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STATUTORY INSTRUMENTS

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**1989 No. 339**

**The Civil Legal Aid (General) Regulations 1989**

**PART I**  
**GENERAL**

**Citation, commencement, revocations and transitional provisions**

1.—(1) These Regulations may be cited as the Civil Legal Aid (General) Regulations 1989 and shall come into force on 1st April 1989.

(2) The Regulations specified in Schedule 1 are hereby revoked.

(3) Where a review by an area committee under regulation 104, 105 or 106 relates to an assessment made before 1st June 1989, paragraphs (5) and (6) of regulation 105 shall not apply and the assisted person's solicitor or counsel may, within 21 days of the area committee's decision, appeal in writing to a committee appointed by the Board.

**Scope**

2. These Regulations apply for the purposes of the provision of civil legal aid under Part IV of the Legal Aid Act 1988.

**Interpretation**

3.—(1) In these Regulations, unless the context otherwise requires,—

“the Act” means the Legal Aid Act 1988;

“affidavit of costs and resources” means an affidavit which includes the matters specified in Schedule 2 and which is sworn by a person in support of his application for an order under section 18 of the Act;

“appropriate area committee” means the area committee in whose area an application for a certificate has been granted or refused and includes an area committee to whose area an application has been transferred under these Regulations;

“area committee” means an area committee appointed by the Board in accordance with regulation 4;

“Area Director” means an Area Director appointed by the Board in accordance with regulation 4 and includes any person duly authorised to act on his behalf;

“assessment officer” means a person authorised by the Secretary of State to assess the disposable income, disposable capital and maximum contribution of the person concerned;

“assisted person” means a person in respect of whom a certificate issued under these Regulations is in force and, for the purposes of Part XI only, includes a person in respect of whom a certificate has been, but is no longer, in force;

“authorised summary proceedings” means proceedings in a magistrates' court for which legal aid is available by virtue of Part I of Schedule 2 to the Act;

“certificate” means a legal aid certificate issued in accordance with these Regulations (or any regulations revoked by these Regulations) and includes an amendment to a certificate issued under Part VII and, unless the context otherwise requires, an emergency certificate;

“contribution” means the contribution payable under section 16(1) of the Act in respect of the costs of representation;

“court” includes

(a) in relation to proceedings tried or heard at first instance by a master or taxing master of the Supreme Court, a registrar of the Family Division of the High Court, a district registrar or the registrar of a county court, that master or registrar;

(b) in relation to proceedings on appeal to the Court of Appeal, the registrar of civil appeals;

“disposable capital” and “disposable income” mean the amounts of capital and income available for the making of a contribution after capital and income have been computed in accordance with the Civil Legal Aid (Assessment of Resources) Regulations 1989(1);

“EEC lawyer” has the same meaning as in the European Communities (Services of Lawyers) Order 1978(2);

“emergency certificate” means a certificate issued under Part III of these Regulations;

“fund” means the legal aid fund;

“legal aid” means representation under Part IV of the Act;

“legal aid area” has the meaning assigned by regulation 4(1);

“legal executive” means a fellow of the Institute of Legal Executives;

“master” in relation to an application for an order under section 18 of the Act in respect of proceedings in or on appeal from the Chancery or Queen’s Bench Division of the High Court, means a taxing master of the Supreme Court or a district registrar of the High Court; and in relation to such an application made in respect of proceedings in or on appeal from the Family Division of the High Court, means a registrar of the said Division or a district registrar of the High Court;

“matrimonial proceedings” means—

(a) any proceedings with respect to which rules may be made under section 50 of the Matrimonial Causes Act 1973(3); or

(b) any proceedings in a county court under section 17 of the Married Women’s Property Act 1882(4) or section 1 of or Schedule 1 to the Matrimonial Homes Act 1983(5); or

(c) any proceedings under the Domestic Violence and Matrimonial Proceedings Act 1976(6);

“maximum contribution” means the amount assessed by the assessment officer as the maximum amount which an assisted person may be liable to pay on account of his contribution;

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(1) S.I.1989/338.

(2) S.I. 1978/1910, amended by S.I. 1980/1964.

(3) 1973 c. 18; section 50 was amended by the Domicile and Matrimonial Proceedings Act 1973 (c. 45), section 6(2), by the Inheritance (Provision for Family and Dependents) Act 1975 (c. 63), section 26(2), Schedule, by the Children Act 1975 (c. 72), section 108, Schedule 3, paragraph 79, by the Administration of Justice Act 1977 (c. 38), Schedule 5 Part VI, by the Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22), section 89, Schedule 2, paragraph 40, by the Matrimonial Homes Act 1983 (c. 19), Schedule 2, by the County Courts Act 1984 (c. 28), section 148, Schedule 2 Part V paragraph 44, and by the Family Law Act 1986 (c. 55), sections 64, 68, Schedule 1, paragraph 15.

(4) 1882 c. 75; section 17 was amended by the Statute Law (Repeals) Act 1969 (c. 52), Schedule Part III and the Matrimonial and Family Proceedings Act 1984 (c. 42), section 43.

(5) 1983 c. 19; section 1 and Schedule 1 were amended by the Housing (Consequential Provisions) Act 1985 (c. 71), section 4, Schedule 2, paragraph 56; Schedule 1 was also amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 46, Schedule 3.

(6) 1976 c. 50.

“patient” means a person who, by reason of mental disorder within the meaning of the Mental Health Act 1983(7), is incapable of managing and administering his property and affairs;

“standard basis” and “indemnity basis”, in relation to the taxation of costs, have the meanings assigned by Order 62, rule 12 of the Rules of the Supreme Court 1965(8);

“substantive certificate” means a certificate issued to replace an emergency certificate which is still in force.

(2) Any reference in these Regulations to a regulation or Schedule by number means the regulation or Schedule so numbered in these Regulations.

(3) References in these Regulations to costs shall, unless the context otherwise requires, be construed as including references to fees, charges, disbursements, expenses and remuneration.

#### **Area committees, Area Directors and legal aid areas**

4.—(1) The Board shall, for the purposes of administering the Act, appoint—

- (a) area committees, and
- (b) Area Directors,

in respect of areas (in these Regulations referred to as “legal aid areas”) to be specified by the Board.

(2) Area committees and Area Directors so appointed shall exercise functions respectively delegated to them by the Board or conferred on them by these Regulations.

#### **Powers exercisable by courts**

5. Where the power to do any act or exercise any jurisdiction or discretion is conferred by any provision of these Regulations on a court, it may, unless it is exercisable only during the trial or hearing of the action, cause or matter, be exercised—

- (a) in respect of proceedings in a county court or the Family Division of the High Court, by the registrar;
- (b) in respect of proceedings in the Chancery or Queen’s Bench Division of the High Court, by a judge, master or district registrar;
- (c) in respect of proceedings in the Court of Appeal, by a single judge of that Court or by the registrar of civil appeals;
- (d) in respect of proceedings in the House of Lords, by the Clerk of the Parliaments;
- (e) by any person who, under any enactment or rules of court, is capable of exercising the jurisdiction of the court in relation to the proceedings in question.

#### **Powers exercisable by Area Directors**

6.—(1) Where an area committee is required or entitled to perform any function under these Regulations, that function may, subject to paragraph (2), be performed on behalf of that committee by the Area Director.

(2) Paragraph (1) shall not empower an Area Director to determine an appeal under regulation 39.

#### **Computation of time**

7.—(1) Where, under these Regulations, an act is required to be done within a specified period after or from a specified date, the period of time so fixed starts immediately after that date.

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(7) 1983 c. 20.

(8) S.I. 1965/1776; the relevant amending instrument is S.I. 1986/632.

(2) The period within which an act is required or authorised to be done under these Regulations may, if the Area Director thinks fit, be extended and any such period may be extended although the application for extension is not made until after the expiration of the period.

### **Service of notices**

**8.**—(1) Where by virtue of these Regulations any document is required to be served (whether the expression “serve” or the expression “send” or “send by post” or any other expression is used) the document may be served—

- (a) if the person to be served is acting in person, by delivering it to him personally or by delivering it at, or sending it by post to, his address for service or, if he has no address for service,—
  - (i) by delivering the document at his residence or by sending it by post to his last known residence, or
  - (ii) in the case of a proprietor of a business, by delivering the document at his place of business or by sending it by post to his last known place of business;
- (b) if the person to be served is acting by a solicitor—
  - (i) by delivering the document at, or by sending it by post to, the solicitor’s address for service, or
  - (ii) where the solicitor’s address for service includes a numbered box at a document exchange, by leaving the document at that document exchange or at a document exchange which transmits documents daily to that document exchange.

(2) Any document which is left at a document exchange in accordance with paragraph (1)(b)(ii), shall, unless the contrary is proved, be deemed to have been served on the second day after the day on which it is left.

### **Availability of documents to the court**

**9.** Any document sent to a court office or registry or filed or exhibited under the provisions of these Regulations may, on request, be made available for the use of the court at any stage of the proceedings.

## **PART II**

### **APPLICATIONS FOR CERTIFICATES**

#### **Applications to be made to Area Directors**

**10.** Any person who wishes to be granted legal aid for the purposes of proceedings may apply for a certificate—

- (a) if resident in the United Kingdom, to any Area Director, or
- (b) if resident elsewhere, to the Area Director of one of the legal aid areas nominated by the Board for this purpose.

#### **Form and lodgment of application**

**11.** Every application—

- (a) shall be made in writing on a form approved by the Board or in such other written form as the Area Director may accept; and

- (b) shall be lodged with the Area Director.

### **Contents of application**

**12.**—(1) Every application shall—

- (a) state the name of the solicitor selected by the applicant to act for him;
- (b) contain such information and be accompanied by such supporting documents (including any welfare report) as may be necessary to enable—
  - (i) the Area Director to determine the nature of the proceedings in respect of which legal aid is sought and whether it is reasonable that representation should be granted; and
  - (ii) the assessment officer to assess the disposable income, disposable capital and maximum contribution of the applicant.

(2) An applicant for legal aid in connection with authorised summary proceedings may, with a view to expediting the issue to him of a certificate, lodge with the Area Director (when he applies for a certificate or at any time before it is issued) an undertaking on a form approved by the Board to pay any contribution that may be assessed under the Civil Legal Aid (Assessment of Resources) Regulations 1989.

(3) An applicant shall, if required to do so for the purpose of providing additional material, supply such further information or documents as may be required or attend for an interview and, for this purpose, “applicant” includes a person to whom a certificate has been issued on a form of undertaking given under paragraph (2).

### **Applications by persons resident outside United Kingdom**

**13.**—(1) Subject to paragraph (2), where the applicant resides outside the United Kingdom and cannot be present in England or Wales while his application is considered, his application shall be

- (a) written in English or in French; and
- (b) except where the applicant is a member of Her Majesty’s armed forces, sworn—
  - (i) if the applicant resides within the Commonwealth or the Republic of Ireland, before any justice of the peace or magistrate or any person for the time being authorised by law in the place where he resides to administer an oath for any judicial or other legal purpose, or
  - (ii) if the applicant resides elsewhere, before a British consular officer or any other person for the time being authorised to exercise the functions of such an officer or having authority to administer an oath in that place; and
- (c) accompanied by a statement in writing, signed by some responsible person who has knowledge of the facts, certifying that part of the application which relates to the applicant’s disposable income and disposable capital.

(2) The requirements of paragraph (1) may be waived by the Area Director where compliance with them would cause serious difficulty, inconvenience or delay and the application otherwise satisfies the requirements of regulations 11 and 12.

### **Child Abduction and Custody Act 1985(9)**

**14.**—(1) A person whose application under the Hague Convention or the European Convention has been submitted to the Central Authority in England and Wales pursuant to section 3(2) or

section 14(2) of the Child Abduction and Custody Act 1985 and on whose behalf a solicitor in England and Wales has been instructed in connection with the application—

- (a) shall be eligible to receive legal aid whether or not his financial resources are such as to make him eligible to receive it under regulations made under the Legal Aid Act 1988;
- (b) shall not be refused legal aid by virtue of subsections (2) and (3) of section 15 of the said Act of 1988; and
- (c) shall not be required to pay a contribution to the legal aid fund;

and these Regulations (with the exception of those provisions relating to assessment of disposable income and capital, eligibility on the merits and payment of contribution) shall apply accordingly.

(2) In this regulation the “Hague Convention” means the convention defined in section 1(1) of the Child Abduction and Custody Act 1985 and the “European Convention” means the convention defined in section 12(1) of that Act.

### **Registration of certain foreign orders and judgments**

**15.**—(1) This regulation applies to any person who

- (a) appeals to a magistrates' court against the registration of or the refusal to register a maintenance order made in a Hague Convention country pursuant to the Maintenance Orders (Reciprocal Enforcement) Act 1972<sup>(10)</sup>; or
- (b) applies for the registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982<sup>(11)</sup>.

(2) Subject to paragraph (3), a person to whom this regulation applies—

- (a) shall be eligible to receive legal aid whether or not his financial resources are such as to make him eligible to receive it under regulations made under the Legal Aid Act 1988;
- (b) shall not be refused legal aid by virtue of subsections (2) and (3) of section 15 of the said Act of 1988;
- (c) shall not be required to pay a contribution to the legal aid fund,

and these Regulations (with the exception of those provisions relating to assessment of disposable income and capital, eligibility on the merits and payment of contribution) shall apply accordingly.

(3) A person shall not be given legal aid under this regulation in respect of any appeal or application as is mentioned in paragraph (1) unless he benefited from complete or partial legal aid or exemption from costs or expenses in the country in which the maintenance order was made or the judgment was given.

(4) In this regulation, “Hague Convention country” has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979<sup>(12)</sup> and “the Maintenance Orders (Reciprocal Enforcement) Act 1972” means that Act as applied with such exceptions, adaptations and modifications as are specified in the said 1979 Order.

### **Application on behalf of minors and patients**

**16.**—(1) Subject to paragraph (5), an application for legal aid for a minor or patient shall be made on his behalf by a person of full age and capacity and,

- (a) where the application relates to proceedings which are required by rules of court to be brought or defended by a next friend or guardian ad litem, the person making the application shall be the next friend or guardian ad litem, or,

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<sup>(10)</sup> 1972 c. 18.

<sup>(11)</sup> 1982 c. 27.

<sup>(12)</sup> S.I. 1979/1317, amended by S.I. 1981/837, 1545, 1674 and 1983/885, 1523.

(b) where the application relates to proceedings which have not actually begun, the person who, subject to any order of the court, intends to act in either of those capacities when the proceedings begin, shall make the application.

(2) Except where an application is made by the Official Solicitor, the Area Director shall not issue a certificate applied for by a person on behalf of a minor or patient unless that person has signed an undertaking to pay to the Board (if required to do so) any sums which, by virtue of any provision of the Act or of these Regulations, the Area Director may require an assisted person of full age and capacity to pay upon the issue or during the currency or upon the discharge or revocation of a certificate.

(3) Any certificate issued to a minor or patient shall be in his name, stating the name of the person who has applied for it on his behalf.

(4) In any matter relating to the issue, amendment, revocation or discharge of a certificate issued to a minor or patient, and in any other matter which may arise between an assisted person who is a minor or patient and the Area Director, the person who is named in the certificate as the next friend or guardian ad litem of the minor or patient shall be treated for all purposes (including the receipt of notices) as the agent of the minor or patient.

(5) An Area Director may, where the circumstances appear to make it desirable, waive all or any of the requirements of the preceding paragraphs of this regulation.

#### **Power to transfer application to another area office**

17. If it appears to an Area Director that an application could, without prejudice to the applicant, be more conveniently or appropriately dealt with in another area office, the papers relating to the application shall be transferred to that other office.

#### **Reference to the assessment officer for assessment of resources**

18.—(1) Except where he has previously refused the application, the Area Director shall refer to the assessment officer so much of it as is relevant to the assessment of the applicant's disposable income and disposable capital; and (subject to paragraph (2) and regulation 21) no application shall be approved until the assessment officer has assessed the applicant's disposable income, disposable capital and maximum contribution in accordance with the Civil Legal Aid (Assessment of Resources) Regulations 1989(13).

(2) Where an Area Director approves an application relating to proceedings—

- (a) in the House of Lords or on appeal from a magistrates' court in any action, cause or matter in which the applicant was an assisted person in the court below; or
- (b) by way of a new trial ordered by a court in any action, cause or matter in which the applicant was an assisted person; he shall not require the assessment officer to re-assess the assisted person's disposable income and disposable capital.

## PART III

### EMERGENCY CERTIFICATES

#### **Application for emergency certificate**

**19.**—(1) Any person who desires legal aid as a matter of urgency may apply to an Area Director for an emergency certificate on a form approved by the Board or in such other manner as the Area Director may accept as sufficient in the circumstances of the case.

(2) Subject to paragraph (3), an application for an emergency certificate shall contain such information and be accompanied by such documents as may be necessary to enable the Area Director to determine the nature of the proceedings for which legal aid is sought and the circumstances in which it is required and whether—

- (a) the applicant is likely to fulfil the conditions under which legal aid may be granted under the Act and these Regulations; and
- (b) it is in the interests of justice that the applicant should, as a matter of urgency, be granted legal aid;

and the applicant shall furnish such additional information and documents (if any) as may be sufficient to constitute an application for a certificate under Part II of these Regulations.

(3) If it appears to the Area Director that the applicant cannot at the time of making the application reasonably furnish the information required under paragraph (2), or any part of it, that Area Director shall nevertheless have the power to issue an emergency certificate subject to such conditions as to the furnishing of additional information as he thinks fit.

#### **Refusal of emergency certificate**

**20.** An application for an emergency certificate may be refused—

- (a) on one of the grounds on which a substantive certificate may be refused under regulation 34; or
- (b) on the ground that the applicant is unlikely to fulfil the conditions under which legal aid may be granted; or
- (c) on the ground that it is not in the interests of justice that legal aid be granted as a matter of urgency.

#### **Issue and effect of emergency certificate**

**21.**—(1) An Area Director shall have power to approve an application made under regulation 19 and to issue an emergency certificate without reference to the assessment officer.

(2) An emergency certificate shall not be issued in respect of authorised summary proceedings.

(3) Where an Area Director issues an emergency certificate, he shall send the emergency certificate (together with a copy) to the solicitor selected by the applicant, and a copy of the certificate to the applicant.

(4) An emergency certificate shall have the same effect in all respects as a substantive certificate and any person holding an emergency certificate shall, while it is in force, be deemed for the purposes of the proceedings to which the emergency certificate relates to be an assisted person.

#### **Duration of emergency certificate**

**22.** An emergency certificate shall remain in force until—



- (a) it is discharged or revoked in accordance with Part X of these Regulations; or
- (b) it is merged in a substantive certificate under regulation 23; or
- (c) the expiry of any period (including any extension of that period granted under regulation 24(1)) allowed for the duration of the emergency certificate.

#### **Merger in substantive certificate**

**23.**—(1) Where a substantive certificate is issued, the emergency certificate shall merge in the substantive certificate and the substantive certificate shall take effect from the date upon which the emergency certificate was issued in respect of the proceedings specified in the emergency certificate.

(2) Where an emergency certificate is merged in a substantive certificate, the substantive certificate shall state—

- (a) the 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.

#### **Extension and expiry of emergency certificate**

**24.**—(1) The Area Director (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 application for a substantive certificate in respect of the proceedings to which the emergency certificate relates has been refused and either notice of appeal has been given to the appropriate area committee within the time limits laid down by regulation 36 or the time limit for doing so has not expired; or
- (c) there are exceptional circumstances.

(2) Where an emergency certificate is extended under paragraph (1)(a) or (b), no further work may be done or steps taken under the certificate.

#### **Notification of extension of emergency certificate**

**25.**—(1) Where an emergency certificate is extended, the Area Director shall

- (a) forthwith issue a notice to that effect;
- (b) send the notice (together with a copy) to the solicitor acting for the person to whom the emergency certificate was issued; and
- (c) send a copy of the notice to the person to whom the emergency certificate was issued.

(2) It shall be the duty of the solicitor to notify forthwith any counsel whom he may have instructed that the certificate has been extended.

(3) A solicitor who receives notice that an emergency certificate has been extended under regulation 24 shall, if proceedings have begun or otherwise upon their commencement,

- (a) send a copy of the notice by post to the appropriate court office or registry, and
- (b) serve notice of the fact upon any other persons who are parties to the proceedings,

and, if any other person becomes a party to the proceedings, serve a similar notice upon that person.

## PART IV

### DETERMINATION OF APPLICATIONS

#### **Power to notify other parties of application**

- 26.—(1) On receiving an application for a certificate, the Area Director may, if he thinks fit,—
- (a) notify any party to the proceedings in respect of which the application is made; and
  - (b) ask that party whether he is willing to delay taking any further step in, or in relation to, the proceedings until the application has been determined.
- (2) When the Area Director has determined the application, he shall so inform any party notified under this regulation.

#### **Financial eligibility**

- 27.—(1) Where the assessment officer assesses that an applicant has disposable income of an amount which makes him ineligible for legal aid, the Area Director shall refuse the application.
- (2) Where the assessment officer assesses that an applicant, 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, the Area Director shall refuse the application if it appears to him that the probable costs of the applicant in the proceedings in respect of which the application was made would not exceed the contribution payable by the applicant.

#### **Eligibility on the merits**

28. Without prejudice to the generality of section 15(2) or (3) of the Act, an application for a certificate shall only be approved after the Area Director has considered all the questions of fact or law arising in the action, cause or matter to which the application relates and the circumstances in which the application was made.

#### **Refusal where advantage trivial or on account of nature of proceedings**

29. Without prejudice to regulations 28 and 32, an application may be refused where it appears to the Area Director that—
- (a) only a trivial advantage would be gained by the applicant from the proceedings to which the application relates, or
  - (b) on account of the nature of the proceedings a solicitor would not ordinarily be employed.

#### **Refusal where other rights or facilities available**

- 30.—(1) Without prejudice to regulation 28, an application may be refused where it appears to the Area Director that—
- (a) the applicant has available to him rights or facilities which make it unnecessary for him to obtain legal aid; or
  - (b) the applicant has a reasonable expectation of obtaining financial or other help from a body of which he is a member,

and that he has failed to take all reasonable steps to enforce or obtain such rights, facilities or help (including permitting the Area Director to take those steps on his behalf).

- (2) Where it appears that the applicant has a right to be indemnified against expenses incurred in connection with any proceedings, it shall not, for the purposes of paragraph (1), be deemed to be

a failure to take reasonable steps if he has not taken proceedings to enforce that right, whether for a declaration as to that right or otherwise.

### **Determination of contribution**

**31.**—(1) The Area Director shall, when determining an application, also determine the sums for the time being payable on account of the applicant's contribution and, in so doing, shall have regard to the probable cost of the proceedings.

(2) Where the probable cost of the proceedings exceeds any maximum contribution which has been assessed, the Area Director shall determine the maximum contribution as the sum payable on account of the applicant's contribution.

(3) Save as otherwise provided by these Regulations, the sum determined under paragraph (1) shall not exceed the maximum contribution which has been assessed.

### **Proceedings in which others have an interest**

**32.**—(1) When determining an application, the Area Director shall consider whether it is reasonable and proper for persons concerned jointly with or having the same interest as the applicant to defray so much of the costs as would be payable from the fund in respect of the proceedings if a certificate were issued.

(2) In determining an application made by, or on behalf of, a person in connection with an action, cause or matter in which—

- (a) numerous persons have the same interest, and
- (b) in accordance with rules of court, one or more persons may sue or be sued, or may be authorised by a court to defend any such action, cause or matter on behalf of or for the benefit of all persons so interested,

the Area Director shall consider whether the rights of the applicant would be substantially prejudiced by the refusal of his application.

(3) Where an application has been approved and the Area Director considers that it is reasonable that persons concerned jointly with or having the same interest as the applicant should contribute to the cost of the proceedings, he shall add the amount which would be payable by such persons to the sums (if any) payable by the applicant under regulation 31 and shall so notify him under regulation 43(2).

(4) The Area Director may subsequently redetermine the amount of any additional sums payable under paragraph (3) where he is satisfied that the applicant has, without success, taken all reasonable steps (including permitting the Area Director to take those steps on his behalf) to obtain such payment.

### **Application in representative, fiduciary or official capacity**

**33.** Where an application is made in a representative, fiduciary or official capacity, the Area Director—

- (a) shall take into account the value of any property or estate or the amount of any fund out of which the applicant is entitled to be indemnified and the financial resources of any persons (including the applicant if appropriate) who might benefit from the proceedings; and
- (b) may (without prejudice to regulation 28) either—
  - (i) approve the application, subject to the payment from the property or resources specified in sub-paragraph (a) of any sums which he may in his discretion determine,
  - or

- (ii) refuse the application, if he concludes that to do so would not cause hardship.

## PART V

### REFUSAL OF APPLICATIONS

#### **Notification of refusal**

**34.**—(1) Where an application for a certificate is refused on one or more of the following grounds, namely, that

- (a) the assessment officer has assessed that the applicant has disposable income which makes him ineligible for legal aid; or
- (b) the assessment officer has assessed that the applicant, 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 Area Director that, without legal aid, the probable costs to the applicant of the proceedings in respect of which the application was made would not exceed the sums payable by the applicant on account of his contribution; or
- (c) the proceedings to which the application relates are not proceedings for which legal aid may be given; or
- (d) the applicant has not shown that he has reasonable grounds for taking, defending or being a party to the proceedings; or
- (e) it appears unreasonable that the applicant should receive legal aid in the particular circumstances of the case,

the Area Director shall notify the applicant of the grounds on which the application has been refused and inform him of the circumstances in which he may appeal to the appropriate area committee for the decision to be reviewed.

(2) Where an application is refused on either of the grounds specified in sub-paragraphs (d) and (e) of paragraph (1), the notification given under that paragraph shall include a brief statement of the reasons why that ground applies to the applicant's case.

#### **Right of appeal against refusal**

**35.**—(1) Where an Area Director refuses an application for a certificate or an applicant is dissatisfied with the terms upon which the Area Director would be prepared to issue it, the applicant may, subject to paragraph (2), appeal to the appropriate area committee.

(2) No appeal shall lie to an area committee from—

- (a) an assessment of the assessment officer, or
- (b) any decision by an Area Director as to the sums payable on account of the applicant's contribution or the method by which they shall be paid except a decision as to sums payable under regulation 32(3) or 33.

#### **Time and form of appeal**

**36.** Every appeal shall be brought by giving to the appropriate area committee, within 14 days of the date of notice of refusal of a certificate or of the terms upon which a certificate would be issued (or such longer period as the appropriate area committee may allow), notice of appeal in writing either on a form approved by the Board or in such other written form as the Area Director may accept as sufficient in the circumstances of the case.

### **Nature of appeal**

37. Every appeal shall be by way of reconsideration of the application.

### **Representation at appeal or other final application**

38.—(1) Upon an appeal the appellant may—

- (a) furnish further statements, whether oral or in writing, in support of his application; and
- (b) conduct the appeal himself, with or without the assistance of any person whom he may appoint for the purpose, or be represented by counsel or a solicitor or legal executive.

(2) With any necessary modifications, paragraph (1)(a) shall apply to any appeal to an area committee and, subject to regulation 58(3), paragraph (1)(b) shall apply to any appeal to an area committee on which the committee finally determines the applicant's right to receive legal aid.

### **Determination of appeal**

39.—(1) The area committee shall determine the appeal in such manner as seems to it to be just and, without prejudice to the generality of the foregoing, may—

- (a) dismiss the appeal; or
- (b) direct the Area Director to offer a certificate subject to such terms and conditions as the area committee thinks fit;
- (c) direct the Area Director to settle terms and conditions on which a certificate may be offered; or
- (d) refer the matter, or any part of it, back to the Area Director for his determination or report.

(2) Any decision of an area committee with regard to an appeal shall be final, and it shall give notice of its decision, and the reasons for it, to the appellant and to any solicitor acting for him on a form approved by the Board.

### **Repeated refusal of certificates**

40.—(1) Where a person has applied for and been refused a certificate on three separate occasions and it appears to the Area Director to whom such person applies that his conduct may amount to an abuse of the facilities provided by the Act, then the Area Director may report the matter to the appropriate area committee.

(2) If a report under paragraph (1) has been made, the area committee may—

- (a) enquire whether any other area office has received an application from the person named in the report;
- (b) call for a report as to the circumstances of any other such application; and
- (c) if it considers that the person named in the report has abused the facilities provided by the Act, report thereon to the Board, making such recommendations as seem to the area committee to be just.

### **Power to make prohibitory directions**

41.—(1) The Board, on receipt of a report made under regulation 40(2)(c), shall give the person named in it an opportunity of making (either by himself or by some other person acting on his behalf) representations in writing on the matter, and shall make such other enquiries as seem to be necessary; and, if they are satisfied that his conduct has amounted to an abuse of the facilities provided by the Act, may make a direction (in this regulation referred to as a “prohibitory direction”) that no consideration shall, for a period not exceeding five years, be given by any Area Director either—

- (a) to any future application by that person for a certificate with regard to any particular matter; or
  - (b) in exceptional circumstances, to any future application by him whatsoever.
- (2) The Board may in its discretion—
- (a) include within the terms of any prohibitory direction any receiver, next friend or guardian ad litem who applies for a certificate on behalf of the person referred to in the prohibitory direction; and
  - (b) at any time vary or revoke any prohibitory direction in whole or in part.
- (3) Where the Board makes a prohibitory direction, it shall inform the Lord Chancellor and shall, if so requested, give him its reasons for making it.

## PART VI

### ISSUE AND EFFECT OF CERTIFICATES

#### **Issue of certificate where no contribution may be payable**

**42.** Where an application is approved relating to proceedings where an undertaking under regulation 12(2) has been given or where no contribution is (for the time being) payable, the Area Director shall—

- (a) issue a certificate;
- (b) send the certificate (together with a copy) to the solicitor selected by the applicant; and
- (c) send a copy of the certificate to the applicant together with a notice drawing the applicant's attention to the provisions of sections 16(6) and 17(1) of the Act.

#### **Offer of certificate where contribution payable**

**43.—(1)** Where an application is approved for any proceedings where a contribution will be payable, the Area Director shall require—

- (a) any sums payable out of capital to be paid forthwith if the sum is readily available or, if it is not, by such time as seems to him reasonable in all the circumstances; and
- (b) any sums payable out of income to be paid by such instalments as he may direct.

(2) The Area Director shall notify the applicant—

- (a) of the sums payable under regulation 31; and
- (b) of the terms upon which a certificate will be issued to him;

and draw to his attention the provisions of sections 16(1) and (6) and 17(1) of the Act.

#### **Undertaking to account for sums received from third parties**

**44.** Where the applicant—

- (a) appears to be a member of an organisation or body which might reasonably be expected to give him financial assistance in meeting the cost of the proceedings for which the applicant has applied for legal aid; and
- (b) does not appear to have any right to be indemnified by that organisation or body against expenses incurred in connection with those proceedings,

the Area Director shall require the applicant, as a term upon which the certificate will be issued, to sign an undertaking to pay to the Board (in addition to any sums payable under regulations 31 and 32) any sum which he receives from that organisation or body on account of the cost of those proceedings.

#### **Acceptance and issue of certificate where contribution payable**

**45.**—(1) An applicant who desires that a certificate should be issued to him on the terms notified to him by an Area Director shall, within 28 days of being so notified,—

- (a) signify his acceptance of those terms on a form approved by the Board and lodge it with the Area Director; and
- (b) if those terms require the payment of any sums of money, give an undertaking, on a form approved by the Board, to pay those sums by the method stated in the terms and, if any sum is required to be paid before the certificate is issued, make that payment accordingly.

(2) When an applicant has complied with so many of the requirements of paragraph (1) as are relevant to his case, the Area Director shall issue a certificate and send it to the solicitor selected by the applicant.

(3) Where an application is approved relating to authorised summary proceedings in which an undertaking under regulation 12(2) has been given, the Area Director may defer issuing a certificate until a contribution has been paid.

#### **Scope of certificates**

**46.**—(1) A certificate may be issued in respect of the whole or part of proceedings and may be extended to cover appellate proceedings other than those mentioned in paragraph (2).

(2) A certificate shall not be extended to cover proceedings in the House of Lords or on appeal from a magistrates' court.

(3) A certificate shall not relate to more than one action, cause or matter except in the case of—

- (a) authorised summary proceedings; or
- (b) matrimonial proceedings; or
- (c) proceedings under the Guardianship of Minors Act 1971<sup>(14)</sup> or the Guardianship Act 1973<sup>(15)</sup> and proceedings under the Domestic Violence and Matrimonial Proceedings Act 1976<sup>(16)</sup>;
- (d) an application for a grant of representation which is necessary to enable the action, which is the subject matter of the certificate, to be brought;
- (e) an application under section 33 of the Supreme Court Act 1981<sup>(17)</sup> or section 52 of the County Courts Act 1984<sup>(18)</sup> and subsequent court proceedings; or
- (f) proceedings which, under the Act, may be taken to enforce or give effect to any order or agreement made in the proceedings to which the certificate relates; and, for the purposes of this sub-paragraph, proceedings to enforce or give effect to an agreement or order shall include proceedings in bankruptcy or to wind-up a company.

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<sup>(14)</sup> 1971 c. 3.

<sup>(15)</sup> 1973 c. 29.

<sup>(16)</sup> 1976 c. 50.

<sup>(17)</sup> 1981 c. 54.

<sup>(18)</sup> 1984 c. 28.

### **Certificates to specify parties to proceedings**

47. A certificate other than one relating to matrimonial proceedings or authorised summary proceedings shall specify the parties to the proceedings in respect of which it is issued.

### **Power to restrict costs allowable to distant solicitor**

48.—(1) Where the solicitor selected by the applicant to whom a certificate is issued carries on his practice at a place which is so far away from where his services will be required in acting under the certificate that his selection will result in significantly greater expense to the fund than would have been incurred if the applicant had selected another solicitor, the certificate may provide that the solicitor shall not be entitled to payment in respect of any additional costs or disbursements incurred by reason of the fact that he does not carry on his practice at or near the place where his services are required in acting under the certificate.

(2) Where a certificate includes a provision under paragraph (1), payment of such additional costs or disbursements shall not be allowed on determination of the costs.

### **Effect of certificates**

49. Any document purporting to be a certificate issued in accordance with these Regulations shall, until the contrary is proved, be deemed to be a valid certificate issued to the person named in it and for the purposes there set out and shall be received in evidence without further proof.

### **Notification of issue of certificates**

50.—(1) Whenever an assisted person becomes a party to proceedings, or a party to proceedings becomes an assisted person, his solicitor shall forthwith—

- (a) serve all other parties to the proceedings with notice of the issue of a certificate; and
- (b) if at any time thereafter any other person becomes a party to the proceedings, forthwith serve a similar notice on that party.

(2) Copies of the notices referred to in paragraph (1) shall form part of the papers for the use of the court in the proceedings.

(3) Where an assisted person's solicitor—

- (a) commences any proceedings for the assisted person in a county court; or
- (b) commences proceedings in accordance with Order 112, rule 3 or 4 of the Rules of the Supreme Court 1965<sup>(19)</sup> or rule 101 or 103 of the Matrimonial Causes Rules 1977<sup>(20)</sup>;

and at the same time files a copy of the notice to be served in accordance with paragraph (1), a copy of that notice shall be annexed to the originating process for service.

(4) A solicitor who receives a certificate from an Area Director shall, if proceedings have begun, or otherwise upon their commencement, send a copy of it by post to the appropriate court office or registry.

(5) Paragraphs (1) to (4) shall not apply to authorised summary proceedings and, where an assisted person is a party to such proceedings, his solicitor shall, before or at the first hearing that takes place after the certificate has been issued, file the certificate with the clerk to the justices.

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<sup>(19)</sup> S.I. 1965/1776; relevant amending instruments are S.I. 1971/1955 and 1983/1181.

<sup>(20)</sup> S.I. 1977/344; the relevant amending instrument is S.I. 1986/634.



## PART VII

### AMENDMENT OF CERTIFICATE AND ADJUSTMENT OF CONTRIBUTION

#### Power to amend certificates

- 51.** The Area Director may amend a certificate where in his opinion—
- (a) there is some mistake in the certificate; or
  - (b) it has become desirable for the certificate to extend to
    - (i) proceedings; or
    - (ii) other steps; or
    - (iii) subject to regulation 46(3), other proceedings; or
    - (iv) proceedings which under the Act may be taken to enforce or give effect to any order or agreement made in the proceedings in respect of which the certificate was issued; or
    - (v) the bringing of an interlocutory appeal; or
    - (vi) proceedings in the Court of Justice of the European Communities on a reference to that Court for a preliminary ruling; or
    - (vii) representation by an EEC lawyer; or
  - (c) it has become desirable to add or substitute parties to the proceedings in respect of which the certificate was issued; or
  - (d) it has become desirable for the certificate to extend to any steps having the same effect as a cross-action or as a reply thereto, or a cross-appeal; or
  - (e) it has become desirable for the certificate not to extend to certain of the proceedings in respect of which it was issued; or
  - (f) a change of solicitor should be authorised.

#### Power to alter contribution and amend certificate

**52.—**(1) Without prejudice to the provisions of the Civil Legal Aid (Assessment of Resources) Regulations 1989(21), where the assisted person's disposable income and disposable capital have been assessed, the Area Director may, if he considers it to be desirable, request the assessment officer to re-assess the assisted person's financial resources and maximum contribution.

(2) Where the Area Director has determined the assisted person's contribution at a sum which is less than the maximum contribution and it appears likely that the costs incurred or likely to be incurred under the certificate may exceed the contribution which has been determined, he shall increase the amount payable on account of the assisted person's contribution to the amount or likely amount of the costs or to the amount of the maximum contribution, whichever is the lesser of the two.

(3) Without prejudice to regulation 51, the Area Director shall amend the certificate where he re-determines the amount payable on account of the assisted person's contribution whether as a result of a re-assessment pursuant to paragraph (1) or of an increase in contribution under paragraph (2) or otherwise.

### **Making and determination of applications for amendment**

53. Parts II and V of these Regulations shall apply, with any necessary modifications, to applications for the amendment of certificates as they apply to applications for certificates.

### **Procedure on issue of amendment**

54.—(1) Where an Area Director amends a certificate, he shall send two copies of the amendment to the assisted person's solicitor and one copy to the assisted person.

(2) A solicitor who receives an amendment sent to him under paragraph (1) shall forthwith—

- (a) if proceedings have begun or otherwise upon their commencement, send a copy of the amendment by post to the appropriate court office or registry, and
- (b) except in the case of an amendment made under regulation 52, serve notice of the fact upon all other parties to the proceedings, and, if any other person becomes a party to the proceedings, serve similar notice upon that person.

(3) The copy of the amendment sent to the appropriate court office or registry shall form part of the papers for the court in the proceedings.

(4) Paragraphs (2) and (3) shall not apply to authorised summary proceedings, and, where an assisted person is a party to such proceedings, his solicitor shall, before or at the first hearing that takes place after the amendment has been issued, file the amendment with the clerk to the justices.

### **Right to show cause on application to remove limitation**

55. An Area Director shall not refuse an application to amend a certificate (other than an emergency certificate) by removing a limitation imposed upon it until—

- (a) notice has been served on the assisted person that the application may be refused and his certificate discharged and that he may show cause why the application should be granted; and
- (b) the assisted person has been given an opportunity to show cause why his application should be granted.

### **Procedure on refusal of amendment**

56. Where an Area Director refuses an application for the amendment of a certificate, he shall notify the assisted person's solicitor in writing, stating his reasons for so doing.

### **Right of appeal against refusal of amendment**

57.—(1) Where an Area Director refuses an application for the amendment of a certificate, the assisted person may appeal to the appropriate area committee.

(2) An appeal shall be brought by giving notice on a form approved by the Board within 14 days of the Area Director's decision to refuse the application.

### **Determination of appeal against refusal of amendment**

58.—(1) Subject to paragraph (3), the area committee shall, on an appeal under regulation 57, reconsider the application and determine the appeal in such manner as seems to it to be just and, without prejudice to the generality of the foregoing, may—

- (a) dismiss the appeal; or
- (b) direct the Area Director to amend the certificate in such manner as the area committee thinks fit.

(2) Any decision of an area committee with regard to an appeal shall be final, and it shall give notice of its decision, and the reasons for it, to the assisted person and to his solicitor in a form approved by the Board.

(3) Nothing in this regulation or regulation 53 shall require the area committee to allow the assisted person to conduct an appeal under this regulation himself or to be represented on any such appeal if the area committee considers that such steps are unnecessary.

## PART VIII

### AUTHORITY TO INCUR COSTS

#### **Instructing counsel**

**59.**—(1) Where it appears to an assisted person's solicitor that the proper conduct of the proceedings so requires, he may instruct counsel; but, unless authority has been given in the certificate or by the Area Director,—

- (a) counsel shall not be instructed in authorised summary proceedings; and
- (b) a Queen's Counsel or more than one counsel shall not be instructed.

(2) Any instructions delivered to counsel under paragraph (1) shall—

- (a) include a copy of the certificate (and any amendments to it) and any authority to incur costs under this Part of these Regulations;
- (b) be endorsed with the legal aid reference number; and
- (c) in the case of authorised summary proceedings, show the authority for counsel to be instructed;

but no fees shall be marked on any set of papers so delivered.

#### **Power of Board to give general authority**

**60.** The Board may give general authority to solicitors acting for assisted persons in any particular class of case to incur costs by—

- (a) obtaining a report or opinion from one or more experts or tendering expert evidence;
- (b) employing a person to provide a report or opinion (other than as an expert); or
- (c) requesting transcripts of shorthand notes or tape recordings of any proceedings;

and, if such authority is given, the Board shall specify the maximum fee payable for any such report, opinion, expert evidence or transcript.

#### **Other cases where authority may be sought**

**61.**—(1) Where it appears to an assisted person's solicitor to be necessary for the proper conduct of the proceedings to incur costs by taking any of the steps specified in paragraph (2), he may, unless authority has been given in the certificate, apply to the Area Director for such authority.

(2) The steps referred to in paragraph (1) are—

- (a) obtaining a report or opinion of an expert or tendering expert evidence in a case of a class not included in any general authority given under regulation 60; or
- (b) paying a person, not being an expert witness, a fee to prepare a report and, if required, to give evidence in a case of a class not included in any general authority given under regulation 60; or

- (c) in a case of a class included in a general authority given under regulation 60, paying a higher fee than that specified by the Board or obtaining more reports or opinions or tendering more evidence (expert or otherwise) than has been specified; or
  - (d) performing an act which is either unusual in its nature or involves unusually large expenditure; or
  - (e) bespeaking any transcripts of shorthand notes or tape recordings of any proceedings not included in any general authority given under regulation 60.
- (3) Where the Area Director gives authority for the taking of any step referred to in paragraph (2) (a) to (d), he shall specify the number of reports or opinions that may be obtained or the number of persons who may be authorised to give expert evidence and the maximum fee to be paid to each.

#### **Reasons to be given for refusing authority**

**62.** If an Area Director refuses an application for authority made under regulation 59 or 61, he shall give written reasons for his decision.

#### **Effect of obtaining and failing to obtain authority**

**63.**—(1) Subject to paragraph (2), no question as to the propriety of any step or act in relation to which prior authority has been obtained under regulation 59, 60 or 61 shall be raised on any taxation of costs.

(2) Where costs are incurred in accordance with and subject to the limit imposed by a prior authority given under regulation 59, 60 or 61, no question shall be raised on any taxation as to the amount of the payment to be allowed for the step or act in relation to which the authority was given unless the solicitor or the assisted person knew or ought reasonably to have known that the purpose for which the authority was given had failed or become irrelevant or unnecessary before the costs were incurred.

(3) Without prejudice to regulation 59, where costs are incurred in instructing a Queen’s Counsel or more than one counsel, without authority to do so having been given in the certificate or under regulation 59(1), no payment in respect of those costs shall be allowed on any taxation unless it is also allowed on an inter partes taxation.

(4) Where costs are incurred in instructing counsel or in taking any step or doing any act for which authority may be given under regulation 60 or 61, without authority to do so having been given in the certificate or under regulation 59, 60 or 61, payment in respect of those costs may still be allowed on taxation.

#### **Restriction on payment otherwise than from the fund**

**64.** Where a certificate has been issued in connection with any proceedings, the assisted person’s solicitor or counsel shall not receive or be party to the making of any payment for work done in those proceedings during the currency of that certificate (whether within the scope of the certificate or otherwise) except such payments as may be made out of the fund.

## PART IX

### CONDUCT OF PROCEEDINGS

#### **Restrictions on entrusting case to others**

**65.**—(1) No solicitor or counsel acting for an assisted person shall entrust the conduct of any part of the case to any other person except another solicitor or counsel selected under section 32(1) of the Act.

(2) Nothing in paragraph (1) shall prevent a solicitor from entrusting the conduct of any part of the case to a partner of his or to a competent and responsible representative of his employed in his office or otherwise under his immediate supervision.

#### **Duty to report changes of circumstances**

**66.** The assisted person shall forthwith inform his solicitor of any change in his circumstances or in the circumstances of his case, which he has reason to believe might affect the terms or the continuation of his certificate.

#### **Duty to report abuse of legal aid**

**67.**—(1) Where an assisted person's solicitor or counsel has reason to believe that the assisted person has—

- (a) required his case to be conducted unreasonably so as to incur an unjustifiable expense to the fund or has required unreasonably that the case be continued; or
- (b) intentionally failed to comply with any provision of regulations made under the Act concerning the information to be furnished by him or in furnishing such information has knowingly made a false statement or false representation, the solicitor or counsel shall forthwith report the fact to the Area Director.

(2) Where the solicitor or counsel is uncertain whether it would be reasonable for him to continue acting for the assisted person, he shall report the circumstances to the Area Director.

#### **Power of court to refer abuse to Area Director**

**68.**—(1) Subject to paragraph (2), at any time during the hearing of any proceedings to which an assisted person is a party, the court may, on the application of the Board or of its own motion, make an order referring to the Area Director the question whether the assisted person's certificate should continue where the court considers that the assisted person has—

- (a) in relation to any application for a certificate, made an untrue statement as to his financial resources or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after the issue of the certificate and notwithstanding that it was made or occurred in relation to an application to another area office in connection with the same proceedings; or
- (b) intentionally failed to comply with these Regulations by not furnishing to his solicitor or the Area Director any material information concerning anything other than his financial resources; or
- (c) knowingly made an untrue statement in furnishing such information; and the court shall notify the Area Director of the terms of any order so made.

(2) No order shall be made under paragraph (1) by reason of any such mis-statement or failure as is referred to in paragraph (1)(a) if the assisted person satisfies the court that he used due care or

diligence to avoid such mis-statement or failure but the assisted person's solicitor shall nevertheless report the circumstances to the Area Director.

#### **Duty to report on refusing or giving up case**

**69.**—(1) A solicitor shall inform the Area Director of his reasons for refusing to act or for giving up a case after being selected.

(2) Counsel, where he has been selected to act or is acting for an assisted person, shall inform the Area Director of his reasons for refusing to accept instructions or for giving up the case or shall, if required so to do, inform the Area Director of his reasons for entrusting it to another.

(3) Without prejudice to any other right of a solicitor or counsel to give up a case, any solicitor or counsel may give up an assisted person's case in the circumstances specified in regulation 67.

(4) Where any solicitor or counsel exercises his right to give up an assisted person's case in the circumstances specified in regulation 67, the solicitor shall make a report to the Area Director of the circumstances in which that right was exercised.

(5) Where the Area Director to whom a report is made under paragraph (4) does not discharge or revoke the assisted person's certificate, he shall require the assisted person to select another solicitor to act for him.

#### **Duty to report progress of proceedings**

**70.**—(1) An assisted person's solicitor and his counsel (if any) shall give the Area Director such information regarding the progress and disposal of the proceedings to which the certificate relates as the Area Director may from time to time require for the purpose of performing his functions under these Regulations and, without being required so to do, the assisted person's solicitor shall—

- (a) make a report where the assisted person declines to accept a reasonable offer of settlement or a sum which is paid into court;
- (b) notify the Area Director where a legal aid certificate is issued to another party to the proceedings.

(2) Without prejudice to the generality of paragraph (1), an assisted person's solicitor shall, when required so to do by the Board, make a report to the Area Director, on a form approved by the Board, specifying the grounds on which he certifies that it is reasonable for the assisted person to continue to receive legal aid in respect of the proceedings to which the certificate relates.

(3) Where an assisted person's solicitor fails to make a report under paragraph (2) within 21 days of the Board's request, the Area Director shall—

- (a) give notice to him and to the assisted person that the legal aid certificate may be discharged; and
- (b) invite the assisted person to show cause why the certificate should not be discharged,

and the provisions of Part X of these Regulations shall apply, with any necessary modifications, where notice is given under sub-paragraph (a) above.

#### **Duty to report death, etc., of assisted person**

**71.** A solicitor who has acted or is acting for an assisted person shall, on becoming aware that the assisted person,—

- (a) has died; or
- (b) has had a bankruptcy order made against him, report that fact to the Area Director.

### **Duty to report completion of case**

72. A solicitor shall report forthwith to the Area Director either—
- (a) upon the completion of the case if he has completed the work authorised by the certificate, or
  - (b) if, for any reason, he is unable to complete the work.

### **Privilege, etc., not to prevent disclosure**

73.—(1) No solicitor or counsel shall be precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client, from disclosing to an Area Director or an area committee any information, or from giving any opinion, which he is required to disclose or give to the Area Director or that committee under the Act or these Regulations, or which may enable them to perform their functions under the Act or these Regulations.

(2) For the purpose of providing information under the Act or these Regulations or to enable an Area Director or an area committee to perform its functions under the Act or these Regulations, any party may disclose to an Area Director or an area committee communications in relation to the proceedings concerned sent to or by the assisted person's solicitor, whether or not they are expressed to be "without prejudice".

## **PART X**

### **REVOCATION AND DISCHARGE OF CERTIFICATES**

#### **Effect of revocation or discharge**

74.—(1) An Area Director may terminate a certificate by revoking or discharging it under this Part of these Regulations.

(2) Subject to this Part of these Regulations, a person whose certificate is revoked shall be deemed never to have been an assisted person in relation to those proceedings except for the purposes of section 18 of the Act; and a person whose certificate is discharged shall, from the date of the discharge, cease to be an assisted person in the proceedings to which the certificate related.

#### **Revocation or discharge of emergency certificate**

75.—(1) The Area Director shall revoke an emergency certificate where the assessment officer assesses that the person to whom it was issued has disposable income of an amount which makes him ineligible for legal aid.

(2) The Area Director shall revoke an emergency certificate where the assessment officer assesses that the person to whom it was issued, 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 Area Director that, without legal aid, the probable cost to him of the proceedings in respect of which the emergency certificate was issued would not exceed the contribution which would be payable by him.

(3) The Area Director may revoke or discharge an emergency certificate if he is satisfied that the assisted person has failed to attend for an interview or to provide information or documents when required to do so under these Regulations, or has failed to accept an offer of a substantive certificate.

(4) The Area Director may revoke or discharge an emergency certificate upon the expiry of such period (including any extension of that period granted under regulation 24(1)) as he may have allowed for the duration of the certificate.

- (5) No emergency certificate shall be revoked under paragraph (3) until—
- (a) notice has been served on the assisted person and his solicitor that the Area Director may do so and that the assisted person may show cause why the certificate should not be revoked, and
  - (b) the assisted person has been given an opportunity to show cause why his certificate should not be revoked.
- (6) Where notice is served under paragraph (5), no further work may be done or steps taken under the certificate unless authorised by the Area Director.

#### **Discharge of certificate on financial grounds**

**76.**—(1) The Area Director shall discharge a certificate (other than an emergency certificate) from such date as he considers appropriate where the assessment officer assesses that the person to whom it was issued has disposable income of an amount which makes him ineligible for legal aid.

(2) The Area Director shall discharge a certificate (other than an emergency certificate) from such date as he considers appropriate where the assessment officer assesses that the person to whom it was issued, 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 Area Director that, without legal aid, the probable cost to him of continuing the proceedings in respect of which the certificate was issued would not exceed the contribution which would be payable.

(3) Where the Area Director considers that the current financial circumstances of the assisted person are such that he could afford to proceed without legal aid, he may, with a view to discharging the certificate, require the assessment officer to assess the assisted person's current financial resources in accordance with the Civil Legal Aid (Assessment of Resources) Regulations 1989<sup>(22)</sup> and may discharge the certificate from such date as he considers appropriate.

#### **Discharge on the merits**

**77.** The Area Director shall discharge a certificate from such date as he considers appropriate where, as a result of information which has come to his knowledge, he considers that—

- (a) the assisted person no longer has reasonable grounds for taking, defending or being a party to the proceedings, or for continuing to do so; or
- (b) the assisted person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the fund; or
- (c) it is unreasonable in the particular circumstances that the assisted person should continue to receive legal aid.

#### **Power to revoke or discharge for abuse of legal aid**

**78.**—(1) Subject to paragraph (2), the Area Director may revoke or discharge a certificate where, as a result of information which has come to his knowledge, whether by a reference from the court under regulation 68 or otherwise, it appears to the Area Director that the assisted person has—

- (a) in relation to any application for a certificate, made an untrue statement as to his financial resources or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after the issue of the certificate and notwithstanding that it was made or occurred in relation to an application to another area office in connection with the same proceedings; or

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(22) S.I. 1989/338.



- (b) intentionally failed to comply with these Regulations by not furnishing to the Area Director or the solicitor any material information concerning any matter other than his financial resources; or
- (c) knowingly made an untrue statement in furnishing such information.

(2) No certificate shall be revoked or discharged under paragraph (1) by reason of any such mis-statement or failure as is referred to in paragraph (1)(a) if the assisted person satisfies the Area Director that he used due care or diligence to avoid such mis-statement or failure.

#### **Power to revoke or discharge for failure to provide information etc.**

**79.** The Area Director may revoke or discharge a certificate if he is satisfied that the assisted person has failed to attend for an interview or to provide information or documents when required to do so under these Regulations.

#### **Further power to discharge**

- 80.** The Area Director may discharge a certificate from such date as he considers appropriate—
- (a) with the consent of the assisted person; or
  - (b) where the assisted person has been required to make a contribution and any payment in respect of it is more than 21 days in arrears; or
  - (c) on being satisfied, by the report of the assisted person’s solicitor or otherwise, that—
    - (i) the assisted person has died; or
    - (ii) the assisted person has had a bankruptcy order made against him; or
    - (iii) the proceedings to which the certificate relates have been disposed of; or
    - (iv) the work authorised by the certificate has been completed.

#### **Opportunity to show cause against revocation or discharge**

**81.—**(1) Except where a certificate is discharged or revoked under regulation 75 or discharged under regulation 76 or 80(a), (b), (c)(i), (iii) or (iv), no certificate shall be revoked or discharged until—

- (a) notice has been served on the assisted person that the Area Director may revoke or discharge his certificate (as the case may be) and that he may show cause why it should not be revoked or discharged; and
- (b) the assisted person has been given an opportunity to show cause why his certificate should not be revoked or discharged.

(2) Where an Area Director revokes or discharges a certificate after notice has been given under paragraph (1), the assisted person may appeal to the appropriate area committee against such revocation or discharge and the provisions of regulations 36 to 39 shall, with the necessary modifications, apply to the conduct of such appeals.

(3) Any decision with regard to an appeal under paragraph (2) shall be final, and the area committee shall give notice of its decision and the reasons for it to the appellant and to any solicitor acting for him on a form approved by the Board.

#### **Notification of revocation or discharge**

**82.—**(1) Where an Area Director revokes or discharges an assisted person’s certificate, he shall, unless the costs have already been determined, forthwith issue a notice of revocation or a notice of discharge (as the case may be), and shall send the notice (together with a copy) to his solicitor, and

shall (except where the certificate has been discharged because the assisted person has died) send a further copy of the notice to the assisted person.

(2) A solicitor who receives a notice of revocation or a notice of discharge sent to him under paragraph (1) shall either forthwith, or if an appeal has been brought under regulation 81(2) which has been dismissed, forthwith upon receipt by him of a notice of dismissal—

- (a) serve notice of such revocation or discharge upon any other persons who are parties to the proceedings, and
- (b) inform any counsel, and if proceedings have been commenced, send a copy of the notice by post to the appropriate court office or registry.

(3) The copy of the notice sent to the appropriate court office or registry shall form part of the papers for the use of the court in the proceedings.

(4) Paragraphs (2) and (3) shall not apply to authorised summary proceedings and, where an assisted person is a party to such proceedings, his solicitor shall before or at the first hearing that takes place after the notice of revocation or discharge (as the case may be) has been issued, file the notice with the clerk to the justices.

(5) Where the Area Director has considered revoking or discharging a certificate in consequence of information brought to his knowledge by any person, he may, if he thinks fit, inform that person whether or not the certificate has been revoked or discharged.

#### **Effect of revocation or discharge on retainer**

**83.**—(1) Upon receipt by him of a notice of revocation or discharge of a certificate, the retainer of any solicitor and counsel selected by or acting on behalf of the assisted person shall, subject to paragraph (2), either forthwith determine or, if an appeal has been brought under regulation 81(2) which has been dismissed, forthwith determine after receipt by him of a notice of such dismissal.

(2) If an Area Director revokes or discharges a certificate and proceedings have commenced, the retainer of the solicitor shall not determine until he has sent to the appropriate court office or registry, and has served, any notice required by regulation 82.

#### **Costs to be taxed or assessed on revocation or discharge**

**84.** Upon the determination of a retainer under regulation 83—

- (a) the costs of the proceedings to which the certificate related, incurred by or on behalf of the person to whom it was issued, shall, as soon as is practicable after the determination of the retainer, be submitted for taxation or assessment; and
- (b) the fund shall remain liable for the payment of any costs so taxed or assessed.

#### **Operation of statutory charge**

**85.**—(1) Where a certificate has been revoked or discharged, section 16(6) of the Act (which provides for a charge upon property recovered or preserved for an assisted person) shall apply to any property recovered or preserved as a result of the person whose certificate has been revoked or discharged continuing to take, defend or be a party to the proceedings to which the certificate related.

(2) For the purpose of paragraph (1), the reference to a person whose certificate has been discharged shall, where the certificate has been discharged under regulation 80(c)(i) or (ii), include his personal representatives, his trustee in bankruptcy or the Official Receiver, as the case may be.

#### **Right to recover costs and contribution**

**86.**—(1) Where a certificate has been revoked—

- (a) the Board shall have the right to recover from the person to whom the certificate was issued the costs paid or payable under regulation 84(b) less any amount received from him by way of contribution; and
  - (b) the solicitor who has acted under the certificate shall have the right to recover from that person the difference between the amount paid or payable out of the fund and the full amount of his solicitor and own client costs.
- (2) Where a certificate has been discharged, the person to whom the certificate was issued shall remain liable for the payment of his contribution (if any) as determined or redetermined, up to the amount paid or payable by the Board under regulation 84(b) and, where he continues to take, defend or be a party to the proceedings to which the certificate related, section 17(1) of the Act shall apply in so far as the costs were incurred while he was an assisted person.

## PART XI

### PROPERTY AND COSTS RECOVERED FOR ASSISTED PERSONS

#### **Money recovered to be paid to solicitor or the Board**

- 87.**—(1) Subject to regulations 89 and 94, all moneys payable to an assisted person—
- (a) by virtue of any agreement or order made in connection with the action, cause or matter to which his certificate relates, whether such agreement was made before or after the proceedings were taken; or
  - (b) being moneys payable in respect of the action, cause or matter to which his certificate relates upon the distribution of property of a person who had been adjudicated bankrupt or has entered into a deed of arrangement, or of a company in liquidation; or
  - (c) being moneys which were paid into court by him or on his behalf in any proceedings to which his certificate relates and which have been ordered to be repaid to him; or
  - (d) being moneys standing in court to the credit of any proceedings to which his certificate relates,

shall be paid or repaid, as the case may be, to the solicitor of the assisted person or, if he is no longer represented by a solicitor, to the Board, and only the solicitor, or, as the case may be, the Board, shall be capable of giving a good discharge for moneys so payable.

(2) Where the assisted person's solicitor has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), he shall inform the Board.

#### **Notice to trustee in bankruptcy, etc.**

**88.**—(1) Where moneys become payable under regulation 87(b), the solicitor or the Board, as the case may be, shall send to the trustee in bankruptcy, the trustee or assignee of the deed of arrangement or the liquidator of the company in liquidation, as the case may be, notice that a certificate has been issued to the assisted person.

(2) A notice sent under paragraph (1) shall operate as a request by the assisted person for payment of the moneys payable under regulation 87(b) to the assisted person's solicitor or the Board, as the case may be, and shall be a sufficient authority for that purpose.

#### **Exceptions to regulation 87**

- 89.** Notwithstanding the requirements of regulation 87—

- (a) payment of any sum under an order for costs in favour of an assisted person in authorised summary proceedings shall be made to the clerk to the justices, who shall pay it to the Board or as the Board shall direct, and only the clerk to the justices shall be able to give a good discharge therefor; and
- (b) where any moneys recovered or preserved for an assisted person in any proceedings have been paid into or remain in court and invested for the benefit of the assisted person, such part of those moneys as is not subject to the charge created by section 16(6) of the Act in accordance with regulation 93 may be paid to the assisted person.

### **Solicitor to pay moneys recovered to the Board**

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

- (a) inform the Area Director of any property recovered or preserved for the assisted person and send to him 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 Board.

(2) Where the Area Director considers that the rights of the fund will thereby be safeguarded, he may direct the assisted person’s solicitor to—

- (a) pay to the Board under paragraph (1)(b) only such sums as, in the opinion of the Area Director, should be retained by the Board 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 96(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
- (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 Area Director.

(4) If the Area Director considers and directs that the provisions of regulation 96 apply to any sum of money, paragraph (1)(b) above shall not apply to it and the assisted person’s solicitor shall release the money only in accordance with the provisions of regulation 96.

### **Enforcement of orders, etc., in favour of assisted person**

**91.**—(1) Where in any proceedings to which an assisted person is a party—

- (a) an order or agreement is made providing for the recovery or preservation of property for the benefit of the assisted person and, by virtue of the Act, there is a first charge on the property for the benefit of the Board; or
- (b) an order or agreement is made for the payment of costs to the assisted person,

the Board may take such proceedings in its own name as may be necessary to enforce or give effect to such an order or agreement.

(2) An assisted person may, with the consent of the appropriate Area Director, take proceedings (being proceedings for which representation may be granted under the Act) to give effect to an order or agreement referred to in regulation 87(a).

(3) Where the Board takes proceedings, it may authorise any person to swear an affidavit, file a proof, receive a dividend or take any other step in the proceedings in its name and the costs incurred by the Board in any such proceedings shall be a first charge on any property or sum so recovered.

### **Retention and payment out of moneys by the Board**

**92.** Upon receipt of moneys paid to it under this Part of these Regulations, the Board shall retain—

- (a) subject to regulation 103, any sum paid under an order or agreement for costs made in the assisted person's favour in respect of the period covered by his certificate;
- (b) a sum equal to the amount (if any) by which any property recovered or preserved is charged for the benefit of the Board by virtue of section 16(6) of the Act; and
- (c) any costs of proceedings taken by the Board under regulation 91(1);

and shall pay the balance to the assisted person.

### **Operation of the statutory charge on moneys in court**

**93.** Where any moneys recovered or preserved for an assisted person in any proceedings are ordered to be paid into or remain in court and invested for the benefit of the assisted person, the charge created by section 16(6) of the Act shall attach only to such parts of those moneys as, in the opinion of the Area Director, will be sufficient to safeguard the rights of the Board under any provisions of the Act or these Regulations and the Area Director shall notify the court in writing of the amount so attached.

### **Exemptions from the statutory charge**

**94.** The charge created by section 16(6) of the Act shall not apply to—

- (a) any interim payment made in accordance with an order made under Order 29, rule 11 or 12 of the Rules of the Supreme Court 1965(**23**), or Order 13, rule 12 of the County Court Rules 1981(**24**), or in accordance with an agreement having the same effect as such an order;
- (b) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependents) Act 1975(**25**);
- (c) any periodical payment of maintenance which, for this purpose, means money or money's worth paid towards the support of a spouse, former spouse, child or any other person for whose support the payer has previously been responsible or has made payments;
- (d) the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of—
  - (i) an order made, or deemed to be made, under the provisions of section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or (f), or 35 of the Matrimonial Causes Act 1973(**26**); or
  - (ii) an order made, or deemed to be made, under the provisions of section 2 or 6 of the Inheritance (Provision for Family and Dependents) Act 1975 or any provision repealed by that Act; or

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(23) S.I. 1965/1776; the relevant amending instrument is S.I. 1980/1010.

(24) S.I. 1981/1687; the relevant amending instrument is S.I. 1982/1794.

(25) 1975 c. 63.

(26) 1973 c. 18; section 27 was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 63(3) of section 35 was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 46, Schedule 1, paragraph 13.

- (iii) an order made, or deemed to be made, after 30th September 1977, under section 17 of the Married Women's Property Act 1882(27); or
- (iv) an order made, or deemed to be made, under the provisions of section 4(2)(b) of the Affiliation Proceedings Act 1957(28); or
- (v) an order for the payment of a lump sum made, or deemed to be made, under the provisions of section 60 of the Magistrates' Courts Act 1980(29); or
- (vi) an order made, or deemed to be made, under the provisions of section 2(1)(b) or (d), 6(1) or (5), 11(2)(b) or (3)(b) or 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978(30); or
- (vii) an order made, or deemed to be made, under section 9(2)(b), 10(1)(b)(ii) or 11(b)(ii) of the Guardianship of Minors Act 1971(31) or under section 11B, 11C, or 11D of that Act(32); or
- (viii) an order made, or deemed to be made, under section 34(1)(c) or 35 of the Children Act 1975(33); or
- (ix) an agreement made after 1st March 1981 which has the same effect as an order made, or deemed to be made under any of the provisions specified in sub-paragraph (d)(i) to (viii); or
- (e) where the certificate was issued before 3rd May 1976, any money or property, of whatever amount or value, recovered or preserved by the virtue of an order made, or deemed to be made, under any of the provisions specified in sub-paragraph (d)(i) or (ii) before 1st August 1976 or which, if made on or after that date, gives effect to a settlement entered into before that date;
- (f) any payment made in accordance with an order made by the Employment Appeal Tribunal, or in accordance with a settlement entered into after 1st November 1983 which has the same effect as such an order; or
- (g) any sum, payment or benefit which, by virtue of any provision of, or made under, an Act of Parliament, cannot be assigned or charged.

### **Vesting and enforcement of charges**

**95.—(1)** Any charge on property recovered or preserved for an assisted person arising under section 16(6) of the Act or created by virtue of regulation 96, 97 or 98 shall vest in the Board.

(2) The Board 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 Board shall not agree to the release or postponement

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- (27) 1882 c. 75; section 17 was amended by the Statute Law (Repeals) Act 1969 (c. 52), Schedule Part III and by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 43.
  - (28) 1957 c. 55; section 4(2) was amended by the Affiliation Proceedings (Amendment) Act 1972 (c. 49), section 1(2) and by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 50(1); the 1957 Act is repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c. 42), sections 33, 34(2), Schedule 4.
  - (29) 1980 c. 43.
  - (30) 1978 c. 22; sections 6 and 11 were amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), sections 10, 46, Schedule 1, paragraph 23; section 20 was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 11 and is repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c. 42), sections 33, 34(2), Schedule 4.
  - (31) 1971 c. 3; the provisions referred to were amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), sections 36(1)(a), 41(2) to (4) and are repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c. 42), sections 10, 11, 34(2).
  - (32) Sections 11B, 11C and 11D are inserted, as from a day to be appointed, by the Family Law Reform Act 1987 (c. 42), sections 12 to 14, 33, 34; the 1971 Act, as amended, is set out in Schedule 1 to the 1987 Act.
  - (33) 1975 c. 72; sections 34(1) and 35 were amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), sections 64, 66; section 35 is amended (as from a day to be appointed) by the Family Law Reform Act 1987 (c. 42), sections 33, 34(2), Schedule 2, paragraph 62.

of the enforcement of any such charge except where regulation 96, 97 or 98 applies and then only in accordance with the provisions of those regulations.

- (3) Any such charge shall according to its nature—
- (a) in the case of unregistered land, be a Class B land charge within the meaning of section 2 of the Land Charges Act 1972<sup>(34)</sup>;
  - (b) in the case of registered land, be a registrable substantive charge; or
  - (c) in a case in which the conditions specified in section 54(1) of the Land Registration Act 1925<sup>(35)</sup> are met, be protected by lodging a caution in accordance with the provisions of that section,

and references to registration in regulations 96 to 98 shall be construed as references to registration or protection in accordance with paragraph (a), (b) or (c) of this regulation.

(4) Without prejudice to the provisions of the Land Registration Act 1925 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 Board.

#### **Postponement of enforcement of charges over money**

**96.**—(1) This regulation applies where in proceedings under—

- (a) the Married Women’s Property Act 1882<sup>(36)</sup>,
- (b) the Matrimonial Causes Act 1973<sup>(37)</sup>, or
- (c) the Inheritance (Provision for Family and Dependants) Act 1975<sup>(38)</sup>,

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 Board to comply with the conditions set out in paragraph (3),

the Board may, if the Area Director is satisfied that the property to be purchased will provide adequate security for the sum referred to in paragraph (3)(b), agree to defer enforcing any charge over that sum.

- (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 Board and registered in accordance with regulation 95(3); and
  - (b) from the date on which the charge is first registered, simple interest shall accrue for the benefit of the Board at the rate of 12 per cent 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 Board would have retained under regulation 92(b) in respect of its charge over the property to which this regulation applies.

(4) Where the Board has agreed to defer enforcement under paragraph (2), the assisted person’s solicitor may release any money received by him under regulation 87 and which is the subject of the

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<sup>(34)</sup> 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), section 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).

<sup>(35)</sup> 1925 c. 21.

<sup>(36)</sup> 1882 c. 75.

<sup>(37)</sup> 1973 c. 18.

<sup>(38)</sup> 1975 c. 63.

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 Area Director has directed (under regulation 90(4)) that this regulation applies; and
- (b) no agreement to defer enforcement under paragraph (2) above has been made,

the assisted person's solicitor may release any money received by him under regulation 87 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(39) does not apply, who has given an undertaking to, and on a form approved by, the Board 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 Area Director as soon as practicable and either—

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

(7) 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 Board.

### **Postponement of enforcement of charges over land**

97.—(1) This regulation applies where, in proceedings under any of the enactments referred to in regulation 96(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 Area Director considers that the provisions of this regulation apply to any property, he shall so direct.

(3) Where the Area Director 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 Board to comply with the condition set out in paragraph (4),

the Board may, if the Area Director is satisfied that the property will provide adequate security for the sum referred to in paragraph (4), agree to defer enforcing of any charge over that property.

(4) The condition referred to in paragraph (3) is that from the date on which the charge is first registered where that date is after 1st December 1988, simple interest shall accrue for the benefit of the Board at the rate of 12 per cent 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 Board would have retained under regulation 92(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 Board has not yet been registered in accordance with regulation 95(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

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(39) 1974 c. 47; section 22 was amended by the Administration of Justice Act 1985 (c. 61), section 6.



- (b) agrees in writing on a form approved by the Board to comply with the conditions set out in paragraph (6),

the Board may, if the Area Director 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 Board and registered in accordance with regulation 95(3); and
  - (b) from the date on which the charge is first registered where that date is after 1st December 1988, simple interest shall accrue for the benefit of the Board at the rate referred to in paragraph (4) on the sum referred to in that paragraph.

### **Substitution of charged property**

**98.**—(1) This regulation applies where a charge has been registered in favour of the Board in pursuance of an agreement made under regulation 96 or 97.

- (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 Board to comply with the conditions set out in paragraph (3); and
  - (c) the Area Director is satisfied that the property to be purchased will provide adequate security for the sum referred to in regulation 96(3)(b) or regulation 97(4), as the case may be,

the Board 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 Board and registered in accordance with regulation 95(3); and
  - (b) where simple interest has accrued, it shall continue to accrue for the benefit of the Board at the rate prescribed for the time being for the purposes of regulation 96(3)(b) on the sum referred to in that regulation or in regulation 97(4), as the case may be.

(4) Where, after a charge has been registered in favour of the Board in pursuance of an agreement made 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 Board to comply with the conditions set out in paragraph (3) above; and
- (c) the Area Director is satisfied that the property to be purchased will provide adequate security for the sum referred to in regulation 96(3)(b) or regulation 97(4), as the case may be,

the Board may agree to release that charge.

### **Payment and recovery of interest**

**99.**—(1) Where interest is payable by the assisted person pursuant to the provisions of regulations 96, 97 or 98, such interest shall continue to accrue until the sum referred to in

regulation 96(3)(b) or regulation 97(4), as the case may be, is paid and the Board shall not seek to recover interest until such payment is made.

(2) The Board may take such steps as may be necessary to enforce, give effect to or terminate any agreement made under regulation 96, 97 or 98.

(3) Nothing in regulations 96 to 99 shall prevent the assisted person from making interim payments of interest or capital in respect of any sum referred to in regulation 96(3)(b) or 97(4), whether such payments are made at regular intervals or not, and any such payment of capital shall reduce those sums accordingly except that no interim payment shall be used to reduce any such sum while interest on that sum remains outstanding.

## PART XII

### COSTS OF ASSISTED PERSONS

#### Payment on account

**100.**—(1) A solicitor acting for an assisted person under a certificate to which this regulation applies may submit a claim to the Financial Controller of the Board on a form approved by the Board for the payment of sums on account of profit costs incurred in connection with the proceedings to which the certificate relates.

(2) Counsel instructed on behalf of an assisted person under a certificate to which this regulation applies may submit a claim to the Financial Controller of the Board on a form approved by the Board for the payment of sums on account of his fees for work done in connection with the proceedings to which the certificate relates.

(3) A claim may be made under this regulation in relation to a certificate—

- (a) which was issued on or after 1st October 1986, after a period of 18 months has elapsed since the date on which the certificate was issued;
- (b) which was issued before 1st October 1986, after a period of 30 months has elapsed since the date on which the certificate was issued.

(4) Further claims may be made under this regulation in relation to—

- (a) a certificate to which paragraph (3)(a) applies, after periods of 12 months and 24 months have elapsed since the date on which a claim could first be made;
- (b) a certificate to which paragraph (3)(b) applies, after a period of 12 months has elapsed since the date on which a claim could first be made.

(5) The maximum payment to be made for each claim under paragraph (1) or (2) in any one financial year shall be—

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for the financial year 1989/90	38%
for the financial year 1990/91	46%
for the financial year 1991/92	54%
for the financial year 1992/93	62%
for the financial year 1993/94	70%
for the financial year 1994/95 and thereafter	75%

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(6) Where a solicitor's retainer has been determined and another solicitor (who is not a member of the same firm) is acting on behalf of the assisted person, the appropriate area committee may

authorise payment of a sum on account of the original solicitor's costs where it appears unlikely that the costs will be taxed within 6 months of the date on which the retainer was determined.

(7) The making of a payment under this regulation shall not release a solicitor from any obligation under these Regulations to submit his costs and counsel's fees for taxation or assessment on conclusion of the case.

(8) Where, after taxation or assessment, payments made under this regulation are found to exceed the final costs of the case, the solicitor or counsel (if any) shall, on demand, repay the balance due to the fund and, where the total costs exceed any payments made under this regulation, the balance shall be paid from the fund.

### **Payment on account of disbursements, in cases of hardship, etc**

**101.**—(1) Without prejudice to regulation 100, a solicitor acting for an assisted person may apply to the appropriate area committee for the payment of a sum on account of

- (a) disbursements incurred or about to be incurred in connection with the proceedings to which the certificate relates;
- (b) profit costs or counsel's fees where the proceedings to which the certificate relates have continued for more than 12 months and it appears unlikely that an order for taxation will be made within the next 12 months and delay in the taxation of those costs or fees will cause hardship to the solicitor or counsel.

(2) Without prejudice to regulation 100, where—

- (a) the proceedings to which the certificate related have concluded or the solicitor is otherwise entitled to have his costs taxed; and
- (b) counsel acting for the assisted person has not received payment in respect of his fees for at least 6 months since the event which gave rise to the right to taxation,

counsel may apply to the appropriate area committee for payment of 75 per cent of the amount claimed on account of his fees for work done in connection with the proceedings to which the certificate related.

### **Deferment of solicitor's profit costs**

**102.** Where an assisted person's solicitor has failed to comply with any provision of these Regulations and, as a result of his default or omission, the fund incurs loss—

- (a) the appropriate area committee may defer payment of all or part of the solicitor's profit costs in connection with the proceedings to which the certificate relates until he has complied with such provisions; and
- (b) if the Board refers the conduct of the solicitor to the Solicitors' Disciplinary Tribunal and the solicitor is disciplined, the Board may retain any sum, payment of which has been deferred under sub-paragraph (a), in accordance with the finding of the Tribunal.

### **Legal aid granted after costs incurred**

**103.**—(1) Where, after proceedings have been instituted in any court, a party becomes an assisted person in relation to those proceedings, the provisions of section 17(1) of the Act shall apply only to so much of the costs of the proceedings as are incurred while a certificate is in force.

(2) Any solicitor who has acted on behalf of the assisted person in the proceedings to which a certificate relates before the date of the certificate, and any solicitor who has a lien on any documents necessary for the proceedings and who has delivered them up subject to his lien, may give notice of that fact to the appropriate area committee.

(3) Subject to paragraph (4), if moneys are recovered for the assisted person, the Board shall pay to any solicitor who has given notice under paragraph (2) out of the sum so recovered the costs to which he would have been entitled following a solicitor and own client taxation.

(4) In any case where the sums so recovered are insufficient to pay the solicitor's costs in full in accordance with paragraph (3) and also to meet the sums paid out or payable out of the fund on the assisted person's account, the sums recovered in the proceedings shall be divided between the fund and the solicitor in the same proportions as the solicitor's costs and the cost to the fund bear to the aggregate of the two, and the first charge for the benefit of the Board imposed by virtue of section 16(6) of the Act on property recovered or preserved in the proceedings shall take effect accordingly.

(5) In any case in which the amount of—

- (a) the costs payable to a solicitor under this regulation; or
- (b) the inter partes costs incurred during the period in which the certificate was in force,

have not been ascertained on taxation, they shall, for the purpose of this regulation, be assessed by the appropriate area committee and, where the committee makes an assessment under this regulation, it shall do so with a view to allowing, for the costs referred to in sub-paragraph (a) above, such costs as the solicitor would have been entitled to on a solicitor and own client taxation and, for the costs referred to in sub-paragraph (b) above, such costs as would have been allowed on a taxation on the standard basis.

(6) For the purposes of this regulation, work done by a solicitor—

- (a) immediately prior to the issue of an emergency certificate, and
- (b) at a time when no application for an emergency certificate could be made because the appropriate area office was closed,

shall be deemed to be work done while such a certificate is in force if the solicitor applies for an emergency certificate at the first available opportunity and the application is granted.

### **Remuneration of counsel and solicitors in the Crown Court and magistrates' courts**

**104.**—(1) The sums to be allowed to solicitors and counsel in connection with authorised summary proceedings or proceedings in the Crown Court for which legal aid is available under Part IV of the Act shall be assessed by the Area Director.

(2) Any assessment or review under this regulation shall be made in accordance with the provisions of regulation 6 of and Schedule 1 Part I paragraph 1(a) to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989<sup>(40)</sup> as if the work done was work to which those provisions apply.

(3) Paragraphs (4) to (8) of regulation 105 shall apply where costs are assessed by an Area Director under paragraph (1) as they apply to an assessment under that regulation.

(4) Subject to paragraph (3), regulations 105 to 110 shall not apply to costs in respect of authorised summary proceedings or proceedings in the Crown Court for which legal aid is available under Part IV of the Act.

### **Assessment of costs**

**105.**—(1) In this regulation and in regulation 106, “assessment” means an assessment of costs with a view to ensuring that the amounts of costs to be allowed are those which would be allowed on a taxation on the standard basis under rules of court.

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(40) S.I. 1989/343.

(2) Where the retainer of an assisted person's solicitor or counsel is determined before proceedings are actually begun and there has been no subsequent change of solicitor or counsel under the certificate, the amount of the solicitor's costs and counsel's fees (if any) shall be assessed by the Area Director.

(3) Where proceedings have begun and—

- (a) the solicitor is of the opinion that the total amount which he and counsel (if any) would receive after taxation on the standard basis would not be more than £500; or
- (b) the case of an assisted person (who is not such a person as is referred to in Order 62, rule 16, of the Rules of the Supreme Court 1965) has been settled after the commencement of proceedings without any direction of the court as to costs on terms that include provision for an agreed sum in respect of costs to be paid to the assisted person which the solicitor and counsel (if any) is willing to accept in full satisfaction of the work done; or
- (c) there are special circumstances where a taxation would be against the interest of the assisted person or would increase the amount payable from the fund; or
- (d) after a direction or order that the assisted person's costs shall be taxed on the standard basis, the solicitor incurs costs for the purpose of recovering moneys payable to the fund,

the solicitor may apply to the Area Director for an assessment of the amount of his costs and counsel's fees (if any) in respect of the work done.

(4) If any solicitor or counsel is dissatisfied with any decision on an assessment in accordance with paragraph (2) or (3), he may, within 21 days of that decision, make written representations to the appropriate area committee; and that committee shall review the assessment of the Area Director whether by confirming, increasing or decreasing the amount assessed by the Area Director.

(5) A solicitor or counsel who is dissatisfied with the decision of an area committee on a review under paragraph (4) may, within 21 days of the decision, apply to that committee to certify a point of principle of general importance.

(6) Where an area committee certifies a point of principle of general importance, the solicitor or counsel may, within 21 days of the certification, appeal in writing to a committee appointed by the Board against the decision of the area committee under paragraph (4).

(7) On an appeal under paragraph (6) the committee appointed by the Board may reverse, affirm or amend the decision of the area committee under paragraph (4).

(8) The assisted person's solicitor shall within 7 days after an assessment or review under this regulation notify counsel in writing where the fees claimed on his behalf have been reduced or disallowed on assessment or review.

### **Agreement in respect of costs**

**106.**—(1) Where, in proceedings to which an assisted person (or a former assisted person) has been a party and which have been brought to an end by a judgment, decree or final order, there has been an agreement as to the costs to be paid by any other party to the assisted person (or former assisted person) which that person's solicitor and counsel (if any) is willing to accept in full satisfaction of the costs of the work done, the amount of those costs shall be assessed by the Area Director.

(2) Where costs are to be assessed in the circumstances specified in paragraph (1), the Area Director may, if he thinks fit, request the taxing officer of the court in which the proceedings were conducted to assess the costs on the standard basis without a taxation.

(3) Paragraphs (4) to (8) of regulation 105 shall apply where costs are assessed by an Area Director under paragraph (1) as they apply to an assessment under that regulation.

### **Taxation of costs**

**107.**—(1) The costs of proceedings to which an assisted person is a party shall be taxed in accordance with any direction or order given or made in the proceedings irrespective of the interest (if any) of the assisted person in the taxation; and, for the purpose of these Regulations, an order for the taxation of the costs of a review of taxation or of the costs of an appeal from a decision of a judge on such a review shall be deemed to be a final order.

(2) Any certificate or notice of revocation or discharge, or a copy of any such certificate or notice, shall be made available on the taxation.

(3) Where in any proceedings to which an assisted person is a party—

- (a) judgment is signed in default, the judgment shall include a direction that the costs of any assisted person shall be taxed on the standard basis;
- (b) the court gives judgment or makes a final decree or order in the proceedings, the judgment, decree or order shall include a direction (in addition to any other direction as to taxation) that the costs of any assisted person shall be taxed on the standard basis;
- (c) the plaintiff accepts money paid into court, the costs of any assisted person shall be taxed on the standard basis.

(4) Where in any proceedings to which an assisted person or a former assisted person is a party and—

- (a) the proceedings are, or have been, brought to an end without a direction having been given, whether under paragraph (3) or otherwise, as to the assisted person's costs being taxed on the standard basis; or
- (b) a judgment or order in favour of an opposing party, which includes a direction that the assisted person's costs be so taxed, has not been drawn up or, as the case may be, entered by him; or
- (c) a retainer is determined under regulation 83 in such circumstances as to require a taxation in accordance with the provisions of these Regulations;

the costs of that person shall be taxed on the standard basis on production of a copy of the notice of discharge or revocation of the certificate at the appropriate taxing office.

### **Failure to apply for taxation**

**108.** Where, in any proceedings to which a former assisted person was a party, an order or agreement was made for the payment to him of costs and he has failed to ask for the costs to be taxed or his certificate is discharged before taxation, the Board may authorise the making of the application for taxation on his behalf and the costs of the application and of taxation shall be deemed to be costs in the proceedings to which the certificate related.

### **Disallowance or reduction of costs**

**109.**—(1) Without prejudice to Order 62, rules 10 and 11 of the Rules of the Supreme Court 1965<sup>(41)</sup> or to Order 38, rule 1(3) of the County Court Rules 1981<sup>(42)</sup>, on any taxation of an assisted person's costs in connection with proceedings (except authorised summary proceedings and proceedings in the Crown Court), any costs wasted by failure to conduct the proceedings with reasonable competence and expedition shall be disallowed or reduced, and where the solicitor has without good reason delayed putting in his bill for taxation the whole of the costs may be disallowed or reduced.

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<sup>(41)</sup> S.I. 1965/1776; the relevant amending instrument is S.I. 1986/632.

<sup>(42)</sup> S.I. 1981/1687; the relevant amending instrument is S.I. 1986/636.

(2) No costs shall be disallowed or reduced under paragraph (1) until notice has been served by the taxing officer on the solicitor whose name appears on the assisted person's certificate and, in a case where those costs relate to counsel's fees, on the assisted person's counsel, requiring the solicitor or, as the case may be, counsel to show cause orally or in writing why those costs should not be disallowed or reduced.

### **Solicitor's duty to safeguard the interests of the fund**

**110.** It shall be the duty of an assisted person's solicitor to safeguard the interests of the fund on any inter partes taxation pursuant to an order for costs made in favour of the assisted person where that person may himself have no interest in the result of the taxation, and for this purpose to take such steps as may appear to the solicitor to be necessary to obtain a review of taxation under regulation 113 or 114.

### **Costs of applications, reports, etc., under these Regulations**

**111.** Costs incurred by reason of any application made under Part VIII, and of any report made by an assisted person's solicitor under Part IX, of these Regulations shall be taxed on the standard basis and costs incurred by reason of regulation 25, 50, 54, 82 or 124 shall be costs in the cause.

### **Duty to inform counsel**

**112.—(1)** The assisted person's solicitor shall within 7 days after the taxation (or provisional taxation) notify counsel in writing where the fees claimed on his behalf have been reduced or disallowed on taxation, and shall endorse the bill of costs with the date on which such notice was given or that no such notice is necessary.

(2) Where the bill of costs is endorsed that no notice under paragraph (1) is necessary, the taxing officer may issue the certificate or allocatur but, where such a notice has been given, the taxing officer shall not issue the certificate or allocatur until 14 days have elapsed from the date so endorsed.

### **Application to carry in objections to the taxation**

**113.—(1)** In this regulation, in regulation 114 and in regulation 116, "legal aid taxation" means the taxation of a solicitor's bill to his own client where that bill is to be paid out of the fund.

(2) Where—

- (a) an assisted person is dissatisfied with any decision of a taxing officer (except a decision under regulation 106) as to the amount which he is entitled to recover by virtue of an order or agreement for costs made in his favour or for which he is liable by virtue of an order for costs made against him; or
- (b) the assisted person's solicitor is dissatisfied with any decision of the taxing officer—
  - (i) on an inter partes taxation pursuant to an order for costs made in favour of the assisted person, or
  - (ii) on a legal aid taxation,

the solicitor shall apply to the appropriate area committee for authority to carry in objections to the taxation; and if the area committee gives authority (but not otherwise) the solicitor may carry in objections in accordance with rules of court.

### **Application to judge to review taxation**

**114.** Where the assisted person or his solicitor, as the case may be, is dissatisfied with the decision of the taxing officer on any matter to which objection has been taken under regulation 113, the

solicitor shall apply to the Board for authority to have the taxation reviewed; and, if the Board gives authority (but not otherwise), the solicitor may apply (or instruct counsel to apply) to a judge to review the taxation in accordance with rules of court.

#### **Appeal from review of taxation**

**115.**—(1) Subject to paragraph (2) and notwithstanding that the assisted person may have no interest in the appeal or would, but for regulation 118, have an interest adverse to that of his solicitor, an assisted person’s solicitor—

- (a) may, with the authority of the Board, appeal from the decision of the judge on a review of taxation under regulation 114, or
- (b) shall be entitled to be heard on an appeal brought by any other party,

and, on any such appeal, the solicitor may appear by counsel.

(2) Nothing in this regulation shall be deemed to confer a right of appeal in proceedings to which an assisted person is not a party where no such right exists.

(3) Where an assisted person’s solicitor applies for authority under paragraph (1), he shall do so before the expiration of the time allowed by rules of court for an appeal from the decision of a judge and, for this purpose, the time so allowed shall be extended by one month.

#### **Counsel dissatisfied with taxation**

**116.**—(1) Where counsel acting for an assisted person is dissatisfied with any decision on a legal aid taxation, it shall be the duty of the assisted person’s solicitor to report the matter to the appropriate area committee or to the Board, as the case may be, and, if the committee or the Board give authority to do so,—

- (a) to carry in objections to the taxation,
- (b) to apply to a judge to review the taxation, or
- (c) to appeal from the decision of the judge,

as the case may be, and regulations 113 to 115 and 120 shall apply as if the solicitor were the person dissatisfied.

(2) Paragraph (1) shall apply to a provisional taxation with the necessary modifications and in particular with the insertion of the words “to inform the taxing officer that he wishes to be heard on the taxation and to attend on the taxation,” after the words “the assisted person’s solicitor”.

#### **Objection by other party**

**117.** If, in proceedings to which an assisted person is a party, any other party carries in objections to the inter partes taxation or applies to a judge to review the taxation, the assisted person’s solicitor may be heard on the objections or review notwithstanding that the assisted person himself may have no interest in the taxation.

#### **Assisted person having no interest or adverse interest in taxation**

**118.** Where the assisted person has no interest in the taxation or would, but for the provisions of this regulation, have an interest adverse to that of his solicitor—

- (a) it shall be the duty of the solicitor carrying in objections under regulation 113 or applying for a review under regulation 114 to ensure that all matters which are proper to be taken into account in consideration of the objections or on the review are placed before the taxing officer or the judge, as the case may be;



- (b) the assisted person shall not be required to make any contribution to the fund on account of the costs of any proceedings arising under regulations 113 to 117 or in consequence of any order made in such proceedings; and
- (c) the charge created by section 16(6) of the Act shall not apply in relation to any resulting increase in the net liability of the fund arising out of the costs of any proceedings under regulations 113 to 117 or in consequence of any order made in such proceedings.

#### **Assisted person having financial interest in taxation**

**119.** Without prejudice to the provisions of regulation 118, where the assisted person has a financial interest in the taxation—

- (a) it shall be the duty of his solicitor to explain to him the extent of his interest in the taxation and the steps which can be taken to safeguard that interest and, if the assisted person so requests, to give notice in accordance with rules of court to the taxing officer that the assisted person has such an interest;
- (b) the assisted person shall not be required to make any contribution to the fund on account of the costs of the taxation proceedings;
- (c) the charge created by section 16(6) of the Act shall not apply in relation to any resulting increase in the net liability of the fund arising out of the costs of the taxation proceedings.

#### **Costs to be paid out of the fund**

**120.** Any proceedings under regulations 113 to 119 shall be deemed to be proceedings to which the assisted person's certificate relates, whether or not it has been discharged or revoked, and the costs of such proceedings shall be paid out of the fund.

#### **Time limits, etc.**

**121.—(1)** Subject to regulation 112 where any party to a taxation is an assisted person, the certificate or allocatur shall not, unless the parties agree, be signed until 21 days after the taxing officer's decision; and where an assisted person's solicitor applies under regulation 113 or 114 (or under regulation 116) for authority to carry in objections or to have a taxation reviewed, he shall do so before the expiration of the time allowed under rules of court for applying to the taxing officer for a review of the taxation and the time so allowed shall, for this purpose, be extended by one month, or such longer period as the taxing officer may allow.

(2) Notice of any application made under regulation 113, 114 or 116 shall be given to the taxing officer and to any opposing party.

#### **Appointment of solicitor to intervene**

**122.—(1)** The Lord Chancellor may appoint a solicitor to intervene in any review by a judge of a taxation of the costs of proceedings to which an assisted person is a party, and any such appointment may be made in respect of a particular review or may extend to any review of taxation during the period for which the solicitor is appointed.

(2) Whenever the Board gives authority to an assisted person's solicitor to apply to a judge to review a taxation, it shall notify the Lord Chancellor and inform him of the name and address of the assisted person's solicitor.

(3) If, in proceedings to which an assisted person is a party, any other party applies to a judge to review the inter partes taxation or the assisted person's solicitor applies to a judge to review any such taxation as is referred to in regulation 113, the assisted person's solicitor shall so inform the Board and the Board shall notify the Lord Chancellor and inform him of the name and address of the

assisted person's solicitor and, where the subject of the review is an inter partes taxation, the name and address of the solicitor acting for the other party.

(4) The solicitor appointed by the Lord Chancellor to intervene in a review of taxation shall be entitled to production of all documents relevant to the matters in issue before the judge and to delivery of copies thereof and to appear by counsel and be heard on the review, with a view to ensuring that all considerations which are proper to be taken into account are placed before the court, whether they relate to the interests of the fund or of the assisted person or to the remuneration of solicitors and counsel acting for assisted persons.

(5) On any review in which a solicitor appointed by the Lord Chancellor has intervened, the judge may make such order as may be just for the payment to or by that solicitor of the costs incurred by him or any other party, and any sum due to the solicitor by virtue of any such order shall be paid by him to the Board and any sum so payable by the solicitor shall be paid out of the fund, and the solicitor shall be entitled to receive from the fund the costs he has incurred on the intervention.

(6) A solicitor appointed by the Lord Chancellor under paragraph (1) may appeal from the decision of the judge on a review of taxation under regulation 115 and paragraphs (2) to (5) above shall apply to such an appeal as it applies to a review.

## PART XIII

### COSTS AWARDED AGAINST AN ASSISTED PERSON

#### **Security for costs given by assisted person**

**123.** Where in any proceedings an assisted person is required to give security for costs, the amount of such security shall not exceed the amount which could be ordered under section 17(1) of the Act.

#### **Assisted person's liability for costs**

**124.—(1)** Where proceedings have been concluded in which an assisted person (including, for the purpose of this regulation, a person who was an assisted person in respect of those proceedings) is liable or would have been liable for costs if he had not been an assisted person, no costs attributable to the period during which his certificate was in force shall be recoverable from him until the court has determined the amount of his liability in accordance with section 17(1) of the Act.

(2) Where the assisted person's certificate does not relate to, or has been amended so that it no longer relates to the whole of the proceedings, the court shall nevertheless make a determination under section 17(1) of the Act in respect of that part of the proceedings to which the certificate relates.

(3) The amount of an assisted person's liability for costs shall be determined by the court which tried or heard the proceedings.

#### **Affidavit of means by unassisted party**

**125.—(1)** Any person, not being himself an assisted person, who is a party to proceedings (other than authorised summary proceedings) to which an assisted person is a party, may file in the appropriate court office or registry an affidavit exhibiting a statement setting out the rate of his own income and amount of his own capital and any other facts relevant to the determination of his means in accordance with section 17(1) of the Act.

(2) Any person filing an affidavit under paragraph (1) shall serve a copy of it, together with the exhibit, upon the assisted person's solicitor, who shall forthwith serve him with a copy of the certificate and shall send a copy of the affidavit to the Area Director.

### **Determination of liability for costs**

**126.** In determining the amount of the assisted person's liability for costs—

- (a) his dwelling-house, clothes, household furniture and the tools and implements of his trade shall be left out of account to the like extent as they are left out of account by the assessment officer in determining his disposable income and disposable capital; and
- (b) any document which may have been sent to the court office or registry or filed or exhibited under these Regulations shall, subject to regulation 128, be evidence of the facts stated therein.

### **Postponement, adjournment or referral of determination**

**127.** The court may, if it thinks fit,—

- (a) postpone or adjourn the determination for such time and to such place (including chambers) as the court thinks fit; or
- (b) refer to a master, registrar or the Clerk of the Parliaments or (in the case of an appeal from a decision of the Crown Court or a court of summary jurisdiction) to the chief clerk or clerk to the justices of the court from which the appeal is brought, for investigation (in chambers or elsewhere) any question of fact relevant to the determination, and require him to report his findings on that question to the court.

### **Oral examination of parties**

**128.**—(1) The court may, if it thinks fit, order the assisted person and any party who has filed an affidavit pursuant to regulation 125 to attend for oral examination as to his means and as to any other facts (whether stated in any document before the court or otherwise) which may be relevant to the determination of the amount of the assisted person's liability for costs and may permit any party to give evidence and call witnesses.

(2) Where the court has made an order under regulation 127(b), the person to whom the matter has been referred for investigation may exercise the power conferred on the court by this regulation.

### **Order for costs**

**129.** The court may direct—

- (a) that payment under the order for costs shall be limited to such amount, payable in instalments or otherwise (including an amount to be determined on taxation), as the court thinks reasonable having regard to all the circumstances; or
- (b) where the court thinks it reasonable that no payment should be made immediately or that the assisted person should have no liability for payment, that payment under the order for costs be suspended either until such date as the court may determine or indefinitely.

### **Variation of order for costs**

**130.** The party in whose favour an order for costs is made may, within six years from the date on which it was made, apply to the court for the order to be varied on the ground that—

- (a) material additional information as to the assisted person's means, being information which could not have been obtained by that party with reasonable diligence at the time the order was made, is available; or
- (b) there has been a change in the assisted person's circumstances since the date of the order;

and on any such application the order may be varied as the court thinks fit; but save as aforesaid the determination of the court shall be final.

#### **Assisted person acting in representative, fiduciary or official capacity**

**131.** Where an order for costs is made against an assisted person who is concerned in the proceedings in a representative, fiduciary or official capacity, he shall have the benefit of section 17(1) of the Act and his personal resources shall not (unless there is reason to the contrary) be taken into account for that purpose, but regard shall be had to the value of the property or estate, or the amount of the fund out of which he is entitled to be indemnified.

#### **Assisted person a minor**

**132.** Where a minor is an assisted person, his means for the purpose of determining his liability for costs under section 17(1) of the Act shall be taken as including the means of any person whose resources have been taken into account under the Civil Legal Aid (Assessment of Resources) Regulations 1989(43) by the assessment officer in assessing the disposable income and disposable capital of the minor.

#### **Order against next friend or guardian ad litem**

**133.** Where an order for costs is made against a next friend or guardian ad litem of an assisted person who is a minor or patient, he shall have the benefit of section 17(1) of the Act as it applies to an assisted person and the means of the next friend or guardian ad litem shall, for the purposes of regulation 132, be taken as being the means of the minor or, as the case may be, of the patient.

## **PART XIV**

### **COSTS OF UNASSISTED PARTIES OUT OF THE FUND**

#### **Time and form of application**

**134.—(1)** An application for an order under section 18 of the Act may be made at any time and in any manner in which an application for an order for costs might be made in respect of the same proceedings if none of the parties were receiving legal aid.

(2) Any proceedings in respect of which a separate certificate could properly be issued shall be treated as separate proceedings for the purposes of section 18 of the Act.

#### **Unassisted party acting in representative, fiduciary or official capacity**

**135.** Where an unassisted party is concerned in proceedings only in a representative, fiduciary or official capacity, then for the purposes of section 18(4)(b) of the Act the court shall not take into account his personal resources, but shall have regard to the value of the property, estate or fund out of which the unassisted party is entitled to be indemnified and may in its discretion also have regard to the resources of the persons, if any, including the unassisted party where appropriate, who are beneficially interested in that property, estate or fund.

### **Appearance by unassisted party and Area Director**

**136.**—(1) The unassisted party and the Area Director may appear at any hearing or inquiry under Parts XIII and XIV of these Regulations.

(2) The Area Director may, instead of appearing, submit written representations concerning the application and such representations shall be—

- (a) supported by an affidavit sworn by the Area Director; and
- (b) sent to the proper officer of the court, with a copy to the unassisted party, not less than 7 days before the hearing or inquiry to which they relate.

### **Applications in respect of magistrates' court proceedings**

**137.**—(1) Where an application for an order under section 18 of the Act is made in respect of authorised summary proceedings, the court, instead of making an order forthwith, may in its discretion either

- (a) adjourn the hearing of the application; or
- (b) dismiss the application.

(2) If the court adjourns the hearing of the application, the unassisted party shall swear an affidavit of costs and resources containing the matters specified in Schedule 2, which he shall produce at the adjourned hearing and, not less than 21 days before the adjourned hearing, the unassisted party shall serve notice of the date and time of the hearing on the Area Director, with a copy of his affidavit of costs and resources together with any exhibits and supporting documents.

### **Applications in respect of county court proceedings**

**138.** On application for an order under section 18 of the Act made in respect of proceedings in or on appeal from a county court, the court shall not make an order under that section forthwith, but may in its discretion—

- (a) refer the application to the registrar for hearing and determination; or
- (b) adjourn the application; or
- (c) dismiss the application,

and, in this regulation and regulations 139 to 142, “registrar” means the registrar of the county court in which the proceedings were tried or determined or from which the appeal was brought.

### **Procedure where application referred to registrar for determination**

**139.** Where a court in accordance with regulation 138(a) refers an application to the registrar for hearing and determination—

- (a) the provisions of regulation 142 shall apply as if the registrar were the court and the court had adjourned the hearing of the application to a date to be fixed; and
- (b) the unassisted party or the Area Director may appeal to the judge on a point of law from the registrar’s determination within 14 days of the date on which it was given.

### **Reference to registrar for inquiry and report**

**140.** The court may, if it adjourns the hearing of an application in accordance with regulation 138(b), make an order referring it to the registrar for inquiry and report; and, if such an order is made,—

- (a) the court shall serve a copy of its order on the unassisted party;

- (b) within 21 days of the court making its order (or such longer time as the court may allow), the unassisted party shall file an affidavit of costs and resources (with any exhibits and supporting documents) together with a copy; and
- (c) the court shall serve a copy of its order and of the unassisted party's affidavit of costs and resources filed under sub-paragraph (b) on the Area Director.

#### **Procedure on inquiry and report**

**141.**—(1) As soon as a copy of the order of the court and the affidavit of costs and resources have been served on the Area Director in accordance with regulation 140(1)(c), the registrar shall give the unassisted party and the Area Director not less than 21 days' notice of the date and time when he proposes to conduct his inquiry.

(2) In exercising his functions under this regulation, the registrar shall have the same powers as a taxing officer has in the exercise of his functions under the County Court Rules 1981(44).

(3) On completing his inquiry, the registrar shall report to the court in writing, and shall at the same time send a copy of his report to the unassisted party and the Area Director.

(4) When the court has received the registrar's report, it shall give the unassisted party and the Area Director 21 days' notice of the day appointed for the hearing and determination of the application in chambers.

#### **Procedure where application adjourned**

**142.** If the court adjourns the hearing of an application in accordance with regulation 138(b) but does not refer it to the registrar for inquiry and report,—

- (a) within 21 days of the adjournment, the unassisted party shall file an affidavit of costs and resources (with any exhibits and supporting documents) together with a copy; and
- (b) not less than 21 days before the adjourned hearing, the court shall serve on the Area Director notice of the date fixed together with a copy of the affidavit of costs and resources filed under sub-paragraph (a).

#### **Applications in respect of proceedings in the Supreme Court and House of Lords**

**143.**—(1) On an application for an order under section 18 of the Act made in respect of proceedings in the Supreme Court (except proceedings on appeal from a county court) or in the House of Lords, the court shall not make an order forthwith, but may in its discretion—

- (a) refer the application to a master or registrar for hearing and determination; or
- (b) adjourn the hearing of the application; or
- (c) dismiss the application,

and, in relation to proceedings in the Court of Appeal, "registrar" means the registrar of civil appeals or, in respect of appeals from the Employment Appeal Tribunal or from the Restrictive Practices Court, the registrar of that Tribunal or Court, as the case may be.

(2) Where the application is referred to a registrar under paragraph (1)(a), the provisions of regulations 139 and 142 shall apply with any necessary modifications.

#### **Procedure where application referred to master for determination**

**144.** Where the court in accordance with regulation 143(1)(a) refers the application to a master for hearing and determination—

- (a) the provisions of regulation 147 shall apply as if the master were the court and the court had adjourned the hearing of the application to a date to be fixed; and
- (b) the master shall have the same powers as a taxing officer has in the exercise of his functions under Order 62 of the Rules of the Supreme Court 1965<sup>(45)</sup>; and
- (c) the unassisted party or the Area Director may appeal to a judge in chambers on a point of law within 14 days from the determination of the master.

#### **Reference to master for inquiry and report**

**145.** The court may, if it adjourns the hearing of an application in accordance with regulation 143(1)(b), make an order referring it to the master for inquiry and report; and if, such an order is made, then within 21 days of the court making the order (or such longer time as the master may allow) the unassisted party shall—

- (a) file an affidavit of costs and resources;
- (b) lodge a copy of the order of the court and of his affidavit of costs and resources, together with original exhibits and any other documents necessary to support the affidavit, with the master; and at the same time
- (c) serve a copy of the order of the court and of his affidavit of costs and resources (and of any exhibits and supporting documents) on the Area Director.

#### **Procedure on inquiry and report**

**146.—(1)** Where the unassisted party has complied with the requirements of regulation 145, the master shall give the unassisted party and the Area Director not less than 21 days' notice of the date and time when he proposes to conduct his inquiry.

(2) In exercising his functions under this regulation, the master shall have the same powers as a taxing officer has in the exercise of his functions under Order 62 of the Rules of the Supreme Court 1965.

(3) On completing his inquiry, the master shall report to the court in writing, and shall at the same time send a copy of his report to the unassisted party and to the Area Director.

(4) When the court has received the report of the master, the unassisted party shall seek an appointment for the hearing and determination of the application in chambers, and shall give the Area Director not less than 21 days' notice of the date and time so fixed.

#### **Procedure where application adjourned**

**147.** If the court adjourns the hearing of an application in accordance with regulation 143 but does not refer it for inquiry and report, then—

- (a) within 21 days of the adjournment, the unassisted party shall file an affidavit of costs and resources together with original exhibits and any other documents necessary to support the affidavit; and
- (b) not less than 21 days before the adjourned hearing, the unassisted party shall serve notice on the Area Director of the date and time of the adjourned hearing together with a copy of his affidavit of costs and resources (and of any exhibits and supporting documents).

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<sup>(45)</sup> S.I. 1965/1776; the relevant amending instrument is S.I. 1986/632.

## PART XV

### PARTICULAR COURTS AND TRIBUNALS

#### The Lands Tribunal

148.—(1) In this regulation—

“the tribunal” means the Lands Tribunal established by section 1(1)(b) of the Lands Tribunal Act 1949<sup>(46)</sup> and

“the registrar” means the registrar of the tribunal.

(2) Except in so far as otherwise provided by this regulation, these Regulations shall apply to applications for legal aid for proceedings in the tribunal and in the conduct of all proceedings in it for which a certificate is granted in like manner as they apply to applications for legal aid for, and the conduct of, proceedings in any court.

(3) Where any power to do any act or exercise any jurisdiction or discretion is conferred by these Regulations on a court it shall be exercised by the tribunal and may, unless it is exercisable only during the hearing of the proceedings, be exercised by the registrar.

(4) Notwithstanding anything in regulation 105 or 107, the following provisions shall have effect in relation to proceedings in the tribunal to which an assisted person is a party—

- (a) where a final decision is given in writing by the tribunal, it shall, in addition to any direction as to costs, contain a direction that the costs of any assisted person shall be taxed on the standard basis and the costs shall be so taxed by the registrar;
- (b) where the proceedings are brought to an end without a direction having been given under sub-paragraph (a), the costs of any assisted person shall be taxed by the registrar on the standard basis; and
- (c) in taxing the costs of any assisted person the registrar shall have power to determine as the appropriate scale for the taxation, one of the scales of costs for the time being prescribed by the County Court Rules 1981<sup>(47)</sup>.

#### The Employment Appeal Tribunal

149.—(1) In this regulation—

“the Appeal Tribunal” means the Employment Appeal Tribunal established under section 135(1) of the Employment Protection (Consolidation) Act 1978<sup>(48)</sup>; and

“the registrar” means the registrar of the Appeal Tribunal and includes any officer of the Appeal Tribunal authorised to act on behalf of the registrar.

(2) Except in so far as otherwise provided by this regulation, these Regulations shall apply to applications for legal aid for proceedings in the Appeal Tribunal and to the conduct of all proceedings in it for which a certificate is granted, in the same way as they apply to applications for legal aid for, and the conduct of, proceedings in any court.

(3) Where any power to do any act or exercise any jurisdiction or discretion is conferred by these Regulations on a court, it shall, in relation to proceedings in the Appeal Tribunal, be exercised by that Tribunal and may, unless it is exercisable only during the hearing of the proceedings by a judge or member of the Appeal Tribunal or by the Appeal Tribunal as required to be constituted by paragraph 16 of Schedule 11 to the Employment Protection (Consolidation) Act 1978, be exercised by the registrar.

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<sup>(46)</sup> 1949 c. 42.

<sup>(47)</sup> S.I. 1981/1687; the relevant amending instrument is S.I. 1986/636.

<sup>(48)</sup> 1978 c. 44; section 135(1) was amended by the Employment Act 1980 (c. 42), Schedule 2.



(4) Where it appears to the Area Director that an application for a certificate relates to proceedings in the Appeal Tribunal which are likely to be conducted in Scotland, he shall transmit the application forthwith to the Chief Executive of the Legal Aid Board in Scotland and shall notify the applicant and his solicitor accordingly.

(5) Where it appears to the Area Director doubtful whether the proceedings to which an application for a certificate relates will be conducted in the Appeal Tribunal in England and Wales or in Scotland, he shall request the registrar to determine that question and that determination shall be binding upon the Area Director.

(6) Where a certificate has been issued and there is a change of circumstances regarding the conduct of the proceedings in that, by direction of the Appeal Tribunal, they will be wholly or partly conducted in Scotland—

- (a) the certificate shall remain in force;
- (b) the assisted person shall continue to be represented in the proceedings in Scotland by the solicitor who represented him in England and that solicitor may instruct either a member of the English or the Scottish Bar; and
- (c) no question as to the propriety of appearing in Scotland shall be raised on a taxation or on an assessment in accordance with regulation 105.

(7) The costs of an assisted person in respect of proceedings in the Appeal Tribunal shall be assessed in accordance with regulation 105 or taxed on the standard basis by a taxing master of the Supreme Court and the provisions of Order 62 of the Rules of the Supreme Court 1965 shall apply, with the necessary modifications, to the taxation of those costs as if the proceedings in the Appeal Tribunal were a cause or matter in the Supreme Court.

### **The Commons Commissioners**

**150.**—(1) In this regulation, “a commissioner” means a Commons Commissioner appointed under section 17(1) of the Commons Registration Act 1965<sup>(49)</sup>.

(2) Except in so far as otherwise provided by this regulation, these Regulations shall apply to applications for legal aid for proceedings before a commissioner and to the conduct of all proceedings before him for which a certificate is granted, in the same way as they apply to applications for legal aid for, and the conduct of, proceedings in any court.

(3) Where any power to do any act or exercise any jurisdiction or discretion is conferred on a court by these Regulations, it shall, in relation to proceedings before a commissioner, be exercised by him.

(4) The costs of an assisted person in respect of proceedings before a commissioner shall be taxed (or assessed) as if they were costs of proceedings in a county court.

### **The Restrictive Practices Court**

**151.**—(1) In this regulation—

“the Court” means the Court established by section 1 of the Restrictive Practices Court Act 1976<sup>(50)</sup>, and

“the proper officer of the Court” shall have the same meaning as in the Restrictive Practices Court Rules 1976<sup>(51)</sup>.

(2) Except in so far as otherwise provided by this regulation, these Regulations shall apply to applications for legal aid for proceedings in the Court under Part III of the Fair Trading Act 1973<sup>(52)</sup>

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<sup>(49)</sup> 1965 c. 64.

<sup>(50)</sup> 1976 c. 33.

<sup>(51)</sup> S.I. 1976/1897; the relevant amending instrument is S.I. 1982/871.

<sup>(52)</sup> 1973 c. 41.

and to any proceedings in the Court in consequence of an order made, or undertaking given to the Court, under that Part of that Act, and to the conduct of all such proceedings for which a certificate is granted, in the same way as they apply to applications for legal aid for, and the conduct of, proceedings in any court.

(3) Where any power to do any act or exercise any jurisdiction or discretion is conferred by these Regulations on a court it shall in relation to proceedings in the Court be exercised by that Court and may, unless it is exercisable only during the hearing of any proceedings by a judge or by the Court, be exercisable by the proper officer of the Court.

(4) Where it appears to the Area Director that an application for a certificate relates to proceedings in the Court which are likely to be conducted in Scotland or Northern Ireland, he shall transmit the application forthwith to the Chief Executive of the Legal Aid Board in Scotland or the Secretary of the Legal Aid Department of the Incorporated Law Society of Northern Ireland, as the case may be, and shall notify the applicant and his solicitor accordingly.

(5) Where it appears to the Area Director doubtful whether the proceedings to which an application for a certificate relates will be conducted in the Court in England and Wales or in Scotland or Northern Ireland, he shall request the proper officer of the Court to determine that question and that determination shall be binding upon the Area Director.

(6) Where a certificate has been issued and there is a change of circumstances regarding the conduct of the proceedings in that, by order of the Court, they will be wholly or partly conducted in Scotland or Northern Ireland—

- (a) the certificate shall remain in force; and
- (b) for any proceedings in Scotland—
  - (i) the assisted person shall continue to be represented in the proceedings by the solicitor who represented him in England and Wales and that solicitor may instruct a member of the English or the Scottish Bar; and
  - (ii) no question as to the propriety of appearing in Scotland shall be raised on a taxation or on an assessment in accordance with regulation 105; and
- (c) for any proceedings in Northern Ireland, the assisted person shall continue to be represented in the proceedings by the solicitor who represented him in England and Wales and that solicitor shall instruct as his agent a solicitor on the panel maintained by the Incorporated Law Society of Northern Ireland of solicitors willing to act for assisted persons before the Court.

(7) The costs of an assisted person in respect of proceedings in the Court shall be assessed in accordance with regulation 105 or taxed on the standard basis by a taxing master of the Supreme Court, and the provisions of Order 62 of the Rules of the Supreme Court 1965 shall apply, with the necessary modifications, to the taxation of those costs as if the proceedings in the Court were a cause or matter in the Supreme Court.

Dated 28th February 1989

*Mackay of Clashfern, C.*

We consent,

Dated 3rd March 1989

*Kenneth Carlisle*  
*Alan Howarth*  
Two of the Lords Commissioners of Her  
Majesty's Treasury