

2007 No. 2936

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Criminal Defence Service (General) (No. 2) (Amendment
No. 2) Regulations 2007**

<i>Made</i>	- - - -	<i>9th October 2007</i>
<i>Laid before Parliament</i>		<i>10th October 2007</i>
<i>Coming into force</i>	- -	<i>1st November 2007</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 13(1) and 15(2) (c) to (e) of, and paragraphs 2(1) and (2) and 2A(1) of Schedule 3 to, the Access to Justice Act 1999(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Criminal Defence Service (General) (No. 2) (Amendment No. 2) Regulations 2007 and come into force on 1st November 2007.

(2) In these Regulations a reference to a regulation by number alone is a reference to the regulation so numbered in the Criminal Defence Service (General) (No. 2) Regulations 2001(b).

Amendments to the Criminal Defence Service (General) (No. 2) Regulations 2001

2. In regulation 2—

- (a) in the definition of “advocate”, after “Society” insert—
“or
a solicitor who is exercising automatic rights of audience in the Crown Court”;
- (b) in the definition of “appropriate officer”, after “case of”, in the first place where it appears, insert “the High Court or”;
- (c) after the definition of “judge of the court” insert—
““litigator” means the person named on the representation order as representing an assisted person, being a solicitor, firm of solicitors or other appropriately qualified person;”;
- (d) after the definition of “representation order” insert—
““representative” means a litigator or an advocate;”.

(a) 1999 c.22. “Regulations” is defined in section 26 of the Act as regulations made by the Lord Chancellor. The reference to the Lord Chancellor was changed to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887) and was changed back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429). Paragraph 2A of Schedule 3 was inserted by section 1 of the Criminal Defence Service Act 2006 (c.9).

(b) S.I. 2001/1437. Relevant amending instruments are S.I. 2002/712, 2004/1196 and 2006/2490.

3. In regulation 3, after paragraph (4) insert—

“(5) Proceedings in a magistrates’ court in which the court sends an assisted person for trial in the Crown Court under section 51 of the Crime and Disorder Act 1998(a) are to be regarded as preliminary to the proceedings in the Crown Court.”.

4. In regulation 9—

(a) in paragraph (1)—

- (i) in sub-paragraph (g) omit “and”;
- (ii) omit sub-paragraph (h);

(b) after paragraph (1) insert—

“(1A) Where a representation order has been granted in respect of proceedings in a magistrates’ court, an application for a representation order in respect of an appeal to the Crown Court in those proceedings may be made—

- (a) orally to that magistrates’ court;
- (b) in writing to the appropriate officer of that magistrates’ court;
- (c) orally or in writing to the Crown Court; or
- (d) in writing to the appropriate officer of the Crown Court.

(1B) An application for a representation order in respect of a retrial ordered under section 7 of the Criminal Appeal Act 1968(b) may be made—

- (a) orally or in writing to the court ordering the retrial; or
- (b) orally or in writing to the Crown Court or in writing to the appropriate officer of the Crown Court.”.

5. After regulation 9 insert—

“Proceedings in the High Court

9A.—(1) Except where regulation 6(3) applies, an application for a representation order in respect of proceedings in the High Court may be made—

- (a) in the case of an appeal by way of case stated from a decision of a magistrates’ court, orally to that court or in writing to the appropriate officer of that court;
- (b) in the case of an appeal by way of case stated from a decision of the Crown Court, orally or in writing to that Court or in writing to the appropriate officer at that Court; or
- (c) orally or in writing to a judge of the High Court or in writing to the appropriate officer of that Court.

(2) Where an application is made to a court or a judge, the court or judge may refer it to the appropriate officer.

(3) The appropriate officer may grant the application or refer it to the court or a judge of the court.”.

6. In regulation 12—

(a) in paragraph (1)—

- (i) for sub-paragraph (b) substitute—
“(b) extradition hearings under the Extradition Act 2003(c).”;
- (ii) for “solicitor” substitute “litigator”;

(a) 1998 c.37.

(b) 1968 c.19. Section 7 was amended by sections 43(2) and 170(2) of, and Schedule 16 to, the Criminal Justice Act 1988 (c.33) and by section 331 of, and Schedule 36 to, the Criminal Justice Act 2003 (c.44).

(c) 2003 c.41.

(b) after paragraph (2) insert—

“(3) A representation order for the purposes of proceedings before a magistrates’ court may provide for the services of a Queen’s Counsel or of more than one advocate only—

(a) in extradition hearings under the Extradition Act 2003; and

(b) where the court is of the opinion that the assisted person could not be adequately represented except by a Queen’s Counsel or by more than one advocate.”.

7. For the heading to regulation 14 and regulation 14(1) substitute—

“Advocates in the Crown Court and above

14.—(1) A representation order for the purposes of proceedings in the Crown Court (including a representation order which extends to that Court by virtue of regulation 4 of the Criminal Defence Service (Representation Orders and Consequential Amendments) Regulations 2006(a)), High Court, Court of Appeal or House of Lords—

(a) includes representation by one junior advocate; and

(b) may include representation by a Queen’s Counsel or by more than one advocate in respect of the whole or any specified part of the proceedings only in the cases specified and in the manner provided for by this regulation.

(1A) In this regulation “junior advocate” means any advocate who is not a Queen’s Counsel.”.

8. In regulation 15, for “solicitor” substitute “litigator”.

9. In regulation 16, in each place where it appears, for “representative” substitute “litigator”.

10. In regulation 16A, for “representative” substitute “litigator”.

11. In regulation 17—

(a) in paragraph (1A)(c), for “representative” substitute “litigator”;

(b) in paragraph (2), in each place where it appears, for “solicitor” substitute “litigator”;

(c) in paragraph (3)(c), in each place where it appears, for “representative” substitute “litigator”.

12. In regulation 19(1), for “solicitor” substitute “litigator”.

13. In paragraph 1 of Schedule 1 to the Criminal Defence Service (General) (No. 2) Regulations 2001, for “solicitor or firm of solicitors” substitute “litigator”.

Signed by authority of the Lord Chancellor

9th October 2007

Hunt
Parliamentary Under Secretary of State
Ministry of Justice

(a) S.I. 2006/2493.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Defence Service (General) (No. 2) Regulations 2001 (S.I. 2001/1437), which deal with publicly funded advice and assistance and representation in criminal cases. The Regulations—

update references from “solicitor” to “litigator”, introduce a definition of “representative” and amend the definition of “advocate” (regulations 2, 6 and 8 to 13);

provide that where a magistrates’ court sends a defendant for trial at the Crown Court under section 51 of the Crime and Disorder Act 1998, the proceedings in the magistrates’ court are preliminary to the proceedings in the Crown Court, so that no representation order is required for the proceedings in the magistrates’ court (regulation 3);

provide for applications for representation orders for appeals to the Crown Court, where a representation order has been made in respect of the proceedings in the magistrates’ court, and for applications for representation orders for re-trials (regulation 4);

provide for applications for representation orders in the High Court (regulation 5);

permit representation by a QC or by more than one advocate in exceptional extradition cases in magistrates’ courts and update a reference to the legislation on extradition (regulation 6);

provide expressly that a representation order for proceedings in the Crown Court, including orders which extend to that Court from a magistrates’ court such as committals for sentence, covers representation by a junior advocate (regulation 7).

An impact assessment has not been produced for this instrument as no impact on businesses, charities or voluntary bodies is foreseen.

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