
STATUTORY INSTRUMENTS

1989 No. 339

The Civil Legal Aid (General) Regulations 1989

PART VI

ISSUE AND EFFECT OF CERTIFICATES

Issue of certificate where no contribution may be payable

42. Where an application is approved relating to proceedings where an undertaking under regulation 12(2) has been given or where no contribution is (for the time being) payable, the Area Director shall—

- (a) issue a certificate;
- (b) send the certificate (together with a copy) to the solicitor selected by the applicant; and
- (c) send a copy of the certificate to the applicant together with a notice drawing the applicant's attention to the provisions of sections 16(6) and 17(1) of the Act.

Offer of certificate where contribution payable

43.—(1) Where an application is approved for any proceedings where a contribution will be payable, the Area Director shall require—

- (a) any sums 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 him reasonable in all the circumstances; and
- (b) any sums payable out of income to be paid by such instalments as he may direct.

(2) The Area Director shall notify the applicant—

- (a) of the sums payable under regulation 31; and
- (b) of the terms upon which a certificate will be issued to him;

and draw to his attention the provisions of sections 16(1) and (6) and 17(1) of the Act.

Undertaking to account for sums received from third parties

44. Where the applicant—

- (a) appears to be a member of an organisation or body which might reasonably be expected to give him financial assistance in meeting the cost of the proceedings for which the applicant has applied for legal aid; and
- (b) does not appear to have any right to be indemnified by that organisation or body against expenses incurred in connection with those proceedings,

the Area Director shall require the applicant, as a term upon which the certificate will be issued, to sign an undertaking to pay to the Board (in addition to any sums payable under regulations 31 and 32) any sum which he receives from that organisation or body on account of the cost of those proceedings.

Acceptance and issue of certificate where contribution payable

45.—(1) An applicant who desires that a certificate should be issued to him on the terms notified to him by an Area Director shall, within 28 days of being so notified,—

- (a) signify his acceptance of those terms on a form approved by the Board and lodge it with the Area Director; and
- (b) if those terms require the payment of any sums of money, give an undertaking, on a form approved by the Board, to pay those sums by the method stated in the terms and, if any sum is required to be paid before the certificate is issued, make that payment accordingly.

(2) When an applicant has complied with so many of the requirements of paragraph (1) as are relevant to his case, the Area Director 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 under regulation 12(2) has been given, the Area Director may defer issuing a certificate until a contribution has been paid.

Scope of certificates

46.—(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.

(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) proceedings under the Guardianship of Minors Act 1971⁽¹⁾ or the Guardianship Act 1973⁽²⁾ and proceedings under the Domestic Violence and Matrimonial Proceedings Act 1976⁽³⁾;
- (d) 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;
- (e) an application under section 33 of the Supreme Court Act 1981⁽⁴⁾ or section 52 of the County Courts Act 1984⁽⁵⁾ and subsequent court proceedings; or
- (f) proceedings which, under 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 sub-paragraph, 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

47. 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.

(1) 1971 c. 3.
(2) 1973 c. 29.
(3) 1976 c. 50.
(4) 1981 c. 54.
(5) 1984 c. 28.

Power to restrict costs allowable to distant solicitor

48.—(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) Where a certificate includes a provision under paragraph (1), payment of such additional costs or disbursements shall not be allowed on determination of the costs.

Effect of certificates

49. 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 in it and for the purposes there set out and shall be received in evidence without further proof.

Notification of issue of certificates

50.—(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 a 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 a county court; or
- (b) commences proceedings in accordance with Order 112, rule 3 or 4 of the Rules of the Supreme Court 1965⁽⁶⁾ or rule 101 or 103 of the Matrimonial Causes Rules 1977⁽⁷⁾;

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

(4) A solicitor who receives a certificate from an Area Director shall, if proceedings have begun, or otherwise upon their commencement, send a copy of it by 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.

⁽⁶⁾ S.I.1965/1776; relevant amending instruments are S.I. 1971/1955 and 1983/1181.

⁽⁷⁾ S.I. 1977/344; the relevant amending instrument is S.I. 1986/634.