
STATUTORY INSTRUMENTS

1996 No. 436

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

**The Legal Aid in Criminal and Care Proceedings
(General) (Amendment) Regulations 1996**

<i>Made</i>	- - - -	<i>27th February 1996</i>
<i>Laid before Parliament</i>		<i>28th February 1996</i>
<i>Coming into force</i>	- -	<i>1st June 1996</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 21(5), 23, 34 and 43 of the Legal Aid Act 1988(1), and with the consent of the Treasury, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (General) (Amendment) Regulations 1996 and shall come into force on 1st June 1996.

Interpretation

2. In these Regulations a Schedule referred to by number alone means a Schedule so numbered in the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989(2).

Transitional Provisions

3. These Regulations shall apply to applications for legal aid made on or after 1st June 1996 and applications made before that date shall be treated as if these Regulations had not come into force.

Amendments to the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989

4. After paragraph 2 of Schedule 3 there shall be inserted the following:—

“2A.—(1) Where it appears to the proper officer that:

(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.1989/344; relevant amendments are S.I. 1992/720 and 1993/789 and 1895.

- (a) the person concerned has directly or indirectly transferred any resources to another person;
- (b) another person is or has been maintaining the person concerned in the proceedings to which the application relates or any other proceedings, or
- (c) any of the resources of another person are or have been made available to the person concerned,

the proper officer shall have power to treat all or any part of the resources of that other person as the resources of the person concerned.

(2) Where sub-paragraph (1) applies:

- (a) the question of what is or is not a resource of that other person shall be determined, as nearly as the circumstances permit, in accordance with the provisions of this Schedule excluding this paragraph, and
- (b) the proper officer shall assess or estimate the value of those resources to the best of his judgment.

(3) In this paragraph, “person” (except in the phrase “person concerned”) includes a company, partnership, body of trustees and any body of persons whether corporate or not corporate.”.

5. After paragraph 8(3) of Schedule 3 there shall be inserted the following:—

“(4) In sub-paragraph (2)(b) above, the amount to be included as “rent” in respect of any annual instalment payable in respect of a mortgage debt or heritable security shall not exceed an amount bearing the same proportion to the amount of the annual instalment as £100,000 bears to the debt secured.”.

6. In paragraph 19 of Schedule 3, for “wholly disregarded” there shall be substituted the following:—

“taken to be the amount for which that interest could be sold in the open market, subject to the following rules:—

- (a) the amount to be allowed in respect of any mortgage debt or heritable security shall not exceed £100,000;
- (b) the first £100,000 of the value of that interest, after the application of the rule in paragraph (a), shall be disregarded.”.

7. After paragraph 19 of Schedule 3 there shall be inserted the following:—

“(19A) Where the person concerned resides in more than one dwelling in which he has an interest, the proper officer shall decide which is the main dwelling and shall take into account the amount for which any interest in a dwelling which is not the main dwelling could be sold in the open market; provided that the total amount to be allowed in respect of any mortgage debts or heritable securities over all such dwellings, together with any amount allowed under paragraph 19(a) in respect of the main dwelling, shall not exceed £100,000.”.

Dated 22nd February 1996

Mackay of Clashfern, C.

We consent,

Dated 27th February 1996

Simon Burns
Liam Fox
Two of the Lords Commissioners of Her
Majesty's Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the provisions of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 concerning the computation of the income and capital of an applicant for legal aid by—

- (1) providing for a power to take into account all or part of the resources of a person to whom the applicant has transferred assets, or who has been maintaining or assisting the applicant;
- (2) limiting the amount of the mortgage instalments to be deducted in computing the applicant's income to the proportion attributable to the first £100,000 of the mortgage debt;
- (3) limiting the total amount deductible in respect of any mortgage debts on one or more homes of the applicant to £100,000;
- (4) limiting the amount to be disregarded in respect of his only or principal home to the first £100,000 of the value, as assessed after deduction of any amount allowable in respect of a mortgage debt.