
STATUTORY INSTRUMENTS

1989 No. 339

The Civil Legal Aid (General) Regulations 1989

PART XI

PROPERTY AND COSTS RECOVERED FOR ASSISTED PERSONS

Money recovered to be paid to solicitor or the Board

- 87.**—(1) Subject to regulations 89 and 94, all moneys payable to an assisted person—
- (a) by virtue of any agreement or order made in connection with the action, cause or matter to which his certificate relates, whether such agreement was made before or after the proceedings were taken; or
 - (b) being moneys payable in respect of the action, cause or matter to which his certificate relates upon the distribution of property of a person who had been adjudicated bankrupt or has entered into a deed of arrangement, or of a company in liquidation; or
 - (c) being moneys which were paid into court by him or on his behalf in any proceedings to which his certificate relates and which have been ordered to be repaid to him; or
 - (d) being moneys standing in court to the credit of any proceedings to which his certificate relates,

shall be paid or repaid, as the case may be, to the solicitor of the assisted person or, if he is no longer represented by a solicitor, to the Board, and only the solicitor, or, as the case may be, the Board, shall be capable of giving a good discharge for moneys so payable.

(2) Where the assisted person's solicitor has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), he shall inform the Board.

Notice to trustee in bankruptcy, etc.

88.—(1) Where moneys become payable under regulation 87(b), the solicitor or the Board, as the case may be, shall send to the trustee in bankruptcy, the trustee or assignee of the deed of arrangement or the liquidator of the company in liquidation, as the case may be, notice that a certificate has been issued to the assisted person.

(2) A notice sent under paragraph (1) shall operate as a request by the assisted person for payment of the moneys payable under regulation 87(b) to the assisted person's solicitor or the Board, as the case may be, and shall be a sufficient authority for that purpose.

Exceptions to regulation 87

- 89.** Notwithstanding the requirements of regulation 87—
- (a) payment of any sum under an order for costs in favour of an assisted person in authorised summary proceedings shall be made to the clerk to the justices, who shall pay it to the Board or as the Board shall direct, and only the clerk to the justices shall be able to give a good discharge therefor; and

- (b) where any moneys recovered or preserved for an assisted person in any proceedings have been paid into or remain in court and invested for the benefit of the assisted person, such part of those moneys as is not subject to the charge created by section 16(6) of the Act in accordance with regulation 93 may be paid to the assisted person.

Solicitor to pay moneys recovered to the Board

- 90.**—(1) An assisted person’s solicitor shall forthwith—
- (a) inform the Area Director of any property recovered or preserved for the assisted person and send to him a copy of the order or agreement by virtue of which the property was recovered or preserved; and
 - (b) subject to paragraphs (2) and (4), pay all moneys received by him under the terms of the order or agreement made in the assisted person’s favour to the Board.
- (2) Where the Area Director considers that the rights of the fund will thereby be safeguarded, he may direct the assisted person’s solicitor to—
- (a) pay to the Board under paragraph (1)(b) only such sums as, in the opinion of the Area Director, should be retained by the Board in order to safeguard the rights of the fund under any provisions of the Act and these Regulations; and
 - (b) pay any other moneys to the assisted person.
- (3) Where in proceedings under any of the enactments referred to in regulation 96(1), the property recovered or preserved for the assisted person includes—
- (a) property which by order of the court or under the terms of any agreement reached is to be used as a home for the assisted person or his dependants; or
 - (b) money which by order of the court or under the terms of any agreement reached is to be used to purchase a home for the assisted person or his dependants,
- the assisted person’s solicitor shall forthwith so inform the Area Director.
- (4) If the Area Director considers and directs that the provisions of regulation 96 apply to any sum of money, paragraph (1)(b) above shall not apply to it and the assisted person’s solicitor shall release the money only in accordance with the provisions of regulation 96.

Enforcement of orders, etc., in favour of assisted person

- 91.**—(1) Where in any proceedings to which an assisted person is a party—
- (a) an order or agreement is made providing for the recovery or preservation of property for the benefit of the assisted person and, by virtue of the Act, there is a first charge on the property for the benefit of the Board; or
 - (b) an order or agreement is made for the payment of costs to the assisted person,
- the Board may take such proceedings in its own name as may be necessary to enforce or give effect to such an order or agreement.
- (2) An assisted person may, with the consent of the appropriate Area Director, take proceedings (being proceedings for which representation may be granted under the Act) to give effect to an order or agreement referred to in regulation 87(a).
- (3) Where the Board takes proceedings, it may authorise any person to swear an affidavit, file a proof, receive a dividend or take any other step in the proceedings in its name and the costs incurred by the Board in any such proceedings shall be a first charge on any property or sum so recovered.

Retention and payment out of moneys by the Board

92. Upon receipt of moneys paid to it under this Part of these Regulations, the Board shall retain—

- (a) subject to regulation 103, any sum paid under an order or agreement for costs made in the assisted person's favour in respect of the period covered by his certificate;
- (b) a sum equal to the amount (if any) by which any property recovered or preserved is charged for the benefit of the Board by virtue of section 16(6) of the Act; and
- (c) any costs of proceedings taken by the Board under regulation 91(1);

and shall pay the balance to the assisted person.

Operation of the statutory charge on moneys in court

93. Where any moneys recovered or preserved for an assisted person in any proceedings are ordered to be paid into or remain in court and invested for the benefit of the assisted person, the charge created by section 16(6) of the Act shall attach only to such parts of those moneys as, in the opinion of the Area Director, will be sufficient to safeguard the rights of the Board under any provisions of the Act or these Regulations and the Area Director shall notify the court in writing of the amount so attached.

Exemptions from the statutory charge

94. The charge created by section 16(6) of the Act shall not apply to—

- (a) any interim payment made in accordance with an order made under Order 29, rule 11 or 12 of the Rules of the Supreme Court 1965(1), or Order 13, rule 12 of the County Court Rules 1981(2), or in accordance with an agreement having the same effect as such an order;
- (b) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependents) Act 1975(3);
- (c) any periodical payment of maintenance which, for this purpose, means money or money's worth paid towards the support of a spouse, former spouse, child or any other person for whose support the payer has previously been responsible or has made payments;
- (d) the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of—
 - (i) an order made, or deemed to be made, under the provisions of section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or (f), or 35 of the Matrimonial Causes Act 1973(4); or
 - (ii) an order made, or deemed to be made, under the provisions of section 2 or 6 of the Inheritance (Provision for Family and Dependents) Act 1975 or any provision repealed by that Act; or
 - (iii) an order made, or deemed to be made, after 30th September 1977, under section 17 of the Married Women's Property Act 1882(5); or
 - (iv) an order made, or deemed to be made, under the provisions of section 4(2)(b) of the Affiliation Proceedings Act 1957(6); or

(1) S.I.1965/1776; the relevant amending instrument is S.I. 1980/1010.

(2) S.I. 1981/1687; the relevant amending instrument is S.I. 1982/1794.

(3) 1975 c. 63.

(4) 1973 c. 18; section 27 was amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 63(3) and section 35 was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 46, Schedule 1, paragraph 13.

(5) 1882 c. 75; section 17 was amended by the Statute Law (Repeals) Act 1969 (c. 52), Schedule Part III and by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 43.

(6) 1957 c. 55; section 4(2) was amended by the Affiliation Proceedings (Amendment) Act 1972 (c. 49), section 1(2) and by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), section 50(1); the 1957 Act is repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c. 42), sections 33, 34(2), Schedule 4.

- (v) an order for the payment of a lump sum made, or deemed to be made, under the provisions of section 60 of the Magistrates' Courts Act 1980(7); or
- (vi) an order made, or deemed to be made, under the provisions of section 2(1)(b) or (d), 6(1) or (5), 11(2)(b) or (3)(b) or 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978(8); or
- (vii) an order made, or deemed to be made, under section 9(2)(b), 10(1)(b)(ii) or 11(b)(ii) of the Guardianship of Minors Act 1971(9) or under section 11B, 11C, or 11D of that Act(10); or
- (viii) an order made, or deemed to be made, under section 34(1)(c) or 35 of the Children Act 1975(11); or
- (ix) an agreement made after 1st March 1981 which has the same effect as an order made, or deemed to be made under any of the provisions specified in sub-paragraph (d)(i) to (viii); or
- (e) where the certificate was issued before 3rd May 1976, any money or property, of whatever amount or value, recovered or preserved by the virtue of an order made, or deemed to be made, under any of the provisions specified in sub-paragraph (d)(i) or (ii) before 1st August 1976 or which, if made on or after that date, gives effect to a settlement entered into before that date;
- (f) any payment made in accordance with an order made by the Employment Appeal Tribunal, or in accordance with a settlement entered into after 1st November 1983 which has the same effect as such an order; or
- (g) any sum, payment or benefit which, by virtue of any provision of, or made under, an Act of Parliament, cannot be assigned or charged.

Vesting and enforcement of charges

95.—(1) Any charge on property recovered or preserved for an assisted person arising under section 16(6) of the Act or created by virtue of regulation 96, 97 or 98 shall vest in the Board.

(2) The Board may enforce any such charge in any manner which would be available to a chargee in respect of a charge given inter partes, but the Board shall not agree to the release or postponement of the enforcement of any such charge except where regulation 96, 97 or 98 applies and then only in accordance with the provisions of those regulations.

(3) Any such charge shall according to its nature—

- (a) in the case of unregistered land, be a Class B land charge within the meaning of section 2 of the Land Charges Act 1972(12);
- (b) in the case of registered land, be a registrable substantive charge; or

(7) 1980 c. 43.

(8) 1978 c. 22; sections 6 and 11 were amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), sections 10, 46, Schedule 1, paragraph 23; section 20 was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 11 and is repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c. 42), sections 33, 34(2), Schedule 4.

(9) 1971 c. 3; the provisions referred to were amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), sections 36(1)(a), 41(2) to (4) and are repealed (as from a day to be appointed) by the Family Law Reform Act 1987 (c. 42), sections 10, 11, 34(2).

(10) Sections 11B, 11C and 11D are inserted, as from a day to be appointed, by the Family Law Reform Act 1987 (c. 42), sections 12 to 14, 33, 34; the 1971 Act, as amended, is set out in Schedule 1 to the 1987 Act.

(11) 1975 c. 72; sections 34(1) and 35 were amended by the Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22), sections 64, 66; section 35 is amended (as from a day to be appointed) by the Family Law Reform Act 1987 (c. 42), sections 33, 34(2), Schedule 2, paragraph 62.

(12) 1972 c. 61; section 2 was amended by the Finance Act 1975 (c. 7), section 52, Schedule 12, paragraphs 2, 18(1)–(3), by the Local Land Charges Act 1975 (c. 76), section 17(1)(b), 19, Schedule 2, by the Finance Act 1977 (c. 36), section 59, Schedule 9 Part V, by the Matrimonial Homes Act 1983 (c. 19), Schedule 2 and by the Capital Transfer Act 1984 (c. 51), Schedule 8, paragraph 3(1).

- (c) in a case in which the conditions specified in section 54(1) of the Land Registration Act 1925⁽¹³⁾ are met, be protected by lodging a caution in accordance with the provisions of that section,

and references to registration in regulations 96 to 98 shall be construed as references to registration or protection in accordance with paragraph (a), (b) or (c) of this regulation.

(4) Without prejudice to the provisions of the Land Registration Act 1925 and the Land Charges Act 1972, all conveyances and acts done to defeat, or operating to defeat, any such charge shall, except in the case of a bona fide purchaser for value without notice, be void as against the Board.

Postponement of enforcement of charges over money

96.—(1) This regulation applies where in proceedings under—

- (a) the Married Women’s Property Act 1882⁽¹⁴⁾,
- (b) the Matrimonial Causes Act 1973⁽¹⁵⁾, or
- (c) the Inheritance (Provision for Family and Dependants) Act 1975⁽¹⁶⁾,

there is recovered or preserved for the assisted person a sum of money which by order of the court or under the terms of any agreement reached is to be used for the purpose of purchasing a home for himself or his dependants.

(2) Where the assisted person—

- (a) wishes to purchase a home in accordance with the order or agreement; and
- (b) agrees in writing on a form approved by the Board to comply with the conditions set out in paragraph (3),

the Board may, if the Area Director is satisfied that the property to be purchased will provide adequate security for the sum referred to in paragraph (3)(b), agree to defer enforcing any charge over that sum.

(3) The conditions referred to in paragraph (2) are that—

- (a) the property to be purchased shall be subject to a charge executed in favour of the Board and registered in accordance with regulation 95(3); and
- (b) from the date on which the charge is first registered, simple interest shall accrue for the benefit of the Board at the rate of 12 per cent per annum (or such other rate as may from time to time be prescribed) on such sum as, but for the provisions of this regulation, the Board would have retained under regulation 92(b) in respect of its charge over the property to which this regulation applies.

(4) Where the Board has agreed to defer enforcement under paragraph (2), the assisted person’s solicitor may release any money received by him under regulation 87 and which is the subject of the order or agreement, to the vendor or the vendor’s representative on completion of the purchase of the property purchased in accordance with the order or agreement.

(5) Where—

- (a) the Area Director has directed (under regulation 90(4)) that this regulation applies; and
- (b) no agreement to defer enforcement under paragraph (2) above has been made,

the assisted person’s solicitor may release any money received by him under regulation 87 and which is the subject of the order or agreement to another solicitor or to a person providing conveyancing services to whom section 22(1) of the Solicitors Act 1974⁽¹⁷⁾ does not apply, who has given an

⁽¹³⁾ 1925 c. 21.

⁽¹⁴⁾ 1882 c. 75.

⁽¹⁵⁾ 1973 c. 18.

⁽¹⁶⁾ 1975 c. 63.

⁽¹⁷⁾ 1974 c. 47; section 22 was amended by the Administration of Justice Act 1985 (c. 61), section 6.

undertaking to, and on a form approved by, the Board that he will fulfil the obligations imposed by this regulation on the assisted person's solicitor.

(6) Where the assisted person's solicitor releases any money under paragraph (4) or (5), he shall so inform the Area Director as soon as practicable and either—

- (a) provide the Area Director with sufficient information to enable him to register a charge on the property purchased in accordance with the order or agreement; or
- (b) send to the Area Director a copy of any undertaking given under paragraph (5).

(7) Where any sum of money retained by the assisted person's solicitor by virtue of this regulation has not been used for the purchase of a home after a period of one year from the date of the order or agreement under which it was recovered or preserved for the assisted person, the assisted person's solicitor shall pay that sum to the Board.

Postponement of enforcement of charges over land

97.—(1) This regulation applies where, in proceedings under any of the enactments referred to in regulation 96(1), there is recovered or preserved for the assisted person property which, by order of the court or under the terms of any agreement reached, is to be used as a home for the assisted person or his dependants.

(2) Where the Area Director considers that the provisions of this regulation apply to any property, he shall so direct.

(3) Where the Area Director has directed that this regulation applies to property and the assisted person—

- (a) wishes to use the property as a home for himself or his dependants; and
- (b) agrees in writing on a form approved by the Board to comply with the condition set out in paragraph (4),

the Board may, if the Area Director is satisfied that the property will provide adequate security for the sum referred to in paragraph (4), agree to defer enforcing of any charge over that property.

(4) The condition referred to in paragraph (3) is that from the date on which the charge is first registered where that date is after 1st December 1988, simple interest shall accrue for the benefit of the Board at the rate of 12 per cent per annum (or such other rate as may from time to time be prescribed) on such sum as, but for the provisions of this regulation, the Board would have retained under regulation 92(b) in respect of the property to which this regulation applies.

(5) Where, in a case to which this regulation applies, the charge in favour of the Board has not yet been registered in accordance with regulation 95(3) and the assisted person—

- (a) wishes to purchase a different property in substitution for the property which is the subject of the order or agreement referred to in paragraph (1); and
- (b) agrees in writing on a form approved by the Board to comply with the conditions set out in paragraph (6),

the Board may, if the Area Director is satisfied that the property to be purchased will provide adequate security for the sum referred to in paragraph (4), agree to defer enforcing any charge over that property.

(6) The conditions referred to in paragraph (5) are that—

- (a) the property to be purchased shall be subject to a charge executed in favour of the Board and registered in accordance with regulation 95(3); and
- (b) from the date on which the charge is first registered where that date is after 1st December 1988, simple interest shall accrue for the benefit of the Board at the rate referred to in paragraph (4) on the sum referred to in that paragraph.

Substitution of charged property

98.—(1) This regulation applies where a charge has been registered in favour of the Board in pursuance of an agreement made under regulation 96 or 97.

(2) Where, in a case to which this regulation applies,—

- (a) the assisted person wishes to purchase a different property in substitution for that over which a charge already exists;
- (b) the assisted person agrees in writing on a form approved by the Board to comply with the conditions set out in paragraph (3); and
- (c) the Area Director is satisfied that the property to be purchased will provide adequate security for the sum referred to in regulation 96(3)(b) or regulation 97(4), as the case may be,

the Board may agree to release that charge.

(3) The conditions referred to in paragraphs (2) and (4) are that—

- (a) the property to be purchased shall be subject to a charge executed in favour of the Board and registered in accordance with regulation 95(3); and
- (b) where simple interest has accrued, it shall continue to accrue for the benefit of the Board at the rate prescribed for the time being for the purposes of regulation 96(3)(b) on the sum referred to in that regulation or in regulation 97(4), as the case may be.

(4) Where, after a charge has been registered in favour of the Board in pursuance of an agreement made under this regulation,—

- (a) the assisted person wishes to purchase a different property in substitution for the property over which that charge exists;
- (b) the assisted person agrees in writing on a form approved by the Board to comply with the conditions set out in paragraph (3) above; and
- (c) the Area Director is satisfied that the property to be purchased will provide adequate security for the sum referred to in regulation 96(3)(b) or regulation 97(4), as the case may be,

the Board may agree to release that charge.

Payment and recovery of interest

99.—(1) Where interest is payable by the assisted person pursuant to the provisions of regulations 96, 97 or 98, such interest shall continue to accrue until the sum referred to in regulation 96(3)(b) or regulation 97(4), as the case may be, is paid and the Board shall not seek to recover interest until such payment is made.

(2) The Board may take such steps as may be necessary to enforce, give effect to or terminate any agreement made under regulation 96, 97 or 98.

(3) Nothing in regulations 96 to 99 shall prevent the assisted person from making interim payments of interest or capital in respect of any sum referred to in regulation 96(3)(b) or 97(4), whether such payments are made at regular intervals or not, and any such payment of capital shall reduce those sums accordingly except that no interim payment shall be used to reduce any such sum while interest on that sum remains outstanding.