
STATUTORY INSTRUMENTS

1991 No. 2036

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

**The Civil Legal Aid (General)
(Amendment) (No. 2) Regulations 1991**

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| <i>Made</i> | - - - - | <i>21st August 1991</i> |
| <i>Laid before Parliament</i> | | <i>10th September 1991</i> |
| <i>Coming into force</i> | | |
| <i>regulation 20</i> | | <i>1st October 1991</i> |
| <i>remainder</i> | | <i>14th October 1991</i> |

The Lord Chancellor, in exercise of the powers conferred on him by sections 6(3), 15(3A), 16(6), 31, 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, the Law Society, and with the consent of the Treasury, hereby makes the following Regulations:

Citation, commencement and transitional provisions

1.—(1) These Regulations may be cited as the Civil Legal Aid (General) (Amendment) (No. 2) Regulations 1991.

(2) Regulation 20 shall come into force on 1st October 1991 and all other regulations shall come into force on 14th October 1991.

(3) Subject to paragraph (4), these Regulations shall apply to proceedings commenced on or after 14th October 1991 and the provisions of the Civil Legal Aid (General) Regulations 1989(2) shall apply in relation to proceedings commenced before that date as if these Regulations had not been made.

(4) Regulation 20 shall apply to any taxation carried out on or after 1st October 1991.

(1) 1988 c. 34; section 15(3A) was inserted by the Children Act 1989 (c. 41), section 99(2). Section 34 is amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 63. Section 43 is an interpretation provision and is cited because of the meanings assigned to the words “prescribed” and “regulations”.

(2) S.I.1989/339, as amended by S.I. 1991/524.

Interpretation

2. In these Regulations a regulation referred to by number means a regulation so numbered in the Civil Legal Aid (General) Regulations 1989.

Amendment of the Legal Aid Act 1988

3. After paragraph (b) of section 15(3A) of the Act there shall be inserted the word “or” and then the following new paragraph:—

“(c) to a guardian *ad litem*,”

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

4. In regulation 3—

(a) after the definition of “emergency certificate” there shall be inserted the following new definition:—

““family proceedings” has the meaning assigned by section 32 of the Matrimonial and Family Proceedings Act 1984(3);”

(b) the definition of “matrimonial proceedings” shall be omitted;

(c) after the definition of “patient” there shall be inserted the following new definition:—

““special Children Act proceedings” means proceedings under the Children Act 1989(4) for which representation must be granted to the applicant regardless of sections 15(1) to (3) of the Act;”

5. After regulation 3 there shall be inserted the following new regulation:—

“Exclusion from civil legal aid of prescribed bodies

3A. Representation under Part IV of the Act shall not be available to any body acting in a representative, fiduciary or official capacity for the purposes of proceedings under the Children Act 1989.”.

6. At the beginning of regulation 12 there shall be inserted the words “Subject to regulation 12A,”.

7. Regulations 12(2), 21(2), 45(3), 50(5), and 82(4) shall be omitted.

8. After regulation 12 there shall be inserted the following new regulation:—

“Certificates relating to special Children Act proceedings

12A.—(1) Where a person is entitled to legal aid for special Children Act proceedings, his solicitor shall lodge with the Area Director an application on a form approved by the Board at the first available opportunity and in any event within three working days of receiving instructions to act for that person in such proceedings.

(2) The application shall—

(a) state the name of the solicitor selected by the applicant to act for him; and

(b) contain a statement signed by the solicitor to the effect that legal aid is sought in respect of proceedings to which section 15(1) to (3) of the Act do not apply.

(3) 1984 c. 42.

(4) 1989 c. 41.

(3) Work done by a solicitor in relation to special Children Act proceedings prior to the issue of a certificate shall be deemed to be work done while such a certificate is in force provided that the application was lodged at the first available opportunity and in any event within the time specified in paragraph (1).”.

9. At the beginning of regulation 18(1) there shall be inserted the words “Subject to section 15(3B) to (3D) of the Act and”.

10. For regulation 28 there shall be substituted the following new regulation:—

“Eligibility on the merits

28.—(1) Without prejudice to the generality of sections 15(2) to (3C) and (3E) of the Act and subject to paragraph (2), an application for a certificate shall only be approved after the Area Director has considered all the questions of fact or law arising in the action, cause or matter to which the application relates and the circumstances in which the application was made.

(2) Where the application relates to proceedings to which section 15(3B), (3C) or (3E) of the Act apply, provided that the Area Director is satisfied that it does so relate and subject to regulation 27 (where applicable) he shall grant the application and Parts IV and V of these Regulations shall apply with any necessary modifications.”.

11. In regulation 42 for the words “proceedings where an undertaking under regulation 12(2) has been given or” there shall be substituted “special Children Act proceedings or proceedings”.

12. In regulation 46—

- (a) At the beginning of paragraph (2) there shall be inserted the words “Except in the case of special Children Act proceedings”;
- (b) For sub-paragraph (3)(a) there shall be substituted the following new sub-paragraph:—
 - “(a) family proceedings; or”;
- (c) sub-paragraphs (3)(b) and (c) shall be omitted.

13. In regulation 47 for the words “matrimonial proceedings or authorised summary proceedings” there shall be substituted “family proceedings”.

14. At the beginning of regulation 76(3) there shall be inserted the words “Subject to section 15(3B) to (3D) of the Act,”.

15. In regulation 94(d):—

- (a) sub-paragraphs (iv) and (vii) shall be omitted;
- (b) in sub-paragraph (vi) the words “, 11(2)(b) or (3)(b)” shall be omitted;
- (c) in sub-paragraph (viii) for the words “section 34(1)(c) or 35 of the Children Act 1975” there shall be substituted “the provisions of Schedule 1 to the Children Act 1989”.

16. In regulation 96(1) the word “or” at the end of sub-paragraph (b) shall be omitted, there shall be inserted after “1975” in paragraph (c) “; or” and at the end of that paragraph there shall be inserted the following new sub-paragraph:—

“(d) Schedule 1 to the Children Act 1989,”.

17. In regulation 96(3)(b) and regulation 97(4) for the words “12 per cent” there shall be substituted “11 per cent”.

18. For regulation 104 there shall be substituted the following new regulation:—

“Remuneration of legal representatives in magistrates' courts and family proceedings

104.—(1) The sums to be allowed to legal representatives in connection with authorised summary proceedings shall be assessed by the Area Director.

(2) In the case of any family proceedings any assessment, review or taxation shall be made in accordance with the Legal Aid in Family Proceedings (Remuneration) Regulations 1991⁽⁵⁾ and Part XII of these Regulations shall apply subject to the provisions of those Regulations.

(3) In the case of authorised summary proceedings which are not family proceedings any assessment, review or appeal under this regulation shall be made in accordance with the provisions of regulation 6 of and Schedule 1 Part I paragraph 1(1)(a) to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989⁽⁶⁾ as if the work done was work to which these provisions apply, save that paragraphs 2 and 3 of Schedule 1, Part I shall not apply.

(4) Paragraphs (4) to (8) of regulation 105 and regulation 105A shall apply where costs are assessed by an Area Director under paragraph (1) as they apply to an assessment under that regulation.

(5) Subject to paragraph (4), regulations 105 to 110 shall not apply to costs in respect of authorised summary proceedings.”.

19. After regulation 105 there shall be inserted the following new regulation—

“Assisted person having financial interest in assessment

105A.—(1) Where an assisted person has a financial interest in any assessment, review or appeal under this regulation he shall have a right to make written representations to the Area Director, appropriate area committee or committee appointed by the Board as the case may be within 21 days of being notified of the right to make such representations.

(2) On an assessment it shall be the duty of an assisted person’s solicitor—

- (a) to supply him with a copy of his bill;
- (b) to inform him of any financial interest he may have in the assessment, the extent of any such interest and his right to make written representations; and
- (c) to endorse on the bill whether or not the assisted person has a financial interest in the assessment and that he has complied with sub-paragraphs (a) and (b) above.

(3) Where a legal representative wishes to apply for a review of the assessment of the Area Director or appeal against a decision of the area committee under regulation 105 and the assisted person has exercised his right to make representations prior to the assessment, the legal representative shall notify him of the decision to be reviewed or appealed, the grounds of appeal and his right to make further written representations.”.

20. In regulation 109—

- (a) for paragraph (1) there shall be substituted the following new paragraph:—

109.—(1) Without prejudice to section 51(6) of the Supreme Court Act 1981⁽⁷⁾, Order 62, rules 10 and 11 of the Rules of the Supreme Court 1965⁽⁸⁾ or to Order 38, rule 1(3) of the County Court

(5) S.I. 1991/2038.

(6) S.I. 1989/343.

(7) 1981 c. 54. Section 51(6) was substituted by section 4 of the Courts and Legal Services Act 1990 (c. 41).

(8) S.I. 1965/1776; the relevant amending instrument is S.I. 1991/1884.

Rules(9), on any taxation of an assisted person's costs in connection with proceedings (which are not authorised summary proceedings) any wasted costs shall be disallowed or reduced, and where the solicitor has without good reason delayed putting in his bill for taxation the whole of the costs may be disallowed or reduced.

(b) after paragraph (2) there shall be inserted the following new paragraph:—

“(3) In this regulation “wasted costs” has the same meaning as in section 51(7) of the Supreme Court Act 1981.”

21. For Regulation 119 there shall be substituted the following new regulation—

“Assisted person having financial interest in taxation

119.—(1) It shall be the duty of an assisted person's solicitor—

- (a) to supply him with a copy of his bill;
- (b) to inform him of any financial interest he may have in the taxation, the extent of any such interest and the steps which can be taken to safeguard that interest and, if the assisted person so requests, to give notice in accordance with rules of court to the taxing officer that the assisted person has such an interest; and
- (c) to endorse on the bill whether or not the assisted person has a financial interest in the taxation and that he has complied with sub-paragraphs (a) and (b) above.

(2) Where the assisted person has a financial interest in the taxation he shall not be required to make any contribution to the fund on account of the costs of the taxation proceedings and the charge created by section 16(6) of the Act shall not apply in relation to any resulting increase in the net liability of the fund arising out of the costs of the taxation proceedings.”.

25th July 1991

Mackay of Clashfern, C

We Consent,

21st August 1991

Thomas Sackville
Sydney Chapman
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 Civil Legal Aid (General) Regulations 1989, primarily to give effect to new procedures resulting from the Children Act 1989. In particular:

(1) guardians *ad litem* and any bodies acting in a representative, fiduciary or official capacity are excluded from representation for the purposes of the Children Act (regulations 3 and 5);

(2) effect is given to the amendments to section 15 of the Legal Aid Act 1988 (which waive either the means and merits requirements or just the merits requirements for certain parties to certain proceedings under the Children Act) (regulations 6,8–11, and 14);

(3) the scope of legal aid certificates in relation to certain Children Act proceedings may extend to proceedings in the House of Lords or on appeal from a magistrates' court and may relate to more than one cause or matter and need not specify the parties to the proceedings in relation to proceedings under the Children Act (regulations 12 and 13);

(4) the £2,500 exemption from the statutory charge and the postponement of enforcement of the charge over money where it is to be used to purchase a home applies to proceedings under Schedule 1 to the Children Act (financial provision for children) (regulations 15 and 16);

(5) the rate of interest chargeable where enforcement of the statutory charge is postponed is reduced from 12% per annum to 11% (regulation 17);

(6) provision is made for the fees of legal representatives to be assessed in accordance with the provisions of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 (regulation 18);

(7) provision is made for an assisted person with a financial interest in the assessment to make written representations and for his solicitor to inform him of his rights, supply him with a copy of his bill and to endorse on the bill whether or not the assisted person has a financial interest and that he had complied with the other provisions (regulation 19) and corresponding amendments are made where the assisted person has a financial interest in taxation (regulation 21); and

(8) regulation 109 (which provides for the disallowance or reduction of costs due to fault on the part of the legal representative) is amended to bring it in line with the new provisions relating to costs against legal representatives under section 51(6) of the Supreme Court Act 1981 (regulation 20).