

2009 No. 2878

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Criminal Defence Service (Financial Eligibility)
(Amendment) 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 25(8) and 26 of and paragraph 3B of Schedule 3 to the Access to Justice Act 1999(a).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Criminal Defence Service (Financial Eligibility) (Amendment) Regulations 2009.

(2) This regulation and regulations 2, 3, and 5 to 8 come into force on 11th January 2010.

(3) Regulation 4 comes into force—

- (a) in relation to any magistrates' court in any of the local justice areas listed in the first part of the Schedule to these Regulations, on 11th January 2010; and
- (b) in relation to any other magistrates' court in any of the courts board areas listed—
 - (i) in the second part of that table, on 12th April 2010;
 - (ii) in the third part of that table, on 26th April 2010;
 - (iii) in the fourth part of that table, on 10th May 2010;
 - (iv) in the fifth part of that table, on 17th May 2010;
 - (v) in the sixth part of that table, on 24th May 2010;
 - (vi) in the seventh part of that table, on 14th June 2010;
 - (vii) in the eighth part of that table, on 28th June 2010.

(4) Regulation 4 applies only to proceedings in which an individual is committed for sentence by a magistrates' court on or after the date on which that regulation comes into force in respect of that court.

(a) 1999 c. 22. Paragraph 3B of Schedule 3 was inserted by section 2(2) of the Criminal Defence Service Act 2006 (c. 9). "Regulations" and "prescribed" are defined in section 26. The reference in that section 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.

Amendment to the Criminal Defence Service (Financial Eligibility) Regulations 2006

2. The Criminal Defence Service (Financial Eligibility) Regulations 2006(a) are amended as follows.

3. In regulation 2—

- (a) in the definition of “child care costs”—
 - (i) after “registered under” insert “Part 3 of the Childcare Act 2006(b) or”;
 - (ii) for “or any of them is” substitute “or both of them is or are”;
 - (iii) after “home” insert “and in this definition “relative” means a grandparent, brother, sister, aunt, uncle or first cousin, whether of the full blood or half blood or by marriage or civil partnership;”;
- (b) in the definition of “gross annual income”, after “disablement pension” insert—
 - “(va) housing benefit”.

4. For regulation 3 substitute—

“3. These Regulations apply to—

- (a) those criminal proceedings which—
 - (i) are referred to in section 12(2)(a) to (f) of the Act and in regulation 3(2) (other than sub-paragraph (h)) of the Criminal Defence Service (General) (No. 2) Regulations 2001(c); and
 - (ii) are in a magistrates’ court; and
- (b) criminal proceedings in which the individual—
 - (i) has been committed to the Crown Court for sentence; and
 - (ii) did not apply for, or was not granted, a representation order in a magistrates’ court.”.

5. In regulation 5(3) for “directly or indirectly” substitute “, directly or indirectly, properly”.

6. In regulation 7(2)—

- (a) in paragraph (a) omit “or is likely to be”;
- (b) in paragraph (b) omit “or are likely to be”;
- (c) for the words from “resources of that” to the end substitute “maintenance or the resources made available and may treat the amount as the resources of the individual”.

7. In regulation 10—

- (a) in paragraph (2), after “annual income” insert “(without adjustment under regulation 9(1))”;
- (b) in paragraph (2)(d)(i) omit “, less any housing benefit paid under the Social Security Benefits and Contributions Act 1992”;
- (c) for paragraph (2)(f) substitute—
 - “(f) if the individual is making payments for the maintenance of a former partner or of a child or a relative who is not (in such case) a member of the individual’s household, the amount, where reasonable, of such payments paid or payable in respect of the period of calculation;
 - and in this sub-paragraph “relative” means a parent, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece or first cousin, whether of the full blood or half blood or by marriage or civil partnership;”.

(a) S.I. 2006/2492. Relevant amending instruments are S.I. 2007/2937 and 2008/723.

(b) 2006 c. 21.

(c) S.I. 2001/1437.

8. Omit regulation 11(1)(b) and the word “and” immediately preceding it.

Signed by authority of the Lord Chancellor

27th October 2009

Bach
Parliamentary Under Secretary of State
Ministry of Justice

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 extend the cases in which an individual must be financially eligible to receive publicly funded representation in criminal proceedings to proceedings in which the individual is committed for sentence from a magistrates' court to the Crown Court (regulation 4). They also make minor changes to the Criminal Defence Service (Financial Eligibility) Regulations 2006 (regulations 3 and 5 to 8).

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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