

2001 No. 3663

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

**The Community Legal Service (Financial)
(Amendment No. 3) Regulations 2001**

Made - - - - - *30th October 2001*
Laid before Parliament *12th November 2001*
Coming into force - - *3rd December 2001*

The Lord Chancellor, in exercise of the powers conferred on him by sections 7 and 10 of the Access to Justice Act 1999(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 and shall come into force on 3rd December 2001.

Interpretation

2. In these Regulations:
- (a) a regulation referred to by number alone means the regulation so numbered in the Community Legal Service (Financial) Regulations 2000(b); and
 - (b) the same meaning applies to words and phrases defined in those Regulations.

Transitional provisions

3.—(1) Subject to article 7(2)(a) of the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000(c) and to paragraphs (2) and (3) of this regulation, these Regulations shall apply to applications for funded services made on or after 3rd December 2001 and applications made before that date shall be treated as if these Regulations had not been made.

(2) The following regulations shall apply to all assessments carried out under regulation 15 on or after 3rd December 2001:

- (a) regulations 4 and 5 of these Regulations;
- (b) in regulation 6 of these Regulations, the substituted regulation 5(6) and the new regulation 5B; and
- (c) in regulation 19 of these Regulations, the first figure in the substituted regulation 38(2)(a), that is, £259.

(3) Regulations 20 and 22 of these Regulations shall apply to all cases to which the statutory charge applies.

(a) 1999 c. 22.

(b) S.I. 2000/516, as amended by S.I. 2001/950 and 2996.

(c) S.I. 2000/774.

Amendments to the Community Legal Service (Financial) Regulations 2000

4. In regulation 2(1), after the definition of “supplier”, there shall be inserted the following definition:

““wider public interest” means the potential of proceedings to produce real benefits for individuals other than the client (other than any general benefits which normally flow from proceedings of the type in question).”.

5. For regulation 4 there shall be substituted:

“4.—(1) Subject to regulation 3, the assessing authority to which an application is made shall determine the financial eligibility of the client in accordance with these Regulations.

(2) Where the assessing authority is satisfied that the client is in receipt, directly or indirectly, of income support or income-based jobseeker’s allowance, it shall take his disposable income and, in relation to paragraphs (3)(b) and (c), disposable capital, as not exceeding the relevant sums specified in paragraph (3).

(3) The relevant sums mentioned in paragraph (2) are as follows:

- (a) where eligibility is being assessed under regulation 5(2), the disposable income figure in that paragraph;
- (b) where eligibility is being assessed under regulation 5(3), the disposable income and capital figures in that paragraph;
- (c) where eligibility is being assessed under regulation 5(5) or 5(6), the disposable income figure in regulation 38(2)(a), that is, £259, and the disposable capital figure in regulation 38(2)(b).”.

6. For regulation 5 there shall be substituted:

“5.—(1) This regulation has effect subject to regulations 3, 4 and 5A.

(2) A client is eligible for Legal Help, Help at Court, and Legal Representation before the Immigration Appeal Tribunal and an adjudicator if his monthly disposable income does not exceed £601, and his disposable capital does not exceed £3,000.

(3) A client is eligible for Family Mediation if his monthly disposable income does not exceed £683 and his disposable capital does not exceed £8,000.

(4) A client who is eligible for Family Mediation under paragraph (3) shall also be eligible for Help with Mediation in relation to family mediation.

(5) A client is eligible for Legal Representation in respect of family proceedings before a magistrates’ court, other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996(a), if his disposable income does not exceed £683 per month, but a person may be refused such services where:

- (a) his disposable capital exceeds £8,000; and
- (b) it appears to the assessing authority that the probable cost of the funded services to which the application relates would not exceed the contribution payable by him under regulation 38.

(6) A client is eligible for Legal Representation (other than as provided for in paragraphs (2) and (5)), General Family Help and Support Funding, and for such other services as are required or authorised by the Lord Chancellor to be funded under section 6(8) of the Act, if his disposable income does not exceed £683 per month, but a person may be refused such services where:

- (a) his disposable capital exceeds £8,000; and
- (b) it appears to the assessing authority that the probable cost of the funded services to which the application relates would not exceed the contribution payable to him under regulation 38.

5A.—(1) For the purposes of this regulation, “gross income” means total income from all sources, before any deductions are made.

(2) This regulation does not apply to any applications to which regulation 4(2) applies.

(3) In relation to the calculation of gross income:

- (a) regulations 6, 10, 11, 12 and 15 shall apply as if “gross income” were substituted for “disposable income” each time it appears; and
- (b) regulations 21 and 23 shall not apply.

(a) 1996 c. 27.

(4) Subject to regulation 3, where the gross monthly income of the person concerned exceeds £2,000, the assessing authority shall refuse any application for funded services.

Waiver of eligibility limit in Multi-Party Actions of wider public interest

5B.—(1) For the purposes of this regulation, a Multi-Party Action means any action or actions in which a number of clients have causes of action which involve common issues of fact or law arising out of the same cause or event.

(2) Paragraph (3) applies where:

- (a) the Commission funds Legal Representation or Support Funding in a Multi-Party Action which it considers has a significant wider public interest; and
- (b) the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation.

(3) Where this paragraph applies, the Commission may, if it considers it equitable to do so, disapply the eligibility limits in regulations 5(6) and 5A.”.

7. For regulation 7 there shall be substituted:

“7.—(1) The assessing authority shall:

- (a) subject to regulation 4(2), calculate the disposable income and disposable capital of the person concerned in accordance with regulations 16 to 37;
- (b) calculate the gross income of the person concerned in accordance with regulation 5A; and
- (c) calculate any contribution payable in accordance with regulations 38 and 39.

(2) When calculating:

- (a) disposable income for the purposes of regulation 5(2), (3), (5) or (6); or
- (b) gross income for the purposes of regulation 5A

the period of calculation shall be one month.

(3) For the purposes of this regulation and regulation 15, one month means the period of one calendar month which ends on the date on which the application is made, or such other equivalent period as the Commission considers appropriate.

(4) Where the assessing authority calculates that a client has disposable income or disposable capital of an amount which makes him ineligible to receive funded services, it shall refuse the application.”.

8.—(1) In regulation 15(1)(a):

- (a) “normal” shall be inserted before “disposable”;
- (b) “£60” shall be substituted for “£750”; and
- (c) “£25” shall be substituted for “£300”.

(2) In regulation 15(2), “one month” shall be substituted for “12 months” each time it occurs.

9. At the end of regulation 16, the following shall be inserted:

“, but where the eligibility of the person concerned is being assessed under regulation 5(6), in calculating such income the Commission may have regard to his average income during such other period as it considers appropriate.”.

10. Regulation 18(3) shall be deleted.

11. In Regulation 19, the following shall be inserted:

(a) after paragraph (a)(iv):

- “(v) invalid care allowance;
- (vi) council tax benefit;” and

(b) after paragraph (c):

- “(d) severe disablement allowance paid under the Social Security (Severe Disablement Allowance) Regulations 1984(a);
- (e) exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(b);

(a) S.I. 1984/1303.

(b) S.I. 1983/686, as amended by S.I. 2001/420.

- (f) widow's and widower's pensions paid under the Naval, Military and Air Forces etc (Disability and Death) Service Pensions Order 1983(a); and
- (g) to the extent that it exceeds the relevant figure referred to in regulation 20(2)(b), any financial support paid under an agreement for the care of a foster child entered into in accordance with regulation 5(6) of the Foster Placement (Children) Regulations 1991(b)."

12. Regulation 22 shall be deleted.

13. For regulation 23 there shall be substituted:

“23. Where the income of the person concerned consists, wholly or partly, of a wage or salary from employment, there shall be deducted:

- (a) the sum of £45 per month; and
- (b) where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home by reason of his employment.”.

14.—(1) Regulation 24(1) shall be deleted.

(2) In regulation 24(4):

- (a) “monthly” shall be substituted for “annual” each time it occurs;
- (b) in sub-paragraph (b) the words after “hereditary security” shall be deleted; and
- (c) sub-paragraph (c) shall be deleted.

(3) After regulation 24(6) there shall be inserted:

“(7) If no deduction has been made under regulation 20(2), the maximum amount to be deducted under paragraph (3) or, as the case may be, (6) shall be £545.”.

15. Regulation 34 shall be deleted.

16.—(1) In regulation 35(1):

- (a) “aged 60 or over” shall be substituted for “of pensionable age”;
- (b) “first figure prescribed in regulation 38(2)(a), that is, 259” shall be substituted for “figure prescribed in regulation 38(2)(a)”; and
- (c) the following shall be substituted for the table:

<i>monthly disposable income (excluding net income derived from capital)</i>	<i>amount of capital disregard</i>
<i>up to £25</i>	<i>£100,000</i>
<i>£26–50</i>	<i>£90,000</i>
<i>£51–75</i>	<i>£80,000</i>
<i>£76–100</i>	<i>£70,000</i>
<i>£101–125</i>	<i>£60,000</i>
<i>£126–150</i>	<i>£50,000</i>
<i>£151–175</i>	<i>£40,000</i>
<i>£176–200</i>	<i>£30,000</i>
<i>£201–225</i>	<i>£20,000</i>
<i>£226–250</i>	<i>£10,000</i>

(2) Regulation 35(2) shall be deleted.

17. For regulation 36 there shall be substituted:

“36. Where eligibility is being assessed under regulation 5(5) or 5(6), in calculating the disposable capital of the person concerned, any interim payment made to him in any court proceedings may be disregarded.”.

18. For regulation 37 there shall be substituted:

“37. Where eligibility is being assessed under regulation 5(5) or 5(6), in calculating the disposable capital of the person concerned, any capital resource may be disregarded where:

- (a) he is restrained from dealing with that resource by order of the court;

(a) S.I. 1983/883.
(b) S.I. 1991/910.

- (b) he has requested the court which made the order to release part or all of that resource for use in connection with the proceedings to which the application for funding relates; and
- (c) that request has been refused.”.

19. For regulation 38 there shall be substituted:

Contributions

“38.—(1) Subject to regulation 15, all contributions shall be:

- (a) assessed at the beginning of the case; and
 - (b) payable to the assessing authority.
- (2) A person whose eligibility is assessed under regulation 5(5) or 5(6) shall make the following contributions:
- (a) where his monthly disposable income exceeds £259:
 - (i) one quarter of any such income between £255 and £380 inclusive;
 - (ii) one third of any such income between £381 and £505 inclusive; and
 - (iii) one half of his remaining disposable income; and
 - (b) where his disposable capital exceeds £3,000, a contribution of the lesser of the excess and the sum which the assessing authority considers to be the likely maximum cost of the funded services.
- (3) All contributions under paragraph (2)(a) shall be payable monthly throughout the period the certificate is in force.
- (4) All contributions under paragraph (2)(b) shall be payable upon assessment.
- (5) Paragraph (6) applies where:
- (a) eligibility is being assessed under regulation 5(5) or 5(6); and
 - (b) the Commission considers that:
 - (i) there are other persons or bodies, including those who have the same or a similar interest to the client or who might benefit from any proceedings, who can reasonably be expected to contribute to the cost of the funded services; or
 - (ii) some other source of funding exists which could be used to contribute to that cost.
- (6) Where this paragraph applies, the Commission may add a reasonable additional amount to the contribution (if any) due from the client.
- (7) The Commission may subsequently vary the amount of any additional contribution payable under paragraph (6).
- (8) Paragraph (9) applies where:
- (a) the Commission funds Legal Representation or Support Funding in proceedings which it considers to have a significant wider public interest; and
 - (b) the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation.
- (9) Where this paragraph applies, the Commission may, if it considers it equitable to do so, waive part or all of the contributions payable under this regulation.”.

20. For regulation 44(1)(d) there shall be substituted:

“(d) other than for the purposes of registration under regulation 52(1)(c), the first £3,000 of any money or the value of any property recovered by virtue of an order made or deemed to be made under any of the enactments specified in paragraph (2), or an agreement which has the same effect as such an order, but where the enforcement of the charge is postponed under regulation 52 this exemption will apply when the amount of the charge is paid;”.

21. Regulation 47(1) shall be deleted.

22. For regulation 53(3) there shall be substituted:

- “(3) Where interest is payable by the client under regulation 52:
- (a) it shall run from the date when the charge is first registered;
 - (b) the applicable rate shall be:
 - (i) 8% per annum until 31st March 2002;

- (ii) thereafter, 1 percentage point above the Bank of England base rate current on 1st April 2002;
- (c) subject to sub-paragraph (d), the applicable rate shall be varied on 1st April of each subsequent year so that it remains at the rate of 1 percentage point above the Bank of England base rate then current;
- (d) the variation set out in sub-paragraph (c) shall take place only if the application of the new base rate has the effect of varying the base rate previously applicable by 1 percentage point or more; and
- (e) the capital on which it is calculated shall be the lesser of:
 - (i) the amount of the statutory charge outstanding from time to time, less any interest accrued by virtue of regulation 52(3), or
 - (ii) the value of the property recovered at the time of such recovery, less the amount of any exemption under regulation 44(1)(d) which would apply were the amount of the charge to be paid.”.

Signed by authority of the Lord Chancellor

30th October 2001

Patricia Scotland
Parliamentary Secretary,
Lord Chancellor's Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the Community Legal Service (Financial) Regulations 2000 so as to:

- (i) further align the financial eligibility limits applied in respect of the various levels of service;
- (ii) introduce a new means test which applies to all levels of service;
- (iii) introduce a limit on the gross monthly income an applicant may have in order to be eligible for any funded services;
- (iv) extend the discretion of the Legal Services Commission in respect of financial eligibility and contributions payable in cases of wider public interest;
- (v) change the manner in which interest on the statutory charge is calculated;
- (vi) make various further changes regarding financial eligibility, contributions and the statutory charge.

2001 No. 3663

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Community Legal Service (Financial)
(Amendment No. 3) Regulations 2001**

£2.00

© Crown copyright 2001

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1834 11/2001 667704 19585

ISBN 0-11-038801-1



9 780110 388014