
STATUTORY INSTRUMENTS

2004 No. 2899

**LEGAL SERVICES COMMISSION,
ENGLAND AND WALES**

**The Community Legal Service (Financial)
(Amendment) Regulations 2004**

Made - - - - 9th November 2004
Laid before Parliament 9th November 2004
Coming into force - - 30th November 2004

The Secretary of State, in exercise of the powers conferred by sections 7 and 10 of the Access to Justice Act 1999⁽¹⁾ and now vested in him ⁽²⁾ makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Legal Service (Financial) (Amendment) Regulations 2004 and shall come into force on 30th November 2004.

(2) In these regulations, a reference to a regulation by number alone means the regulation so numbered in the Community Legal Service (Financial) Regulations 2000⁽³⁾.

Amendments to the Community Legal Service (Financial) Regulations 2000

2. After regulation 5C insert—

“Waiver of eligibility limit and contributions in cross-border disputes

5D.—(1) This regulation applies to an application to the Commission by a client domiciled or habitually resident in another Member State for the funding of services in relation to a cross-border dispute.

(2) Where this regulation applies, the Commission must—

(a) disapply the relevant eligibility limits in regulations 5 and 5A if the client proves that he is unable to pay the cost of proceedings in England and Wales in relation

(1) 1999 c. 22.

(2) By virtue of the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), articles 4(1) and 9, Schedule 1 and Schedule 2 paragraph 11(1)(a).

(3) S.I. 2000/516. There are relevant amendments in S.I. 2001/3663, 2003/650 and 2003/2838.

to the dispute as a result of differences in the cost of living between the client's Member State of domicile or habitual residence and England and Wales; and

- (b) waive part or all of any contributions payable under regulation 38, if and to such extent as the client proves that he is unable to pay them as a result of such differences in the cost of living.

- (3) In this regulation—

“cross-border dispute” means a dispute where a client is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced;

“Member State” means a member state of the European Union except Denmark.

- (4) For the purposes of this regulation the Member State in which a client is domiciled shall be determined in accordance with Article 59 of Council Regulation (EC) No.44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.”.

3. In regulation 19, in sub-paragraph (a)(v), for “invalid care allowance” substitute “carer's allowance”.

Transitional provision

4. Regulation 2 of these Regulations shall apply in relation to applications for services made to the Commission on or after 30th November 2004, and in relation to applications made before that date the Community Legal Service (Financial) Regulations 2000 shall have effect as if regulation 2 of these Regulations had not been made.

Signed by authority of the Secretary of State

9th November 2004

David Lammy
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Community Legal Service (Financial) Regulations 2000 (S.I.2000/516) which govern the financial aspects of the provision of services funded by the Legal Services Commission.

A new regulation 5D is inserted in the 2000 Regulations in order to implement Articles 3(4) and 5(4) of Council Directive 2002/8/EC of 27th January 2003 about the provision of legal aid for cross-border disputes. New regulation 5D requires the Legal Services Commission to waive the normal financial eligibility criteria and requirement to pay contributions, where a client who is domiciled or habitually resident in another Member State applies for funded services in connection with a cross-border dispute and proves that he is unable to pay the cost of proceedings in England and Wales, or contributions, as a result of differences in the cost of living between his Member State and England and Wales. These amendments apply in relation to applications for services made to the Commission on or after 30th November 2004.

An amendment is also made to regulation 19 of the 2000 Regulations, which specifies payments to be disregarded in calculating a person's income, to substitute "carer's allowance" for "invalid care allowance".