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## STATUTORY INSTRUMENTS

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# 1989 No. 339

## The Civil Legal Aid (General) Regulations 1989

### PART XIV

#### COSTS OF UNASSISTED PARTIES OUT OF THE FUND

##### **Time and form of application**

**134.**—(1) An application for an order under section 18 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 none of the parties 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 18 of the Act.

##### **Unassisted party acting in representative, fiduciary or official capacity**

**135.** Where an unassisted party is concerned in proceedings only in a representative, fiduciary or official capacity, then for the purposes of section 18(4)(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 Area Director**

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

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

- (a) supported by an affidavit sworn by the Area Director; and
- (b) sent to the proper officer of the court, with a copy 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**

**137.**—(1) Where an application for an order under section 18 of the Act is made in respect of authorised summary proceedings, the court, instead of making an order forthwith, may in its discretion either

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

(2) If the court adjourns the hearing of the application, the unassisted party shall swear an affidavit of costs and resources containing the matters specified in Schedule 2, 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 of the hearing on the Area Director, with a copy of his affidavit of costs and resources together with any exhibits and supporting documents.

### **Applications in respect of county court proceedings**

**138.** On application for an order under section 18 of the Act made in respect of proceedings in or on appeal from a county court, the court shall not make an order under that section 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,

and, in this regulation and regulations 139 to 142, “registrar” means the registrar of the county court in which the proceedings were tried or determined or from which the appeal was brought.

### **Procedure where application referred to registrar for determination**

**139.** Where a court in accordance with regulation 138(a) refers an application to the registrar for hearing and determination—

- (a) the provisions of regulation 142 shall 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 Area Director may appeal to the judge on a point of law from the registrar’s determination within 14 days of the date on which it was given.

### **Reference to registrar for inquiry and report**

**140.** The court may, if it adjourns the hearing of an application in accordance with regulation 138(b), make an order referring it to the registrar for inquiry and report; and, if such an order is made,—

- (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 (with any exhibits and supporting documents) together with a copy; and
- (c) the court shall serve a copy of its order and of the unassisted party’s affidavit of costs and resources filed under sub-paragraph (b) on the Area Director.

### **Procedure on inquiry and report**

**141.—(1)** As soon as a copy of the order of the court and the affidavit of costs and resources have been served on the Area Director in accordance with regulation 140(1)(c), the registrar shall give the unassisted party and the Area Director 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 the same powers as a taxing officer has in the exercise of his functions under the County Court Rules 1981(1).

(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 Area Director.

(4) When the court has received the registrar's report, it shall give the unassisted party and the Area Director 21 days' notice of the day appointed for the hearing and determination of the application in chambers.

#### **Procedure where application adjourned**

**142.** If the court adjourns the hearing of an application in accordance with regulation 138(b) but does not refer it to the registrar for inquiry and report,—

- (a) within 21 days of the adjournment, the unassisted party shall file an affidavit of costs and resources (with any exhibits and supporting documents) together with a copy; and
- (b) not less than 21 days before the adjourned hearing, the court shall serve on the Area Director notice of the date fixed together with a copy of the affidavit of costs and resources filed under sub-paragraph (a).

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

**143.—**(1) On an application for an order under section 18 of the Act made in respect of proceedings in the Supreme Court (except proceedings on appeal from a county court) or in the House of Lords, the court shall not make an order forthwith, but 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,

and, in relation to proceedings in the Court of Appeal, “registrar” means the registrar of civil appeals or, in respect of appeals from the Employment Appeal Tribunal or from the Restrictive Practices Court, the registrar of that Tribunal or Court, as the case may be.

(2) Where the application is referred to a registrar under paragraph (1)(a), the provisions of regulations 139 and 142 shall apply with any necessary modifications.

#### **Procedure where application referred to master for determination**

**144.** Where the court in accordance with regulation 143(1)(a) refers the application to a master for hearing and determination—

- (a) the provisions of regulation 147 shall 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 the same powers as a taxing officer has in the exercise of his functions under Order 62 of the Rules of the Supreme Court 1965(2); and
- (c) the unassisted party or the Area Director may appeal to a judge in chambers on a point of law within 14 days from the determination of the master.

#### **Reference to master for inquiry and report**

**145.** The court may, if it adjourns the hearing of an application in accordance with regulation 143(1)(b), make an order referring it to the master for inquiry and report; and if, such an order is made, then within 21 days of the court making the order (or such longer time as the master may allow) the unassisted party shall—

- (a) file an affidavit of costs and resources;

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

- (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 (and of any exhibits and supporting documents) on the Area Director.

#### **Procedure on inquiry and report**

**146.**—(1) Where the unassisted party has complied with the requirements of regulation 145, the master shall give the unassisted party and the Area Director 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 master shall have the same powers as a taxing officer has in the exercise of his functions under Order 62 of the Rules of the Supreme Court 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 Area Director.

(4) When the court has received the report of the master, the unassisted party shall seek an appointment for the hearing and determination of the application in chambers, and shall give the Area Director not less than 21 days' notice of the date and time so fixed.

#### **Procedure where application adjourned**

**147.** If the court adjourns the hearing of an application in accordance with regulation 143 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 Area Director of the date and time of the adjourned hearing together with a copy of his affidavit of costs and resources (and of any exhibits and supporting documents).