person to be served is acting in person, by delivering it to him personally or by delivering it at, or sending it by post to, his address for service or, if he has no address for service,—
 - (i) by delivering the document at his residence or by sending it by post to his last known residence, or
 - (ii) in the case of a proprietor of a business, by delivering the document at his place of business or by sending it by post to his last known place of business;
- (b) if the person to be served is acting by a solicitor—
 - (i) by delivering the document at, or by sending it by post to, the solicitor’s address for service, or
 - (ii) where the solicitor’s address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents daily to that document exchange.

(2) Any document which is left at a document exchange in accordance with paragraph (1)(b)(ii), shall, unless the contrary is proved, be deemed to have been served on the second day after the day on which it is left.

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 may, on request, be made available for the use of the court at any stage of the proceedings.