
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.

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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.