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STATUTORY INSTRUMENTS

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**1989 No. 339**

**The Civil Legal Aid (General) Regulations 1989**

**PART X**

**REVOCATION AND DISCHARGE OF CERTIFICATES**

**Effect of revocation or discharge**

**74.**—(1) An Area Director may terminate a certificate by revoking or 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 18 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**

**75.**—(1) The Area Director shall revoke an emergency certificate where the assessment officer assesses that the person to whom it was issued has disposable income of an amount which makes him ineligible for legal aid.

(2) The Area Director shall revoke an emergency certificate where the assessment officer assesses 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 Area Director 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 contribution which would be payable by him.

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

(4) The Area Director may revoke or discharge an emergency certificate upon the expiry of such period (including any extension of that period granted under regulation 24(1)) as he may have allowed for the duration of the certificate.

(5) No emergency certificate shall be revoked under paragraph (3) until—

- (a) notice has been served on the assisted person and his solicitor that the Area Director may do so and that the assisted person may show cause why the certificate should not be revoked, and
- (b) the assisted person has been given an opportunity to show cause why his certificate should not be revoked.

(6) Where notice is served under paragraph (5), no further work may be done or steps taken under the certificate unless authorised by the Area Director.

### **Discharge of certificate on financial grounds**

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

(2) The Area Director shall discharge a certificate (other than an emergency certificate) from such date as he considers appropriate where the assessment officer assesses 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 Area Director 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 contribution which would be payable.

(3) Where the Area Director considers that the current financial circumstances of the assisted person are such that he could afford to proceed without legal aid, he may, with a view to discharging the certificate, require the assessment officer to assess the assisted person's current financial resources in accordance with the Civil Legal Aid (Assessment of Resources) Regulations 1989<sup>(1)</sup> and may discharge the certificate from such date as he considers appropriate.

### **Discharge on the merits**

77. The Area Director shall discharge a certificate from such date as he considers appropriate where, as a result of information which has come to his knowledge, he 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**

78.—(1) Subject to paragraph (2), the Area Director may revoke or discharge a certificate where, as a result of information which has come to his knowledge, whether by a reference from the court under regulation 68 or otherwise, it appears to the Area Director that the assisted person has—

- (a) in relation to any application for a certificate, made an untrue statement as to his financial 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 area office in connection with the same proceedings; or
- (b) intentionally failed to comply with these Regulations by not furnishing to the Area Director or the solicitor any material information concerning any matter other than his financial 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 such mis-statement or failure as is referred to in paragraph (1)(a) if the assisted person satisfies the Area Director that he used due care or diligence to avoid such mis-statement or failure.

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(1) S.I.1989/338.

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

79. The Area Director may revoke or discharge a certificate if he is satisfied that the assisted person has failed to attend for an interview or to provide information or documents when required to do so under these Regulations.

### **Further power to discharge**

80. The Area Director may discharge a certificate from such date as he 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 of it 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 bankruptcy 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**

81.—(1) Except where a certificate is discharged or revoked under regulation 75 or discharged under regulation 76 or 80(a), (b), (c)(i), (iii) or (iv), no certificate shall be revoked or discharged until—

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

(2) Where an Area Director revokes or discharges a certificate after notice has been given under paragraph (1), the assisted person may appeal to the appropriate area committee against such revocation or discharge and the provisions of regulations 36 to 39 shall, with the necessary modifications, 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 Board.

### **Notification of revocation or discharge**

82.—(1) Where an Area Director revokes or discharges an assisted person’s certificate, he shall, unless the costs have already been determined, forthwith issue a notice of revocation or a notice of discharge (as the case may be), and shall send the notice (together with a copy) 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 brought under regulation 81(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 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 Area Director has considered revoking or discharging a certificate in consequence of information brought to his knowledge by any person, he may, if he thinks fit, inform that person whether or not the certificate has been revoked or discharged.

#### **Effect of revocation or discharge on retainer**

**83.**—(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 brought under regulation 81(2) which has been dismissed, forthwith determine after receipt by him of a notice of such dismissal.

(2) If an Area Director revokes or discharges a certificate and proceedings have commenced, the retainer of the solicitor shall not determine until he has sent to the appropriate court office or registry, and has served, any notice required by regulation 82.

#### **Costs to be taxed or assessed on revocation or discharge**

**84.** Upon the determination of a retainer under regulation 83—

- (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 is practicable after the determination of the retainer, be submitted for taxation or assessment; and
- (b) the fund shall remain liable for the payment of any costs so taxed or assessed.

#### **Operation of statutory charge**

**85.**—(1) Where a certificate has been revoked or discharged, section 16(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 to a person whose certificate has been discharged shall, where the certificate has been discharged under regulation 80(c)(i) or (ii), include his personal representatives, his trustee in bankruptcy or the Official Receiver, as the case may be.

#### **Right to recover costs and contribution**

**86.**—(1) Where a certificate has been revoked—

- (a) the Board shall have the right to recover from the person to whom the certificate was issued the costs paid or payable under regulation 84(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 contribution (if any) as determined or redetermined, up to the amount paid or payable by the Board under regulation 84(b) and, where he continues to take, defend or be a party to the proceedings to which the certificate related, section 17(1) of the Act shall apply in so far as the costs were incurred while he was an assisted person.