

1988 No. 468

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Legal Aid in Criminal Proceedings (General)  
(Amendment) Regulations 1988

<i>Made - - - -</i>	<i>9th March 1988</i>
<i>Laid before Parliament</i>	<i>15th March 1988</i>
<i>Coming into force</i>	<i>11th April 1988</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 39 of the Legal Aid Act 1974(a), and now vested in him(b), and sections 7 and 16(4) of the Legal Aid Act 1982(c), and with the concurrence of the Treasury, hereby makes the following Regulations:—

1.—(1) These Regulations may be cited as the Legal Aid in Criminal Proceedings (General) (Amendment) Regulations 1988 and shall come into force on 11th April 1988.

(2) In these Regulations, a regulation or Schedule referred to by number means a regulation or Schedule so numbered in the Legal Aid in Criminal Proceedings (General) Regulations 1968(d).

2. For regulation 19(2) and (3), there shall be substituted the following—

“ (2) The court or the proper officer of the court shall not determine disposable income and disposable capital where the applicant, the legally assisted person or the appropriate contributor is in receipt of supplementary benefit, income support or family credit, unless he is required to make a redetermination under regulation 25A below.

(3) Subject to paragraph (2), the applicant, the legally assisted person or the appropriate contributor shall make a contribution—

(a) if his disposable income exceeds the average weekly sum of £50, of such an amount as shall be determined by the proper officer in accordance with the Third Schedule; and

(b) if his disposable capital exceeds £3,000, of such an amount as is equal to the excess.”.

3. For regulation 25A, there shall be substituted the following—

**“Redetermination of contribution**

**25A.** The court or the proper officer of the court shall redetermine the amount of any contribution payable by a legally assisted person or an appropriate contributor under a legal aid order where—

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(a) 1974 c.4.

(b) S.I. 1980/705.

(c) 1982 c.44; section 7 was amended by the Social Security Act 1986 (c.50), Schedule 10, paragraph 56; section 16(4) is an interpretation provision and is cited because of the meaning assigned to the word “regulations”.

(d) S.I. 1968/1231; relevant amending instruments are S.I. 1983/1863 and 1987/422.

- (a) further information has become available as to the amounts of disposable income and disposable capital available at the time when the legal aid contribution order was made; or
- (b) the circumstances upon which the disposable income or disposable capital were determined at the time when the legal aid contribution order was made have altered within the contribution period so that—
  - (i) his disposable income may have increased by an amount greater than £400 or decreased by an amount greater than £200; or
  - (ii) his disposable capital may have increased by an amount greater than £200; or
- (c) the legally assisted person or an appropriate contributor has ceased to receive supplementary benefit, income support or family credit, as the case may be;

unless it appears to be unlikely that any significant change in the liability to make a contribution would result from such a redetermination, and shall vary or revoke the legal aid contribution order accordingly.”.

4. For regulation 25E, there shall be substituted the following—

**“Termination of contribution period**

**25E.—(1) Where the contribution period has not ended and—**

- (a) the court remits any sum due under a legal aid contribution order which falls to be paid after the conclusion of the relevant proceedings;
- (b) the legally assisted person is sentenced to an immediate term of imprisonment or a sentence of youth custody or detention in a detention centre, or
- (c) the legally assisted person or an appropriate contributor begins to receive supplementary benefit, income support or family credit (in this regulation referred to as “income-related benefits”),

the contribution period shall be deemed to have ended on the date of that remission or sentence or on the date receipt of income-related benefits commenced.

(2) The court making any such remission or passing any such sentence shall inform the collecting court that the contribution period is to be deemed to have ended on the date of that remission or sentence.

(3) Without prejudice to regulation 24, the legally assisted person or appropriate contributor shall inform the collecting court of the date on which receipt of income-related benefits commenced.”.

5. Regulation 26A shall be amended by substituting, for the words “the 1982 Regulations”, the words “the 1988 Regulations”.

6. Regulation 31(1) shall be amended as follows—

- (a) in the definition of “appropriate authority”, for the words “the 1982 Regulations”, there shall be substituted the words “the 1988 Regulations”;
- (b) after the definition of “disposable income”, there shall be inserted the following definition—  
“ ‘family credit’ means family credit under the Social Security Act 1986;”(a);
- (c) after the definition of “guardian”, there shall be inserted the following definition—  
“ ‘income support’ means income support under the Social Security Act 1986;”;
- (d) for the definition of “the 1982 Regulations”, there shall be substituted the following definition—  
“ ‘the 1988 Regulations’ means the Legal Aid in Criminal Proceedings (Costs) Regulations 1988;”(b).

7. Form 5 in the Schedule shall be amended as follows—

- (a) for questions 1 and 2 of Section 3 Part A, there shall be substituted the following—

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(a) 1986 c.50.  
(b) S.I. 1988/423.

“ 1. Do you receive supplementary benefit, income support or family credit? (You should answer YES if either you or your wife or husband does providing that you are living together)

YES — You do not need to complete the rest of this form, simply turn to the declaration in Section 6 and sign it.

NO — Please go on to question 2.”.

(b) question 3 of Section 3 Part A shall be renumbered question 2;

(c) for Section 6, there shall be substituted the following—

“SECTION 6 – DECLARATION

Anyone who has knowingly or recklessly made a statement which is false in any way, or has knowingly withheld information is liable to be prosecuted and, if convicted, to imprisonment for a term not exceeding four months, or to a fine, or both. After your application has been considered by the court, you may be asked to give further information or to clarify information that you have already given. In particular you may be required to provide documentary proof of the information you have given (e.g. wage slips, rent books, etc).

**Note:** If you cease to receive supplementary benefit, income support or family credit or if your financial position changes in any other way after you have submitted this form, you must inform the court. This is a requirement of the Legal Aid Regulations.

I declare that to the best of my knowledge and belief, I have given a complete and correct statement of my income, savings and capital (and that of my husband or wife)\* (and that of my child)\*\*

Date

Signed

\* Delete if you are not living with your husband or wife, or if you are single.

\*\* Delete if legal aid is not sought for your child.”.

8. For rule 3 of Part II of the Second Schedule, there shall be substituted the following—

“ 3. In computing disposable income there shall be disregarded—

(a) attendance allowance paid under the Social Security Acts 1975–1986;

(b) mobility allowance paid under the Social Security Acts 1975–1986;

(c) any rebate or allowance paid under Part II of the Social Security and Housing Benefits Act 1982(a) and any rate rebate;

(d) constant attendance allowance paid as an increase to a disablement pension under section 61 of the Social Security Act 1975(b);

(e) housing benefit paid under the Social Security Act 1986; and

(f) payments made out of the social fund under section 32 of the Social Security Act 1986.”.

9. For rule 4(d) of Part II of the Second Schedule, there shall be substituted the following—

“(d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act 1975(c) or to a personal pension scheme within the meaning of the Social Security Act 1986; and”.

10. For rule 5(3) of Part II of the Second Schedule, there shall be substituted the following—

“ (3) Where any amount of the rent or rates is met by a rebate or allowance under Part II of the Social Security and Housing Benefits Act 1982, or by housing benefit under the Social Security Act 1986, or by any rate rebate, the amount so met shall be deducted from the rent to be considered under paragraph (1) of this rule.”.

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(a) 1982 c.24.

(b) 1975 c.14; section 61 was amended by the Social Security Act 1986 (c.50), Schedule 3, paragraph 6.

(c) 1975 c.60.

11. For rule 7(1)(b) of Part II of the Second Schedule, there shall be substituted the following—

“(b) in the case of a dependent child or a dependent relative, at the rate equivalent to 25 per cent above the amount specified for the time being in paragraph 2 of Part I of Schedule 2 to the Income Support (General) Regulations 1987(a) appropriate to the age of the child or relative;”.

12. For rule 2(c) of Part III of the Second Schedule, there shall be substituted the following—

“(c) any savings of mobility allowance paid under the Social Security Act 1975 which the person concerned intends to use in connection with mobility;

(d) for a period not exceeding 12 months from the date of receipt, any arrears of—

(i) attendance or mobility allowance paid under the Social Security Act 1975; and

(ii) supplementary benefit or income support; and

(e) any payments made out of the social fund under section 32 of the Social Security Act 1986.”.

13. For the sums specified in the Third Schedule, there shall be substituted the following sums—

Exceeding £50 but not exceeding £56	£1
Exceeding £56 but not exceeding £60	£2
Exceeding £60 but not exceeding £64	£3
Exceeding £64 but not exceeding £68	£4
Exceeding £68 but not exceeding £72	£5
Exceeding £72 but not exceeding £76	£6
Exceeding £76 but not exceeding £80	£7,

and the weekly instalment of contribution shall be increased by £1 for each £4 or part of £4 by which average weekly disposable income exceeds £80.

Dated 8th March 1988

*Mackay of Clashfern, C.*

We concur,

*Mark Lennox-Boyd*

*David Lightbown*

Dated 9th March 1988 Two of the Lords Commissioners of Her Majesty's Treasury

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(a) S.I. 1987/1967.

## EXPLANATORY NOTE

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

These Regulations amend the Legal Aid in Criminal Proceedings (General) Regulations 1968 in consequence of the provisions of the Social Security Act 1986 and of the revocation of the Legal Aid in Criminal Proceedings (Costs) Regulations 1982 (S.I. 1982/1197) by the Legal Aid in Criminal Proceedings (Costs) Regulations 1988.

They increase from £48 to £50 a week the disposable income above which a person receiving legal aid under Part II of the Legal Aid Act 1974 in criminal proceedings and proceedings relating to children and young persons is required, under the Legal Aid Act 1982, to pay a contribution. The scale of contributions is also amended.