

2005 No. 589

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Community Legal Service (Financial) (Amendment)
Regulations 2005**

Made - - - - *9th March 2005*

Laid before Parliament *10th March 2005*

Coming into force in accordance with regulation 1

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Legal Service (Financial) (Amendment) Regulations 2005 and shall come into force—

- (a) for the purposes of regulations 14 to 17, 18(2), and this regulation, on 1st April 2005;
- (b) for the purposes of regulation 3, on 4th April 2005;
- (c) for all other purposes, on 11th April 2005.

(2) In these Regulations—

- (a) a reference to a regulation by number alone is a reference to the regulation so numbered in the Community Legal Service (Financial) Regulations 2000(c); and
- (b) the same meaning applies to words and expressions defined in those Regulations.

Amendments to the Community Legal Service (Financial) Regulations 2000

2. In regulation 4—

- (a) for paragraph (2) substitute—

“(2) Where the assessing authority is satisfied that the client is in receipt, directly or indirectly, of—

- (a) income support,
- (b) income-based jobseeker’s allowance, or
- (c) guarantee state pension credit (under section 1(3)(a) of the State Pension Credit Act 2002)(d),

(a) 1999 c.22.

(b) 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).

(c) S.I. 2000/516. There are relevant amendments in S.I. 2001/3663, S.I. 2002/709 and S.I. 2003/650.

(d) 2002 c.16.

he shall be eligible for all the levels of service listed in regulation 2(3) without making (where applicable) any contributions.”;

(b) omit paragraph (3).

3. In regulation 5, for paragraph (2) substitute—

“(2) A client is eligible for—

(a) Legal Help,

(b) Help at Court, and

(c) Legal Representation before—

(i) the Asylum and Immigration Tribunal; and

(ii) the High Court in respect of an application under section 103A of the Nationality, Immigration and Asylum Act 2002^(a),

if his monthly disposable income does not exceed £621 and his disposable capital does not exceed £3,000.”.

4. Regulation 5, as amended by regulation 3 of these Regulations, is further amended as follows—

(a) for paragraphs (2) and (3) substitute—

“(2) A client is eligible for Legal Representation before—

(a) the Asylum and Immigration Tribunal; and

(b) the High Court in respect of an application under section 103A of the Nationality, Immigration and Asylum Act 2002,

if his monthly disposable income does not exceed £632 and his disposable capital does not exceed £3,000.

(3) A client is eligible for Legal Help, Help at Court and Family Mediation if his monthly disposable income does not exceed £632 and his disposable capital does not exceed £8,000.”;

(b) in paragraph (5), and in paragraph (6), for “£707” substitute “£632”.

5. After regulation 5D insert—

“Waiver of eligibility limit in proceedings for protection from harm to the person

5E.—(1) This regulation applies to an application by a client for the funding of Legal Representation in proceedings where the client seeks—

(a) an injunction or other order for protection from harm to the person; or

(b) committal for breach of any such order.

(2) Where this regulation applies the Commission may, if it considers it equitable to do so, disapply the disposable income limit in regulation 5(5) or 5(6).”.

6. In regulation 7(1)—

(a) after “The assessing authority shall”, insert “, subject to regulation 4(2); and

(b) in sub-paragraph (a), at the beginning, omit “subject to regulation 4(2).”.

7. For regulation 23 substitute—

“23.—(1) Where the income of the person concerned consists, wholly or partly, of a wage or salary from employment, there shall be deducted—

(a) the sum of £45 per month; and

(a) 2002 c.41. Section 103A is inserted by section 26 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19).

- (b) where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home by reason of his employment.

(2) Where the income of the person consists, wholly or partly, of income from a trade, business or gainful occupation other than an occupation at a wage or salary, there shall be deducted, where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home whilst he is engaged in that trade, business or gainful occupation.”.

8. In regulation 24(4), in sub-paragraph (b), for “a mortgage debt or hereditible security” substitute “a debt secured by a mortgage or charge on the property”.

9. Omit regulation 25.

10. After regulation 30 insert—

“**30A.** Subject to regulation 31, in calculating the value of the interest of the person concerned in any resource of a capital nature which he owns jointly or in common with any other person, the assessing authority may treat that resource as being owned—

- (a) in equal shares; or
- (b) in such other proportions as appear to the assessing authority to be equitable.”.

11. For regulation 32 substitute—

“**32.**—(1) In calculating the disposable capital of the client, the value of any interest in land shall be taken to be the amount for which that interest could be sold less, subject to paragraphs (2) and (3), the amount of any debt secured by a mortgage or charge on the property.

(2) The total amount to be deducted under this regulation on an assessment of the client’s disposable capital shall not exceed £100,000 in respect of all secured debts.

(3) Where—

- (a) the interests in land which are taken into account in an assessment of the client’s disposable capital include interests in both—
 - (i) the main or only dwelling in which the client resides; and
 - (ii) one or more other properties, and
- (b) debts totalling more than £100,000 are secured on the main or only dwelling and one or more of the other properties,

the deduction to be made under this regulation shall be made in respect of the debts secured on the other properties first.

(4) Where the client resides in more than one dwelling, the assessing authority shall decide which is the main dwelling for the purposes of this regulation and regulations 32A and 32B.

32A.—(1) In calculating the disposable capital of the client, the amount or value of the subject matter of the dispute to which the application relates shall, subject to paragraphs (2) and (3), be disregarded.

(2) Where eligibility is being assessed under regulation 5(5) or 5(6), the total amount to be disregarded under this regulation shall not exceed £100,000.

(3) Where eligibility is being assessed under regulation 5(5) or 5(6), if—

- (a) the subject matter of the dispute includes interests of the client in—
 - (i) the main or only dwelling in which the client resides; and
 - (ii) other resources of a capital nature, and
- (b) the total value of those interests (after the application of regulation 32) exceeds £100,000,

the assessing authority shall disregard the value of the client's interest in his main or only dwelling first.

32B.—(1) In calculating the disposable capital of the client, the value (after the application of regulations 32 and 32A) of his interest (if any) in the main or only dwelling in which he resides shall, subject to paragraph (2), be disregarded.

(2) The amount to be disregarded under this regulation shall not exceed £100,000.”.

12. In regulation 35(1)—

(a) for the words from the beginning to “disregarded” substitute—

“Where—

- (a) eligibility is being assessed under regulation 5(2), 5(3), 5(5) or 5(6);
- (b) the client or any other person concerned is aged 60 or over; and
- (c) the total monthly disposable income (excluding any net income derived from capital) of the client and any other person concerned is less than the first figure prescribed in regulation 38(2)(a), that is, £272,

the amount of capital shown in the following table shall be disregarded”;

(b) in the table, for “£226-250” substitute “£226-272”.

13. In regulation 38(2)—

(a) for “A person” substitute “Subject to regulation 4(2), a person”; and

(b) for sub-paragraph (a) substitute—

“(a) where his monthly disposable income exceeds £272—

- (i) one quarter of any such income between £268 and £400 inclusive;
- (ii) one third of any such income between £401 and £531 inclusive; and
- (iii) one half of his remaining disposable income; and”.

14. In regulation 44—

(a) in paragraph (1), omit sub-paragraph (d); and

(b) omit paragraph (2).

15. In regulation 52, in paragraph (1)(c) and paragraph (4), for “Land Registration Act 1925” substitute “Land Registration Act 2002”.

16. In regulation 53(3)—

(a) for sub-paragraph (b) substitute—

“(b) the applicable rate shall be—

- (i) 8% per annum until 31st March 2002;
- (ii) 5% per annum from 1st April 2002 until 30th September 2005;
- (iii) 8% per annum from 1st October 2005;”;

(b) omit sub-paragraphs (c) and (d).

17. In regulation 53(3), in sub-paragraph (e)(ii), omit “, less the amount of any exemption under regulation 44(1)(d) which would apply were the amount of the charge to be paid”.

Transitional provision

18.—(1) Regulation 2 and regulations 4 to 13 of these Regulations shall apply to applications for funded services made on or after 11th April 2005, and applications made before that date shall be treated as if those regulations had not been made.

(2) Regulations 14 and 17 of these Regulations shall not apply in cases where the statutory charge applies in respect of funded services provided pursuant to applications made before 1st April 2005.

9th March 2005

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 (“the principal Regulations), which govern the financial aspects of the provision of services funded by the Legal Services Commission in civil matters as part of the Community Legal Service.

Regulations 2, 4 and 13 amend the financial eligibility limits and thresholds for payment of contributions for various levels of service, and in particular align the financial eligibility limits for Legal Help, Help at Court and Family Mediation with those for Legal Representation.

Regulation 5 inserts a new regulation 5E into the principal Regulations, which gives the Legal Services Commission power to waive the upper disposable income limit for eligibility for Legal Representation in proceedings where a client is seeking an order for protection from harm to the person, or committal of a person for breach of such an order.

Regulation 7 amends regulation 23 of the principal Regulations to provide for allowance from income of childcare costs for those who are self employed, when determining eligibility for services.

Regulations 9 to 12 amend provisions about the calculation of a client’s disposable capital. In particular, the amount to be disregarded in respect of resources which are the subject matter of the dispute is limited to £100,000, and amendments are made to make clarify the operation of provisions about the disregard of sums in respect of debts secured on land, resources which are the subject matter of the dispute, and the client’s interest in his only or main dwelling.

Regulations 14 to 17 amend provisions about the operation of the statutory charge under section 10(7) of the Access to Justice Act 1999. In particular—

- (a) an exemption from the statutory charge of the first £3,000 of any property recovered in certain family proceedings is removed; and
- (b) regulation 53(3) of the principal Regulations, which prescribes the rate of interest payable by a client where the Commission postpones the enforcement of a statutory charge in its favour, is amended to prescribe a fixed interest rate of 5% per annum (which has been the applicable rate since 1st April 2002 under regulation 53(3) as it applied before this amendment) for the period 1st April 2005 to 30th September 2005, and thereafter a fixed interest rate of 8% per annum from 1st October 2005.

The opportunity has also been taken to make consequential amendments necessitated by the Land Registration Act 2002 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, and other minor amendments.

The amendments made by regulations 2 and 4-13 of these Regulations apply only in relation to applications for funded services made on or after 11th April 2005. The amendments made by regulations 14 and 17 do not apply in cases where the statutory charge applies in respect of funded services provided pursuant to an application made before 1st April 2005.

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