

1989 No. 340

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Legal Advice and Assistance Regulations 1989

<i>Made</i> - - - -	<i>3rd March 1989</i>
<i>Laid before Parliament</i>	<i>8th March 1989</i>
<i>Coming into force</i> -	<i>1st April 1989</i>

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The Lord Chancellor, in exercise of the powers conferred on him by sections 2, 9, 10, 11, 34, and 43 of the Legal Aid Act 1988(a), having consulted the General Council of the Bar, the Law Society, the County Court Rule Committee and the Magistrates' Courts Rule Committee, and with the consent of the Treasury, hereby makes the following Regulations:-

Citation, commencement, and transitional provisions

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

(2) Where a review under paragraph (7) of regulation 29 relates to a claim made before 1st June 1989, paragraphs (8) and (9) of that regulation shall not apply and the solicitor may appeal in writing within 21 days of receipt of notification of the decision on the review to a committee appointed by the Board.

Revocations

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

Interpretation

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

“ABWOR” means assistance by way of representation;

“the Act” means the Legal Aid Act 1988;

“appropriate area committee” means the area committee in whose area an application for advice and assistance, or a claim for costs has been dealt with by an Area Director;

“area committee” has the meaning assigned to it in the Civil Legal Aid (General) Regulations 1989(b);

“Area Director” has the meaning assigned to it in the Civil Legal Aid (General) Regulations 1989;

“assessed deficiency” means the amount by which the sum allowed to the solicitor by the Area Director in assessing his claim under regulation 29 exceeds any

(a) 1988 c.34.

(b) S.I. 1989/339.

contribution payable by the client to the solicitor under section 9 of the Act together with the value of any charge arising under section 11 of the Act;

“board of visitors” means a board of visitors appointed by the Secretary of State under section 6(2) of the Prison Act 1952(a);

“child” means a person under the age that is for the time being the upper limit of compulsory school age by virtue of section 35 of the Education Act 1944(b) together with any Order in Council made under that section;

“client” means a person seeking or receiving advice and assistance or on whose behalf advice and assistance is sought;

“costs” means the cost of giving advice or assistance, including disbursements, charges and fees;

“Costs Regulations” means the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989(c);

“extension” means the grant of prior authority to exceed the limit prescribed under section 10(1) of the Act and, where appropriate, the grant of prior authority to exceed any further limit imposed under regulation 21(3) or 22(8);

“family credit” means family credit under the Social Security Act 1986(d)

“fund” means the legal aid fund;

“income support” means income support under the Social Security Act 1986;

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

“Scope Regulations” means the Legal Advice and Assistance (Scope) Regulations 1989(f);

“serious service offence” means an offence under any of the Army Act 1955(g), the Air Force Act 1955(h), or the Naval Discipline Act 1957(i) which cannot be dealt with summarily or which appears to an interviewing service policeman to be serious;

“volunteer” means a person who, for the purpose of assisting with an investigation, attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested.

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

Limit on cost of advice and assistance

4.—(1) Subject to paragraph (2), the limit applicable under section 10(1) of the Act is—

- (a) in respect of advice and assistance given in accordance with regulation 6(1), £90;
- (b) in respect of advice and assistance provided to a petitioner for divorce or judicial separation which includes advice or assistance in the preparation of the petition, three times the relevant sum specified for preparation in the table in paragraph 1(1)(a) of part 1 of Schedule 1 to the Costs Regulations;
- (c) in respect of all other advice and assistance, twice the relevant sum referred to in sub-paragraph (b);

(2) Section 10(1) of the Act shall not apply to—

- (a) advice or assistance specified in regulation 5(1)(b) of the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989(j) where the

(a) 1952 c.52.
(b) 1944 c.31.
(c) S.I. 1989/343.
(d) 1986 c.50.
(e) 1983 c.20.
(f) S.I. 1989/
(g) 1955 c.18.
(h) 1955 c.19.
(i) 1957 c.53.
(j) S.I. 1989/342.

interests of justice require such advice or assistance to be given as a matter of urgency; or

- (b) ABWOR provided under arrangements made by the Board under regulation 7; or
- (c) advice or assistance given under arrangements made by the Board under regulation 8.

ABWOR relating to applications for further detention

5. ABWOR to which Part III of the Act applies by virtue of regulation 7(1)(c) of the Scope Regulations (application for warrant of further detention) shall be available without reference to the client's financial resources.

Provision of advice and assistance at police stations etc

6.—(1) A solicitor may give advice and assistance to any person who—

- (a) is arrested and held in custody at a police station or other premises; or
- (b) is being interviewed in connection with a serious service offence; or
- (c) is a volunteer.

(2) Subject to any arrangements made by the Board under paragraph (3), an application for advice and assistance in the circumstances specified in paragraph (1) may be made by telephone to the solicitor from whom the advice and assistance is sought.

(3) The Board may make arrangements for solicitors designated by the Board to attend at police stations or other premises in order to provide advice and assistance under paragraph (1).

(4) Advice and assistance given under this regulation shall be available without reference to the client's financial resources.

ABWOR in criminal proceedings in magistrates' courts

7.—(1) The Board may make arrangements for the provision of ABWOR to which Part III of the Act applies by virtue of regulation 7(2) and (4) of the Scope Regulations.

(2) Arrangements under paragraph (1) may provide for solicitors designated by the Board to attend at magistrates' courts.

(3) ABWOR under this regulation shall be available without reference to the client's financial resources.

Advice and assistance in criminal proceedings in magistrates' courts

8.—(1) Arrangements under regulation 7 may provide for a solicitor who gives ABWOR in accordance with them also to give—

- (a) advice to a defendant who is in custody;
- (b) advice to a defendant who is before the court as a result of a failure to pay a fine or other sum which he was ordered on conviction to pay, or to obey an order of the court, where such failure may lead to his being at risk of imprisonment;
- (c) advice, where in the opinion of the solicitor the defendant requires it, to a defendant who is not in custody;
- (d) assistance to a defendant to make an application for representation under the Act in respect of any subsequent appearance of the defendant before the court.

(2) Advice and assistance given under this regulation shall be available without reference to the client's financial resources.

Applications for advice and assistance

9.—(1) An application for advice and assistance to which this regulation applies shall be made in accordance with its provisions to the solicitor from whom the advice and assistance is sought.

(2) This regulation applies to all advice and assistance except—

- (a) advice or assistance given under regulation 6 or 8; and

(b) ABWOR given under regulation 7, or to which Part III of the Act applies by virtue of regulation 7(1)(c) of the Scope Regulations (warrants of further detention).

(3) Subject to regulations 10 and 15, the application under paragraph (1) shall be made by the client in person.

(4) Where a client makes an application under paragraph (1) he shall provide the solicitor with the information necessary to enable the solicitor to determine—

- (a) his disposable capital;
- (b) where appropriate, whether he is in receipt of income support or family credit, and
- (c) where he is not in receipt of income support or family credit, his disposable income.

(5) Where an application under paragraph (1) is for advice or assistance relating to the making of a will, the client shall provide the solicitor with the information necessary to enable the solicitor to determine whether the advice or assistance would fall within regulation 4(2) of the Scope Regulations.

(6) The information required by this regulation shall be furnished on a form approved by the Board.

Attendance on behalf of a client

10.—(1) Where a client cannot for good reason attend on the solicitor in order to apply for advice and assistance in accordance with paragraph (3) of regulation 9, he may authorise another person to attend on his behalf.

(2) Where a person authorised in accordance with paragraph (1) attends on a solicitor, he shall furnish the solicitor with the information necessary to enable the solicitor to determine—

- (a) the client's disposable capital,
- (b) where appropriate, whether the client is in receipt of income support or family credit, and
- (c) where the client is not in receipt of income support or family credit, the client's disposable income.

(3) Where the application is for advice or assistance relating to the making of a will, the person authorised in accordance with paragraph (1) shall provide the solicitor with the information necessary to enable the solicitor to determine whether the advice or assistance would fall within regulation 4(2) of the Scope Regulations.

(4) The information required by this regulation shall be furnished on a form approved by the Board.

Eligibility for advice and assistance to which regulation 9 applies

11.—(1) A client is eligible for advice and assistance (excluding ABWOR) to which regulation 9 applies if his weekly disposable income does not exceed the highest amount for the time being specified in the first column of the table in Schedule 3, and his disposable capital does not exceed £890.

(2) A client is eligible for ABWOR to which regulation 9 applies if his weekly disposable income does not exceed the highest amount for the time being specified in the first column of the table in Schedule 3, and his disposable capital does not exceed £3,000.

Contributions to the cost of advice and assistance to which regulation 9 applies

12.—(1) Subject to paragraph (2), the contribution which a client is liable to make under section 9(6) of the Act is as set out in Schedule 3.

(2) A client whose weekly disposable income does not exceed the lowest sum for the time being specified in the first column of the table in Schedule 3 is not liable to make any contribution under section 9(6) of the Act.

Assessment of disposable income, disposable capital and maximum contribution

13.—(1) Subject to paragraphs (2) and (3), a solicitor to whom an application under regulation 9 is made shall assess the disposable income and disposable capital of the client and, where appropriate, of any person whose financial resources may be treated as those of the client in accordance with Schedule 2.

(2) Where the solicitor is satisfied that any of the persons whose disposable incomes are to be assessed under paragraph (1) is directly or indirectly in receipt of income support or family credit, he shall take that person's disposable income as not exceeding the lowest sum for the time being specified in the first column of the table in Schedule 3.

(3) Where, in the case of an application for ABWOR to which regulation 9 applies, the solicitor is satisfied that any of the persons whose disposable capital is to be assessed under paragraph (1) is directly or indirectly in receipt of income support, he shall take that person's disposable capital as not exceeding the capital sum specified in regulation 11(2).

(4) The solicitor shall also determine the maximum contribution, if any, payable to him by the client under section 9(6) of the Act in accordance with the provisions of Schedule 3.

(5) The solicitor shall not provide advice and assistance to any person until either the form referred to in regulation 9(6) has been signed by the client or, where appropriate, the form referred to in regulation 10(4) has been signed on behalf of the client, and in any case, until the solicitor has assessed disposable income and disposable capital in accordance with paragraph (1).

Children and patients

14.—(1) A solicitor shall not, except where paragraph (2) applies, accept an application for advice and assistance from a child unless he has been authorised to do so by the Area Director and the Area Director shall withhold such authority unless he is satisfied that it is reasonable in the circumstances that the child should receive advice and assistance.

- (2) A solicitor may accept an application for advice and assistance from a child who—
- (a) is arrested and held in custody at a police station or other premises;
 - (b) is being interviewed in connection with a serious service offence; or
 - (c) is a volunteer;

where the solicitor is satisfied that the application cannot reasonably be made by any of the persons specified in paragraph (3)(a), (c) or (d).

(3) A solicitor may accept an application for advice and assistance on behalf of a child or patient from—

- (a) in the case of a child, his parent or guardian or other person in whose care he is; or
- (b) in the case of a patient, a receiver appointed under Part VII of the Mental Health Act 1983 or the patient's nearest relative or guardian within the meaning of Part II of the Mental Health Act 1983; or
- (c) in the case of a child or patient, a person acting for the purposes of any proceedings as his next friend or guardian ad litem; or
- (d) in the case of a child or a patient, any other person where the Area Director is satisfied that it is reasonable in the circumstances and has given prior authority for the advice and assistance to be given to such other person on behalf of the child or patient.

Clients resident outside England and Wales

15. Where the client resides outside England and Wales, the Area Director may give the solicitor prior authority to accept a postal application for advice and assistance if the Area Director is satisfied that it is reasonable in the circumstances to do so.

Advice and assistance from more than one solicitor

16.—(1) A person shall not, except where regulation 6, 7 or 8 applies, be given advice and assistance for the same matter by more than one solicitor without the prior authority of the Area Director, and such authority may be given on such terms and conditions as the Area Director may in his discretion see fit to impose.

(2) Where regulation 6 applies, a person may be given advice and assistance for the same matter by more than one solicitor without the prior authority of the Area Director, provided that the cost of that advice and assistance shall not exceed the cost that would have been incurred had it been given by one solicitor.

Separate matters

17. Where two or more separate matters are involved, each matter shall be the subject of a separate application for advice and assistance provided that matters connected with or arising from proceedings for divorce or judicial separation, whether actual or prospective between the client and his spouse, shall not be treated as separate matters for the purpose of advice and assistance.

Refusal of advice and assistance

18. A solicitor may for good cause either refuse to accept an application for advice and assistance or (having accepted an application) decline to give, or to continue to give advice and assistance and may, if he thinks fit, refuse to disclose his reasons for doing so to the client or person seeking advice and assistance on his behalf; but he shall give the Area Director such information about such a refusal as the Area Director may require.

Power to require information

19. The Area Director may require a solicitor who has given advice and assistance to furnish such information as he may from time to time require for the purposes of his functions under these Regulations; and the solicitor shall not be precluded, by reason of any privilege arising out of the relationship between solicitor and client, from disclosing such information to him.

Entrusting functions to others

20. Subject to any arrangements made by the Board under regulations 6, 7 or 8, nothing in these Regulations shall prevent a solicitor from entrusting any function under these Regulations to a partner of his or to a competent and responsible representative of his who is employed in his office or is otherwise under his immediate supervision.

Extensions

21.—(1) Subject to regulation 22(8), and except where regulation 6, 7 or 8 applies, where it appears to the solicitor that the cost of giving advice or assistance is likely to exceed the limit applicable under section 10(1) of the Act, he shall apply to the Area Director for an extension and shall furnish such information as may enable him to consider and determine that application.

(2) Where an Area Director receives an application in accordance with paragraph (1) he shall consider—

- (a) whether it is reasonable for the advice and assistance to be given; and
- (b) whether the estimate of the costs to be incurred in giving advice and assistance is reasonable.

(3) If the Area Director is satisfied that it is reasonable for the advice or assistance to be given and that the estimate of the costs to be incurred in giving it is reasonable, he shall grant an extension and shall prescribe such higher limit as he thinks fit and may limit the advice and assistance to such subject matter as he thinks fit.

Applications for approval of ABWOR

22.—(1) The approval of the Board shall not be required for ABWOR to be given in accordance with arrangements made by the Board under regulation 7.

(2) The approval of the Board shall not be required for ABWOR to which Part III of the Act applies by virtue of regulation 7(1)(b), 7(1)(c), or 8 of the Scope Regulations.

(3) Subject to paragraph (1), where it appears to the solicitor that the client needs ABWOR to which Part III of the Act applies by virtue of regulation 7(1)(a), 7(2) or 9 of the Scope Regulations, he shall apply to the Area Director for approval.

(4) The application for approval shall be on a form approved by the Board and the solicitor shall supply such information as may enable the Area Director to consider and determine it.

(5) An application for approval shall be refused unless it is shown that the client has reasonable grounds for taking, defending or being a party to the proceedings to which it relates.

(6) An application for approval may be refused if it appears unreasonable that approval should be granted in the particular circumstances of the case.

(7) The Area Director may grant an application for approval in whole or in part and may impose such conditions as to the conduct of the proceedings to which his approval relates as he thinks fit, and in particular it shall be a condition of every approval that the prior permission of the Area Director shall be required—

- (a) to obtain a report or opinion of an expert; or
- (b) to tender expert evidence; or
- (c) to perform an act which is either unusual in its nature or involves unusually large expenditure;

unless such permission has been included in the grant of approval.

(8) An approval of ABWOR shall include an extension in respect of the matter to which it relates and, without prejudice to paragraph (7), the Area Director may prescribe such higher limit as he thinks fit.

Counsel

23. Where it appears to the solicitor that the proper conduct of proceedings in respect of which ABWOR has been granted under regulation 22 requires the instruction of counsel, he may apply to the Area Director for approval and the Area Director shall grant approval if he considers that the proper conduct of the proceedings requires counsel.

Notification of approval of assistance by way of representation

24. Where ABWOR has been approved in respect of proceedings specified in regulation 7(1)(a) of the Scope Regulations and the client becomes a party to proceedings or is already a party to proceedings the solicitor shall as soon as practicable give notice of the approval to any other party to the proceedings and the court in which the proceedings are pending.

Withdrawal of approval of assistance by way of representation

25.—(1) The Area Director shall withdraw approval of ABWOR granted under regulation 22 from such date as he considers appropriate where, as a result of information which has come to his knowledge, he considers that—

- (a) in respect of proceedings specified in regulation 7(1)(a) of the Scope Regulations, the client no longer has reasonable grounds for taking, defending or being a party to the proceedings, or for continuing to do so; or
- (b) the client 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 client should continue to receive ABWOR.

(2) When approval of ABWOR is withdrawn, the Area Director shall notify the solicitor who shall forthwith—

- (a) inform his client; and
- (b) in respect of proceedings specified in regulation 7(1)(a) of the Scope Regulations, if proceedings have been commenced, send a copy of the notice to the court and to any other party to the proceedings to which the approval related.

(3) Withdrawal of approval shall not affect or prejudice any subsequent application for representation or for approval of ABWOR in respect of the same proceedings.

Appeals against refusal of ABWOR etc

26.—(1) Where the Area Director—

- (a) refuses an application under regulation 22 for the approval of ABWOR; or
- (b) refuses authority in respect of any of the matters set out in paragraph (7)(a) to (c) of regulation 22; or
- (c) withdraws approval of ABWOR under regulation 25;

the client may appeal to the appropriate area committee.

(2) An appeal shall be made by giving notice on a form approved by the Board within 14 days of the Area Director's decision to refuse the application or authority or withdraw approval.

Determination of appeals

27.—(1) The area committee shall, on an appeal under regulation 26, reconsider the application for approval or authority or the circumstances set out in paragraph (1)(a) to (c) of regulation 25 and shall—

- (a) dismiss the appeal; or
- (b) in the case of an application for approval or authority, grant the application subject to such terms and conditions as the committee thinks fit; or
- (c) in the case of a decision to withdraw approval, quash that decision.

(2) The decision of the area committee on an appeal shall be final and it shall give notice in writing of its decision, and the reasons for it, to the client and to any solicitor acting for him.

(3) Where the Area Director's decision to withdraw approval is quashed on appeal by the area committee, the solicitor shall, in respect of proceedings specified in regulation 7(1)(a) of the Scope regulations, notify any other party to the proceedings and the court, if any, in which the proceedings are pending.

Collection and refund of contributions

28.—(1) Where a client is required to make a contribution in respect of the cost of advice or assistance, the solicitor may collect that contribution in such instalments as may be agreed between him and the client and where the total contribution is likely to exceed the cost of giving advice or assistance, he shall not require the client to pay a sum higher than would be expected to defray his reasonable costs.

(2) Where the reasonable costs of the advice or assistance are less than any contribution made by the client, the solicitor shall refund the balance.

Costs payable out of the fund

29.—(1) Where the reasonable costs of the advice or assistance, including charges for disbursements, exceed any contribution payable by the client to the solicitor under section 9 of the Act together with the value of any charge arising under section 11 of the Act, the solicitor shall, except where paragraph (2) applies, submit a claim to the Area Director requesting payment of the deficiency.

(2) A claim for charges or fees properly chargeable for advice and assistance given in the circumstances specified in regulation 6 shall be made in accordance with the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989(a).

(3) A claim for the costs of advice and assistance given in accordance with arrangements made by the Board under regulation 7 or 8 shall be made in accordance with the Legal Advice and Assistance (Duty Solicitor) (Remuneration) Regulations 1989(b).

(a) S.I. 1989/342.

(b) S.I. 1989/341.

(4) Where the claim does not relate to ABWOR in respect of which counsel has been instructed, the Area Director shall assess it and pay the assessed deficiency, if any, to the solicitor.

(5) Where the claim relates to ABWOR in respect of which counsel has been instructed and the Area Director considers that the proper conduct of the proceedings required counsel, or the instruction of counsel has been approved under regulation 23, the Area Director shall—

- (a) assess the solicitor's claim excluding counsel's fee, and pay the assessed deficiency, if any, to the solicitor, and
- (b) assess counsel's fee and pay him the amount so allowed less the amount, if any, by which the value of any charge arising under section 11 of the Act together with the amount of any contribution payable by the client under section 9(6) of the Act exceeds the amount allowed to the solicitor on the assessment of his claim.

(6) Where the claim relates to ABWOR in respect of which counsel has been instructed without obtaining prior approval under regulation 23, and the Area Director considers that the proper conduct of the proceedings did not require counsel, the Area Director shall—

- (a) determine the assessed deficiency on the basis that counsel had not been instructed and the solicitor had conducted the case on his own;
- (b) allow the amount which it would have allowed counsel under paragraph (5) above and pay counsel what it would have paid him under that paragraph to the extent of the assessed deficiency; and
- (c) pay the balance of the net assessed deficiency if any to the solicitor.

(7) If any solicitor or counsel is dissatisfied with any decision of the Area Director as to the payment of an assessed deficiency in the costs of advice and assistance, he may within 21 days of receipt of notification of that decision make written representations to the appropriate area committee; and that committee shall review the assessment of the Area Director whether by confirming, increasing or decreasing the amount assessed by the Area Director.

(8) A solicitor or counsel who is dissatisfied with the decision of an area committee on a review under paragraph (7) may within 21 days of receipt of notification of the decision apply to that committee to certify a point of principle of general importance.

(9) Where an area committee certifies a point of principle of general importance the solicitor or counsel may, within 21 days of receipt of notification of that certification, appeal in writing to a committee appointed by the Board against the decision of the area committee under paragraph (7).

(10) On an appeal under this regulation the committee appointed by the Board may reverse, affirm or amend the decision of the area committee under paragraph (7).

Basis of assessments

30. In any assessment or review of a claim for costs made under these Regulations, the amount to be allowed shall be assessed—

- (a) in respect of ABWOR to which regulation 5 applies and which is given in unsocial hours as defined in regulation 2 of the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1989(a) at the rate prescribed for advice and assistance in paragraph 1(1)(b)(i) of the Schedule to those Regulations; and
- (b) in respect of all other work, in accordance with the provisions of regulation 6 of and Schedule 1 Part I paragraph 1(a) to the Costs Regulations as if the work done was work to which those provisions apply.

Recovery of costs

31.—(1) Where any sum is payable to the client by virtue of an order for costs made in connection with proceedings for which ABWOR has been approved under regulation 22,

(a) S.I. 1989/342.

the sum shall be paid to the clerk to the justices, who shall pay it to the Board; and only the clerk to the justices shall be able to give a good discharge for it.

(2) The Board shall, except where a payment has been made under paragraph (3), pay to the solicitor such portion of the sum paid to the Board under paragraph (1) as corresponds to the charge created in his favour on that sum by section 11(2)(a) of the Act, and pay any balance to the client.

(3) The Board may in addition to any payment under regulation 29, pay the solicitor a sum not greater than the sum payable to the Board under paragraph (1) and where such a payment is made, the Board shall require the solicitor to assign his charge under section 11(2)(a) of the Act to the Board.

Exceptions to charge on property recovered or preserved

32. The provisions of section 11(2)(b) of the Act shall not apply to the matters specified in Schedule 4.

Authority not to enforce the charge

33. Where in the opinion of the solicitor—

(a) it would cause grave hardship or distress to the client to enforce the charge on any money or property recovered or preserved for him, or

(b) the charge on any property recovered or preserved could be enforced only with unreasonable difficulty because of the nature of the property,

the solicitor may apply to the appropriate area committee for authority not to enforce, either wholly or in part, the charge and, if the committee gives authority, any deficiency in the solicitor's costs shall be computed as if section 11(2)(b) of the Act did not apply to that money or property or to such part of it as the committee may have authorised.

Costs awarded against a client

34. Where proceedings have been concluded in which a client is or was in receipt of ABWOR and an order for costs has been made against him in those proceedings, the amount of his liability for costs (if any) shall be determined in accordance with Schedule 5.

Costs of successful unassisted parties out of the fund

35. Before making any order under section 13 of the Act, the Court shall afford the Area director who dealt with the application under regulation 22 an opportunity to make representations.

False statements etc

36. Where a client has wilfully failed to comply with the provisions of these Regulations as to the information to be furnished by him or, in furnishing such information, has knowingly made a false statement or false representation, and after the failure occurred or the false statement or false representation was made the client received advice or assistance, the appropriate area committee may declare that the advice or assistance so given was not given under the Act and these Regulations and, if it does, shall so inform the client and the solicitor; and thereafter the Board shall be entitled to recover from the client any sums paid out of the fund in respect of the advice and assistance so given.

Dated 1st March 1989

Mackay of Clashfern, C.

We consent,

*Kenneth Carlisle
Alan Howarth*

Two of the Lords Commissioners
of Her Majesty's Treasury

Dated 3rd March 1989

SCHEDULE 1

Regulation 2

<i>Regulations revoked</i>	<i>References</i>
The Legal Advice and Assistance Regulations (No. 2) 1980.	S.I. 1980/1898.
The Legal Advice and Assistance (Amendment) Regulations 1982.	S.I. 1982/1592.
The Legal Advice and Assistance (Amendment) (No. 2) Regulations 1983.	S.I. 1983/470.
The Legal Advice and Assistance (Financial Conditions) Regulations 1983.	S.I. 1983/618.
The Legal Advice and Assistance (Amendment) (No. 3) Regulations 1983.	S.I. 1983/1142.
The Legal Advice and Assistance (Financial Conditions) (No. 2) Regulations 1983.	S.I. 1983/1784.
The Legal Advice and Assistance (Prospective Cost) (No. 2) Regulations 1983.	S.I. 1983/1785.
The Legal Advice and Assistance (Amendment) (No. 5) Regulations 1983.	S.I. 1983/1935.
The Legal Advice and Assistance (Amendment) (No. 6) Regulations 1983.	S.I. 1983/1963.
The Legal Advice and Assistance (Amendment) Regulations 1984.	S.I. 1984/241.
The Legal Advice and Assistance (Amendment) (No. 2) Regulations 1984.	S.I. 1984/637.
The Legal Advice and Assistance (Amendment) Regulations 1985.	S.I. 1985/1491.
The Legal Advice and Assistance (Prospective Cost) Regulations 1985.	S.I. 1985/1840.
The Legal Advice and Assistance (Amendment) (No. 2) Regulations 1985.	S.I. 1985/1879.
The Legal Advice and Assistance (Amendment) Regulations 1986.	S.I. 1986/275.
The Legal Advice and Assistance (Financial Conditions) (No. 2) Regulations 1987.	S.I. 1987/396.
The Legal Advice and Assistance (Financial Conditions) Regulations 1988.	S.I. 1988/666.
The Legal Advice and Assistance (Financial Conditions) (No. 2) Regulations 1988.	S.I. 1988/459.
The Legal Advice and Assistance (Amendment) Regulations 1988.	S.I. 1988/461.

SCHEDULE 2

Regulation 13(1)

ASSESSMENT OF RESOURCES

1. In this Schedule, unless the context otherwise requires—
 - “capital” means the amount or value of every resource of a capital nature;
 - “income” means the total income from all sources which the person concerned has received or may reasonably expect to receive in respect of the seven days up to and including the date of his application;
 - “the person concerned” means the person whose disposable capital and disposable income are to be assessed.

2. The provisions of this Schedule apply to a man and a woman who are living with each other in the same household as husband and wife as they apply to the parties to a marriage.

3. Any question arising under this Schedule shall be decided by the solicitor to whom the client has applied and that solicitor, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Board as to the application of this Schedule.

4. The disposable capital and disposable income of the person concerned shall be the capital and income as assessed by the solicitor after deducting any sums which are to be left out of account or for which allowance is to be made under the provisions of this Schedule.

5. The resources of any person who, under section 26(3) and (4) of the Social Security Act 1986 is liable to maintain a child or who usually contributes substantially to a child's maintenance, or who has care and control of the child, not being a person who has such care and control by reason of any contract or for some temporary purpose, may be treated as the resources of the child, if, having regard to all the circumstances, including the age and resources of the child and to any conflict of interest it appears just and equitable to do so.

6. If it appears to the solicitor that the person concerned has, with intent to reduce the disposable capital or disposable income or maximum contribution, directly or indirectly deprived himself of any resource or has converted any part of his resources into resources which are to be left out of account wholly or partly, the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted, as the case may be.

7.—(1) In computing the capital and income of the person concerned, there shall be left out of account the value of the subject matter of any claim in respect of which he is seeking advice or assistance.

(2) In computing the capital and income of the person concerned, the resources of any spouse of his shall be treated as his resources unless—

- (i) the spouse has a contrary interest in the matter in respect of which he is seeking advice and assistance, or
- (ii) the person concerned and his spouse are living separate and apart, or
- (iii) in all the circumstances of the case it would be inequitable or impractical to do so.

8. In computing the capital of the person concerned—

- (a) there shall be left out of account the value of the main or only dwelling in which he resides and the value of his household furniture and effects, of his clothes and of tools and implements of his trade;
- (b) where the person concerned resides in more than one dwelling in which he has an interest there shall be taken into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which may be obtained by borrowing money on the security thereof;
- (c) where the person concerned has living with him one or more of the following persons, namely, a spouse whose resources are required to be aggregated with his, a dependent child or a dependent relative wholly or substantially maintained by him, a deduction shall be made of £335 in respect of the first person, £200 in respect of the second and £100 in respect of each further person.

9. In computing the income of the person concerned—

- (a) there shall be left out of account—
 - (i) any income tax paid or payable on income treated under the provisions of this Schedule as his income;
 - (ii) contributions estimated to have been paid under the Social Security Acts 1975–1988 or any scheme made under those Acts during or in respect of the seven days up to and including the date of the application for advice and assistance;
- (b) there shall be a deduction in respect of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent child and in respect of the maintenance of any dependent relative of the person concerned, being (in either of such cases) a member of his or her household, at the following rates—
 - (i) in the case of a spouse at a rate equivalent to 25 per cent above the amount specified for the time being in column (3) of paragraph 6 of Part IV of Schedule 4 to the Social Security Act 1975(a) (increase for adult dependant of category A retirement pension);
 - (ii) in the case of a dependent child or a dependent relative, at a rate equivalent to 25 per cent above the amount specified for the time being in paragraph 2 of Part I of Schedule 2 to the Income Support (General) Regulations 1987(b) appropriate to the age of the child or relative.

10. If the person concerned is making bona fide payments for the maintenance of a spouse who is living apart, of a former spouse, of a child or relative who is not (in any such case) a member of the household of the person concerned, there shall be a deduction of such payment as was or will be made in respect of the seven days up to and including the date of the application for advice and assistance.

(a) 1975 c.14; Part IV of Schedule 4 was amended by S.I. 1989/43.

(b) S.I. 1987/1967.

11. Where it appears to the solicitor that there has been some error or mistake in the assessment of the disposable income, disposable capital or maximum contribution of the person concerned, he may reassess the disposable income or disposable capital or maximum contribution or, as the case may be, amend the assessment and in the latter case the amended assessment shall for all purposes be substituted for the original assessment.

SCHEDULE 3

Regulation 13(4)

CONTRIBUTIONS BY CLIENTS

The contribution payable by a client under section 9(6) of the Act where his disposable income falls within a range specified in the first column of the following table, is the amount specified in relation to that range in the second column.

<i>Disposable income</i>	<i>Maximum contribution</i>
Exceeding £61 but not exceeding £69 a week	£5
Exceeding £69 but not exceeding £75 a week	£12
Exceeding £75 but not exceeding £81 a week	£19
Exceeding £81 but not exceeding £87 a week	£25
Exceeding £87 but not exceeding £93 a week	£32
Exceeding £93 but not exceeding £98 a week	£37
Exceeding £98 but not exceeding £103 a week	£42
Exceeding £103 but not exceeding £108 a week	£48
Exceeding £108 but not exceeding £113 a week	£53
Exceeding £113 but not exceeding £118 a week	£59
Exceeding £118 but not exceeding £123 a week	£64
Exceeding £123 but not exceeding £128 a week	£70

SCHEDULE 4

Regulation 32

EXCEPTIONS TO CHARGE ON PROPERTY RECOVERED OR PRESERVED

The provisions of section 11(2)(b) of the Act shall not apply to—

- (a) any periodical payment of maintenance, which for this purpose means money or money's worth towards the support of a spouse, former spouse, child or any other person for whose support the payer has previously been responsible or has made payments;
- (b) any property recovered or preserved for the client as a result of advice and assistance given to him by the solicitor which comprises the client's main or only dwelling, or any household furniture or tools of trade;
- (c) (without prejudice to (b) above) the first £2,500 of any money or of the value of any property recovered or preserved by virtue of—
 - (i) an order made or deemed to be made, under the provisions of section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or (f), or 35 of the Matrimonial Causes Act 1973(a);
 - (ii) an order made, or deemed to be made, under the provisions of section 2 or 6 of the Inheritance (Provision for Family and Dependents) Act 1975(b);
 - (iii) an order made, or deemed to be made, under section 17 of the Married Women's Property Act 1882(c); or

(a) 1973 c.18; section 27 was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), section 63(3) and section 35 was amended by the Matrimonial and Family Proceedings Act 1984 (c.42), section 46, Schedule 1, paragraph 13.

(b) 1975 c.63.

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

- (iv) an order made, or deemed to be made, under the provisions of section 4(2)(b) of the Affiliation Proceedings Act 1957(a); or
- (v) an order for the payment of a lump sum made, or deemed to be made, under the provisions of section 60 of the Magistrates' Courts Act 1980(b); or
- (vi) an order made, or deemed to be made, under the provisions of section 2(1)(b) or (d), 6(1) or (5), 11(2)(b) or (3)(b) or 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978(c); or
- (vii) an order made, or deemed to be made, under section 9(2)(b), 10(1)(b)(ii), 11(b)(ii) of the Guardianship of Minors Act 1971(d) or under section 11B, 11C or 11D of that Act (e); or
- (viii) an order made, or deemed to be made, under section 34(1)(c) or 35 of the Children Act 1975(f); or
- (ix) an agreement which has the same effect as an order made, or deemed to be made, under any of the provisions specified in this sub-paragraph;
- (d) one-half of any redundancy payment within the meaning of Part VI of the Employment Protection (Consolidation) Act 1978(g) recovered or preserved for the client;
- (e) any payment of money in accordance with an order made under section 136 of the Employment Protection (Consolidation) Act 1978 by the Employment Appeal Tribunal;
- (f) any sum, payment or benefit which, by virtue of any provision of or made under an Act of Parliament, cannot be assigned or charged.

SCHEDULE 5

Regulation 34

COSTS AWARDED AGAINST A CLIENT

1. No costs attributable to the period during which a client was in receipt of ABWOR shall be recoverable from him until the court has determined the amount of his liability in accordance with section 12 of the Act:

Provided that where the ABWOR does not relate to or has been withdrawn so that it no longer relates to the whole of the proceedings the court shall nevertheless make a determination in respect of that part of the proceedings to which the approval of ABWOR relates.

2. The court may, if it thinks fit, refer to the clerk to the justices for investigation any question of fact relevant to the determination, requiring him to report his findings on that question to the court.

3. In determining the amount of the client's liability his dwelling-house, clothes, household furniture and the tools and implements of his trade shall be left out of account to the like extent as they are left out of account by the solicitor in determining the client's disposable capital.

4. Any person, not being himself a client, who is a party to proceedings to which the client is a party may, at any time before the judgment, lodge with the clerk to the justices an affidavit exhibiting thereto a statement setting out the rate of his own income and amount of his own capital and any other facts relevant to the determination of his means in accordance with section 12 of the Act and shall serve a copy thereof together with the exhibit upon the client's solicitor and such affidavit and exhibit shall be evidence of the facts stated therein.

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- (a) 1957 c.55; section 4(2) was amended by the Affiliation Proceedings (Amendment) Act 1972 (c.49), section 1(2) and by Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), section 50(1); the 1957 Act is repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c.42), sections 33, 34(2), Schedule 4.
 - (b) 1980 c.43.
 - (c) 1978 c.22; sections 6 and 11 were amended by the Matrimonial and Family Proceedings Act 1984 (c.42), sections 10, 46, Schedule 1, paragraph 23; section 20 was amended by the Matrimonial and Family Proceedings Act 1984 (c.42), section 11 and is repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c.42), sections 33, 34(2), Schedule 4.
 - (d) 1971 c.3; the provisions referred to were amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), sections 36(1)(a), 41(2) to (4) and are repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c.42), sections 10, 11, 34(2).
 - (e) Sections 11B, 11C and 11D are inserted, as from a day to be appointed, by the Family Law Reform Act 1987 (c.42), sections 12 to 14, 33, 34; the Act, as amended, is set out in Schedule 1 to the 1987 Act.
 - (f) 1975 c.72; sections 34(1) and 35 were amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), sections 64, 66; section 35 is amended (as from a day to be appointed) by the Family Law Reform Act 1987 (c.42), sections 33, 34(2), Schedule 2, paragraph 62.
 - (g) 1978 c.44.

5. The court may, if it thinks fit, order the client and any party who has filed an affidavit in accordance with paragraph (4) of this Schedule to attend for oral examination as to his means and as to any other facts relevant to the determination of the amount of the client's liability and may permit any party to give evidence and call witnesses thereon.

6. The court may direct—

- (a) that payment under the order for costs shall be limited to such amount payable in instalments or otherwise as the court thinks reasonable having regard to all the circumstances; or
- (b) where the court thinks it reasonable for payment under sub-paragraph (a) not to be made immediately, that payment under the order for costs be suspended either until such date as the court may determine or sine die.

7. The party in whose favour an order is made may within 6 years from the date thereof apply to the court for the order to be varied on the grounds that—

- (a) material additional information as to the client's means, being information which could not have been obtained by that party with reasonable diligence at the time the order was made, is available; or
 - (b) there has been a change in the client's circumstances since the date of the order,
- and on any such application the order may be varied as the court thinks fit but save as aforesaid the determination of the court shall be final.

8. Where an order for costs is made against a client who is concerned in the proceedings solely in a representative, fiduciary or official capacity, he shall have the benefit of section 12(1) of the Act and his personal resources shall not (unless there is reason to the contrary) be taken into account for that purpose, but regard shall be had to the value of the property or estate, or the amount of the fund out of which he is entitled to be indemnified.

9. Where a client is a child, his means for the purpose of determining his liability for costs under section 12(1) of the Act shall be taken as including the means of any person whose disposable income and disposable capital has, by virtue of Schedule 2 been included in assessing the child's resources.

10. Where an order for costs is made against a next friend or guardian ad litem of a client who is a child or patient, he shall have the benefit of section 12(1) of the Act in like manner as it applies to a client, and the means of the next friend or guardian ad litem shall be taken as being the means of the child as defined in paragraph 9 or, as the case may be, of the patient.

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations replace, with amendments, the Legal Advice and Assistance Regulations (No. 2) 1980 (S.I. 1980/1898) (as amended) (except their provisions as to the scope of advice and assistance), which are replaced, with amendments, by the Legal Advice and Assistance (Scope) Regulations 1989 (S.I. 1989/).

The main changes reflect the transfer of responsibility for administration of legal aid from the Law Society to the Legal Aid Board established by the Legal Aid Act 1988.

Other important changes are—

- (a) to enable the Board to make duty solicitor arrangements replacing those made by the Law Society under the Legal Aid (Duty Solicitor) Scheme 1988 (regulations 6(3) and 7);
- (b) to require the provision of information to enable the solicitor to determine whether advice or assistance relating to the making of a will would fall within the scope of Part III of the Act (regulations 9(5), 10(3));

- (c) to require the Board to be given an opportunity to make representations before any order for costs against the Board is made under section 13 of the Act (regulation 35);
- (d) to set out in the Regulations the financial limits on advice and assistance which can be given without the approval of the Board (regulation 4);
- (e) to set out in the Regulations all the provisions for eligibility for advice and assistance and contributions (regulations 11 to 13 and Schedules 2 and 3);
- (f) to provide for the purposes of eligibility and contributions that the resources of a man and a woman living together as husband and wife are to be treated as if they were married (paragraph 2 of Schedule 2); and
- (g) to provide (subject to the transitional provision in regulation 1(2)) for the assessment of costs by Area Directors, for reviews of such assessments by area committees, and for appeals from such reviews to a committee appointed by the Board (regulation 29).