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STATUTORY INSTRUMENTS

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**1998 No. 2909**

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

**The Legal Aid in Criminal and Care Proceedings  
(General) (Amendment) (No. 2) Regulations 1998**

*Made* - - - - *19th November 1998*  
*Laid before Parliament* *25th November 1998*  
*Coming into force* - - *4th January 1999*

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), with the consent of the Treasury, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 2) Regulations 1998 and shall come into force on 4th January 1999.

**Interpretation**

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

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

3.—(1) In regulation 11(1), for “An application” there shall be substituted “Subject to paragraph (4), an application”.

(2) After regulation 11(3) the following paragraph shall be inserted:

“(4) Where regulation 18(1)(f) applies there shall be a single application to the justices' clerk for a legal aid order in respect of proceedings in both the magistrates' court and the Crown Court.”.

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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 given to “regulations”.  
(2) S.I.1989/344. The relevant amending instruments are S.I. 1993/789 and 1895, 1994/807, 1995/542 and 1996/1258.

4. In regulation 13(b) after “had a legal aid order been made” there shall be inserted “or, where regulation 18(1)(f) applies, had a legal aid order been made and the information contained in the statement of means been corroborated by the supporting documentary evidence”.

5. In regulation 17(2) after “under regulation 13” there shall be inserted “unless the application is an application under regulation 18(1)(f)”.

6.—(1) In regulation 18(1)(a), after the words “Crown Court or”, there shall be inserted “, except where regulation 18(1)(f) applies,”.

(2) After regulation 18(1)(e) the following sub-paragraph shall be inserted:

“(f) Where the applicant appears or is brought, or is to appear or be brought, before a magistrates' court and the magistrates' court has a duty or a power to send the applicant for trial under section 51 of the Crime and Disorder Act 1998(3), to the justices' clerk of that magistrates' court in Form 1.”.

7. In regulation 20(b) after “had a legal aid order been made” there shall be inserted “or, where regulation 18(1)(f) applies, had a legal aid order been made and the information contained in the statement of means been corroborated by the supporting documentary evidence”.

8.—(1) In regulation 23(1), after “shall be in Form 5 and shall”, there shall be inserted “, except where the application is made under regulation 18(1)(f),”.

(2) In regulation 23(2A) for “paragraphs (3) and (4)” there shall be substituted “paragraphs (3), (4) and (6)”.

(3) In regulation 23(4) after “statement of means and” there shall be inserted “, subject to paragraph (6),”.

(4) After regulation 23(5) the following paragraph shall be inserted:

“(6) Where an application for legal aid is made under regulation 18(1)(f) the applicant shall, subject to paragraph (3), provide the proper officer with supporting documentary evidence of the matters in the statement of means as soon as possible and in any event within 14 days of the legal aid order being made.”.

9.—(1) At the end of regulation 24(1) there shall be inserted “provided that in the case of an application for legal aid under regulation 18(1)(f) the applicant shall not be required to provide the supporting documentary evidence referred to in regulation 23(6) until the period of 14 days referred to in regulation 23(6) has expired”.

(2) In regulation 24(2) after “at the time of submission of the statement of means” there shall be inserted “or, in the case of an application for legal aid under regulation 18(1)(f) the expiry of the period of 14 days referred to in regulation 23(6),”.

10.—(1) In regulation 25(1) “, when making a legal aid order,” shall be deleted.

(2) After regulation 25(1) the following paragraph shall be inserted:

“(1A) The determination under paragraph (1) shall be carried out when making a legal aid order, except in the case of an application for legal aid under regulation 18(1)(f), when it shall be carried out forthwith after the redetermination of disposable income and disposable capital under regulation 26(2)(c).”.

11.—(1) In regulation 26(2)(a):

(a) after “statement of means and” there shall be inserted “any”; and

- (b) the final word “and” shall be deleted.
- (2) In regulation 26(2)(b), for “Schedule 3.” there shall be substituted “Schedule 3; and”.
- (3) After regulation 26(2)(b) the following sub-paragraph shall be inserted:
- “(c) where an application for legal aid is made under regulation 18(1)(f), consider the supporting documentary evidence submitted by the applicant or the appropriate contributor and, subject to paragraphs (2A) and (3), redetermine his disposable income and disposable capital in accordance with Schedule 3.”.
- (4) In regulation 26(3) after “shall not make a determination under paragraph (2)(b)” there shall be inserted “or redetermination under paragraph (2)(c)”.
- (5) At the end of regulation 26(4) there shall be inserted “but where an application for legal aid is made under regulation 18(1)(f) the contribution shall be assessed on the basis of the redetermination of disposable income and disposable capital under regulation 26(2)(c)”.
- 12.**—(1) In regulation 29(4), for “The period referred to” there shall be substituted “Subject to paragraph (5), the period referred to”.
- (2) After regulation 29(4) the following paragraph shall be inserted:
- “(5) If an application for legal aid has been made under regulation 18(1)(f), the period referred to in paragraph (1) above shall be extended by a number of days equal to the number of days from (and including) the day after the grant of the legal aid order to (and including) the day on which a contribution order was made under regulation 27.”.
- 13.** In regulation 38(1) for “regulation 35(5)” there shall be substituted “regulations 29(5) and 35(5)”.
- 14.** After regulation 40(1) the following paragraphs shall be inserted:
- “(1A) A justices' clerk to whom an application for legal aid has been made under regulation 18(1)(f) may do one of the following:
- (a) make a legal aid order applying to all the following proceedings:
- (i) the proceedings in the magistrates' court in which the court decides whether or not to send the defendant to the Crown Court for trial;
- (ii) the defendant's trial before the Crown Court, in the event of his being sent to the Crown Court for trial; and
- (iii) the defendant's trial in a magistrates' court in the event of his being remitted for trial under paragraph 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998;
- (b) make a legal aid order applying to all the proceedings listed in sub-paragraph (a) above and also to the defendant's trial in the magistrates' court, in the event of his not being sent to the Crown Court for trial; or
- (c) refuse to grant a legal aid order.
- (1B) Where a legal aid order is made under sub-paragraph (a) or (b) above, Form 11 shall be used and copies of the order shall be sent in accordance with paragraph (2) below.”.
- 15.**—(1) At the end of regulation 41(3), for “made.” there shall be substituted “made; and”.
- (2) After regulation 41(3)(c) the following sub-paragraph shall be inserted:
- “(d) where the legally assisted person has been or is later sent for trial, to the proper officer of the Crown Court, and where the legally aided person is sent for trial after legal aid has been withdrawn the copy shall be sent as soon as reasonably practicable after the legally assisted person is sent for trial.”.

16. The present regulation 43 shall stand as paragraph (1) of that regulation and:

- (a) after “is committed” there shall be inserted “or sent for trial”;
- (b) in sub-paragraph (c) for “a copy” there shall be substituted “copies” and after “refused” there shall be inserted “and of any determinations under regulations 13 or 20”;
- (c) in sub-paragraph (d) before “any statement of means” there shall be inserted “subject to paragraph (2),”;
- (d) after sub-paragraph (d) the following paragraph shall be inserted:

“(2) Where a person is sent for trial and the magistrates' court which sent him later does any of the things mentioned in sub-paragraphs (a) to (c) below, the justices' clerk shall as soon afterwards as reasonably practicable send to the appropriate officer of the Crown Court the documents mentioned in those sub-paragraphs:

- (a) if it makes a legal aid order, a copy of the legal aid order;
- (b) if it makes a contribution order, a copy of the contribution order, and any statement of means;
- (c) if it refuses a legal aid application, a copy of the application and of any determination under regulation 20, and any statement of means.”.

Signed by authority of the Lord Chancellor

Dated 17th November 1998

*G. W. Hoon*  
Minister of State,  
Lord Chancellor's Department

We consent

Dated 19th November 1998

*Clive Betts*  
*Jim Dowd*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

## **EXPLANATORY NOTE**

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

These Regulations amend the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 so that where a defendant is liable to be sent for trial under section 51 of the Crime and Disorder Act 1998, he may apply for legal aid to the sending magistrates' court, which can grant legal aid for all subsequent proceedings, including the trial. When such an application is made, the defendant must, as previously, file a statement of means, but is not obliged to provide supporting documents at the same time. When the supporting documents have been supplied a redetermination of the defendant's means is carried out.