
STATUTORY INSTRUMENTS

1989 No. 344

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

PART V

LEGAL REPRESENTATION

Nature of representation

44.—(1) Subject to the following paragraphs of this regulation, a grant of representation shall provide for the services of a solicitor and counsel.

(2) A legal aid order granting representation for the purpose of such part of any proceedings before a magistrates' court as relates to the giving of bail shall not include representation by counsel.

(3) A legal aid order granting representation for the purposes of proceedings before a magistrates' court shall not include representation by counsel except—

- (a) in the case of any indictable offence, where the court is of the opinion that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable; and
- (b) in the case of proceedings under section 1 of the Children and Young Persons Act 1969⁽¹⁾, where it is alleged that the condition set out in subsection (2)(f) of that section is satisfied in consequence of an indictable offence and the court is of such opinion as is mentioned in sub-paragraph (a) above.

(4) Where a court grants representation for the purposes of an appeal to the Court of Appeal, the court may order that representation shall be by counsel only.

(5) Where the Crown Court grants representation for the purposes of—

- (a) an appeal to that court;
- (b) proceedings in which a person is committed to or appears before that court for trial or sentence or appears or is brought before the Crown Court to be dealt with;

the court may, in cases of urgency where it appears to the court that there is no time to instruct a solicitor, order that representation shall be by counsel only.

(6) Where the Crown Court or a magistrates' court grants representation for the purposes specified in paragraph (5), the court may, if the proceedings are proceedings in which solicitors have a right of audience, order that representation shall be by a solicitor only.

(7) Where in proceedings in a magistrates' court representation or advice is given before a legal aid order is made, that representation or advice shall be deemed to be representation or advice given under the order if—

⁽¹⁾ 1969 c. 54; section 1 was amended by the Children Act 1975 (c. 72), section 108, Schedule 3 paragraph 67, by the Education Act 1981 (c. 60), section 21, Schedule 3 paragraph 9, by the Mental Health Act 1983 (c. 20), section 148, Schedule 4 paragraph 26(a)(b) and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2 paragraph 10.

- (a) the interests of justice required that the representation or advice be provided as a matter of urgency;
- (b) there was no undue delay in making an application for legal aid; and
- (c) the representation or advice was given by the solicitor who was subsequently assigned under the legal aid order.

Assignment of solicitor and selection of counsel

45.—(1) Subject to regulations 46 and 49, any person who is granted representation entitling him to the services of a solicitor, may select any solicitor who is willing to act and such solicitor shall be assigned to him.

(2) Subject to regulations 46 and 49, where a legal aid order is made providing for the services of solicitor and counsel, the solicitor may instruct any counsel who is willing to act.

Assignment of solicitor or counsel for the Court of Appeal or the House of Lords

46.—(1) In the case of proceedings in the Court of Appeal or the House of Lords, counsel may be assigned by the court, a judge of the court or the proper officer making or amending the legal aid order.

(2) In assigning counsel or a solicitor to a legally assisted person in respect of an appeal to the Court of Appeal or the House of Lords, the court, a judge of the court or the proper officer shall have regard, as far as is reasonably practicable, to the wishes of the legally assisted person, the identity of the solicitor or counsel, if any, who represented him in any earlier proceedings and the nature of the appeal.

Assignment of counsel only

47.—(1) Where a legal aid order granting representation for the purposes of proceedings in the Crown Court is made or amended so as to provide for representation by counsel only, counsel shall be assigned by the court or proper officer making or amending the legal aid order.

(2) Where a legal aid order granting representation for the purposes of proceedings in the Court of Appeal or the Courts-Martial Appeal Court is made or amended so as to provide for representation by counsel only, counsel shall be assigned by the court, a judge of the court or the proper officer.

Assignment of Queen's Counsel and two counsel

48.—(1) A legal aid order may provide for the services of more than one counsel only in the cases specified and in the manner prescribed by the following paragraphs of this regulation.

(2) The cases specified for the purposes of this regulation are trials in the Crown Court or proceedings in the Court of Appeal or the House of Lords—

- (a) on a charge of murder, or
- (b) where it appears to the court or the person making the legal aid order that the case is one of exceptional difficulty, gravity or complexity and that the interests of justice require that the legally assisted person should have the services of two counsel.

(3) Subject to paragraphs (4) and (5), a High Court judge or a circuit judge, in the case of proceedings in the Crown Court, or a judge of the Court of Appeal or the Registrar, in the case of proceedings in the Court of Appeal, may make a legal aid order to provide for the services of two counsel in the following terms—

- (a) a Queen's Counsel with a junior counsel;
- (b) a Queen's Counsel with a noting junior counsel;

- (c) two junior counsel; or
- (d) a junior counsel with a noting junior counsel,

but in considering which order to make may have regard to the choice by the legally assisted person of any one particular counsel.

(4) A magistrates' court shall not make an order in the manner prescribed by paragraph (3)(b), (c) or (d) and may only make an order in the manner prescribed by paragraph (3)(a) on a charge of murder.

(5) Before making an order under paragraph (3), the judge or the Registrar shall consider whether the services of a Queen's Counsel alone should be provided and, if so, shall so order.

(6) In a case specified in paragraph (2), a legal aid order which provides—

- (a) for the services of one counsel, may be amended to provide for the services of two counsel in any manner prescribed by paragraph (3);
- (b) for the services of two counsel, may be amended to provide for the services of the same number of counsel but in another manner prescribed by paragraph (3).

Assignment of one solicitor or counsel to more than one legally assisted person

49. A solicitor or counsel may be assigned to two or more legally assisted persons whose cases are to be heard together, unless the interests of justice require that such persons be separately represented.

Amendment of legal aid orders

50.—(1) A court having power to make a legal aid order may, on application, amend any such order by substituting for any legal representative or representatives previously assigned under the order any legal representative or representatives whom the court could have assigned if it had then been making the legal aid order.

(2) A court having power to make a legal aid order may withdraw any such order if the only legal representative or all the legal representatives for the time being assigned under the order withdraws or withdraw from the case and it appears to the court that, because of the legally assisted person's conduct, it is not desirable to amend the order under paragraph (1) above.

(3) An order amending a legal aid order shall be in Form 15 and a copy of it shall be sent to—

- (a) the legally assisted person;
- (b) the solicitor assigned by the legal aid order or to counsel (where counsel only is assigned) and to any solicitor and counsel assigned by the amended legal aid order; and
- (c) where the legal aid order is amended by an area committee, to the proper officer of the court to which the application for amendment was made.

(4) Where a new solicitor or counsel (where counsel only was assigned) is assigned by an order amending a legal aid order, the solicitor or counsel originally assigned shall send all papers and other items in his possession relating to the proceedings to the new solicitor or counsel.

Applications for amendment of legal aid orders etc.

51.—(1) An application for—

- (a) representation by counsel in any proceedings of a kind specified in regulation 44(3); or
- (b) the amendment or withdrawal of a legal aid order under regulation 50(1) or (2),

shall be made to the proper officer stating the grounds on which the application is made and the proper officer may grant or refuse the application.

(2) Where an application under paragraph (1) is refused, the applicant may renew his application both to the court and (except where paragraph (6) applies) to an area committee, and the proper officer shall notify the applicant of the circumstances in which an application may be renewed.

(3) Where an application is renewed to the court, the court may grant or refuse the application or refer it to the proper officer.

(4) The proper officer to whom an application is referred under paragraph (3), may—

- (a) grant the application; or
- (b) where the proper officer is a justices' clerk, refer it either back to the court or to a justice of the peace; or
- (c) where the proper officer is not a justices' clerk, refer it to a judge of the court.

(5) The court, a judge of the court or a justice of the peace to whom an application is referred under paragraph (4) may grant or refuse the application.

(6) An application may be renewed under paragraph (2) to an area committee except where—

- (a) an application under the same sub-paragraph of paragraph (1) in the same proceedings has previously been refused by an area committee or by the court; or
- (b) the application was made—
 - (i) in the case of proceedings in the Crown Court, more than 14 days after the committal for trial or sentence or the date of giving of notice of appeal; or
 - (ii) in the case of proceedings in a magistrates' court, less than 14 days before the date fixed for the trial of an information or the inquiry into an offence as examining justices, where such a date had been fixed at the time the application was made; or
- (c) the application is an application in respect of proceedings in the Court of Appeal, the Courts-Martial Appeal Court or the House of Lords.

Renewal to area committee of application for amendment of legal aid order etc.

52.—(1) Where an application under regulation 51 is renewed to an area committee, the legally assisted person shall send to the Area Director the following documents—

- (a) a copy of the legal aid order and of the notice of refusal;
- (b) any papers presented to the proper officer by the legally assisted person or his solicitor in support of the application; and
- (c) any other relevant documents or information.

(2) The proper officer and the legally assisted person or his solicitor shall supply such further particulars, information and documents as the area committee may require.

Consideration by area committee

53.—(1) The area committee shall consider the application and any further particulars, information or documents submitted to it under regulation 52 and any other relevant information and shall grant or refuse the application and, where necessary, amend or revoke the legal aid order accordingly.

(2) The area committee shall notify the proper officer of the court and the legally assisted person and his solicitor of its decision.