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## STATUTORY INSTRUMENTS

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# 1989 No. 339

## The Civil Legal Aid (General) Regulations 1989

### PART II

#### APPLICATIONS FOR CERTIFICATES

##### **Applications to be made to Area Directors**

**10.** Any person who wishes to be granted legal aid for the purposes of proceedings may apply for a certificate—

- (a) if resident in the United Kingdom, to any Area Director, or
- (b) if resident elsewhere, to the Area Director of one of the legal aid areas nominated by the Board for this purpose.

##### **Form and lodgment of application**

**11.** Every application—

- (a) shall be made in writing on a form approved by the Board or in such other written form as the Area Director may accept; and
- (b) shall be lodged with the Area Director.

##### **Contents of application**

**12.—(1)** Every application shall—

- (a) state the name of the solicitor selected by the applicant to act for him;
- (b) contain such information and be accompanied by such supporting documents (including any welfare report) as may be necessary to enable—
  - (i) the Area Director to determine the nature of the proceedings in respect of which legal aid is sought and whether it is reasonable that representation should be granted; and
  - (ii) the assessment officer to assess the disposable income, disposable capital and maximum contribution of the applicant.

(2) 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 Area Director (when he applies for a certificate or at any time before it is issued) an undertaking on a form approved by the Board to pay any contribution that may be assessed under the Civil Legal Aid (Assessment of Resources) Regulations 1989.

(3) An applicant shall, if required to do so for the purpose of providing additional material, supply such further information or documents as may be required or attend for an interview and, for this purpose, “applicant” includes a person to whom a certificate has been issued on a form of undertaking given under paragraph (2).

### **Applications by persons resident outside United Kingdom**

**13.**—(1) Subject to paragraph (2), where the applicant resides outside the United Kingdom and cannot be present in England or Wales while his application is considered, his application shall be

- (a) written in English or in French; and
- (b) except where the applicant is a member of Her Majesty's armed forces, sworn—
  - (i) 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 resides to administer an oath for any judicial or other legal purpose, or
  - (ii) if the applicant resides elsewhere, before a British consular officer 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
- (c) 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 Area Director where compliance with them would cause serious difficulty, inconvenience or delay and the application otherwise satisfies the requirements of regulations 11 and 12.

### **Child Abduction and Custody Act 1985(1)**

**14.**—(1) A person whose application under the Hague Convention or the European Convention has been submitted to the Central Authority in England and Wales pursuant to section 3(2) or section 14(2) of the Child Abduction and Custody Act 1985 and on whose behalf a solicitor in England and Wales has been instructed in connection with the application—

- (a) shall be eligible to receive legal aid whether or not his financial resources are such as to make him eligible to receive it under regulations made under the Legal Aid Act 1988;
- (b) shall not be refused legal aid by virtue of subsections (2) and (3) of section 15 of the said Act of 1988; and
- (c) shall not be required to pay a contribution to the legal aid fund;

and these Regulations (with the exception of those provisions relating to assessment of disposable income and capital, eligibility on the merits and payment of contribution) shall apply accordingly.

(2) In this regulation the "Hague Convention" means the convention defined in section 1(1) of the Child Abduction and Custody Act 1985 and the "European Convention" means the convention defined in section 12(1) of that Act.

### **Registration of certain foreign orders and judgments**

**15.**—(1) This regulation applies to any person who

- (a) appeals to a magistrates' court against the registration of or the refusal to register a maintenance order made in a Hague Convention country pursuant to the Maintenance Orders (Reciprocal Enforcement) Act 1972(2); or
- (b) applies for the registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982(3).

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(1) 1985 c. 60.

(2) 1972 c. 18.

(3) 1982 c. 27.

(2) Subject to paragraph (3), a person to whom this regulation applies—

- (a) shall be eligible to receive legal aid whether or not his financial resources are such as to make him eligible to receive it under regulations made under the Legal Aid Act 1988;
- (b) shall not be refused legal aid by virtue of subsections (2) and (3) of section 15 of the said Act of 1988;
- (c) shall not be required to pay a contribution to the legal aid fund,

and these Regulations (with the exception of those provisions relating to assessment of disposable income and capital, eligibility on the merits and payment of contribution) shall apply accordingly.

(3) A person shall not be given legal aid under this regulation in respect of any appeal or application as is mentioned in paragraph (1) unless he benefited from complete or partial legal aid or exemption from costs or expenses in the country in which the maintenance order was made or the judgment was given.

(4) In this regulation, “Hague Convention country” has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979<sup>(4)</sup> and “the Maintenance Orders (Reciprocal Enforcement) Act 1972” means that Act as applied with such exceptions, adaptations and modifications as are specified in the said 1979 Order.

#### **Application on behalf of minors and patients**

**16.**—(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,

- (a) 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, the person making the application shall be the next friend or guardian ad litem, or,
- (b) where the application relates to proceedings which have not actually begun, the person who, subject to any order of the court, intends to act in either of those capacities when the proceedings begin, shall make the application.

(2) Except where an application is made by the Official Solicitor, the Area Director 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 Board (if required to do so) any sums which, by virtue of any provision of the Act or of these Regulations, the Area Director 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 a certificate.

(3) Any certificate issued to a minor or patient shall be in his name, stating the name of the person who has applied for it 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 Area Director, 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) An Area Director may, where the circumstances appear to make it desirable, waive all or any of the requirements of the preceding paragraphs of this regulation.

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(4) S.I.1979/1317, amended by S.I. 1981/837, 1545, 1674 and 1983/885, 1523.

### **Power to transfer application to another area office**

17. If it appears to an Area Director that an application could, without prejudice to the applicant, be more conveniently or appropriately dealt with in another area office, the papers relating to the application shall be transferred to that other office.

### **Reference to the assessment officer for assessment of resources**

18.—(1) Except where he has previously refused the application, the Area Director shall refer to the assessment officer so much of it as is relevant to the assessment of the applicant's disposable income and disposable capital; and (subject to paragraph (2) and regulation 21) no application shall be approved until the assessment officer has assessed the applicant's disposable income, disposable capital and maximum contribution in accordance with the Civil Legal Aid (Assessment of Resources) Regulations 1989<sup>(5)</sup>.

(2) Where an Area Director approves an application relating to proceedings—

- (a) 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) by way of a new trial ordered by a court in any action, cause or matter in which the applicant was an assisted person; he shall not require the assessment officer to re-assess the assisted person's disposable income and disposable capital.

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(5) S.I. 1989/338.