

1988 No. 1938

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Legal Aid (General) (Amendment) (No. 2)
Regulations 1988**

<i>Made - - - -</i>	<i>7th November 1988</i>
<i>Laid before Parliament</i>	<i>9th November 1988</i>
<i>Coming into force</i>	<i>1st December 1988</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 20 and 25 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) (No. 2) Regulations 1988, and shall come into force on 1st December 1988.

(2) In these Regulations, a regulation referred to by a number means the regulation so numbered in the Legal Aid (General) Regulations 1980(b).

2. For regulation 91 there shall be substituted the following new regulation—

“Solicitor to pay moneys recovered to the Law Society

91.—(1) An assisted person’s solicitor shall forthwith—

- (a) inform the appropriate area committee of any property recovered or preserved for the assisted person and send to the secretary a copy of the order or agreement by virtue of which the property was recovered or preserved; and
- (b) subject to paragraphs (2) and (4), pay all moneys received by him under the terms of the order or agreement made in the assisted person’s favour to the Law Society.

(2) Where the appropriate area committee considers that the rights of the fund will thereby be safeguarded, it may direct the assisted person’s solicitor to—

- (a) pay to the Law Society under paragraph (1)(b) only such sums as, in the opinion of the appropriate area committee, should be retained by the Law Society in order to safeguard the rights of the fund under any provisions of the Act and these Regulations; and
- (b) pay any other moneys to the assisted person.

(3) Where in proceedings under any of the enactments referred to in regulation 97A(1), the property recovered or preserved for the assisted person includes—

- (a) property which by order of the court or under the terms of any agreement reached is to be used as a home for the assisted person or his dependants; or

(a) 1974 c.4; section 20 was amended by the Legal Aid Act 1979 (c.26), section 4(2), by the Civil Jurisdiction and Judgments Act 1982 (c.27), section 40(1), by the Legal Aid Act 1982 (c.44), sections 1, 16, and by the Legal Aid Act 1988 (c.34), Schedule 8; section 25 is an interpretation provision and is cited because of the meaning assigned to the words “prescribed” and “regulations”.

(b) S.I. 1980/1894; relevant amending instruments are S.I. 1981/173, 1982/1892, 1983/1483 and 1988/460.

- (b) money which by order of the court or under the terms of any agreement reached is to be used to purchase a home for the assisted person or his dependants,

the assisted person's solicitor shall forthwith so inform the appropriate area committee.

(4) If the appropriate area committee considers and directs that the provisions of regulation 97A apply to any sum of money, paragraph (1)(b) shall not apply to it and the assisted person's solicitor shall release it only in accordance with the provisions of that regulation.”.

3. For regulation 97 there shall be substituted the following new regulation—

“Vesting and enforcement of charges

97.—(1) Any charge on property recovered or preserved for an assisted person arising under section 9(6) of the Act or created by virtue of regulation 97A, 97B or 97C shall vest in the Law Society.

(2) The Law Society may enforce any such charge in any manner which would be available to a chargee in respect of a charge given inter partes, but the Law Society shall not agree to the release or postponement of the enforcement of any such charge except where regulation 97A, 97B or 97C applies and then only in accordance with the provisions of that regulation.

(3) Any such charge affecting land shall, in the case of unregistered land, be a Class B land charge within the meaning of section 2 of the Land Charges Act 1972 (a) and, in the case of registered land, be a registrable substantive charge.

(4) Without prejudice to the provisions of the Land Charges Act 1925 (b) and the Land Charges Act 1972, all conveyances and acts done to defeat, or operating to defeat, any such charge shall, except in the case of a bona fide purchaser for value without notice, be void as against the Law Society.

(5) Nothing in this regulation or in regulation 96 shall affect the inalienability by statute of any benefit, sum or payment.”.

4. After regulation 97 there shall be inserted the following new regulations—

“Postponement of enforcement of charges over money

97A.—(1) This regulation applies where in proceedings under—

- (a) the Married Women's Property Act 1882 (c), or
(b) the Matrimonial Causes Act 1973 (d), or
(c) the Inheritance (Provision for Family and Dependants) Act 1975 (e),

there is recovered or preserved for the assisted person a sum of money which by order of the court or under the terms of any agreement reached is to be used for the purpose of purchasing a home for himself or his dependants.

(2) Where the assisted person—

- (a) wishes to purchase a home in accordance with the order or agreement; and
(b) agrees in writing on a form approved by the Law Society to comply with the conditions set out in paragraph (3),

the Law Society may, if the appropriate area committee is satisfied that the property to be purchased will provide adequate security for the sum referred to in paragraph (3), agree to defer enforcing any charge over that sum.

(a) 1972 c.61; section 2 was amended by the Finance Act 1975 (c.7), section 52, Schedule 12, paragraphs 2, 18(1)–(3), by the Local Land Charges Act 1975 (c.76), sections 17(1)(b), 19, Schedule 2, by the Finance Act 1977 (c.36), section 59, Schedule 9 Part V, by the Matrimonial Homes Act 1983 (c.19), Schedule 2 and by the Capital Transfer Act 1984 (c.51), Schedule 8, paragraph 3(1).

(b) 1925 c.22.

(c) 1882 c.75.

(d) 1973 c.18.

(e) 1975 c.63.

(3) The conditions referred to in paragraph (2) are that—

- (a) the property to be purchased shall be subject to a charge executed in favour of the Law Society and registered in accordance with regulation 97(3); and
- (b) from the date on which the charge is first registered, simple interest shall accrue for the benefit of the Law Society at the rate of 12% per annum (or such other rate as may from time to time be prescribed) on such sum as, but for the provisions of this regulation, the Law Society would have retained under regulation 93(b) in respect of its charge over the property to which this regulation applies.

(4) Where the Law Society has agreed to defer enforcement under paragraph (2), the assisted person's solicitor may release any money received by him under regulation 88 and which is the subject of the order or agreement, to the vendor or the vendor's representative on completion of the purchase of the property purchased in accordance with the order or agreement.

(5) Where—

- (a) the appropriate area committee has directed (under regulation 91(4)) that this regulation applies; and
- (b) no agreement under paragraph (2) above has been made,

the assisted person's solicitor may release any money received by him under regulation 88 and which is the subject of the order or agreement to another solicitor or to a person providing conveyancing services to whom section 22(1) of the Solicitors Act 1974^(a) does not apply, who has given an undertaking to, and on a form approved by, the Law Society that he will fulfil the obligations imposed by this regulation on the assisted person's solicitor.

(6) Where the assisted person's solicitor releases any money under paragraph (4) or (5), he shall so inform the secretary as soon as practicable and either—

- (a) provide the secretary with sufficient information to enable him to register a charge on the property purchased in accordance with the agreement or order; or
- (b) send to the secretary a copy of any undertaking given under paragraph (5).

(7) Subject to paragraph (8), where any sum of money retained by the assisted person's solicitor by virtue of this regulation has not been used for the purchase of a home after a period of one year from the date of the order or agreement under which it was recovered or preserved for the assisted person, the assisted person's solicitor shall pay that sum to the Law Society.

(8) The appropriate area committee may, if it thinks fit, direct that the period referred to in paragraph (7) be extended to a date specified in the direction.

Postponement of enforcement of charges over land

97B.—(1) This regulation applies where in proceedings under any of the enactments referred to in regulation 97A(1) there is recovered or preserved for the assisted person property which by order of the court, or under the terms of any agreement reached, is to be used as a home for the assisted person or his dependants.

(2) Where the appropriate area committee considers that the provisions of this regulation apply to any property, it shall so direct.

(3) Where the appropriate area committee has directed that this regulation applies to property and the assisted person—

- (a) wishes to use the property as a home for himself or his dependants; and
- (b) agrees in writing on a form approved by the Law Society to comply with the condition set out in paragraph (4),

the Law Society may, if the appropriate area committee is satisfied that the property will provide adequate security for the sum referred to in paragraph (4), agree to defer enforcing any charge over that property.

^(a) 1974 c.47; section 22 was amended by the Administration of Justice Act 1985 (c.61) section 6.

(4) The condition referred to in paragraph (3) is that from the date on which the charge is first registered, simple interest shall accrue for the benefit of the Law Society at the rate of 12% per annum (or such other rate as may from time to time be prescribed) on such sum as, but for the provisions of this regulation, the Law Society would have retained under regulation 93(b) in respect of the property to which this regulation applies.

(5) Where, in a case to which this regulation applies, the charge in favour of the Law Society has not yet been registered in accordance with regulation 97(3) and the assisted person—

- (a) wishes to purchase a different property in substitution for the property which is the subject of the order or agreement referred to in paragraph (1); and
- (b) agrees in writing on a form approved by the Law Society to comply with the conditions set out in paragraph (6),

the Law Society may, if the appropriate area committee is satisfied that the property to be purchased will provide adequate security for the sum referred to in paragraph (4), agree to defer enforcing any charge over that property.

(6) The conditions referred to in paragraph (5) are that—

- (a) the property to be purchased shall be subject to a charge executed in favour of the Law Society and registered in accordance with regulation 97(3); and
- (b) from the date on which the charge is first registered, simple interest shall accrue for the benefit of the Law Society at the rate referred to in paragraph (4) on the sum referred to in that paragraph.

Substitution of charged property

97C.—(1) This regulation applies where a charge has been registered in favour of the Law Society in pursuance of an agreement made by the Law Society under regulation 97A or 97B.

(2) Where, in a case to which this regulation applies—

- (a) the assisted person wishes to purchase a different property in substitution for that over which a charge already exists;
- (b) the assisted person agrees in writing on a form approved by the Law Society to comply with conditions set out in paragraph (3); and
- (c) the appropriate area committee is satisfied that the property to be purchased will provide adequate security for the sum referred to in regulation 97A(3)(b) or regulation 97B(4) as the case may be;

the Law Society may agree to release that charge.

(3) The conditions referred to in paragraphs (2) and (4) are that—

- (a) the property to be purchased shall be subject to a charge executed in favour of the Law Society and registered in accordance with regulation 97(3); and
- (b) simple interest shall continue to accrue for the benefit of the Law Society at the rate prescribed for the time being under regulation 97A(3)(b) on the sum referred to in that paragraph or in regulation 97B(4) as the case may be.

(4) Where, after a charge has been registered in favour of the Law Society in pursuance of an agreement made by the Law Society under this regulation—

- (a) the assisted person wishes to purchase a different property in substitution for the property over which that charge exists;
- (b) the assisted person agrees in writing on a form approved by the Law Society to comply with the conditions set out in paragraph (3) above; and
- (c) the secretary is satisfied that the property to be purchased will provide adequate security for the sum referred to in regulation 97A(3)(b), or regulation 97B(4), as the case may be;

the Law Society may agree to release that charge.

Payment of capital and interest and recovery of interest

97D.—(1) Where interest is payable by the assisted person pursuant to an agreement made by the Law Society under regulation 97A, 97B or 97C, such interest shall—

- (a) only be payable on charges registered after 1st December 1988; and
- (b) continue to accrue until the sum referred to in regulation 97A(3)(b) or regulation 97B(4), as the case may be, is paid;

and the Law Society shall not seek to recover the interest until such payment is made.

(2) The Law Society may take such steps as may be necessary to enforce, give effect to or terminate any agreement made under regulation 97A, 97B or 97C.

(3) Nothing in regulations 97A, 97B, 97C or 97D shall prevent the assisted person from making (whether or not at regular intervals) interim payments of interest or capital in respect of any sum referred to in regulation 97A(3)(b) or 97B(4), and any such payment of capital shall reduce such sums accordingly; but no interim payment shall be used to reduce any such sum while any interest on that sum remains outstanding.”.

Dated 7th November 1988

Mackay of Clashfern, C

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Aid (General) Regulations 1980 so as to provide for:

- (a) the release or postponement of the enforcement of the Law Society's charge under section 9(6) of the Legal Aid Act 1974 where, following matrimonial proceedings, either the charge arises on the assisted person's home, or the court makes a lump sum or similar order so that the assisted person can buy a home; and
- (b) interest to accrue where enforcement of the charge is postponed.