
STATUTORY INSTRUMENTS

2006 No. 2493

**LEGAL SERVICES COMMISSION,
ENGLAND AND WALES**

**The Criminal Defence Service (Representation Orders
and Consequential Amendments) Regulations 2006**

Made - - - - 11th September 2006

Coming into force - - 2nd October 2006

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 26 of, and paragraphs 2A and 3A(2) of Schedule 3 to, the Access to Justice Act 1999⁽¹⁾.

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament in accordance with section 25(9) of that Act.

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (Representation Orders and Consequential Amendments) Regulations 2006 and come into force on 2nd October 2006.

Interpretation

2. In these Regulations—

“the Act” means the Access to Justice Act 1999;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“relevant proceedings” means criminal proceedings which—

- (a) are mentioned in section 12(2)(a) to (f) of the Act; and
- (b) are in a magistrates’ court;

“representation authority” means the Commission or a court officer or other person to whom the Commission, in accordance with section 3(4) of the Act, has delegated its functions under paragraph 2A of Schedule 3 to the Act;

(1) 1999 c.22. Section 26 includes definitions of ‘regulations’ and ‘prescribed’. The reference to the Lord Chancellor in section 26 was changed to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887) and was changed back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429). Paragraphs 2A and 3A were inserted by section 1(6) and (7) of the Criminal Defence Service Act 2006 (c.9).

“representation order” means a document granting a right to representation under section 14 of the Act.

Proceedings in which representation order may be granted

3. The Commission may, at any stage of the proceedings, grant to an individual a representation order in respect of relevant proceedings.

Extension of representation order

4. A representation order granted to an individual extends to—

- (a) the Crown Court, if the proceedings continue there; and
- (b) any proceedings incidental to the proceedings,

but does not extend to an appeal.

Withdrawal of representation order

5.—(1) Where any charge or proceedings against the individual are varied, the representation authority must—

- (a) consider whether the interests of justice require that he be represented in respect of the varied charge or proceedings; and
- (b) withdraw the representation order if the interests of justice do not so require.

(2) The representation authority must consider whether to withdraw the representation order in any of the following circumstances—

- (a) where the individual declines to accept the order in the terms on which it is granted;
- (b) otherwise at the request of the individual; or
- (c) where the representative named in the representation order declines to continue to represent the individual.

Transitional provisions

6. An application for a representation order which is received before 2nd October 2006 is to be dealt with as if these Regulations had not been made.

Consequential amendments

7. In section 8A(5) of the Magistrates’ Courts Act 1980(2) (power to make rulings at pre-trial hearing)—

- (a) in the opening words, omit “, the court must”;
- (b) in paragraph (a), at the beginning insert “the court must”; and
- (c) in paragraph (b), after “does,” insert “the Legal Services Commission must”.

8.—(1) Section 50 of the Crime and Disorder Act 1998(3) (early administrative hearings) is amended as follows.

(2) For subsection (2) substitute—

(2) 1980 c.43. Section 8A was inserted by Schedule 3 to the Courts Act 2003 (c.39).

(3) 1998 c.37. Section 50(2) was amended by paragraphs 53 and 54 of Schedule 4 to the Access to Justice Act 1999.

“(2) At a hearing conducted by a single justice under this section the accused shall be asked whether he wishes to be granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service.

(2A) Where the accused wishes to be granted such a right, the Legal Services Commission shall decide whether or not to grant him that right.”

(3) After subsection (4) insert—

“(4A) A hearing conducted by a single justice under this section may be—

- (a) adjourned to enable the decision mentioned in subsection (2A) above to be taken, and
- (b) subsequently resumed by a single justice.”

9. In the Access to Justice Act 1999, in Schedule 4 (amendments consequential on Part 1), paragraph 54 is repealed.

10. In the Schedule to the Justices’ Clerks Rules 2005(4), omit paragraph 13.

Date 11 September 2006

Vera Baird
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations empower the Legal Services Commission (“the Commission”), instead of the court, to grant a right to publicly funded representation in criminal proceedings in magistrates’ courts where it does not already have that power (regulation 3). They take effect from 2nd October 2006, when the relevant amendments to the Access to Justice Act 1999 made by the Criminal Defence Service Act 2006 come into force.

Where a representation order is granted, the order extends to the Crown Court if the proceedings continue there (regulation 4).

The Regulations contain provisions about the withdrawal of representation orders similar to those in the Criminal Defence Service (General) (No. 2) Regulations 2001([S.I. 2001/1437](#)) (regulation 5).

The Regulations also make amendments to legislation consequential on the transfer of responsibility for granting representation orders from the court to the Commission (regulations 7 to 10).

A regulatory impact assessment has been prepared for instruments relating to the Criminal Defence Service Act, which is available from Criminal Legal Aid Strategy Division, Department for Constitutional Affairs, 54 Victoria Street, London SW1E 6QW and can also be found at <http://www.dca.gov.uk/risk/crime-defence-act-ria.pdf>.