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STATUTORY INSTRUMENTS

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**1998 No. 662**

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

**The Legal Aid in Criminal and Care Proceedings  
(General) (Amendment) Regulations 1998**

<i>Made</i>	- - - -	<i>10th March 1998</i>
<i>Laid before Parliament</i>		<i>11th March 1998</i>
<i>Coming into force</i>		
<i>All provisions except regulations 16, 18 and 20</i>		<i>1st April 1998</i>
<i>Regulations 16, 18 and 20</i>		<i>6th April 1998</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, commencement, interpretation and transitional provisions**

1.—(1) These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (General) (Amendment) Regulations 1998 and shall come into force on 1st April 1998, except for regulations 16, 18 and 20 which shall come into force on 6th April 1998.

(2) In these Regulations, unless the context otherwise requires, a regulation or Schedule referred to by number means the regulation or Schedule so numbered in the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989(2).

(3) Subject to paragraph (4), these Regulations shall apply to applications for legal aid made on or after 1st April 1998 and applications made before that date shall be treated as if these Regulations had not come into force.

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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 and by the Family Law Act 1996 (c. 27), section 26 and Schedule 8, paragraph 44. Section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulations”.

(2) S.I.1989/344; the relevant amending instruments are S.I. 1992/720, 1993/789, 1895, 1994/807, 1995/542, 796, 1996/436, 646, 1258, 2656 and 1997/752.

(4) Regulations 16, 18 and 20 of these Regulations shall apply to applications for legal aid made on or after 6th April 1998 and applications made before that date shall be treated as if regulations 16, 18 and 20 had not come into force.

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

2. In regulation 3(1), in the definition of “appropriate officer”, for the words “Chief Clerk”, there shall be substituted the words “Court Manager”.

3. In regulation 4(1), after “Forms 1” there shall be inserted “, 1A”.

4. In regulation 15(1), for “paragraph (2)”, there shall be substituted “paragraphs (2) and (3)”.

5. After regulation 15(2), there shall be inserted the following—

“(3) An application for review shall not lie to an area committee where the offence is one of those mentioned in Schedule 2 to the Magistrates' Courts Act 1980(3) and by virtue of section 22 of that Act, the offence is triable only summarily.”.

6. After regulation 22(1), there shall be inserted the following—

“(1A) Where section 44A of the Criminal Appeal Act 1968(4) (death of convicted person) applies and the applicant is the personal representative of the dead person, the application for legal aid shall be made to the registrar in Form 1A.”.

7.—(1) In the Arrangement of Regulations, after regulation 22, there shall be inserted the following—

“**22A.** Reports by the Board”.

(2) After regulation 22, there shall be inserted the following—

#### **“Reports by the Board**

**22A.**—(1) Where the court or the proper officer is considering an application for a legal aid order or at any time after making a legal aid order, the court or the proper officer may refer an applicant, a legally assisted person or an appropriate contributor to the Board for a report on his financial resources.

(2) Where an application is referred under paragraph (1), the Board may make a report to the court or to the proper officer on the financial resources of the person referred to it.

(3) In compiling a report under this regulation, the Board may investigate the financial resources of the person referred to it and may require him to provide further evidence of any information given in a statement of means or of any change in his financial circumstances together with such additional information as the Board may require.”.

8. After regulation 23(1), there shall be inserted the following—

“(1A) Where section 44A of the Criminal Appeal Act 1968 (death of convicted person) applies and the applicant is the personal representative of the dead person, the statement of means shall be in Form 1A and not in Form 5.”.

9. In regulation 26(2A), for “23 or 24(1)”, there shall be substituted “23, 24(1) or 22A(3)”.

10. In regulation 31, after the word “shall”, there shall be inserted the word “forthwith”.

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(3) 1980 c. 43; section 22 was amended by the Criminal Justice Act 1988 (c. 33), section 38(3) and (4), section 170(2), Schedule 16, the Criminal Justice Act 1991 (c. 53), section 68, Schedule 8, paragraph 6 and by the Criminal Justice and Public Order Act 1994 (c. 33), sections 46, 168(3) and Schedule 11.

(4) 1968 c. 19; section 44A was inserted by section 7 of the Criminal Appeal Act 1995 (c. 35).

11. In regulation 32(1)(a), after the word “information”, there shall be inserted the words “or a report from the Board under regulation 22A(2)”.

12. In regulation 33(a), after the word “information”, there shall be inserted the words “or a report from the Board under regulation 22A(2)”.

13. In Schedule 2—

(a) the words from “PART 1” to “Forms 2 to 16”, immediately after the heading to the Schedule, shall be omitted;

(b) after Form 1 there shall be inserted the form contained in the Schedule to these Regulations.

14. In Schedule 2, in Form 1, paragraph 5b), the following words shall be inserted before the word “and”—

“in a previous application for legal aid in this case”.

15. In Schedule 2, in Form 5, sub-paragraph 2 of paragraph 3, for—

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“Children <input type="checkbox"/> 18 and over	Children <input type="checkbox"/> 16 and 17	Children <input type="checkbox"/> 11 to 15	Children <input type="checkbox"/> ”, under 11
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there shall be substituted the following—

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“Children <input type="checkbox"/> under 19	Date of birth # for each child	Children <input type="checkbox"/> and other Relatives 19 and over
Other relatives under 19 <input type="checkbox"/>	Date of birth #”. for each relative	

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16. In Schedule 2, Part Two of Form 6 (which deals with Calculation of contribution from INCOME) shall be amended by substituting for “£49”, “£50” and, for “£50”, “£51”.

17. In Schedule 3, after paragraph 2A, there shall be inserted the following—

“2B. Where section 44A of the Criminal Appeal Act 1968 (death of convicted person) applies—

(a) if the applicant is the personal representative of the dead person, the financial resources to be taken into account shall be those forming part of the estate of the dead person, and not the resources belonging to the applicant in another capacity or to any other person;

(b) otherwise, the financial resources to be taken into account shall be those belonging to the applicant or treated as belonging to him in accordance with the other provisions of this Schedule.”.

18. In Schedule 3—

(a) in paragraph 10(1)(b)(ii), after the first occurrence of the word “relative”, there shall be inserted the words “aged 18 or under”.

(b) At the end of paragraph 10(1)(b)(ii), there shall be inserted the following—

“(iii) in the case of a dependent child or a dependent relative aged 19 or over, at the rate equivalent to the amount which would have been specified in accordance with paragraph 10(1)(b)(ii) immediately before he attained the age of 19.”.

19. After paragraph 15 of Schedule 3, there shall be inserted the following—

“15A. A resource of a capital nature shall not be treated as not belonging to the person concerned by reason only that that person is restrained from using or disposing of it by the order of any court, unless—

- (a) that person has requested the court which made the order to release assets forming all or part of that resource for use in connection with the proceedings to which the legal aid application relates; and
- (b) that request has been refused.”

20. Schedule 4 shall be amended by substituting, for “£49”, “£50” and, for “£50”, “£51”.

Dated 4th March 1998

*Irvine of Lairg, C.*

We consent,

*John McFall  
Graham Allen*

Two of the Lords Commissioners of Her Majesty’s Treasury

Dated 10th March 1998

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

SCHEDULE

Regulation 13(b)

Application for legal aid in criminal proceedings after the death of a defendant or appellant

Form 1A (also known as Form 5131A) Regulations 22 and 23

Use this form

if you are the personal representative of a deceased defendant and you wish to apply for legal aid in order to make, or continue, an appeal on behalf of the estate of the deceased. The court may order the estate to contribute to the costs of legal aid, or to pay the whole costs.

When you fill in the form

Please use black ink because the form will be copied. Answer each part and give as much information as you can. If you do not give all the information which the court needs, it may make enquiries. After the application has been considered by the court, you may be asked to give proof of the information you have given, or asked for further information.

Before you fill in the form

read through it carefully because you may need the help of a solicitor. If you think you need help to fill in the form you may be able to obtain a solicitor's services free of charge or at a reduced fee.

Warning: If you knowingly make a statement which is false, or knowingly withhold information, you may be prosecuted. If you are convicted you may be sent to prison for up to three months or fined, or both (section 39(1) Legal Aid Act 1988).

1 Details of the deceased

- a Surname or family name
b Other names
c Title
d Date of death

in BLOCK LETTERS
in BLOCK LETTERS
Mr Mrs Miss Ms
Date of death

2 About you (the personal representative)

- a Surname or family name
b Other names
c Title
d Permanent Address
e Present Address
f Telephone number (daytime)
g You are the personal representative by

in BLOCK LETTERS
in BLOCK LETTERS
Mr Mrs Miss Ms
Permanent Address
Present Address
Telephone number (daytime)
Letters of Administration granted on
Probate granted on

3 Your solicitors

If you do not choose a solicitor the court will select one for you. You must tell the solicitors that you have named them in this form (unless they have helped you to complete it)

- a Name and reference
b Address
c Telephone number
d Fax number

Name and reference Ref.
Address
Telephone number
Fax number

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

**4 Details of your appeal**

- a You intend to
- make an appeal to the Court of Appeal (Criminal Division)
- continue an appeal before the Court of Appeal (Criminal Division)
- take over the conduct of an appeal begun by reference to the Criminal Cases Review Commission
- b The deceased was
- convicted  sentenced  convicted and sentenced
- by the Crown Court at \_\_\_\_\_
- on \_\_\_\_\_
- c The appeal is against the
- conviction  sentence  conviction and sentence
- d Are there any co-defendants who have appealed?
- No  Yes
- If Yes, the name(s):
- \_\_\_\_\_
- e Did the deceased receive legal aid in these proceedings at any time before death?
- No  Yes

**5 Reason for wanting legal aid:**

- a To restore the good name and reputation of the deceased
- b A substantial question of law is involved
- You will need the help of a solicitor to give the details. Please give authorities and law report references*
- c I shall be unable to understand the court proceedings or state my own case because:
- (i) my understanding of English is inadequate
- (ii) I suffer from a disability
- Please say which and give details*
- d Witnesses have to be traced and/or interviewed on my behalf, or on behalf of the deceased
- e The case involves expert cross examination of a prosecution witness
- Please give brief details*
- f Any other reason(s):
- Please give full particulars*

<i>Details of your reason(s)</i>	<i>For court use only</i>

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

**6 The estate of the deceased**

- a You must give full details of the estate of the deceased.

*You may provide this information by enclosing copies of the Inland Revenue forms which you submitted with either a personal application, or an application through a solicitor, for a Grant of Probate or Letters of Administration.*

*Please enclose copies of other documents that may be of assistance in assessing the present value of the estate.*

- b If the present value of the estate is different from that shown on the above forms then please state what the present value is and why it has changed.

- c If you do not have all the information at present, say why and give details of the information for which you are waiting.

*If the value of the estate changes in any way after you have submitted this form then you must tell the court. This is a requirement of the Legal Aid Regulations.*

I enclose copies of the following Inland Revenue forms:

**7 Other documents**

I enclose a

- a sealed copy of the Letters of Administration or the Grant of Probate with the will attached
- the indictment and court record (if available)

**8 Declaration**

*Insert the name of the deceased*

I declare to the best of my knowledge and belief that I have given a complete and correct statement of the estate of the deceased.

I apply for legal aid as the personal representative of the estate of

deceased

I authorise the court to make any enquiries it considers necessary.

Signed \_\_\_\_\_ Date \_\_\_\_\_

(The Personal Representative of the estate of

deceased)

*Insert the name of the deceased*

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

**For Court use only**

Any additional factors considered when determining the application, including any information given orally:

**Decision on the interests of justice test**

*\* cross out whichever does not apply*

I have considered all available details of the application and it is\* / is not\* in the interests of justice that representation be granted because:

Signed \_\_\_\_\_ (Proper Officer)

Date \_\_\_\_\_

Form 5131A



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## 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 as to—

- (a) change the reference to Chief Clerk in the definition of the appropriate officer to Court Manager following a change of name (*regulation 2*);
- (b) make provision for appeals to the Court of Appeal or the House of Lords made on behalf of a dead person pursuant to section 44A of the Criminal Appeal Act 1968, as inserted with effect from 1st January 1996 by section 7 of the Criminal Appeal Act 1995. Where the appellant is the personal representative of the dead person, a special form is prescribed comprising both the application for legal aid and the statement of means, and the appellant's financial resources are taken to be those of the dead person's estate; in other cases the actual or deemed financial resources of the appellant, rather than of the dead person, are taken into account (*regulations 3, 6, 8, 13 and 17*);
- (c) provide that an application for the review of a decision by a magistrates' court or a justices' clerk to refuse a legal aid order may not be made if it concerns an offence mentioned in Schedule 2 to the Magistrates' Courts Act 1980 and by virtue of section 22 of that Act, the offence is triable only summarily (*regulations 4 and 5*);
- (d) allow the Legal Aid Board to investigate and make a report to the court or the proper officer on the financial resources of a person who has applied for or is receiving legal aid in cases which have been referred to the Board (*regulations 7, 9, 11 and 12*);
- (e) to make further provision for a deduction to be made for a dependent child or a dependent relative aged 19 or over when computing the income of a person during the assessment of his resources in respect of an application for a legal aid order (*regulation 18*);
- (f) amend the provisions for the computation of the income and capital of an applicant for legal aid to clarify that assets subject to a Mareva injunction or other freezing order are still treated as belonging to the applicant, unless he has applied for assets to be released for the purposes of the case and been refused (*regulation 19*);
- (g) increase the income limit for non-contributory criminal legal aid from £50 per week to £51 per week (*regulation 20*);
- (h) amend Form 6 in Schedule 2 to reflect the changes made by regulation 20 (*regulation 16*); and
- (i) make other minor amendments (*regulations 10, 14 and 15*).