
S T A T U T O R Y I N S T R U M E N T S

2000 No. 1876

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Legal Aid in Criminal and Care Proceedings (General)
(Amendment) (No. 2) Regulations 2000**

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| <i>Made</i> - - - - - | <i>12th July 2000</i> |
| <i>Laid before Parliament</i> | <i>18th July 2000</i> |
| <i>Coming into force</i> - - | <i>1st September 2000</i> |

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

Citation and commencement

1. These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (General) (Amendment) (No. 2) Regulations 2000 and shall come into force on 1st September 2000.

Interpretation

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(b).

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

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

“48.—(1) A legal aid order may provide for the services of a Queen’s Counsel or of more than one advocate 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; and in this regulation “junior counsel” means any authorised advocate other than a Queen’s Counsel.

(2) Subject to paragraphs (3) to (9), a legal aid order may provide for the services of a Queen’s Counsel or of more than one advocate in any of the following terms:—

- (a) a Queen’s Counsel alone;
- (b) where two advocates 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;
- (c) where three advocates are required—

(a) 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”.

(b) S.I. 1989/344: the only relevant amending instrument is S.I. 1994/3136.

- (i) in any of the terms provided for in sub-paragraph (b) plus an extra junior counsel, or
 - (ii) in any of the terms provided for in sub-paragraph (b) plus an extra noting junior counsel.
- (3) A legal aid order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(a) if and only if—
- (a) in the opinion of the competent authority the case for the legally assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel, and
 - (b) either—
 - (i) a Queen's Counsel or senior Treasury counsel has been instructed on behalf of the prosecution, or
 - (ii) the case for the legally assisted person is exceptional compared with the generality of cases involving similar offences.
- (4) A legal aid order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(b)(iii) or (iv) if and only if—
- (a) in the opinion of the competent authority the case for the legally assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented by a single advocate, and
 - (b) either—
 - (i) two or more advocates have been instructed on behalf of the prosecution, or
 - (ii) the case for the legally assisted person is exceptional compared with the generality of cases involving similar offences, or
 - (iii) the number of prosecution witnesses exceeds 80, or
 - (iv) the number of pages of prosecution evidence exceeds 1,000
- and for this purpose the number of pages of prosecution evidence shall be computed in accordance with paragraph 1(2) of Schedule 3 to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989(a).
- (5) A legal aid order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(b)(i) or (ii) if and only if—
- (a) in the opinion of the competent authority the case for the legally assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel assisted by junior counsel; and
 - (b) either
 - (i) the case for the legally assisted person is exceptional compared with the generality of cases involving similar offences, or
 - (ii) a Queen's Counsel or senior Treasury counsel has been instructed on behalf of the prosecution and one of the conditions in paragraph (4)(b)(i), (iii) or (iv) is satisfied.
- (6) A legal aid order may be made in the terms of paragraph (2)(c) if and only if—
- (a) the proceedings arise from a prosecution brought by the Serious Fraud Office;
 - (b) the court making the order considers that three advocates are required; and
 - (c) in the case of proceedings in the Crown Court, the conditions in paragraph (4) or (5) are satisfied.
- (7) 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 (2)(b) or (c).
- (8) 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 (2)(b) or (c) shall be made where the case relates to an appeal to the Court of Appeal or to the House of Lords and it appears to the court at the time of making the order that representation can properly be undertaken by a Queen's Counsel alone.

(a) S.I. 1989/343: Schedule 3 was inserted by S.I. 1996/2655.

- (9) No order shall be made or amended so as to provide for representation—
- (a) in the terms of paragraph (2)(b) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(a);
 - (b) in the terms of paragraph (2)(b)(i) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(ii), (iii) or (iv);
 - (c) in the terms of paragraph (2)(b)(ii) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(iii) or (iv);
 - (d) in the terms of paragraph (2)(b)(iii) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(iv);
 - (e) in any of the terms provided for by paragraph (2)(c)(i) unless the court making the order is of the opinion that the assisted person could not be adequately represented under the corresponding order under paragraph (2)(c)(ii).

(10) Every application for a legal aid order in any of the terms provided for by paragraph (2) or for an amendment under paragraph (15) or (16) shall be in writing specifying—

- (a) the terms of the order sought and the grounds of the application; and
- (b) which of the conditions in paragraphs (3), (4), (5), (6) and (9) is relied upon in support of the order sought, and on what grounds it is contended that each such condition is fulfilled.

(11) A court may, before making a legal aid order in the terms provided for by paragraph (2) or amending the order under paragraph (15) or (16), require written advice from any advocate already assigned to the applicant on the question of what representation is needed in the proceedings.

(12) A court making a decision whether to make an order under paragraph (2) or to amend an order under paragraph (15) or (16) shall make annotations to the written application under paragraph (10), stating whether each of the conditions relied upon in support of the order made or sought is fulfilled.

(13) Subject to paragraph (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 advocate may only be made:—

- (a) in the course of a trial or of a preliminary hearing, pre-trial review or pleas and directions hearing, by the judge presiding at that trial or hearing;
- (b) where the proceedings are in the Crown Court, by a High Court judge, the resident judge of the Crown Court or (in the absence of the resident judge) a judge nominated for that purpose by the presiding judge of the circuit; or
- (c) where the proceedings are in the Court of Appeal, by a High Court judge or a judge of the Court of Appeal.

(14) A magistrates' court which is competent as respects any proceedings in the Crown Court by virtue of section 20(4) or (5) of the Act may make:—

- (a) a legal aid order providing for the services of a Queen's Counsel without a junior counsel where the proceedings are a trial for murder and the order is made upon committal or transfer or sending for trial, or
- (b) a legal aid order providing for the services of a Queen's Counsel with one junior counsel where 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(a).

but shall have no other power to make an order under this regulation.

(a) 1987 c. 38, as amended by the Criminal Justice Act 1988 (c. 33) and the Legal Aid Act 1988 (c. 34).

(15) In proceedings to which paragraph (3), (4) or (5) applies, a legal aid order which provides—

- (a) for one junior counsel only may be amended to provide for the services of a Queen's Counsel or of more than one advocate in any terms provided for by paragraph (2);
- (b) for two advocates in any terms provided for by paragraph (2)(b) may be amended to provide for the services of the same number of advocates but in other terms provided for by that paragraph, or for a Queen's Counsel alone, or for one junior counsel only in accordance with regulation 47.

(16) In proceedings to which paragraph (6) applies, a legal aid order which provides—

- (a) for one junior counsel only may be amended to provide for the services of a Queen's Counsel or of more than one advocate in any terms provided for by paragraph (2)(b) or (c);
- (b) for two advocates in any terms provided for by paragraph (2)(b) may be amended to provide for the services of three advocates in any terms provided for by paragraph (2)(c), for two advocates but in other terms provided for by paragraph (2)(b), or for a Queen's Counsel alone, or for one junior counsel only in accordance with regulation 47;
- (c) for three advocates in any terms provided for by paragraph (2)(c) may be amended to provide for the same number of advocates but in other terms provided for by paragraph (2)(c), or for two advocates in any terms provided for by paragraph (2)(b), or for a Queen's Counsel alone, or for one junior counsel only in accordance with regulation 47.

(17) 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 (2)(b) or (c), it shall be the duty of—

- (a) each legal representative—
 - (i) to keep under review the need for more than one advocate 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 (15) or (16);
- (b) Queen's Counsel, where the services of a Queen's Counsel are provided, to keep under review whether he could act alone.

(18) 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 paragraph (15) or (16), 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.”

4. At the beginning of paragraph (1)(d) of regulation 54 there shall be inserted “(in magistrates' courts only)”.

Signed by authority of the Lord Chancellor

12th July 2000

David Lock
Parliamentary Secretary,
Lord Chancellor's Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations substitute a new version of regulation 48 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989, which sets 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 advocate. They also amend regulation 54(1)(d), which provides that the Legal Aid Board can authorise the use of a Queen's Counsel alone in cases where the legal aid order does not provide for this, by restricting this provision to magistrates' courts.

STATUTORY INSTRUMENTS

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