
STATUTORY INSTRUMENTS

2002 No. 712

**LEGAL SERVICES COMMISSION,
ENGLAND AND WALES**

**The Criminal Defence Service (General)
(No. 2) (Amendment) Regulations 2002**

<i>Made</i>	- - - -	<i>13th March 2002</i>
<i>Laid before Parliament</i>		<i>18th March 2002</i>
<i>Coming into force</i>	- -	<i>8th April 2002</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 12, 13 and 15 of, and Schedule 3 to, the Access to Justice Act 1999⁽¹⁾, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (General) (No. 2) (Amendment) Regulations 2002 and shall come into force on 8th April 2002.

Interpretation

2. In these Regulations, a reference to a regulation by number alone means the regulation so numbered in the Criminal Defence Service (General) (No. 2) Regulations 2001⁽²⁾.

Transitional provisions

3. These Regulations shall apply to applications for funded services made on or after 8th April 2002 and applications made before that date shall be treated as if these Regulations had not been made.

Amendments to the Criminal Defence Service (General) (No. 2) Regulations 2001

4. In regulation 2:

- (a) in the definition of “appropriate officer”, the following shall be inserted after “criminal appeals”:
“or the head of the Civil Appeals Office”; and

(1) 1999 c. 22. Section 13 was amended by section 1 of the Criminal Defence Service (Advice and Assistance) Act 2001 (c. 4).
(2) S.I.2001/1437.

- (b) the following definition shall be inserted between the definitions of “the Costs Committee” and “funded services”:
- “the Financial Services and Markets Tribunal” means the Tribunal established under section 132 of the Financial Services and Markets Act(3);”.
5. The following shall be inserted after regulation 3(2)(g): “and
- (h) proceedings under section 137 of the Financial Services and Markets Act 2000 to appeal against a decision of the Financial Services and Markets Tribunal.”.
6. The following shall be inserted after regulation 4(j): “or
- (k) is detained under Schedule 7 to the Terrorism Act 2000(4).”.
- 7.—(1) In regulation 5(3), “£189” shall be substituted for “£186”.
- (2) In regulation 5(5), “£89” shall be substituted for “£87”.
- 8.—(1) In regulation 6(2), after “the Act” there shall be inserted “, and those mentioned in regulation 3(2)(h).”.
- (2) In regulation 6(3), after “(criminal proceedings for the purposes of section 12(2)(g) of the Act)” there shall be inserted “, except those mentioned in regulation 3(2)(h)”.
9. In regulation 7, after “a judge of the court”, there shall be inserted “the head of the Civil Appeals Office,”.
10. In regulation 10:
- (a) “(Criminal Division)” shall be deleted from the heading;
- (b) in paragraph 1(b), “the court.” shall be substituted for “criminal appeals (“the registrar”).”; and
- (c) “appropriate officer” shall be substituted for “registrar” wherever it occurs.
- 11.—(1) In regulation 13, “(Criminal Division)” shall be deleted from the heading.
- (2) The following shall be inserted after regulation 13(1)(b): “or
- (c) in respect of an appeal from the Financial Services and Markets Tribunal, the representatives of the assisted person before the Court of Appeal.”.
12. In regulation 14, “(Criminal Division)” shall be deleted from the heading.
13. In regulation 17(1), after “regulation 3(2)” there shall be inserted “(a) to (g)”.
14. In Schedule 2, Form A shall be deleted and shall be replaced with the following:
FORM AAPPLICATION FOR THE RIGHT TO REPRESENTATION IN CRIMINAL PROCEEDINGS

(3) 2000 c. 8.
(4) 2000 c. 11.

I apply for the right to representation for the purposes of criminal proceedings in accordance with the Access to Justice Act 1999 and the Criminal Defence Service (General) (No. 2) Regulations 2001

1. Personal details

1a. Surname

1b. Forenames

1c. Title (Mr, Mrs, Ms, Miss or another)

1d. Date of birth

1e. Home address

1f. Present address (if different from above)

2. Case details

2a. What charges have been brought against you? Describe briefly what it is that you are accused of doing; e.g. theft of £10 worth of CDs or assault on a neighbour

2b. Are there any co-defendants in this matter?

No/Yes (if yes give their names)

2c. Give reasons why you and your co-defendants cannot be represented by the same solicitors

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3. The Court Proceedings

3a. I am due to appear before

The		court
Date	at	am/pm

or

3b. I appeared before

The		court
Date	at	am/pm

And

(tick whichever applies)

My case has been sent to the Crown Court for trial under Section 51 of the Crime and Disorder Act 1998	
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My case has been transferred to the Crown Court for trial	
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I was committed for trial to the Crown Court	
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I was convicted and/or* sentenced and I wish to appeal against the conviction/sentence* to the Crown Court/Court of Appeal/House of Lords* (*Delete as appropriate)	
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I was convicted and committed for sentence to the Crown Court	
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A retrial has been ordered under Section 7 of the Criminal Appeal Act 1968	
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Other (please specify nature of hearing)	
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4. Outstanding matters

If there are any other *outstanding* criminal charges or cases against you, give details including the court where you are due to appear

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5. Reasons for wanting representation

To avoid the possibility of your application being delayed, or publicly funded representation being refused because the court does not have enough information about the case, you must complete the rest of this form. When deciding whether to grant publicly funded representation the court will need to know why it is in the interests of justice for you to be represented. If you need help in completing the form you should speak to a solicitor.

	Details	Reasons for grant or refusal (for court use only)
5a. It is likely that I will lose my liberty <i>(you should consider seeing a solicitor before answering this question)</i>		
5b. I am currently subject to a sentence that is suspended or non-custodial that if breached may allow the court to deal with me for the original offence. <i>(Please give details)</i>		
5c. It is likely that I will lose my livelihood		
5d. It is likely that I will suffer serious damage to my reputation		
5e. A substantial question of law is involved. <i>(You will need the help of a solicitor to answer this question)</i>	(Please give authorities to be quoted with law reports references)	
5f. 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* <i>(* Delete as appropriate)</i>		

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	Details	Reasons for grant or refusal (for court use only)
5g. Witnesses have to be traced and/or interviewed on my behalf <i>(State circumstances)</i>		
5h. The case involves expert cross examination of a prosecution witness <i>(give brief details)</i>		
5i. It is in someone else's interests that I am represented		
5j. Any other reasons <i>(Give full particulars)</i>		

6. Legal Representation

- a) If you do not give the name of a solicitor, the court will select a solicitor for you.
- b) You must tell the solicitor that you have named him.
- c) If you have been charged together with another person or persons, the court may assign a solicitor other than the solicitor of your choice.

The solicitor I wish to act for me is:
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Give the firm's name and address (if known)

Declaration to be completed by the legal representative

[The legal representative may wish to confirm with the Legal Services Commission the status of the above named solicitor should he/she not be sure of the above named solicitor's authorisation to provide publicly funded representation]

I,, representing the above named applicant, certify that the named solicitor above is authorised to provide representation under a crime franchise contract, or a general criminal contract, or an individual case contract.

I understand that only firms with a general criminal contract or individual case contract may provide representation in the magistrates' court.

or

I,, representing the above named applicant, certify that the named solicitor above is employed by the Legal Services Commission in a Public Defender Office and is authorised to provide representation.

Signed Date

7. Declaration

If you knowingly make a statement which is false, or knowingly withhold information, you may be prosecuted.

If convicted, you may be sent to prison for up to three months or be fined or both (section 21 Access to Justice Act 1999)

I apply for representation for the proceedings set out in Section 3 of this form.

I understand that should my case proceed to the Crown Court or any higher court, the court may order that I pay for some or all of the costs of representation incurred in the proceedings by way of a Recovery of Defence Costs Order.

I understand that should my case proceed to the Crown Court or any higher court, I will have to furnish details of my means to the court and/or the Legal Services Commission.

Signed dated

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FOR COURT USE ONLY

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

Decision on Interests of Justice Test

I have considered all available details of all the charges and it/is not in the interests of justice that representation be granted for the following reasons:

Signed Appropriate Officer

Date

To be completed where right to representation extends to Crown Court

Statement of means Form B given to defendant on (date)

Indicate type of case:

Sent case under S51 Crime and Disorder Act 1998

Transferred for trial

Committal for trial/sentence*

Appeal against conviction/sentence*

Retrial under S7 of the Criminal Appeal Act 1968

Other (specify)

(* Delete as appropriate)

First date of hearing at Crown Court

Signed by authority of the Lord Chancellor

Dated 13th March 2002

Patricia Scotland
Parliamentary Secretary,
Lord Chancellor's Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make changes to the Criminal Defence Service (General) (No. 2) Regulations 2001 in order to bring appeals to the Court of Appeal from a decision of the Financial Services and Markets Tribunal within the scope of the Criminal Defence Service and to provide for representation in respect of such appeals. The Tribunal was established under section 132 of the Financial Services and Markets Act 2000.

These Regulations also, at regulation 6, extend the class of individuals to whom advice and assistance may be granted to those who have been detained under the Terrorism Act 2000.

In addition, regulation 7 amends the conditions in respect of financial eligibility for the receipt of advice and assistance and advocacy assistance.

Changes are also made to Form A, the form used for an application for the grant of a representation order.