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STATUTORY INSTRUMENTS

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**2009 No. 212**

**LEGAL SERVICES COMMISSION,  
ENGLAND AND WALES**

**The Criminal Defence Service (Information  
Requests) (Prescribed Benefits) Regulations 2009**

|                               |         |                          |
|-------------------------------|---------|--------------------------|
| <i>Made</i>                   | - - - - | <i>8th February 2009</i> |
| <i>Laid before Parliament</i> |         | <i>9th February 2009</i> |
| <i>Coming into force</i>      | - -     | <i>2nd March 2009</i>    |

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 26 of and paragraph 8(2) of Schedule 3 to the Access to Justice Act 1999<sup>(1)</sup>.

**Citation, commencement, interpretation and relevant authority**

1.—(1) These Regulations may be cited as the Criminal Defence Service (Information Requests) (Prescribed Benefits) Regulations 2009 and come into force on 2nd March 2009.

(2) In these Regulations—

- (a) “the 1992 Act” means the Social Security Contributions and Benefits Act 1992<sup>(2)</sup>;
- (b) “the 1999 Act” means the Access to Justice Act 1999;
- (c) “the 2006 Regulations” means the Criminal Defence Service (Financial Eligibility) Regulations 2006<sup>(3)</sup>;
- (d) “disregarded benefit” means a benefit excluded from the calculation of gross annual income as defined in regulation 2 of the 2006 Regulations;
- (e) “Independent Living Funds” has the same meaning as in the 2006 Regulations;

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(1) 1999 c. 22. Section 26 includes definitions of “prescribed” and “regulations”. The reference in that section to the Lord Chancellor was changed to the Secretary of State by S.I. 2003/1887 and was changed back to the Lord Chancellor by S.I. 2005/3429. Paragraph 8 of Schedule 3 was inserted by section 57 of the Criminal Justice and Immigration Act 2008 (c. 4).

(2) 1992 c. 4. Section 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c. 18), and is prospectively repealed by section 67 of, paragraph 9(1) and (5) of Schedule 3 to, and Schedule 8 to, the Welfare Reform Act 2007 (c. 5). Sections 39A and 39 B were inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 (c. 30). Sections 48A and 48B were inserted by section 126 of, and paragraph 3(1) of Schedule 4 to, the Pensions Act 1995 (c. 26). Section 48BB was inserted by section 56 of the Welfare Reform and Pensions Act 1999. Section 55A was inserted by section 50(1) of, and paragraphs 1 and 3 of Schedule 6 to, the Welfare Reform and Pensions Act 1999. Parts 12ZA and 12ZB were inserted by sections 2 and 4 respectively of the Employment Act 2002 (c. 22).

(3) S.I. 2006/2492, amended by S.I. 2007/777, 2007/2937 and 2008/723.

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(f) “qualifying benefit” means a benefit for the purposes of regulation 5(3) of the 2006 Regulations.

(3) The Legal Services Commission or a court officer or other person to whom the Commission, in accordance with section 3(4) of the 1999 Act, has delegated its functions under paragraph 2A of Schedule 3 to the 1999 Act is the relevant authority for the purposes of paragraph 6 of Schedule 3 to the 1999 Act and is referred to in these Regulations as “the relevant authority”.

### Prescribed benefits

2. The benefits prescribed for the purposes of paragraph 6(2)(e) of Schedule 3 to the 1999 Act are those listed in the Table in this regulation.

#### Prescribed benefits

| <i>Qualifying benefit</i>                       | <i>Payable under</i>  | <i>Provision</i>                                    |
|---|---|---|
| Income support                                  | The 1992 Act  | Section 124   |
| Income-based jobseeker’s allowance              | Jobseekers Act 1995(4)  | Part I  |
| Guarantee credit                                | State Pension Credit Act 2002(5)  | Section 1(3)(a)                                     |
| Income-related employment and support allowance | Welfare Reform Act 2007(6)  | Section 1(2)(b)                                     |
| <i>Disregarded benefit</i>                      | <i>Payable under</i>  | <i>Provision</i>                                    |
| Attendance allowance                            | The 1992 Act  | Section 64  |
| Severe disablement allowance                    | The 1992 Act  | Section 68  |
| Carer’s allowance                               | The 1992 Act  | Section 70  |
| Disability living allowance                     | The 1992 Act  | Section 71  |
| Constant attendance allowance                   | The 1992 Act  | Section 104 and paragraphs 4 and 7(2) of Schedule 8 |
| Council tax benefit                             | The 1992 Act  | Section 131   |
| Any direct payment                              | Regulations under the Health and Social Care Act 2001(7)  | Section 57(1)                                       |
| Any direct payment                              | The Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004(8) |   |
| Any exceptionally severe disablement allowance  | The Personal Injuries (Civilians) Scheme 1983(9)  |   |
| Any pension                                     | The Naval, Military and Air Forces etc (Disablement and   |   |

(4) 1995 c.18.

(5) 2002 c. 16.

(6) 2007 c. 5.

(7) 2001 c.15.

(8) S.I. 2004/1748.

(9) S.I. 1983/686.

| <i>Disregarded benefit</i>                           | <i>Payable under</i>                               | <i>Provision</i>                   |
|--|--|------------------------------------|
|  | Death) Service Pensions Order 2006 <sup>(10)</sup> |                                    |
| Any payments out of the Independent Living Funds     |  |                                    |
| <i>Other benefits</i>                                | <i>Payable under</i>                               | <i>Provision</i>                   |
| Bereavement benefits                                 | The 1992 Act                                       | Sections 36, 39A and 39B           |
| Incapacity benefit                                   | The 1992 Act                                       | Section 30A                        |
| Long-term incapacity benefit for widows and widowers | The 1992 Act                                       | Sections 40 and 41                 |
| Industrial injuries benefit                          | The 1992 Act                                       | Section 94                         |
| Contribution-based jobseeker's allowance             | Jobseekers Act 1995                                | Part I                             |
| Contribution-based employment and support allowance  | Welfare Reform Act 2007 <sup>(11)</sup>            | Section 1(2)(a)                    |
| Maternity allowance                                  | The 1992 Act                                       | Section 35                         |
| Statutory maternity pay                              | The 1992 Act                                       | Part XII                           |
| Statutory paternity pay                              | The 1992 Act                                       | Part 12ZA                          |
| Statutory adoption pay                               | The 1992 Act                                       | Part 12ZB                          |
| Category A and Category B retirement pension         | The 1992 Act                                       | Sections 44, 48A, 48B, 48BB and 51 |
| Shared additional pension                            | The 1992 Act                                       | Section 55A                        |
| Widow's benefit                                      | The 1992 Act                                       | Sections 37 and 38                 |
| Housing benefit                                      | The 1992 Act                                       | Section 130                        |
| Job grant, return to work credit or in-work credit   | Employment and Training Act 1973 <sup>(12)</sup>   | Section 2                          |

3. An information request made under paragraph 6 of Schedule 3 to the 1999 Act by the relevant authority may include a request for the disclosure of the amount the individual is receiving by way of any prescribed benefit.

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<sup>(10)</sup> S.I. 2006/606.

<sup>(11)</sup> 2007 c. 5.

<sup>(12)</sup> 1973 c. 50.

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Signed by authority of the Lord Chancellor

8th February 2009

*Bach*  
Parliamentary Under Secretary of State  
Ministry of Justice

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## EXPLANATORY NOTE

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

Under Schedule 3 to the Access to Justice Act 1999 the authority responsible for granting rights to publicly funded representation for criminal cases may make an information request to the Secretary of State for information about an individual who has applied for representation, to facilitate the making of decisions about financial eligibility. The information may include information about the individual's benefit status. These Regulations prescribe the relevant benefits and permit the authority to seek information about the amount of any prescribed benefits being received.

The impact assessment which was prepared for section 57 of the Criminal Justice and Immigration Act 2008 is applicable to this instrument. It is available at [www.justice.gov.uk/publications/criminal-justice-bill.htm](http://www.justice.gov.uk/publications/criminal-justice-bill.htm) and from Criminal Legal Aid Strategy Division, Ministry of Justice, 102 Petty France, London SW1H 9AJ.