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STATUTORY INSTRUMENTS

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**1994 No. 1822**

**LEGAL AID AND ADVICE,  
ENGLAND AND WALES**

**The Civil Legal Aid (General)  
(Amendment) (No. 2) Regulations 1994**

<i>Made</i>	- - - -	<i>5th July 1994</i>
<i>Laid before Parliament</i>		<i>11th July 1994</i>
<i>Coming into force</i>	- -	<i>1st August 1994</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 16(6), 34 and 43 of the Legal Aid Act 1988(1), having had regard to the matters specified in section 34(9) and consulted the General Council of the Bar and the Law Society, and with the consent of the Treasury, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Civil Legal Aid (General) (Amendment) (No. 2) Regulations 1994 and shall come into force on 1st August 1994.

**Interpretation**

2. In these Regulations:—

“the principal Regulations” means the Civil Legal Aid (General) Regulations 1989(2);  
a regulation referred to by number alone means a regulation so numbered in the principal Regulations;

unless the context otherwise requires, all words and expressions have the same meanings as in the principal Regulations.

**Transitional provisions**

3.—(1) Regulations 14, 17, 18, 19 and 21 of these Regulations shall apply to all charges arising under section 16(6) of the Act, whether before or after 1st August 1994, unless:—

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(1) 1988 c. 34; sections 34 and 43 were amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraphs 60 and 63. Section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulations”.  
(2) S.I.1989/339, as amended by 1991/2036 and 2784, 1992/590 and 721, 1993/565 and 1756 and 1994/229.

- (a) the amount charged has been paid in full to the Board before 1st August 1994; or
- (b) the Board has by an agreement entered into before that date agreed to defer enforcing the charge.

(2) Regulation 20 of these Regulations shall apply to charges registered in favour of the Board in accordance with regulation 95, whether before or after 1st August 1994, unless:—

- (a) the amount charged has been paid in full to the Board before 1st August 1994; or
- (b) the Board has by an agreement entered into before that date agreed to release the charge.

(3) The principal Regulations shall apply in the circumstances referred to in sub-paragraphs (a) and (b) of paragraphs (1) and (2) as if regulations 14 and 17 to 21 of these Regulations had not been made.

(4) Interest shall not be payable by reason only of regulations 14 and 17 to 21 of these Regulations in respect of any period before 1st August 1994.

(5) Where:—

- (a) in any proceedings under Part III of the Matrimonial and Family Proceedings Act 1984<sup>(3)</sup> or section 30 of the Law of Property Act 1925<sup>(4)</sup> a sum of money is recovered or preserved for an assisted person; and
- (b) the order of the court or agreement under which the sum of money is recovered or preserved was made before 1st August 1994,

the Board shall have power to agree under regulation 96 to defer enforcement of its charge notwithstanding that the order of the court or agreement does not contain any term to the effect that the sum of money is to be used for the purpose of purchasing a home for the assisted person or his dependants.

(6) Where:—

- (a) in any proceedings (other than proceedings under any of the enactments mentioned in sub-paragraphs (a) to (d) of regulation 96(1)) property is recovered or preserved for an assisted person; and
- (b) the order of the court or agreement under which the property is recovered or preserved was made before 1st August 1994,

the Board shall have power to agree under regulation 97 to defer enforcement of its charge notwithstanding that the order of the court or agreement does not contain any term to the effect that the property is to be used as a home for the assisted person or his dependants.

### **Amendment of the Civil Legal Aid (General) Regulations 1989**

4. In the Arrangement of Regulations, after the reference to regulation 92 there shall be inserted the following:—

“**92A.** Interest on damages.”.

5. For regulation 2 there shall be substituted the following—

#### **“Scope**

2.—(1) Subject to section 15(7)(a) of the Act and paragraph (2) below, these Regulations apply for the purposes of the provision of civil legal aid under Part IV of the Act.

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(3) 1984 c. 42, as amended by the Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56).

(4) 1925 c. 20, as amended by the County Courts Act 1984 (c. 28).

(2) Where the Board has entered into a franchising contract, regulations relevant to the remuneration and payment of expenses of legal representatives and the manner in which any determination which may be required for those purposes may be made, reviewed or appealed against shall apply except to the extent that the franchising contract makes different express provision.”

6. Regulation 3 shall be amended by inserting—

(a) after the definition of “certificate” the following definition:—

““contract” means a contract entered into by the Board with other persons or bodies pursuant to its powers under section 4 of the Act;”;

(b) after the definition of “emergency certificate” the following definition:—

““franchisee” means a person or body (other than the Board) acting under the terms of a franchising contract;”.

7. Regulation 4 shall be amended by adding after paragraph (2) the following:—

“(3) Where and to the extent that a franchising contract permits the franchisee to exercise any of the functions of an Area Director, the functions may be exercised by the franchisee on the Area Director’s behalf.”.

8. Regulation 35(2) shall be amended by inserting in paragraph (2)(b) after “or 33” the following:

—  
“, or

(c) the refusal of an application for an emergency certificate”.

9. Regulation 41(1) shall be amended by inserting—

(a) after “Area Director” the words “or area committee”;

(b) in sub-paragraphs (a) and (b), after “future” the words “or pending”.

10. Regulation 50(1) shall be amended by inserting in sub-paragraph (a) after “certificate” the words “in a form approved by the Board”.

11. Regulation 54(2) shall be amended by inserting in sub-paragraph (b) after “notice of the fact” the words “of the amendment in a form approved by the Board”.

12. Regulation 61 shall be amended as follows:—

(a) in paragraph (1) for the word “such” there shall be substituted “prior”;

(b) for paragraph (3) there shall be substituted:—

“(3) Where the Area Director gives prior authority for the taking of any step referred to in paragraph (2)(a), (b), (c) or (e), he shall specify

(a) the number of reports or opinions that may be obtained or the number of persons who may be authorised to give expert evidence, and

(b) the maximum fee to be paid for each report, opinion, transcript or to each person for tendering evidence, as the case may be.”.

13. Regulation 82(2) shall be amended by inserting in sub-paragraph (a) after “revocation or discharge” the words “in a form approved by the Board”.

14. The following shall be substituted for regulation 90(3):—

“(3) Where—

(a) in proceedings under any of the enactments referred to in regulation 96(1) the property recovered or preserved for the assisted person includes money which by

order of the court or under the terms of any agreement reached is to be used for the purpose of purchasing a home for himself or his dependants; or

- (b) in any proceedings the property recovered or preserved for the assisted person includes property which, by order of the court or under the terms of any agreement reached, is to be used as a home for the assisted person or his dependants,

the assisted person’s solicitor shall immediately so inform the Area Director.”.

15. In regulation 91(2) for “87(a)” there shall be substituted “87(1)(a)”.

16. The following regulation shall be inserted after regulation 92:—

**“Interest on damages**

**92A.**—(1) Where the Board receives damages paid in favour of an assisted person it shall, subject to the provisions of this regulation, pay to the assisted person a sum representing gross interest earned while the damages are being held by the Board.

(2) Without prejudice to its other powers to invest money, the Board shall maintain and may deposit in one general account at a bank or building society damages to which this regulation refers.

(3) The rate of interest payable to the assisted person by virtue of this regulation shall be ½ per cent. per annum less than the rate payable on damages deposited in the general account.

(4) The Board shall not be required to pay interest where the damages received do not exceed £500 or where the period during which they are held by the Board is less than 28 days.

(5) Interest shall be payable for the period beginning on the third business day after the date on which the damages are received by the Board down to (and including) the date on which the Board determines the amount to be retained under regulation 92(2).

(6) In this regulation:—

“bank” means the Bank of England, or the branch, situated in England or Wales, of any institution authorised under the Banking Act 1987<sup>(5)</sup>;

“building society” means the branch, situated in England or Wales, of a building society within the meaning of the Building Societies Act 1986<sup>(6)</sup>;

“business day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971<sup>(7)</sup>;

“general account” means an interest bearing account opened in the name of the Board, the title of which account does not identify any assisted person.”.

17. Regulation 95(3) shall be amended as follows:—

- (a) in sub-paragraph (c) for the words “section 54(1)”<sup>(8)</sup> there shall be substituted “section 53(1) or 54(1)”, and for the words “that section” there shall be substituted “the relevant section”;

(b) there shall be inserted after paragraph (3) the following paragraph:—

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(5) 1987 c. 22.

(6) 1986 c. 53.

(7) 1971 c. 80.

(8) Of the Land Registration Act 1925 (c. 21), as amended by the Land Registration Act 1986 (c. 26).

“(3A) Where, in any of the circumstances described in regulation 96, 97 or 98, the property charged or to be charged is land to which the Conveyancing and Feudal Reform (Scotland) Act 1970(9) applies:—

- (a) references in those regulations to a charge executed in favour of the Board shall be construed as references to a standard security in favour of the Board within the meaning of Part II of that Act; and
- (b) references in those regulations to registration shall be construed as references to the recording of a standard security in the Register of Sasines.”.

**18.** Regulation 96 shall be amended as follows:—

- (a) in paragraph (1)(c), the word “or” shall be omitted;
- (b) in paragraph (1)(d), a semi-colon shall be substituted for the comma;
- (c) the following sub-paragraphs shall be added after paragraph (1)(d):—
  - “(e) Part III of the Matrimonial and Family Proceedings Act 1984; or
  - (f) section 30 of the Law of Property Act 1925.”;
- (d) in paragraph (2), for “the sum referred to in paragraph (3)(b)” there shall be substituted “the amount of the charge created by section 16(6) of the Act”;
- (e) in paragraph (3)(a), for “95(3)” there shall be substituted “95”;
- (f) the following shall be substituted for paragraph (3)(b):—
  - “(b) interest shall accrue for the benefit of the Board in accordance with regulation 99(4).”;
- (g) in paragraph (5)(b) for the words “no agreement” there shall be substituted “an agreement”.

**19.** Regulation 97 shall be amended as follows:—

- (a) in paragraph (1), for the words “, in proceedings under any of the enactments referred to in regulation 96(1),” there shall be substituted “in any proceedings”;
- (b) in paragraph (3), the word “of” shall be deleted;
- (c) the following shall be substituted for paragraph (4):—
  - “(4) The condition referred to in paragraph (3) is that interest shall accrue for the benefit of the Board in accordance with regulation 99(4).”;
- (d) in paragraph (5), for “the sum referred to in paragraph (4)” there shall be substituted “the amount of the charge created by section 16(6) of the Act”;
- (e) in paragraph (6)(a), for “95(3)” there shall be substituted “95”;
- (f) the following shall be substituted for paragraph (6)(b):—
  - “(b) interest shall accrue for the benefit of the Board in accordance with regulation 99(4).”.

**20.** Regulation 98 shall be amended as follows:—

- (a) the following shall be substituted for paragraph (1):—
  - “(1) This regulation applies where the Board has agreed under regulation 96 or 97 to defer enforcing a charge created by section 16(6) of the Act and a charge over any property (whether created by the said section 16(6) or in pursuance of regulation 96 or 97 or this regulation) has been registered in favour of the Board in accordance with regulation 95.”;

- (b) in paragraph (2)(c), for “the sum referred to in regulation 96(3)(b) or regulation 97(4), as the case may be” there shall be substituted “the amount of the charge created by section 16(6) of the Act”;
  - (c) in paragraph (3), for “paragraphs (2) and (4)” there shall be substituted “paragraph (2)”;
  - (d) in paragraph (3)(a), for “95(3)” there shall be substituted “95”;
  - (e) the following shall be substituted for paragraph (3)(b):—
    - “(b) simple interest shall accrue or continue to accrue for the benefit of the Board from the same date, on the same amounts and at the same rate as would apply if the assisted person were to retain the property over which the charge exists and the charge were not to be released.”;
  - (f) paragraph (4) shall be omitted.
- 21.** Regulation 99 shall be amended as follows:—
- (a) in paragraph (1), for “the sum referred to in regulation 96(3)(b) or regulation 97(4)” there shall be substituted “the amount of the charge created by section 16(6) of the Act”;
  - (b) in paragraph (3), for “any sum referred to in regulation 96(3)(b) or 97(4)” there shall be substituted “the amount outstanding on the charge”, and for “those sums” there shall be substituted “that amount”;
  - (c) the following paragraphs shall be added after regulation 99(3):—
    - “(4) Where interest is payable by the assisted person pursuant to the provisions of regulation 96 or 97:—
      - (a) it shall run from the date on which the charge is first registered;
      - (b) it shall accrue at the rate of 8 per cent. per annum (or such other rate as may from time to time be prescribed), and
      - (c) the capital on which it is calculated shall be the amount outstanding on the charge from time to time.
    - (5) In paragraphs (3) and (4), the amount outstanding on the charge at any given time means the amount of the charge created by section 16(6) of the Act, calculated so as to take into account only those sums which up to that time have been either
      - (a) paid by the Board in accordance with an assessment or taxation of costs, or
      - (b) recouped by the Board in the circumstances described in section 16(9) of the Act or in accordance with paragraph (3) of this regulation.
    - (6) In regulations 96 to 99 references to the amount of any charge created by section 16(6) of the Act shall be construed as references to the amount determined in accordance with section 16(6) and (9) of the Act or to the value of the property to which it applies at the time when it was recovered or preserved whichever is the less.”.
- 22.** Regulation 100 shall be amended as follows:—
- (a) by omitting from paragraphs (1) and (2) the words “the Financial Controller of”;
  - (b) by substituting in paragraphs (3), (4) and (5) for “this regulation” in each of the places where those words appear, the words “paragraph (1) or (2)”.
- 23.** In regulations 115(3) and 121(1), there shall be substituted for “one month” where those words appear, the words “two months”.
- 24.** For regulation 152 there shall be substituted the following:—

“**152.** The classes of case in respect of which the Board may enter contracts for the provision of representation under Part IV of the Act shall be any proceedings for the time being specified in Part I of Schedule 2 to the Act except—

- (a) proceedings listed at 5. or 6. of Part I of that Schedule;
- (b) proceedings for the time being specified in Part II of that Schedule.”.

Dated 1st July 1994

*Mackay of Clashfern, C.*

We consent,

Dated 5th July 1994

*Tim Wood*  
*Andrew MacKay*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Civil Legal Aid (General) Regulations 1989.

(1) Regulation 3 is a transitional provision relating to the amendments to the statutory charge provisions.

(2) Regulations 5, 6, 7 and 24 take account of the Legal Aid Board's franchising scheme. The amendments reflect the Legal Aid Board's power under Part II of the Legal Aid Act 1988 to enter into contracts for the provision of representation in cases for which civil legal aid is available. Regulation 152, as amended, specifies the classes of case for which contracts may be entered into.

(3) Regulation 8 specifies that there is no appeal from the refusal of an emergency certificate.

(4) Regulation 9 extends the power to make prohibitory directions preventing consideration of legal aid applications made by persons abusing the facilities of the Act to applications pending at the time when the direction is made, not just future applications.

(5) Regulations 10, 11 and 13 specify that notices served by solicitors informing other parties to proceedings of the issue, amendment, discharge or revocation of legal aid certificates shall be in a form approved by the Board.

(6) Regulation 12 clarifies the provisions relating to the grant of prior authority to incur costs to certain cases and the obligation on the Area Director to specify the maximum fees payable where such prior authority is granted.

(7) Regulations 14 and 17 to 21 amend the provisions relating to the statutory charge over money or property recovered on behalf of an assisted person as follows:

- (a) power to defer enforcement of a charge over money is extended to cover cases of financial relief after a foreign divorce and compulsory sale by trustees for sale;
- (b) power to defer enforcement of a charge over property is extended to cover all cases where the property is or is intended to be used as a home for the assisted person or his dependants;
- (c) interest on a charge is to be calculated from the running total of the costs paid by the Legal Aid Board from time to time, instead of from the final total; and that total is to be limited to the value of the money or property recovered or preserved.

(8) Regulation 15 corrects an error of citation in the main regulations.

(9) Regulation 16 places on a regulatory footing the payment of interest on damages earned during the period in which the damages are in the Board's hands.

(10) Regulation 22 makes a minor change concerning the Board's handling of claims for payments on account. It also clarifies that the limit on the maximum payable on a payment on account claimed under regulation 100(1) or (2) does not apply to claims under regulation 100(6) relating to certain circumstances where a solicitor's retainer has been determined.

(11) Regulation 23 extends the time limit for applying for authority to carry in objections or seek review of taxation or appeal from such a review, from one month to two months.