
STATUTORY INSTRUMENTS

1989 No. 344

**The Legal Aid in Criminal and Care
Proceedings (General) Regulations 1989**

PART III

STATEMENT OF MEANS AND PAYMENT OF CONTRIBUTIONS

Statement of means

23.—(1) A statement of means submitted by an applicant or an appropriate contributor shall be in Form 5.

(2) Subject to paragraphs (3) and (4), where an applicant does not submit a statement of means when he applies for legal aid, the proper officer to whom, or to whose court he is making the application, shall require him so to do.

(3) Where an applicant is under 16, the proper officer may require either the applicant or an appropriate contributor, or both, to submit a statement of means in accordance with this regulation.

(4) A statement of means shall be required unless—

- (a) it appears to the court or the proper officer that, by reason of his physical or mental condition, the applicant is for the time being incapable of furnishing such a statement; or
- (b) the applicant has already submitted such a statement in connection with a previous application in respect of the same case and his financial circumstances have not changed.

(5) Nothing in paragraph (4)(a) shall prevent the court or the proper officer from requiring an applicant to furnish a statement of means after a legal aid order has been made where it appears that he is no longer incapable of furnishing such a statement.

Provision of information

24.—(1) At any time after the submission of a statement of means, the court or the proper officer may require the applicant, the legally assisted person or the appropriate contributor to provide evidence of any information given in a statement of means or of any change in his financial circumstances together with such additional information as the court or the proper officer may require.

(2) Where the applicant, the legally assisted person or the appropriate contributor fails to provide any evidence or information required under paragraph (1)—

- (a) his disposable income and disposable capital shall be deemed to exceed the limits below which no contribution is payable by virtue of Schedule 4; and
- (b) the contribution payable by him shall be such an amount as the court or the proper officer of the court may determine or redetermine.

Determination of contributions

25.—(1) The court or the proper officer shall, when making a legal aid order, determine the amount of any contribution payable by the applicant, the legally assisted person or the appropriate contributor in accordance with regulation 26.

(2) Where the applicant or the legally assisted person has paid or is liable to pay a contribution under section 9(6) of the Act in respect of advice and assistance given in relation to the same proceedings, any contribution which he or an appropriate contributor is liable to make under section 23(1) of the Act in respect of the costs of representation shall be reduced by the total amount of any contribution paid or liable to be paid under section 9(6).

Assessment of resources and method of determining contributions

26.—(1) Representation shall not be granted to a person for any purpose unless it appears that his financial resources are such that he requires assistance in meeting the costs which he may incur for that purpose.

(2) The court or the proper officer shall—

- (a) consider the statement of means submitted by the applicant or the appropriate contributor and any other relevant information; and
- (b) subject to paragraph (3), determine his disposable income and disposable capital in accordance with Schedule 3.

(3) The court or the proper officer shall not make a determination under paragraph (2)(b) where—

- (a) the applicant,
- (b) the appropriate contributor, or
- (c) the spouse of the applicant or appropriate contributor, is in receipt of income support or family credit and this paragraph shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage.

(4) Subject to paragraph (3), the applicant or the appropriate contributor shall pay a contribution in accordance with the provisions of Schedule 4.

Contribution orders

27.—(1) The court or the proper officer of the court shall make a contribution order, in Form 6, in respect of any contribution determined under regulation 26 above and shall endorse the legal aid order accordingly.

(2) A copy of the contribution order shall be sent to the person ordered to make the contribution, to the legally assisted person's solicitor or counsel (where counsel only is assigned) and to the collecting court.

Earlier contribution orders

28. On making a legal aid order in respect of proceedings in the Crown Court, the Court of Appeal, the Courts-Martial Appeal Court or the House of Lords, the court or the proper officer of the court shall not—

- (a) determine disposable income or disposable capital; or
- (b) make a contribution order,

where a contribution order has previously been made in connection with a legal aid order giving legal aid to the person in question in respect of proceedings in the same case in a lower court.

Payment of contributions

29.—(1) Any contribution which is to be paid out of disposable income shall be payable by weekly (or, at the discretion of the court or the proper officer of the court, by fortnightly or monthly instalments) within a period not exceeding the contribution period, and the first such instalment shall fall due 7 days from the making of the legal aid order or of the contribution order, whichever is the later.

(2) Any contribution which is to be paid out of disposable capital shall be paid immediately if the sum is readily available or, if it is not, at such time as the court or the proper officer of the court considers to be reasonable in all the circumstances.

(3) Where a contribution out of disposable capital is to be paid immediately, the legal aid order shall not take effect until such payment is made and the court or the proper officer of the court shall give notice of this fact in Form 7 to—

- (a) the applicant and the appropriate contributor, and
- (b) the solicitor assigned or, where counsel only is assigned, counsel.

Method of payment of contributions

30.—(1) Subject to paragraph (2), payment of contributions shall be made to the proper officer of the collecting court.

(2) Where a legal aid order is not to take effect until a contribution out of disposable capital is paid, such payment shall be made to the proper officer of the court making the legal aid order unless that court otherwise directs.

Change in financial circumstances

31. The legally assisted person or the appropriate contributor shall inform the court or the proper officer of the court of any change in his financial circumstances which has occurred since the submission of his statement of means and which he has reason to believe—

- (a) might make him liable to pay a contribution where such a contribution is not already payable; or
- (b) might affect the terms of any contribution order made in connection with a legal aid order.

Determination where no contribution previously payable

32.—(1) The court or the proper officer of the court shall determine the amount of any contribution payable by a legally assisted person or an appropriate contributor who is not already liable to make such a contribution where—

- (a) further information has become available as to the amount of disposable income and disposable capital available at the time when the legal aid order was made; or
- (b) the circumstances upon which the disposable income or disposable capital were determined at the time the legal aid order was made have altered within the contribution period;

and it appears likely that, were such a determination to be made, the legally assisted person or the appropriate contributor would be liable to make a contribution.

(2) Regulation 26 shall apply where a contribution is determined under paragraph (1) as it applies where a contribution is determined on the making of a legal aid order.

Redetermination of contribution

33. Except where it appears unlikely that any significant change in liability to make a contribution would result, 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—

- (a) further information has become available as to the amounts of disposable income and disposable capital available at the time when the contribution order was made; or
- (b) the circumstances upon which the disposable income or disposable capital were determined at the time when the contribution order was made have altered within the contribution period so that—
 - (i) his disposable income may have increased by an amount greater than £750 a year or decreased by an amount greater than £300 a year; or
 - (ii) his disposable capital may have increased by an amount greater than £750 a year;
 and shall vary or revoke the contribution order accordingly.

Effect of error or mistake

34. Where it appears to the court or the proper officer that there has been some error or mistake in the determination of the legally assisted person's or the appropriate contributor's disposable income, disposable capital or contribution and that it would be just and equitable to correct the error or mistake, the court or the proper officer may vary the contribution order accordingly, may revoke it or may make a contribution order.

Variation and revocation of contribution orders

35.—(1) At the conclusion of the relevant proceedings the court in which those proceedings are concluded may, if it thinks fit,—

- (a) remit any sum due under a contribution order which falls to be paid after the conclusion of those proceedings; or
- (b) remit or order the repayment of any sum due or paid under a contribution order where the legally assisted person has been acquitted,

and, in this regulation, “relevant proceedings” means the proceedings for the purposes of which legal aid was granted under the legal aid order in connection with which the contribution order was made or, where those proceedings are proceedings before a magistrates' court which result in the legally assisted person being committed to the Crown Court for trial or sentence or in his case being remitted to a juvenile court, the relevant proceedings include the proceedings before the Crown Court or that juvenile court.

(2) Where the legal aid order in connection with which a contribution order was made is revoked, paragraph (1) shall apply as if the relevant proceedings had been concluded.

- (3) Where a legally assisted person—
 - (a) successfully appeals against his conviction; or
 - (b) is respondent to an appeal which is unsuccessful,

the court hearing the appeal may remit or order the repayment of any sum due or paid under a contribution order.

(4) Where a contribution order is revoked, or varied to an amount which is less than that which has already been paid, the court or the proper officer of the court shall order the repayment of any sum paid or overpaid as the case may be.

- (5) Where—

- (a) a contribution order is varied to an amount greater than that which was previously payable; or
- (b) a contribution order is made after a determination under regulation 32;

and any payment is to be made out of disposable income, the court or the proper officer may, for the purpose of such payment, extend the period provided in regulation 29 within which such payment is to be made.

(6) An order varying or revoking a contribution order shall be in Form 8 and a copy of it shall be sent to the person ordered to make the contribution, to the legally assisted person's solicitor (or, where counsel only is assigned, to counsel) and to the proper officer of the collecting court.

Refusal to pay contribution

36.—(1) Where any sums which are due under a contribution order before the conclusion of the proceedings have not been paid by the legally assisted person, the court or the proper officer of that court may—

- (a) serve notice on the legally assisted person requiring him to comply with the contribution order and pay any sums due under it within 7 days of receiving such notice; and
- (b) if he does not do so, serve notice on him inviting him to make representations as to why he cannot comply with the contribution order.

(2) A notice given under paragraph (1)(a) shall be in Form 9 and a notice given under paragraph (1)(b) in Form 10 and copies of any notices so given shall be sent to the legally assisted person and to his solicitor or, where counsel only is assigned, to counsel.

(3) The court shall consider any representations made under paragraph (1)(b) and, if satisfied that the legally assisted person—

- (a) was able to pay the relevant contribution when it was due; and
- (b) is able to pay the whole or part of it but has failed or refused to do so,

may revoke the grant of representation.

(4) The revocation of the grant of representation under paragraph (3) shall not affect the right of any legal representative previously assigned to the legally assisted person to remuneration for work done before the date of the revocation.

Termination of contribution period

37.—(1) Where the contribution period has not ended and—

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

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

(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 the remission or sentence.

(3) Without prejudice to regulation 31, the legally assisted person or the appropriate contributor shall inform the collecting court of the date on which receipt of income-related benefits commenced.

(4) Paragraph (1)(a) shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage.

Disposal of sums received from legally assisted persons after conviction

38.—(1) Where a legally assisted person or an appropriate contributor to whom this regulation applies has been ordered to make a contribution, any amounts falling due under the contribution order after the conclusion of the relevant proceedings shall, unless remitted or specifically appropriated by the person paying the money to payment of the contribution, be applied (when paid) first, in accordance with the provisions of section 139 of the Magistrates' Court Act 1980⁽¹⁾ and any sum paid in addition to the sums referred to in paragraph (2) below shall be paid to the Lord Chancellor in accordance with paragraph 4(2) of Schedule 3 to the Act.

(2) This regulation applies to a legally assisted person who is ordered to pay any sum adjudged to be paid on conviction and to an appropriate contributor who is ordered to pay a fine, compensation or costs under the provisions of section 55 of the Children and Young Persons Act 1933⁽²⁾ or section 3 of the Children and Young Person Act 1969⁽³⁾.

Repayment of contributions

39. On receiving notification of the amount of the costs of representation determined by the appropriate authority under the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989⁽⁴⁾, the collecting court or the proper officer of that court shall, in accordance with section 23(7) of the Act, repay to the legally assisted person or the appropriate contributor, as the case may be, the amount, if any, by which any contribution paid exceeds those costs.

(1) 1980 c. 43.

(2) 1933 c. 12; section 55 was amended by the Criminal Justice Act 1982 (c. 48), section 26.

(3) 1969 c. 54; section 3 was amended by Courts Act 1971 (c. 23), section 56, Schedule 8 paragraph 59(1), Schedule 9 Part I, Schedule 11 Part IV, by the Criminal Law Act 1977 (c. 45), sections 58(3), 65(5), Schedule 13, by the Criminal Justice Act 1982 (c. 48), section 27, by the Prosecution of Offences Act 1985 (c. 23), section 27 and by S.I.1982/1109, rule 6(2), Schedule 3 Part II paragraph 6.

(4) S.I. 1989/343.