
STATUTORY INSTRUMENTS

1996 No. 1258

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

**The Legal Aid in Criminal and Care Proceedings
(General) (Amendment) (No. 3) Regulations 1996**

<i>Made</i>	- - - -	<i>8th May 1996</i>
<i>Laid before Parliament</i>		<i>9th May 1996</i>
<i>All provisions</i>		
<i>except regulations 2, 4, 9</i>		
<i>and 11(a)</i>		<i>1st June 1996</i>
<i>Regulations 2, 4, 9 and 11(a)</i>		<i>7th October 1996</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 21(5), 34 and 43 of the Legal Aid Act 1988(1), and with the consent of the Treasury, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 3) Regulations 1996 and shall come into force on 1st June 1996 except for regulations 2, 4, 9 and 11(a) which shall come into force on 7th October 1996.

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

Amendments to the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989

2. Regulation 3(1) shall be amended by inserting, after the definition of “guardian”, the following—

(1) 1988 c. 34; sections 34 and 43 were amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraphs 60 and 63. Section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulations”.
(2) S.I.1989/344; the relevant amending instruments are S.I. 1992/720, 1993/789, 1895, 1995/542 and 1996/436.

““income-based jobseeker’s allowance” means income-based jobseeker’s allowance under the Jobseekers Act 1995(3);”.

3. Regulation 24(1) shall be amended by substituting for the words “At any time after the submission of a statement of means, the court or the proper officer may”, the words “The court or the proper officer may at any time”.

4. Regulations 26(3)(c) and 37(1)(a) and paragraph 16(b)(ii) of Schedule 3 shall be amended by inserting, before the words “income support”, the words “income-based jobseeker’s allowance,”.

5. Regulation 31 shall be amended by substituting, for the words “since the submission of his statement of means”, the words “since he applied for a legal aid order”.

6. Regulation 41(1)(d) shall be amended by substituting for the words “further evidence required under regulation 24(2) is not provided or, when provided,” the words “, as a result of information which has been provided under these Regulations or otherwise,”.

7. After regulation 41, there shall be inserted the following new regulation—

“Withdrawal for abuse of legal aid or for failure to provide information

41A.—(1) Without prejudice to regulation 41, a legal aid order may be withdrawn where, as a result of information which has been provided under these Regulations or otherwise, it appears that the legally assisted person has—

- (a) in relation to any application for a legal aid order, made an untrue statement as to his financial resources or has failed to disclose any material fact concerning them; or
- (b) intentionally failed to comply with any provision of regulations made under the Act by not furnishing any material information concerning any matter other than his financial resources or in furnishing such information has knowingly made a false statement or false representation,

and, in this regulation, “legally assisted person” includes an appropriate contributor.

(2) A legal aid order shall not be withdrawn under paragraph (1) where the legally assisted person satisfies the court that he used due care or diligence to avoid such mis-statement or failure.

(3) A legal aid order may be withdrawn where the court is satisfied that the legally assisted person has failed to attend for an interview or to provide information or documents when required to do so under these Regulations.

(4) Regulation 41(3) and (4) shall apply where a legal aid order is withdrawn under this regulation as it applies where an order is withdrawn under that regulation.”.

8. Regulation 56 shall be amended

- (a) by inserting, after the word “knows”, the words “or suspects”; and
- (b) by substituting, for the words “the fact”, the words “the circumstances”.

9. Question 5 a) in Section 5 of Form 1 (which deals with the applicant’s financial position) shall be amended by inserting

- (a) after the words “I receive”, the words “Income-based Jobseeker’s Allowance,”;
- (b) in question i) after the words “Social Security office”, the words “or Jobcentre”.

10. Question 5 a) in Section 5 of Form 1 shall be further amended by substituting for

- (a) the words from “Working Allowance”to “receipt of benefit”, the words “Working Allowance and I attach documentary evidence that I am receiving such a benefit (*eg. order book*).”;
- (b) the words “You should produce documentary evidence that you are receiving the benefit (*eg order book*).”, the words “If you do not produce documentary evidence that you are receiving benefit, the court will assume that you are not receiving benefit and you will also have to complete a Form 5 (statement of means).”.

11. Section 8 of Form 1 shall be amended by inserting

- (a) after the words “stop receiving”, the words “Income-based Jobseeker’s Allowance,”; and
- (b) after the word “regulations.”, the words “I understand that, if I do not produce all the information which the court needs, it may make such enquiries of the Benefits Agency as it considers necessary and I authorise it so to do. I consent to the disclosure of information to confirm that I am in receipt of benefit.”.

12. Form 5 shall be amended by substituting, for “To apply for criminal legal aid you must complete this form.”, the following “To apply for criminal legal aid you must complete this form unless you can prove that you are in receipt of Income-based Jobseeker’s Allowance, Income Support, Family Credit or Disability Working Allowance and have provided documentary evidence that you receive one of those benefits when you completed Form 1. (*See Section 5 of Form 1 headed***Your Financial Position**)”.

13. In Part B of Section 2 of Form 5 (**Capital and Savings**) for the questions under the heading “**Property**” there shall be substituted the following—

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Property

***Note** In the questions which follow the value of the equity means the sum which you would receive from the sale of the property after paying the mortgage or other loan on it.

1. Main dwelling

Do you or your spouse/partner own the house or property which you treat as your main dwelling?

(tick appropriate box) You YES NO Spouse/Partner YES NO

If so, please provide the following information.

i) What is the value of the equity* in your main dwelling?

ii) What is your main dwelling worth now, that is, what is its market value?

iii) What is the mortgage on your main dwelling?

2. Other houses or property

Do you or your spouse/partner own a house or property other than the house or property which you treat as your main dwelling? (tick appropriate box)

You YES NO Spouse/Partner YES NO

If so, please provide the following information.

i) What is the value of the equity* in the house(s)/other property?

ii) What are the house(s)/other property worth now, that is, what are their market values?

iii) What are the mortgages on the house(s)/other property?

14. For Section 4 of Form 5 (**Further Information**) there shall be substituted the following—

1. Have you directly or indirectly transferred any resources (such as sums of money, stocks or shares, the equity value in your home or any other valuable items) to another person since you became aware that these proceedings would be brought? If so, please give details.

2. Has another person been paying your legal fees and expenses in respect of these or other proceedings before you applied for legal aid? If so, please give details.

3. Are the resources of another person available to you eg. is another person providing you with free accommodation or paying your bills? If so, please give details.

4. Please give any other financial information that you think that the court should have when deciding upon your application for legal aid. You should also include any future changes in circumstances that might alter your position.

15. Form 14 (**Order Withdrawing Legal Aid**) shall be amended by inserting, after paragraph (iii), the following —

“(iv) the provisions of regulation 41A apply (withdrawal for abuse of legal aid etc.).”.

Dated 7th May 1996

Mackay of Clashfern, C.

We consent,

Dated 8th May 1996

Simon Burns
Liam Fox
Two of the Lords Commissioners of Her
Majesty’s Treasury

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 so as

- (a) to take into account the introduction of a new “passport benefit”, the income-based jobseeker’s allowance, receipt of which entitles an applicant to criminal legal aid if he satisfies the interests of justice test (*regulations 2, 4, 9 and 11(a)*);
- (b) to strengthen the provisions which require applicants for criminal legal aid (and their representatives) to provide information about their financial or other circumstances and to enable a legal aid order to be withdrawn where information is not provided or false information is given (*regulations 3, 5 to 8 and 15*);
- (c) to amend Form 1 in Schedule 2 to the Regulations to make it clear that applicants for criminal legal aid must provide documentary evidence that they are entitled to criminal legal aid because they are in receipt of one of the “passporting benefits” (income-based jobseeker’s allowance, income support, family credit or disability working allowance) and to make a consequential amendment to Form 5 (*regulations 10, 11(b) and 12*);
- (d) to amend Form 5 to reflect the changes made by the Legal Aid in Criminal and Care Proceedings (General) (Amendment) Regulations 1996 in the computation of capital and income of an applicant for legal aid (*regulations 13 and 14*).