

1979 No. 263

LEGAL AID AND ADVICE, ENGLAND

The Legal Aid (General) (Amendment) Regulations 1979

<i>Made</i> - - - - -	<i>7th March 1979</i>
<i>Laid before Parliament</i>	<i>15th March 1979</i>
<i>Coming into Operation</i>	<i>6th April 1979</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 20 of the Legal Aid Act 1974(a), hereby makes the following Regulations:—

1.—(1) These Regulations may be cited as the Legal Aid (General) (Amendment) Regulations 1979 and shall come into operation on 6th April 1979.

(2) In these Regulations a regulation referred to by number means a regulation so numbered in the Legal Aid (General) Regulations 1971(b).

2. In regulation 1(3)—

(a) for the definition of “authorised summary proceedings” there shall be substituted the following:—

““authorised summary proceedings” means proceedings in a magistrates’ court for which legal aid may be given, as mentioned in Part 1 of Schedule 1 to the Legal Aid Act 1974”;

(b) after the definition of “the Commission” there shall be inserted the following:—

““EEC lawyer” has the same meaning as in the European Communities (Services of Lawyers) Order 1978(c)”;

(c) at the end of the definition of “secretary” there shall be inserted the words

“and includes any person duly authorised to act on the secretary’s behalf to the extent that he is so authorised”; and

(d) after the definition of “secretary” there shall be inserted the following:—

““substantive certificate” means a certificate issued to replace an emergency certificate.”

3. In regulation 1(5)(iii), after the word “regulation” there shall be inserted “11(13)(a)”.

4. In regulation 5, the following paragraph shall be substituted for paragraph (1):—

“(1) An application for a certificate shall be considered by the secretary,

(a) 1974 c. 4.

(b) S.I. 1971/62. relevant amending instruments are S.I. 1971/1877; 1972/1749; 1977/1293.

(c) S.I. 1978/1910.

who, after having regard to the determination made by the Commission of the applicant's disposable income and disposable capital, and the maximum contribution payable by him or the terms of any undertaking lodged by him under Regulation 3(4) may (save in the circumstances mentioned in paragraph (11)) approve the application on behalf of the appropriate committee; and in every case in which the secretary does not approve the application he shall refer the application to the appropriate committee for their consideration and approval or refusal."

5. In regulation 6, the following paragraph shall be inserted after paragraph 2:—

"(2A) A certificate shall not authorise representation by an EEC lawyer unless, and to the extent that, it expressly provides for such representation."

6. In regulation 9, the following sub-paragraph shall be inserted after sub-paragraph (1)(b)(v):—

"(vi) representation by an EEC lawyer; or"

7. In regulation 11, for paragraphs (8) to (11) there shall be substituted the following:—

"(8) An emergency certificate shall remain in force until—

- (a) it is discharged or revoked in accordance with paragraphs (13) or (14) or regulation 12; or
- (b) a substantive certificate is issued to the same person and in respect of the same proceedings as the emergency certificate; or
- (c) the expiry of whatever period may be allowed for the duration of the emergency certificate, including any extension of that period granted under the following paragraph:

Provided that where an emergency certificate ceases to remain in force under sub-paragraph (b) it shall merge in the substantive certificate.

(9) The secretary, whose decision shall be final, may extend the period allowed for the duration of an emergency certificate where—

- (a) the applicant is offered a substantive certificate in respect of the proceedings to which the emergency certificate relates and either fails to signify his acceptance or appeals against the terms of the offer; or
- (b) the appropriate committee refuse the application for a substantive certificate in respect of proceedings to which the emergency certificate relates and either notice of appeal has been given to the appropriate area committee within the time limits laid down by regulation 10(3) or the time limit for doing so has not expired; or
- (c) there are exceptional circumstances:

Provided that where an emergency certificate is extended under sub-paragraphs (a) or (b), no further work may be done or steps taken under the certificate.

(10) Upon an emergency certificate being extended or amended, the appropriate committee shall forthwith issue a notice to that effect and shall send the notice and one copy thereof to the solicitor acting for the person to whom the emergency certificate was issued and shall send a further copy to that person; and it shall be the duty of the solicitor to notify forthwith any counsel whom he may have instructed that the certificate has been extended or amended, as the case may be.

(11) Where a substantive certificate is issued it shall take effect from the date upon which the emergency certificate which it replaces was issued and shall state—

- (a) the number and date of issue of the emergency certificate; and
- (b) that the emergency certificate has been continuously in force from that date until the date of the substantive certificate.”

and after paragraph (12) there shall be inserted the following:—

“(13) The appropriate committee shall revoke an emergency certificate where the Commission determine that the person to whom it was issued—

- (a) has disposable income of an amount which makes him ineligible for legal aid; or
- (b) having disposable income of an amount which makes him eligible for legal aid, has disposable capital of an amount which renders him liable to be refused legal aid, and it appears to the appropriate committee that the probable cost to him without legal aid of the proceedings in respect of which the emergency certificate was issued would not exceed the maximum contribution payable by him.

(14) The appropriate committee may, subject to the following paragraph, revoke or discharge an emergency certificate if they are satisfied that the assisted person has failed to attend for an interview or provide information or documents when so required under these Regulations, or has failed to accept an offer of a substantive certificate.

(15) No emergency certificate shall be revoked under paragraph (14) above until notice has been served on the assisted person and his solicitor that the appropriate committee may do so and that the assisted person may show cause why the certificate should not be revoked.

(16) Where notice is served under paragraph (15) above no further work may be done or steps taken under the certificate unless authorised by the appropriate committee.

8. In regulation 12—

- (a) in paragraph (1) for “regulation 11(8) or (9)” there shall be substituted “regulation 11(13) to (16)”; and
- (b) in paragraph (3) there shall be inserted after the word “certificate” the words “(other than an emergency certificate)”.

9. In regulation 13, in the proviso to paragraph (2) for “regulation 11(8) or (9)” there shall be substituted “regulation 11(13) or (14)”.

Dated 7th March 1979.

Elwyn-Jones, C.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations further amend the Legal Aid (General) Regulations 1971 so as to:—

- (i) empower local and area secretaries to approve applications for legal aid in all cases;
- (ii) provide that a certificate shall not extend to representation by an EEC lawyer unless it expressly provides for it; and
- (iii) make further provisions for the merging, discharge and revocation of emergency certificates.

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