
STATUTORY INSTRUMENTS

1994 No. 3136

**LEGAL AID AND ADVICE,
ENGLAND AND WALES**

**The Legal Aid in Criminal and Care Proceedings
(General) (Amendment) (No. 2) Regulations 1994**

Made - - - - *8th December 1994*
Laid before Parliament *9th December 1994*
Coming into force - - *1st January 1995*

The Lord Chancellor, in exercise of the powers conferred on him by sections 2, 34 and 43 of the Legal Aid Act 1988(1), hereby makes the following Regulations:—

1. These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 2) Regulations 1994 and shall come into force on 1st January 1995.

2. In these Regulations a regulation or Schedule referred to by number alone means a regulation or Schedule so numbered in the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989(2).

Amendment of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989

3. For regulation 48 there shall be substituted the following:—

“Assignment of Queen’s Counsel or more than one counsel

48.—(1) A legal aid order may provide for the services of a Queen’s Counsel or of more than one counsel in respect of the whole or any specified part of any proceedings only in the cases specified and in the manner provided for 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;

(1) 1988 c. 34; sections 2 and 34 were amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraphs 61 and 63. Section 43 is an interpretation provision and is cited because of the meanings assigned to the words “prescribed” and “regulations”.

(2) S.I.1989/344, as amended by S.I. 1990/489, 1991/637 and 1925, 1992/720, 1993/789 and 1895 and 1994/807.

- (b) where it appears to the court making the order that the case is one of exceptional difficulty, gravity or complexity and that a legal aid order for the provision of services in the terms provided for by paragraph (3)(a) or (b) of this regulation is required in the interests of justice; or
 - (c) where the prosecution is being brought by the Serious Fraud Office.
- (3) Subject to paragraphs (4) to (9), a legal aid order may provide for the services of a Queen's Counsel or of more than one counsel in any of the following terms—
- (a) a Queen's Counsel alone;
 - (b) where two counsel are required—
 - (i) a Queen's Counsel with a junior counsel, or
 - (ii) a Queen's Counsel with a noting junior counsel, or
 - (iii) two junior counsel, or
 - (iv) a junior counsel with a noting junior counsel.
- (4) In proceedings to which paragraph (2)(c) applies, a court making a legal order may, if it considers that three counsel are required, provide for the services of three counsel in any of the terms provided for in paragraph (3)(b) plus an extra junior counsel or noting junior counsel.
- (5) The fact that a Queen's Counsel has been or is proposed to be assigned under this regulation shall not by itself be a reason for making an order in any of the terms provided for by paragraph (3)(b) or (4).
- (6) Where a Queen's Counsel has been or is proposed to be assigned under this regulation, no order in any of the terms provided for by paragraph (3)(b) or (4) shall be made where it appears to the court at the time of making the order that—
- (a) there is reasonable certainty that the indictment will be disposed of by a guilty plea and there are no special circumstances requiring the provision of the services of more than one counsel, or
 - (b) the case relates to an appeal to the Court of Appeal or to the House of Lords and representation can properly be undertaken by a Queen's Counsel alone.
- (7) Unless the court to which the application is made otherwise directs, every application for a legal aid order in any of the terms provided for by paragraph (3) or (4) or for an amendment under paragraph (10) or (11) shall be in writing specifying—
- (a) the terms of the order sought and the grounds of the application; and
 - (b) if the order sought is for the provision of services in any terms provided for by paragraph (3)(b) or (4), the reasons why two counsel are required or an extra junior counsel or noting junior counsel is required as the case may be.
- (8) A court may, before making a legal aid order in the terms provided for by paragraph (3) or (4) or amending the order under paragraph (10) or (11), require written advice from any counsel already assigned to the applicant on the question of what representation is needed in the proceedings.
- (9) A magistrates' court which is competent as respects any proceedings by virtue of section 20(4) or (5) of the Act may make a legal aid order providing for the services of a Queen's Counsel with one junior counsel where:—
- (a) the proceedings are a trial for murder and the order is made upon committal or transfer for trial, or

(b) the prosecution is brought by the Serious Fraud Office and the order is made upon receiving a notice of transfer under section 4 of the Criminal Justice Act 1987(3) but shall have no other power to make an order under this regulation.

(10) In proceedings to which paragraph (2)(a) or (b) applies, a legal aid order which provides—

- (a) for one counsel only may be amended to provide for the services of a Queen’s Counsel or of more than one counsel in any terms provided for by paragraph (3);
- (b) for two counsel in any terms provided for by paragraph (3)(b) may be amended to provide for the services of the same number of counsel but in other terms provided for by that paragraph, or for a Queen’s Counsel alone, or for one counsel only in accordance with regulation 47.

(11) In proceedings to which paragraph (2)(c) applies, a legal aid order which provides—

- (a) for one counsel only may be amended to provide for the services of a Queen’s Counsel or of more than one counsel in any terms provided for by paragraph (3) or (4);
- (b) for two counsel in any terms provided for by paragraph (3)(b) may be amended to provide for the services of three counsel in any terms provided for by paragraph (4), for two counsel but in other terms provided for by paragraph (3) (b), or for a Queen’s Counsel alone, or for one counsel only in accordance with regulation 47;
- (c) for three counsel in any terms provided for by paragraph (4) may be amended to provide for the same number of counsel but in other terms provided for by paragraph (4), or for two counsel in any terms provided for by paragraph (3) (b), or for a Queen’s Counsel alone, or for one counsel only in accordance with regulation 47.

(12) In every case in which a legal aid order is made under this regulation for the provision of services in terms provided for by paragraph (3) or (4), it shall be the duty of—

- (a) each legal representative—
 - (i) to keep under review the need for more than one counsel to be present in court or otherwise providing services, and
 - (ii) to consider whether the legal aid order should be amended as provided for in paragraph (10) or (11);
- (b) Queen’s Counsel, where the services of a Queen’s Counsel are provided, to keep under review whether he could act alone.

(13) It shall be the duty of each legal representative, if of the opinion that the legal aid order should be amended as provided for in paragraphs (10) and (11), to notify that opinion in writing—

- (a) to the other legal representatives for the assisted person, and
- (b) to the court;

and the court shall, after considering the opinion and any representations made by any other legal representatives for the assisted person determine whether and in what manner the legal aid order should be amended.

(14) A decision to make or amend a legal aid order so as to provide for the services of a Queen’s Counsel or of more than one counsel may only be made:—

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- (a) in the cases specified in paragraph (2)(a) or (b), by a circuit judge or a High Court judge where the proceedings are in the Crown Court, or by a judge of the Court of Appeal or the Registrar where the proceedings are in the Court of Appeal;
 - (b) in the case specified in paragraph (2)(c), by the judge expected to try the case or a High Court judge where the proceedings are in the Crown Court, or by a High Court judge or a judge of the Court of Appeal where the proceedings are in the Court of Appeal.”.
4. Form 11A in Schedule 2 shall be amended as follows:—
- (a) the following shall be added after the words “counsel only”:—
 - “/solicitor and three counsel (state permutation of counsel within regulation 48(4))*”;
 - (b) the following shall be added after “including advice on the preparation of the case for the proceedings.”:—
 - “*Only available where prosecution brought by Serious Fraud Office.”.

Dated 8th December 1994

Mackay of Clashfern, C.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 by—

(1) setting out the relevant considerations and options available to courts when making or amending a legal aid order providing for the services of a Queen’s Counsel or for more than one counsel;

(2) introducing a power to provide the assisted person with the services of three counsel where the prosecution is brought by the Serious Fraud Office;

(3) imposing on each legal representative the duty to keep under review the continuing need for the services of more than one counsel, and

(4) introducing a requirement to notify the court where a legal representative is of opinion that more than one counsel is no longer required.