

2005 No. 1802

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil Legal Aid (General)(Amendment No.2) Regulations
2005**

<i>Made</i> - - - -	<i>4th July 2005</i>
<i>Laid before Parliament</i>	<i>5th July 2005</i>
<i>Coming into force</i> - -	<i>25th July 2005</i>

The Secretary of State, in exercise of the powers conferred upon the Lord Chancellor by sections 16(6), 34(1), (2)(f) and (8)(c) and 43 of the Legal Aid Act 1988(a) and now vested in him(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (General) (Amendment No.2) Regulations 2005 and shall come into force on 25th July 2005.

(2) In these Regulations—

- (a) reference to a regulation by number alone means the regulation so numbered in the Civil Legal Aid (General) Regulations 1989(c); and
- (b) words and expressions have the same meaning as in those Regulations.

Amendments to the Civil Legal Aid (General) Regulations 1989

2. In regulation 96(2) (Postponement of enforcement of charges over money) after “the Act” insert “and the condition in regulation 96A is satisfied”.

3. After regulation 96 insert—

“**96A.** The Board may only defer enforcement of the charge created by section 16(6) of the Act if it appears to the Board that it would be unreasonable for the assisted person to repay the amount of the charge.

96B.—(1) The Board may review any decision to defer enforcement of the charge created by section 16(6) of the Act at any time and, unless it appears to the Board that it would be unreasonable for the assisted person to repay the amount of the charge, it shall either—

- (i) proceed to enforce the charge; or

(a) 1988 c.34; see the definition of “regulations” in section 43. This Act is repealed by Part I of Schedule 15 to the Access to Justice Act (c.22), subject to immaterial exceptions, and to transitional provisions and savings contained in S.I. 2000/774 and S.I. 2001/916.

(b) By virtue of the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), article 4(1) and Schedule 1.

(c) S.I.1989/339, amended by S.I.1994/1822; there are other amending instruments but none are relevant.

(ii) where the conditions in regulations 96(1), 96(2) and (3) or 97(1) and (3) (as the case may be) are satisfied continue to defer enforcement of the charge, in which case the provisions of regulations 96(3)(b), or 97(4) relating to interest shall also continue to apply as appropriate.

(2) If the Board continues to defer enforcement under paragraph (1)(ii) it may also do so on such terms or conditions as to repayment of the amount of the charge by way of interim payments of either capital or interest or both, or otherwise, as appear to the Board to be appropriate.”.

4. In regulation 97(3) (Postponement of enforcement of charges over land) after “referred to in paragraph (4)” insert “and the condition in regulation 96A is satisfied”.

5. In regulation 97(5) after “the Act” insert “and the condition in regulation 96A is satisfied”.

6. In regulation 99(1) (Payment and recovery of interest) for “Where” substitute “Subject to regulation 96B(2), where”.

4th July 2005

Bridget Prentice
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulation 1 provides for citation, commencement and interpretation.

Regulations 2 to 6 amend the provisions of the principal Regulations about deferment of enforcement of the charge created by section 16(6) of the Legal Aid Act 1988. In particular, they provide for the circumstances in which—

- enforcement of the charge will not be deferred
- decisions to defer enforcement of the charge will be reviewed.

These Regulations apply to transitional cases to which the principal Regulations continue to apply by virtue of the provisions in the Access to Justice Act 1999 (Commencement No.3, Transitional Provisions and Savings) Order 2000(a).

(a) S.I. 2000/774.

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