

2009 No. 2876

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (General) (No.2) (Amendment No.4) Regulations 2009

Made - - - - - *27th October 2009*

Laid before Parliament *28th October 2009*

Coming into force in accordance with regulation 1

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 15(2)(c) and (e), 25(8) and 26 of and paragraph 2(1A) of Schedule 3 to the Access to Justice Act 1999(a):

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Criminal Defence Service (General) (No.2) (Amendment No.4) Regulations 2009.

(2) These Regulations come into force—

- (a) as to this regulation and regulations 2 to 4, on 11th January 2010;
- (b) as to regulation 5, in so far as regulation 7 of the 2001 Regulations confers power to grant a representation order in proceedings in the Court of Appeal, on 11th January 2010;
- (c) as to regulation 5, in so far as regulation 7 of the 2001 Regulations confers power to grant a representation order in a re-trial in the Crown Court, where the Crown Court is sitting—
 - (i) at Blackfriars, Bradford, Lancaster, Norwich, Preston and Swansea, on 11th January 2010;
 - (ii) at locations in the courts boards areas listed in the second to eighth parts of the table in the Schedule to these Regulations, on the corresponding dates set out in those parts;
- (d) as to regulations 6 and 9, in respect of the grant of a representation order for proceedings in the Crown Court, where the Crown Court is sitting—
 - (i) at Blackfriars, Bradford, Lancaster, Norwich, Preston and Swansea, on 11th January 2010;
 - (ii) at locations in the courts boards areas listed in the second to eighth parts of the table in the Schedule to these Regulations, on the corresponding dates set out in those parts;
- (e) as to regulations 7 and 8, in respect of applications for representation orders, and representation orders made on such applications, where the application is sent to—

(a) 1999 c.22. Section 26 defines “regulations” as regulations made by the Lord Chancellor. The reference to the Lord Chancellor was changed to the Secretary of State by S.I. 2003/1887 and changed back to the Lord Chancellor by S.I. 2005/3429.

- (i) a magistrates' court in any of the local justice areas listed in the first part of the table in Schedule 1, on 11th January 2010;
- (ii) a magistrates' court (if not within such a local justice area) in any of the courts board areas listed in the second to eighth part of that table, on the corresponding dates set out in those parts.

(3) An application for a representation order which is received in a magistrates' court before these Regulations come into force in respect of that court is to be dealt with as if these Regulations had not been made.

(4) In these Regulations—

- (a) “the 2001 Regulations” means the Criminal Defence Service (General) (No.2) Regulations 2001(a);
- (b) “representation order” means a document granting a right to representation under section 14 of the Access to Justice Act 1999.

Amendments to the 2001 Regulations

2. The 2001 Regulations are amended as follows.

3. In regulation 2, after the definition of “litigator” insert—

““representation authority” means the Commission or a court officer or other person to whom the Commission, in accordance with section 3(4) of the Act, has delegated its functions under paragraph 2A of Schedule 3 to the Act;”.

4. After regulation 3(4) insert—

“(4A) Proceedings for dealing with an individual alleged to have failed to comply with an order of the Crown Court are not to be regarded as incidental to the proceedings in which the order was made.”.

5. For regulation 7 substitute—

“Power of Court of Appeal to grant representation

7. The Court of Appeal, a judge of that Court, the head of the Civil Appeals Office or the Registrar of Criminal Appeals may grant a representation order in respect of criminal proceedings in the Court of Appeal, whether or not an application has been made for such an order.”.

6. After regulation 7 insert—

“Power of court to grant representation in Crown Court proceedings

8. Notwithstanding regulation 9, the court may grant a representation order—

- (a) in proceedings in the Crown Court which—
 - (i) are referred to in section 12(2)(f) of the Act; or
 - (ii) arise out of an alleged failure to comply with an order of the Crown Court, where it appears to the court that there is no time to instruct a litigator; or
- (b) where an individual is brought before the court in pursuance of a warrant issued under section 81 of the Senior Courts Act 1981(b).”.

7. For regulation 9 substitute—

(a) S.I. 2001/1437; relevant amending instruments are S.I. 2002/712, 2003/644, 2006/2490, 2007/2936, 2007/3550 and 2008/1879.
 (b) 1981 c. 54.

“Proceedings in magistrates’ courts and the Crown Court

9.—(1) An application for a representation order in respect of proceedings in a magistrates’ court or the Crown Court must be made in writing to the representation authority at the relevant magistrates’ court.

(2) Where an application for a representation order in respect of proceedings in a magistrates’ court is refused, the appropriate officer shall provide the applicant with written reasons for the refusal and details of the appeal process.

(3) In this regulation the relevant magistrates’ court is—

- (a) the court in which the proceedings are to be, or are being, heard;
- (b) in the case of a court inquiring into the offence as examining justices or sending for trial under section 51 of the Crime and Disorder Act 1998, that court;
- (c) the court from which the applicant has been committed or sent for trial at the Crown Court or from which the proceedings have been transferred for trial at the Crown Court;
- (d) in the case of a voluntary bill of indictment, the magistrates’ court in which the proceedings had been heard or a magistrates’ court in which the proceedings would have been heard;
- (e) in the case of an appeal to the Crown Court from a magistrates’ court, that court;
- (f) in the case of a re-trial ordered by the Court of Appeal, a magistrates’ court sitting in the local justice area of Camden and Islington.”.

8. In regulation 14—

- (a) in paragraph (1)(b), after “may” insert “be amended to”;
- (b) in paragraph (2), after “may” insert “be amended by the court to”;
- (c) in paragraph (3), for “made” substitute “amended”;
- (d) in paragraph (4), for “made” substitute “amended”;
- (e) in paragraph (5), for “made” substitute “amended”;
- (f) in paragraph (6)—
 - (i) for “made” substitute “amended”;
 - (ii) in sub-paragraph (b), for “making” substitute “amending”;
- (g) in paragraph (7), for “making” substitute “amending”;
- (h) in paragraph (8)—
 - (i) for “no order” substitute “no amendment”;
 - (ii) for making” substitute “amending”;
- (i) in paragraph (9)—
 - (i) omit “made or”;
 - (ii) in each of sub-paragraphs (a) to (e), for “making” substitute “amending”;
- (j) in paragraph (10)—
 - (i) for “a representation order in any of the terms provided for by paragraph (2), or for an amendment under paragraph (15),” substitute “an amendment in any of the terms provided for by paragraph (2)”;
 - (ii) in each of sub-paragraphs (a) and (b), for “order” substitute “amendment”;
- (k) in paragraph (11), for “a representation order in the terms provided for by paragraph (2) or amending an order under paragraph (15),” substitute “an amendment in any of the terms provided for by paragraph (2)”;
- (l) in paragraph (12)—

- (i) for “order under paragraph (2) or to amend an order under paragraph (15)” substitute “amendment under paragraph (2)”;
- (ii) for “the order” substitute “the amendment”;
- (m) in paragraph (13) omit “make or”;
- (n) in paragraph (14), for “A magistrates’ court which may grant” substitute “The representation authority granting”;
- (o) omit paragraph (15);
- (p) in paragraph (16)—
 - (i) for “made” substitute “amended”;
 - (ii) in sub-paragraph (a)(ii) omit “as provided for in paragraph (15)”;
- (q) in paragraph (17) omit “as provided for in paragraph (15)”.

9. In regulation 15, for the words from “(a) in any” to the end substitute “in proceedings to which regulation 8 applies”.

Signed with the authority of the Lord Chancellor

Bach
Parliamentary Under Secretary of State
Ministry of Justice

27th October 2009

SCHEDULE

Regulation 1

Commencement of Regulations

Part 1 – Commencement on 11th January 2010

Local Justice Areas

Camden and Islington; Bradford; Calderdale; Huddersfield; Keighley; Skipton; Blackburn, Darwen and Ribble Valley; Furness and District; Fylde Coast; Lancaster; Preston; Great Yarmouth; Norwich; West Norfolk; Ceredigion; Llanelli; Neath Port Talbot; Pembrokeshire; Swansea County

Part 2 – Commencement on 12th April 2010

Courts Board Areas

Avon and Somerset; Devon and Cornwall; Dorset, Gloucestershire and Wiltshire; Hampshire and Isle of Wight

Part 3 – Commencement on 26th April 2010

Courts Board Areas

Birmingham, Coventry, Solihull and Warwickshire; Black Country, Staffordshire and West Mercia; Derbyshire and Nottingham; Lincolnshire, Leicestershire, and Rutland and Northamptonshire

Part 4 – Commencement on 10th May 2010

Courts Board Areas

Cheshire and Merseyside, Cumbria and Lancashire; Greater Manchester

Part 5 – Commencement on 17th May 2010

Courts Board Areas

Cleveland, Durham and Northumbria; Humber and South Yorkshire; North and West Yorkshire

Part 6 – Commencement on 24th May 2010

Courts Board Areas

Mid and West Wales; North Wales; South East Wales

Part 7 – Commencement on 14th June 2010

Courts Board Areas

Bedfordshire, Essex and Hertfordshire; Cambridgeshire, Norfolk and Suffolk; Kent; Surrey and Sussex; Thames Valley

Part 8 – Commencement on 28th June 2010

Courts Board Area

London

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Defence Service (General) (No. 2) Regulations 2001, which deal with advice and assistance and representation in criminal cases funded by the Legal Services Commission as part of the Criminal Defence Service. The amendments are consequential on the re-introduction of means testing in Crown Court cases. They indicate where applications for representation orders are to be sent to and limit the power of the court to grant representation.

An impact assessment relating to the introduction of means testing in the Crown Court is available from Criminal Legal Aid Strategy Division, Ministry of Justice, 102 Petty France, London SW1H 9AG or at www.justice.gov.uk.

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STATUTORY INSTRUMENTS

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WALES**

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£4.00