
STATUTORY INSTRUMENTS

1989 No. 344

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

PART I
GENERAL

Citation, commencement and application

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

(2) Parts I to VI of these Regulations apply to criminal proceedings and Part VII applies to care proceedings.

Revocations

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

Interpretation

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

“the Act” means the Legal Act 1988;

“applicant” means, in relation to an application for legal aid made on behalf of a person who has not attained the age of 17 by his parent or guardian, that person and, in the case of any other application for legal aid, the person making the application;

“appropriate authority” means an officer or body authorised to determine costs under the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989(1);

“appropriate contributor”, in relation to a person who has not attained the age of 16, means—

- (a) his father (or any person who has been adjudged to be his father) or his mother; or
- (b) his guardian;

“appropriate officer” means, in the case of the Crown Court, the Chief Clerk or an officer designated by him to act on his behalf;

“appropriate area committee” means the area committee in whose area is situated the court to which an application for or concerning a legal aid order has been made;

“area committee” and “Area Director” have the meanings assigned to them by regulation 4 of the Civil Legal Aid (General) Regulations 1989(2)

“Area Director” includes any person duly authorised to act on his behalf;

“contribution” means the contribution payable under section 23(1) of the Act in respect of the costs of representation;

“contribution period” means the period of 6 months commencing with the date on which the legal aid order was made;

“Court of Appeal” means the criminal division of the Court of Appeal or the Courts-Martial Appeal Court as the case may be;

“disposable capital” and “disposable income” mean the amounts of capital and income which are available for the making of a contribution after capital and income have been computed in accordance with Schedule 3;

“family credit” means family credit under the Social Security Act 1986(3);

“guardian” has the meaning assigned by section 87 of the Child Care Act 1980(4);

“income support” means income support under the Social Security Act 1986;

“judge of the court” means—

- (a) in the case of the Court of Appeal, a single judge of that Court or a judge of the High Court;
- (b) in the case of the Crown Court, a judge of the High Court, a Circuit judge, a recorder, or an assistant recorder.

“justices' clerk” includes a person duly authorised by the justices' clerk of a magistrates' court to act on his behalf to the extent that he is so authorised;

“legal aid” means representation under Part V of the Act or representation in care proceedings, as the case may be, and

“legal aid order” means an order granting such representation;

“person concerned” means the person whose disposable income and disposable capital are to be determined or the person whose resources are to be treated as the resources of any other person under these Regulations;

“proper officer” means—

- (a) in respect of proceedings in the House of Lords, the Clerk of the Parliaments;
- (b) in respect of proceedings in the Court of Appeal, the registrar;
- (c) in respect of proceedings in the Crown Court, the appropriate officer;
- (d) in respect of proceedings in a magistrates' court, the justices' clerk.

“registrar” means the registrar of criminal appeals or the registrar of the Courts-Martial Appeal Court, as the case may be, and includes any person duly authorised to act on his behalf to the extent that he is so authorised;

“statement of means” means a statement of means submitted in accordance with regulation 23;

(2) Unless the context otherwise requires, any reference in these Regulations to a regulation, Part or Schedule by number means the regulation, Part or Schedule so numbered in these Regulations and a form referred to by number means the form so numbered in Schedule 2.

Forms

4.—(1) The form in Part I of Schedule 2 shall be used where applicable with such variations as the circumstances of the particular case require.

(3) 1986 c. 50.

(4) 1980 c. 5.

(2) The forms in Part II of Schedule 2, or forms to the like effect, may be used with such variations as the circumstances may require.

Applicants reaching the age of 16

5. An applicant who attains the age of 16 after the date on which an application for legal aid is made but before the making of a legal aid order shall be treated for the purposes of these Regulations as not having attained that age.

Exclusion of solicitors and counsel

6.—(1) The proper officer of each court shall keep a list of solicitors and counsel, notified to him by the Lord Chancellor, who are for the time being excluded from legal aid work under section 47(2) of the Solicitors Act 1974(5) or section 42 of the Administration of Justice Act 1985(6).

(2) Any reference in these Regulations to solicitors or counsel shall be construed as not including any solicitor or counsel who is so excluded.

Determination in private and in absence of legally assisted person etc.

7. Where it is provided by these Regulations that any matter may be determined otherwise than by a court, it may be determined in private and in the absence of the applicant, the appropriate contributor, the person concerned or the legally assisted person as the case may be.

Legal aid records

8. The proper officer shall keep such records as the Lord Chancellor may from time to time direct of all cases in which a legal aid order was made by the court or an application for legal aid was made to it, and shall send to the Lord Chancellor such information from those records as the Lord Chancellor shall request.

Area committees and powers of Area Directors

9.—(1) Area committees and Area Directors appointed by the Board pursuant to regulation 4 of the Civil Legal Aid (General) Regulations 1989 shall exercise functions respectively delegated to them by the Board or conferred on them by these Regulations and, where an area committee is required or entitled to perform any function under these Regulations, that function may, subject to paragraph (3), be performed on behalf of the committee by the Area Director.

(2) An Area Director so appointed shall act as the secretary to the area committee for his area.

(3) Paragraph (1) shall not empower an Area Director to refuse—

- (a) an application for review under regulation 17(1);
- (b) an application under regulation 52; or
- (c) an application referred to the committee under regulation 54.

General power to grant legal aid

10. Subject to the provisions of section 21(2), (3) and (5) of the Act and to regulation 23, nothing in Part II or in regulation 36 shall affect the power of a court, a judge of the court or of the registrar to make a legal aid order, whether an application has been made for legal aid or not, or the right of

(5) 1974 c. 47.

(6) 1985 c. 61; section 42 was amended by the Legal Aid Act 1988 (c. 34), section 33.

an applicant whose application has been refused or whose legal aid order has been revoked under section 24(2) to apply to the court at the trial or in other proceedings.

PART II

APPLICATIONS FOR LEGAL AID

Proceedings in magistrates' courts

11.—(1) An application for a legal aid order in respect of proceedings in a magistrates' court shall be made—

- (a) to the justices' clerk in Form 1, or
- (b) orally to the court,

and the justices' clerk or the court may grant or refuse the application.

(2) Where an application for a legal aid order is made under paragraph (1)(b), the court may refer it to the justices' clerk for determination.

(3) Except where the applicant is not required to furnish a statement of means under regulation 23(4), a legal aid order shall not be made on an application under paragraph (1) until the court or the justices' clerk has considered the applicant's statement of means.

Notification of refusal of legal aid by a magistrates' court

12.—(1) Where an application for a legal aid order is refused by a magistrates' court or a justices' clerk, the court or the justices' clerk shall notify the applicant on Form 2 that the application has been refused on one or both of the following grounds, namely, that—

- (a) it does not appear to the court or the justices' clerk desirable to make an order in the interests of justice; or
- (b) it appears to the court or the justices' clerk that the applicant's disposable income and disposable capital are such that, in accordance with regulation 26(1), he is ineligible for legal aid,

and shall inform him of the circumstances in which he may renew his application or apply to an area committee for the decision to be reviewed.

(2) A copy of Form 2, and, where an application for review under regulation 15 may be made, of the completed Form 1 shall be sent to the applicant and to his solicitor, if any.

Determination of contribution where legal aid is refused by a magistrates' court

13. Where a magistrates' court or a justices' clerk has refused to make a legal aid order, the court or the justices' clerk shall determine—

- (a) the applicant's disposable income and disposable capital, and
- (b) the amount of any contribution which would have been payable and the manner in which it would be payable by the applicant or an appropriate contributor had a legal aid order been made,

and shall notify the applicant of the amounts so determined.

Renewal of application

14.—(1) Without prejudice to the provisions of regulation 15, an applicant whose application under regulation 11 has been refused may renew his application either orally to the court or to the justices' clerk.

(2) Where an application is renewed under paragraph (1), the applicant shall return the notice of refusal which he received under regulation 12 or any such notice received under regulation 17(4).

(3) Where an application is renewed to the justices' clerk, he may either grant the application or refer it to the court or to a justice of the peace.

(4) Where an application is renewed to the court, the court may grant or refuse the application or refer it to the justices' clerk.

(5) The court or a justice of the peace to whom an application is referred under paragraph (3) or (6), may grant or refuse the application.

(6) A justices' clerk to whom an application is referred under paragraph (4), may grant the application or refer it either back to the court or to a justice of the peace.

(7) Except where the applicant is not required to furnish a statement of means under regulation 23(4), a legal aid order shall not be made where an application is renewed under paragraph (1) until the court, a justice of the peace or the justices' clerk has considered the applicant's statement of means.

(8) Regulation 12 shall apply where an application is refused under this regulation with the modification that references to a magistrates' court shall be construed as including references to a justice of the peace.

(9) In this regulation, "a justice of the peace" means a justice of the peace who is entitled to sit as a member of the magistrates' court.

Application for review

15.—(1) Where an application for a legal aid order has been refused after having been considered for the first time by a magistrates' court or a justices' clerk, the applicant may, subject to paragraph (2), apply for review to the appropriate area committee.

(2) An application for review shall only lie to an area committee where—

- (a) the applicant is charged with an indictable offence or an offence which is triable either way or appears or is brought before a magistrates' court to be dealt with in respect of a sentence imposed or an order made in connection with such an offence; and
- (b) the application for a legal aid order has been refused on the ground specified in regulation 12(1)(a); and
- (c) the application for a legal aid order was made no later than 21 days before the date fixed for the trial of an information or the inquiry into an offence as examining justices, where such a date had been fixed at the time that the application was made.

Procedure on application for review

16.—(1) An application for review shall be made by giving notice in Form 3 to the appropriate area committee within 14 days of the date of notification of the refusal to make a legal aid order and the applicant shall send a copy of Form 3 to the justices' clerk of the magistrates' court to which the first application for legal aid was made.

(2) An application under paragraph (1) shall be accompanied by the following documents—

- (a) a copy of the completed Form 1 returned by the court under regulation 12(2); and
- (b) a copy of the notice of refusal received under regulation 12.

(3) The time limit within which the application for review is to be made may, for good reason, be waived or extended by the area committee.

(4) The justices' clerk and the applicant shall supply such further particulars, information and documents as the area committee may require in relation to an application under paragraph (1).

Determination of review

17.—(1) On a review, the area committee shall consider the application for legal aid and either—

- (a) refuse the application; or
- (b) make a legal aid order.

(2) Where the area committee makes a legal aid order, it shall make a contribution order in accordance with any determination made under regulation 13.

(3) Where a magistrates' court or a justices' clerk has determined under regulation 13 that any legal aid order which is made shall not take effect until a contribution from disposable capital is paid, the area committee shall send the legal aid order to the appropriate justices' clerk.

(4) The area committee shall give notice of its decision and the reasons for it in Form 4 to—

- (a) the applicant and his solicitor, if any, and
- (b) the justices' clerk of the magistrates' court to which the application for legal aid was made.

Proceedings in the Crown Court

18.—(1) An application for a legal aid order in respect of proceedings in the Crown Court shall be made either to the appropriate officer of the Crown Court in Form 1 or

- (a) orally to the Crown Court or to a magistrates' court at the conclusion of any proceedings in that magistrates' court; or
- (b) where a magistrates' court has been given a notice of transfer under section 4 of the Criminal Justice Act 1987(7) (serious fraud cases), to the justices' clerk of that magistrates' court in form 1; or
- (c) in the case of an appeal to the Crown Court from a magistrates' court, to the justices' clerk of that magistrates' court in Form 1; or
- (d) where the applicant was granted legal aid for proceedings in the magistrates' court and was committed for trial in the Crown Court under section 6(2) of the Magistrates' Courts Act 1980(8), to the justices' clerk of the magistrates' court ordering the committal in such form as may be required; or
- (e) in the case of a retrial ordered under section 7 of the Criminal Appeal Act 1968(9), orally to the court ordering the retrial,

and the appropriate officer, the court or the justices' clerk may grant or refuse the application.

(2) Where an application for a legal aid order is made orally to the court, the court may refer it to the proper officer of the court for determination.

(3) Except where the applicant is not required to furnish a statement of means under regulation 23(4), a legal aid order shall not be made on an application under paragraph (1) until the appropriate officer, the court or the justices' clerk has considered the applicant's statement of means.

(7) 1987 c. 38; section 4 was amended by the Criminal Justice Act, 1988 (c. 33), section 144(2).

(8) 1980 c. 43; section 6(2) was amended by the Criminal Justice Act 1982 (c. 48), section 61.

(9) 1968 c. 19; section 7 was amended by the Criminal Justice Act, 1988 (c. 33), section 43.

Notification of refusal of legal aid

19.—(1) Where an application for a legal aid order is refused by the appropriate officer of the Crown Court, the court or a justices' clerk, the appropriate officer, the court or the justices' clerk shall notify the applicant on Form 2 that the application has been refused on one or both of the following grounds, namely, that—

- (a) it does not appear to the officer, the court or the justices' clerk desirable to make an order in the interests of justice; or
- (b) it appears to the officer, the court or the justices' clerk that the applicant's disposable income and disposable capital are such that, in accordance with regulation 26(1), he is ineligible for legal aid,

and shall inform him of the circumstances in which he may renew his application.

- (2) A copy of Form 2 shall be sent to the applicant and to his solicitor, if any.

Determination of contribution where legal aid is refused

20. Where the appropriate officer of the Crown Court, the court or a justices' clerk has refused to make a legal aid order, the officer, the court or the justices' clerk shall determine—

- (a) the applicant's disposable income and disposable capital, and
- (b) the amount of any contribution which would have been payable and the manner in which it would be payable by the applicant or an appropriate contributor had a legal aid order been made,

and shall notify the applicant of the amounts so determined.

Renewal of application

21.—(1) An applicant whose application under regulation 18 has been refused may renew his application either orally to the court or to the appropriate officer of the Crown Court.

(2) Where an application is renewed under paragraph (1), the applicant shall return the notice of refusal which he received under regulation 19.

(3) Where an application is renewed to the appropriate officer, he may either grant the application or refer it to a judge of the court.

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

(5) A judge of the court to whom an application is referred under paragraph (3) or (6), may grant or refuse the application.

(6) An appropriate officer to whom an application is referred under paragraph (4), may grant the application or refer it to a judge of the court.

(7) Except where the applicant is not required to furnish a statement of means under regulation 23(4), a legal aid order shall not be made where an application is renewed under paragraph (1) until the court or the appropriate officer has considered the applicant's statement of means.

(8) Regulation 19 shall apply where an application is refused under this regulation as if references to a justices' clerk were omitted.

Proceedings in the Court of Appeal or the House of Lords

22.—(1) An application for a legal aid order in respect of proceedings in the Court of Appeal or the House of Lords may be made—

- (a) orally to the Court of Appeal, to a judge of the court or the registrar, or
 - (b) by giving written notice of the application to the registrar in such form as he may direct.
- (2) Where an application for a legal aid order is made orally to the Court of Appeal, the court may refer it to a judge of the court or the registrar for determination; and, where such an application is made orally to a judge of the court, he may refer it to the registrar for determination.
- (3) Where a judge of the court refuses to make a legal aid order, the applicant may renew his application to the Court of Appeal.
- (4) The registrar considering an application for a legal aid order shall—
- (a) make an order; or
 - (b) refer the application to the Court of Appeal or to a judge of the court.
- (5) A legal aid order shall not be made until—
- (a) a notice of appeal or application for leave to appeal to the Court of Appeal or the House of Lords, as the case may be, has been given, and
 - (b) except where the applicant is not required under regulation 23(4) to furnish a statement of means, the Court of Appeal, a judge of the court or the registrar has considered the applicant's statement of means.
- (6) In making a legal aid order in respect of proceedings in the Court of Appeal, the court, a judge of the court or the registrar may specify the stage of the proceedings at which legal aid shall commence.
- (7) Subject to the provisions of this regulation, the powers of the Court of Appeal to determine an application for a legal aid order may be exercised by a judge of the court or the registrar.
- (8) The powers of the Court of Appeal to revoke a legal aid order may be exercised by a judge of the court or, where the legally assisted person applies for the order to be revoked, by the registrar.

PART III

STATEMENT OF MEANS AND PAYMENT OF CONTRIBUTIONS

Statement of means

- 23.—**(1) A statement of means submitted by an applicant or an appropriate contributor shall be in Form 5.
- (2) Subject to paragraphs (3) and (4), where an applicant does not submit a statement of means when he applies for legal aid, the proper officer to whom, or to whose court he is making the application, shall require him so to do.
- (3) Where an applicant is under 16, the proper officer may require either the applicant or an appropriate contributor, or both, to submit a statement of means in accordance with this regulation.
- (4) A statement of means shall be required unless—
- (a) it appears to the court or the proper officer that, by reason of his physical or mental condition, the applicant is for the time being incapable of furnishing such a statement; or
 - (b) the applicant has already submitted such a statement in connection with a previous application in respect of the same case and his financial circumstances have not changed.
- (5) Nothing in paragraph (4)(a) shall prevent the court or the proper officer from requiring an applicant to furnish a statement of means after a legal aid order has been made where it appears that he is no longer incapable of furnishing such a statement.

Provision of information

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

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

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

Determination of contributions

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

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

Assessment of resources and method of determining contributions

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

(2) The court or the proper officer shall—

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

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

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

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

Contribution orders

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

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

Earlier contribution orders

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

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

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

Payment of contributions

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

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

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

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

Method of payment of contributions

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

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

Change in financial circumstances

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

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

Determination where no contribution previously payable

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

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

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

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

Redetermination of contribution

33. Except where it appears unlikely that any significant change in liability to make a contribution would result, the court or the proper officer of the court shall redetermine the amount of any contribution payable by a legally assisted person or an appropriate contributor under a legal aid order where—

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

- (i) his disposable income may have increased by an amount greater than £750 a year or decreased by an amount greater than £300 a year; or

- (ii) his disposable capital may have increased by an amount greater than £750 a year;

and shall vary or revoke the contribution order accordingly.

Effect of error or mistake

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

Variation and revocation of contribution orders

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

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

and, in this regulation, “relevant proceedings” means the proceedings for the purposes of which legal aid was granted under the legal aid order in connection with which the contribution order was made or, where those proceedings are proceedings before a magistrates' court which result in the legally

assisted person being committed to the Crown Court for trial or sentence or in his case being remitted to a juvenile court, the relevant proceedings include the proceedings before the Crown Court or that juvenile court.

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

(3) Where a legally assisted person—

- (a) successfully appeals against his conviction; or
- (b) is respondent to an appeal which is unsuccessful,

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

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

(5) Where—

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

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

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

Refusal to pay contribution

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

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

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

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

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

may revoke the grant of representation.

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

Termination of contribution period

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

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

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

(2) The court making any such remission or passing any such sentence shall inform the collecting court that the contribution period is to be deemed to have ended on the date of the remission or sentence.

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

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

Disposal of sums received from legally assisted persons after conviction

38.—(1) Where a legally assisted person or an appropriate contributor to whom this regulation applies has been ordered to make a contribution, any amounts falling due under the contribution order after the conclusion of the relevant proceedings shall, unless remitted or specifically appropriated by the person paying the money to payment of the contribution, be applied (when paid) first, in accordance with the provisions of section 139 of the Magistrates' Court Act 1980⁽¹⁰⁾ and any sum paid in addition to the sums referred to in paragraph (2) below shall be paid to the Lord Chancellor in accordance with paragraph 4(2) of Schedule 3 to the Act.

(2) This regulation applies to a legally assisted person who is ordered to pay any sum adjudged to be paid on conviction and to an appropriate contributor who is ordered to pay a fine, compensation or costs under the provisions of section 55 of the Children and Young Persons Act 1933⁽¹¹⁾ or section 3 of the Children and Young Person Act 1969⁽¹²⁾.

Repayment of contributions

39. On receiving notification of the amount of the costs of representation determined by the appropriate authority under the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989⁽¹³⁾, the collecting court or the proper officer of that court shall, in accordance with section 23(7) of the Act, repay to the legally assisted person or the appropriate contributor, as the case may be, the amount, if any, by which any contribution paid exceeds those costs.

⁽¹⁰⁾ 1980 c. 43.

⁽¹¹⁾ 1933 c. 12; section 55 was amended by the Criminal Justice Act 1982 (c. 48), section 26.

⁽¹²⁾ 1969 c. 54; section 3 was amended by Courts Act 1971 (c. 23), section 56, Schedule 8 paragraph 59(1), Schedule 9 Part I, Schedule 11 Part IV, by the Criminal Law Act 1977 (c. 45), sections 58(3), 65(5), Schedule 13, by the Criminal Justice Act 1982 (c. 48), section 27, by the Prosecution of Offences Act 1985 (c. 23), section 27 and by S.I. 1982/1109, rule 6(2), Schedule 3 Part II paragraph 6.

⁽¹³⁾ S.I. 1989/343.

PART IV

LEGAL AID ORDERS

Legal aid orders

40.—(1) A magistrates' court inquiring into an offence as examining justices may make a legal aid order which applies, or amend an order so that it applies, both to proceedings before the court and, in the event of the defendant being committed for trial, to his trial before the Crown Court and, where such an order is made,—

- (a) Form 11 shall be used; and
- (b) copies of the order shall be sent in accordance with paragraph (2) below or with regulation 50(3), as the case may be.

(2) A legal aid order for the purposes of proceedings in a magistrates' court, the Crown Court or the Court of Appeal shall be in Form 11, 12 or 13 as the case may be and, subject to regulations 17(3) and 29(3), the court or the proper officer shall send—

- (a) one copy to the legally assisted person; and
- (b) one copy to the solicitor assigned or to counsel (where counsel only is assigned); and,

where the legal aid order is made for the purposes of proceedings before a magistrates' court, a further copy (endorsed "Board copy") shall be sent under sub-paragraph (b) above.

(3) Where a legal aid order is made by an area committee for the purposes of proceedings in a magistrates' court, one copy shall be sent to the proper officer of the court to which the application for legal aid was made.

(4) Where a legal aid order is amended under regulation 50, copies of the amended order shall be sent in accordance with paragraph (3) of that regulation.

(5) Where the solicitor assigned instructs counsel, the instructions which are delivered to counsel shall include a copy of the legal aid order and the solicitor shall inform counsel of any amendments made to the legal aid order.

Withdrawal and revocation of legal aid orders

41.—(1) A legal aid order may be withdrawn—

- (a) where the legally assisted person declines to accept the terms on which a grant of representation may be made;
- (b) at the request of the legally assisted person;
- (c) in accordance with the provisions of regulation 50.

(2) Where two legal aid orders are made in respect of the same proceedings, the second order so made shall be deemed to be of no effect and shall be withdrawn as if the legally assisted person had made a request under paragraph (1)(b) above.

(3) An order withdrawing a legal aid order shall be in Form 14 and a copy of it shall be sent to—

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

(4) Where a legal aid order is withdrawn—

- (a) the counsel assigned shall send all papers and other items in his possession relating to the proceedings to the solicitor assigned or (where no solicitor was assigned) to the legally assisted person; and
 - (b) the solicitor assigned shall send all papers and other items in his possession relating to the proceedings to the legally assisted person.
- (5) Where a legal aid order is revoked under regulation 36(3), the foregoing paragraphs of this regulation shall apply, with any necessary modifications, as if the order had been withdrawn.

Notes of evidence and depositions

42. Where a legal aid order is made in respect of an appeal to the Crown Court, the justices' clerk shall supply, on the application of the solicitor assigned to the appellant or respondent on whose application such an order was made, copies of any notes of evidence or depositions taken in the proceedings in the magistrates' court.

Transfer of documents

- 43.** Where a person is committed by a lower court to a higher court or appeals or applies for leave to appeal from a lower court to a higher court, the proper officer of the lower court shall send to the proper officer of the higher court the following documents—
- (a) a copy of any legal aid order previously made in respect of the same proceedings;
 - (b) a copy of any contribution order made;
 - (c) a copy of any legal aid application which has been refused;
 - (d) any statement of means already submitted.

PART V

LEGAL REPRESENTATION

Nature of representation

- 44.—(1)** Subject to the following paragraphs of this regulation, a grant of representation shall provide for the services of a solicitor and counsel.
- (2) A legal aid order granting representation for the purpose of such part of any proceedings before a magistrates' court as relates to the giving of bail shall not include representation by counsel.
- (3) A legal aid order granting representation for the purposes of proceedings before a magistrates' court shall not include representation by counsel except—
- (a) in the case of any indictable offence, where the court is of the opinion that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable; and
 - (b) in the case of proceedings under section 1 of the Children and Young Persons Act 1969(14), where it is alleged that the condition set out in subsection (2)(f) of that section is satisfied in consequence of an indictable offence and the court is of such opinion as is mentioned in sub-paragraph (a) above.

(14) 1969 c. 54; section 1 was amended by the Children Act 1975 (c. 72), section 108, Schedule 3 paragraph 67, by the Education Act 1981 (c. 60), section 21, Schedule 3 paragraph 9, by the Mental Health Act 1983 (c. 20), section 148, Schedule 4 paragraph 26(a)(b) and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 2 paragraph 10.

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

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

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

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

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

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

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

Assignment of solicitor and selection of counsel

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

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

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

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

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

Assignment of counsel only

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

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

Assignment of Queen's Counsel and two counsel

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

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

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

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

- (a) a Queen's Counsel with a junior counsel;
- (b) a Queen's Counsel with a noting junior counsel;
- (c) two junior counsel; or
- (d) a junior counsel with a noting junior counsel,

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

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

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

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

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

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

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

Amendment of legal aid orders

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

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

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

- (a) the legally assisted person;

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

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

Applications for amendment of legal aid orders etc.

51.—(1) An application for—

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

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

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

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

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

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

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

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

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

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

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

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

(c) any other relevant documents or information.

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

Consideration by area committee

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

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

PART VI

AUTHORITY TO INCUR COSTS AND RESTRICTIONS ON PAYMENT OF LEGAL REPRESENTATIVES

Power of area committee to authorise expenditure

54.—(1) Where it appears to a legally assisted person's solicitor necessary for the proper conduct of proceedings in a magistrates' court or in the Crown Court for costs to be incurred under the legal aid order by taking any of the following steps—

- (a) obtaining a written report or opinion of one or more experts;
- (b) employing a person to provide a written report or opinion (otherwise than as an expert);
- (c) bespeaking transcripts of shorthand notes or of tape recordings of any proceedings, including police questioning of suspects;
- (d) where a legal aid order provides for the services of solicitor and counsel, instructing a Queen's Counsel alone without junior counsel; or
- (e) performing an act which is either unusual in its nature or involves unusually large expenditure;

he may apply to the appropriate area committee for prior authority so to do.

(2) Where an area committee authorises the taking of any step specified in paragraph (1)(a), (b), (c) or (e), it shall also authorise the maximum fee to be paid for any such report, opinion, transcript or act.

Restriction on payment

55. Where a legal aid order has been made, the legally assisted person's solicitor or counsel shall not receive or be a party to the making of any payment for work done in connection with the proceedings in respect of which the legal aid order was made except such payments as may be made—

- (a) out of the legal aid fund or by the Lord Chancellor, or
- (b) in respect of any expenses or fees incurred in—
 - (i) preparing, obtaining or considering any report, opinion or further evidence, whether provided by an expert witness or otherwise; or
 - (ii) bespeaking transcripts of shorthand notes or tape recordings of any proceedings, including police questioning of suspects;

where an application under regulation 54 for authority to incur such expenses or fees has been refused by the area committee.

PART VII

CARE PROCEEDINGS

Application of Parts I to VI

56. Subject to the following provisions of this Part, Parts I to VI shall apply, with any necessary modifications, to the grant of representation in care proceedings as they apply to the grant of representation in criminal proceedings.

Scope of care proceedings

57. In section 27(1)(f) of the Act there shall be inserted, after the words “(access orders)”, the words “except appeals from decisions of juvenile courts to the High Court”.

Interpretation

58. The definition of “applicant” in regulation 3(1) shall include a guardian ad litem but nothing in this Part shall have the effect of making a guardian ad litem an appropriate contributor for the purposes of these Regulations;

Statement of means and contributions

59.—(1) Regulation 23(4) shall not apply where representation is granted under this Part.

(2) Where a person has been made a party to care proceedings because he has a contrary interest in those proceedings, regulation 25 shall not have the effect of requiring him to pay a contribution in respect of the costs of representing the child who is the subject of the care proceedings in addition to the costs of his own representation.

Applications for emergency orders

60.—(1) An application for a legal aid order in respect of proceedings before a justice of the peace under section 12E of the Child Care Act 1980(15) may be made orally to a justice of the peace.

(2) A legal aid order shall not be made until the justice of the peace had considered the applicant’s statement of means and, in respect of the proceedings referred to in paragraph (1), such statements may be provided orally or in writing.

(3) In this regulation, “justice of the peace” means a justice of the peace who is entitled to sit as a member of a juvenile court.

Proceedings before a juvenile court

61.—(1) An application for a legal aid order in respect of care proceedings before a juvenile court shall be made—

- (a) to the justices' clerk in Form 16, or
- (b) orally to the court,

(15) 1980 c. 5; section 12E was inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 1 Part I, paragraph 1.

and, subject to the following paragraphs of this regulation, regulations 11 to 14 shall apply as if the application was an application for a legal aid order in respect of proceedings in a magistrates' court.

(2) The powers of the court to determine an application under paragraph (1) may be exercised by a justice of the peace and, in this regulation, "justice of the peace" has the meaning given by regulation 60(3) above.

(3) Regulations 15 to 17 shall not apply to applications under paragraph (1).

Proceedings in the Crown Court

62.—(1) An application for a legal aid order in respect of an appeal to the Crown Court from a decision of a juvenile court in care proceedings shall be made—

- (a) orally to the Crown Court or to the juvenile court at the conclusion of any proceedings in that juvenile court; or
- (b) to the appropriate officer of the Crown Court in Form 16; or
- (c) to the justices' clerk in Form 16,

and, subject to the following paragraphs of this regulation, regulations 18 to 21 shall apply as if the application was an application for a legal aid order in respect of proceedings in the Crown Court.

(2) The powers of a juvenile court to determine an application under paragraph (1) may be exercised by a justice of the peace or the justices' clerk and, in this regulation,—

- (a) "juvenile court" means the juvenile court from which the appeal is brought;
- (b) "justice of the peace" has the meaning given by regulation 60(3) above; and
- (c) "justices' clerk" means the justices' clerk to the juvenile court.

Dated 1st March 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