

1989 No. 550

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Legal Advice and Assistance (Scope) Regulations 1989

Made - - - - - *23rd March 1989*

Coming into force *1st April 1989*

ARRANGEMENT OF REGULATIONS

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Schedule: Proceedings in magistrates' courts in which ABWOR is available.

The Lord Chancellor, in exercise of the powers conferred on him by sections 8 and 43 of the Legal Aid Act 1988(a), hereby makes the following Regulations of which a draft has, in accordance with section 36(3)(b) of that Act, been laid before and approved by resolution of each House of Parliament:—

**PART I
GENERAL**

Citation and Commencement

1. These Regulations may be cited as the Legal Advice and Assistance (Scope) Regulations 1989 and shall come into force on 1st April 1989.

(a) 1988 c.34.

Interpretation

2. In these Regulations, unless the context otherwise requires:-

“ABWOR” means assistance by way of representation;

“the Act” means the Legal Aid Act 1988;

“board of visitors” means a board of visitors appointed by the Secretary of State under section 6(2) of the Prison Act 1952(a);

“client” means a person seeking or receiving advice or assistance or on whose behalf advice or assistance is sought;

“conditional sale agreement” has the meaning assigned to it in section 189 of the Consumer Credit Act 1974(b);

“conveyancing services” has the meaning assigned to it in section 11 of the Administration of Justice Act 1985(c);

“mental disorder” has the meaning assigned to it in section 1 of the Mental Health Act 1983(d);

“rental purchase agreement” has the meaning assigned to it in section 88 of the Housing Act 1980(e);

“will” has the meaning assigned to it in section 1 of the Wills Act 1837(f);

PART II

EXCLUSIONS FROM PART III OF THE ACT

Conveyancing Services

3.—(1) Subject to paragraphs (2) and (3), advice and assistance consisting of conveyancing services are excluded from Part III of the Act.

(2) Paragraph (1) does not exclude from Part III of the Act advice or assistance relating to a rental purchase agreement or a conditional sale agreement for the sale of land.

(3) Paragraph (1) does not exclude from Part III of the Act advice or assistance consisting of such conveyancing services as are necessary in order to give effect to an order of the court or, in proceedings under the Matrimonial Causes Act 1973(g) or the Matrimonial and Family Proceedings Act 1984(h), the terms of an agreement.

Wills

4.—(1) Except as provided by paragraph (2), advice and assistance in the making of wills are excluded from Part III of the Act.

(2) Advice and assistance in the making of a will are not excluded by paragraph (1) from Part III of the Act where they are given to a client who is-

(a) aged 70 or over; or

(b) blind (or partially sighted), deaf (or hard of hearing), or dumb, or who suffers from mental disorder of any description, or who is substantially and permanently handicapped by illness, injury or congenital deformity; or

(c) a parent or guardian within the meaning of section 87 of the Child Care Act 1980(i) of a person to whom any description in (b) applies, where the client wishes to provide in the will for that person; or

(a) 1952 c.52; section 6 was amended by the Courts Act 1971 (c.23), Schedule 7 Part II paragraph 4, Schedule 11 Part IV.

(b) 1974 c.39.

(c) 1985 c.61.

(d) 1983 c.20.

(e) 1980 c.51.

(f) 1837 c.26.

(g) 1973 c.18.

(h) 1984 c.42.

(i) 1980 c.5

- (d) the mother or father of a minor who is living with the client, where the client is not living with the minor's other parent, and the client wishes to appoint a guardian for that minor under section 4 of the Guardianship of Minors Act 1971(a).

Transition

5. Where advice or assistance has been given before these Regulations come into force, nothing in this Part shall affect further advice or assistance given in relation to the same matter.

PART III

ABWOR

Application of Part III of the Act to ABWOR

6. Part III of the Act does not apply to ABWOR except as provided in this Part.

Proceedings in Magistrates' Courts

7.—(1) Part III of the Act applies to ABWOR given—

- (a) to a client for the purposes of the proceedings in magistrates' courts specified in the Schedule;
- (b) at a hearing in any proceedings in a magistrates' court to a party who is not receiving and has not been refused representation in connection with those proceedings, where the court—
 - (i) is satisfied that the hearing should proceed on the same day;
 - (ii) is satisfied that that party would not otherwise be represented; and
 - (iii) requests a solicitor who is within the precincts of the court for purposes other than the provision of ABWOR in accordance with this sub-paragraph, or approves a proposal from such a solicitor, that he provide that party with ABWOR; or
- (c) to a person in connection with an application for a warrant of further detention, or for an extension of such a warrant, made in respect of that person to a magistrates' court under section 43 or 44 of the Police and Criminal Evidence Act 1984(b).

(2) Subject to paragraph (3), Part III of the Act also applies, in criminal proceedings in magistrates' courts where the client has not previously received and is not otherwise receiving representation or ABWOR in connection with the same proceedings, to ABWOR given to a client—

- (a) in making an application for bail;
- (b) at an appearance in court where the client is in custody and wishes the case to be concluded at that appearance, unless the solicitor who is advising him considers that the case should be adjourned in the interests of justice or of the client;
- (c) who is before the court as a result of a failure to obey an order of the court, where such failure may lead to his being at risk of imprisonment;
- (d) who is not in custody and who in the opinion of the solicitor requires ABWOR.

(3) Paragraph (2) does not apply to committal proceedings, to proceedings in which the client pleads not guilty, nor, unless the solicitor considers the circumstances to be exceptional, to proceedings in connection with a non-imprisonable offence.

(4) Part III also applies to ABWOR given to a defendant in proceedings in a magistrates' court where the defendant is before the court as a result of a failure to pay a fine or other sum which he was ordered on conviction to pay, and such failure may lead to his being at risk of imprisonment.

(a) 1971 c.3.

(b) 1984 c.60.

Proceedings in county courts

8. Part III of the Act applies to ABWOR given by a solicitor at a hearing in any proceedings in a county court to a party who is not receiving and has not been refused representation in connection with those proceedings, where the court—

- (i) is satisfied that the hearing should proceed on the same day;
- (ii) is satisfied that that party would not otherwise be represented; and
- (iii) requests a solicitor who is within the precincts of the court for purposes other than the provision of ABWOR in accordance with this regulation, or approves a proposal from such a solicitor, that he provide that party with ABWOR.

Other Proceedings

9. Part III of the Act applies to ABWOR given—

- (a) to a person in proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983 whose case or whose application to the Tribunal is or is to be the subject of the proceedings;
- (b) to a prisoner in proceedings before a board of visitors who has been permitted by the board of visitors to be legally represented in those proceedings.

Dated 23rd March 1989

Mackay of Clashfern, C.

**PROCEEDINGS IN MAGISTRATES' COURTS IN WHICH ABWOR
IS AVAILABLE**

1. In this Schedule "proceedings in a magistrates' court" includes giving notice of appeal or applying for a case to be stated within the ordinary time for so doing, and matters preliminary thereto.

2. The proceedings in which Part III of the Act applies to ABWOR under regulation 7(1) (a) are proceedings—

- (a) for or in relation to an affiliation order within the meaning of the Affiliation Proceedings Act 1957(a);
- (b) for or in relation to an order under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978(b);
- (c) under the Guardianship of Minors Act 1971(c) and 1973(d);
- (d) under section 43 of the National Assistance Act 1948(e), section 22 of the Maintenance Orders Act 1950(f), section 4 of the Maintenance Orders Act 1958(g), section 18 of the Supplementary Benefits Act 1976(h), or section 24 of the Social Security Act 1986(i);
- (e) in relation to an application for leave of the court to remove a child from a person's custody under section 27 or 28 of the Adoption Act 1976(j) or proceedings in which the making of an order under Part II or section 29 or 55 of the Adoption Act 1976 is opposed by any party to the proceedings;
- (f) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972(k) relating to a maintenance order made by a court of a country outside the United Kingdom;
- (g) under Part II of the Children Act 1975(l);

(a) 1957 c.55.

(b) 1978 c.22.

(c) 1971 c.3.

(d) 1973 c.29.

(e) 1948 c.29; section 43 was amended by the Ministry of Social Security Act 1966 (c.20), Schedule 8, by the Supplementary Benefits Act 1976 (c.71), Schedule 7 paragraph 4, by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), Schedule 2 paragraph (6), Schedule 3, by the Justices of the Peace Act 1979 (c. 55), Schedule 2 paragraph 3 and by the Social Security Act 1986 (c.50), Schedule 10 Part II paragraph 33.

(f) 1950 c.37; section 22 was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c.22), Schedule 2 paragraph 14.

(g) 1958 c.39; section 4 was amended by the Administration of Justice Act 1970 (c.31), sections 48(2), (3), 54, Schedule 11, by the Administration of Justice Act 1977 (c. 38), Schedule 3 paragraph 3, Schedule 5 Part IV, and by the Matrimonial and Family Proceedings Act 1984 (c. 42), Schedule 1 paragraph 5.

(h) 1976 c.71.

(i) 1986 c.50.

(j) 1976 c.36; sections 27 and 29 were amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 2 paragraphs 33, 60, Schedule 10 Part I; section 29 was also amended by that Act, Schedule 2 paragraphs 34, 60.

(k) 1972 c.18.

(l) 1975 c.72.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace, with amendments, the provisions in the Legal Advice and Assistance Regulations (No. 2) 1980 (S.I. 1980/1898) which prescribe the scope of advice and assistance (including assistance by way of representation). The other provisions of those Regulations are replaced, with amendments, by the Legal Advice and Assistance Regulations 1989 (S.I. 1989/340).

The main changes are to disapply (with certain exceptions) the provisions of Part III of the Act from advice and assistance consisting of conveyancing services (regulation 3) or in the making of wills (regulation 4).

In accordance with section 8(2) of the Legal Aid Act 1988, the Regulations apply Part III of the Act to assistance by way of representation (as to proceedings in magistrates' courts, regulation 7; as to proceedings in county courts, regulation 8; as to proceedings before Mental Health Review Tribunals and proceedings before boards of prison visitors, regulation 9).

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