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STATUTORY INSTRUMENTS

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**1994 No. 229**

**LEGAL AID AND ADVICE,  
ENGLAND AND WALES**

**The Civil Legal Aid (General) (Amendment) Regulations 1994**

<i>Made</i>	- - - -	<i>2nd February 1994</i>
<i>Laid before Parliament</i>		<i>3rd February 1994</i>
<i>Coming into force</i>	- -	<i>25th February 1994</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 31, 34 and 43 of the Legal Aid Act 1988(1), having had regard to the matters specified in section 34(9) and having consulted the General Council of the Bar and the Law Society and with the consent of the Treasury, hereby make the following Regulations:

**Citation, commencement and transitional provisions**

1.—(1) These Regulations may be cited as the Civil Legal Aid (General) (Amendment) Regulations 1994 and shall come into force on 25th February 1994.

(2) Subject to paragraph (3) below, these Regulations apply to proceedings in respect of which a legal aid certificate is granted on or after 25th February 1994.

(3) Where a legal aid certificate was granted before 25th February 1994 to an assisted person whose solicitor represents any other assisted person in the same proceedings under a legal aid certificate granted on or after 25th February 1994, the provisions of these Regulations shall not apply as regards the costs payable under the later certificate.

(4) Proceedings in respect of which a legal aid certificate was issued before 25th February 1994 shall be treated as if these Regulations had not been made notwithstanding any amendment issued under Part VII on or after that date.

**Interpretation**

2. In these Regulations a regulation or Part referred to by number alone means the regulation or Part so numbered in the Civil Legal Aid (General) Regulations 1989(2).

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(1) 1988 c. 34; sections 31, 34 and 43 were amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraphs 60, 62 and 63. Section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulations”.  
(2) S.I.1989/339 as amended by S.I.1991/524, 2036 and 2784, S.I. 1992/590 and 721, S.I.1993/565 and 1725.

### **Amendments to the Civil Legal Aid (General) (Regulations) 1989**

- 3.—(1) In the Arrangement of Regulations—
- (a) the following headings shall be inserted in the appropriate places:
    - “**106A.** Assessment and taxation where agreed costs have been paid.”;
    - “**107A.** Basis of taxation.
    - 107 B.** Recovery of costs.”;
  - (b) the words “and family proceedings” shall be omitted from the heading to regulation 104;
  - (c) the heading to regulation 106 shall be deleted.
4. In regulation 3—
- (a) after the definition of “legal aid area” there shall be added the following definition:—
 

““legal aid only costs” means those costs which would not be allowed as inter partes costs, but which are payable from the fund subject to determination under regulation 107A(2);”;
  - (b) after the definition of “patient” there shall be added the following definition:—
 

““relevant authority” means the Area Director in the case of an assessment and the taxing officer in the case of a taxation;”;
  - (c) after the definition of “substantive certificate” there shall be added the following definition:—
 

““taxing officer” has the same meanings in relation to proceedings governed by Order 38 of the County Court Rules 1981(3), Order 62 of the Rules of the Supreme Court 1965(4) and the Matrimonial Causes (Costs) Rules 1988(5) respectively, as it has in those Rules.”.
5. Regulation 90 shall be amended by adding after paragraph (4) the following paragraph:—
- “(5) Where the assisted person’s solicitor pays moneys to the Board in accordance with this Regulation, he shall identify what sums relate to costs and what to damages.”.
6. Regulation 91 shall be amended by adding after paragraph 2 the following paragraphs:—
- “(2A) The assisted person’s solicitor may take proceedings for the recovery of costs in the circumstances to which regulation 107B applies.
- (2B) Where the Board has paid costs to which regulation 92(1)(b) refers, but those costs have not been reimbursed by payment from any other party in favour of the assisted person, the solicitor shall require the consent of the Area Director before taking proceedings to which paragraph (2A) refers.”.
7. The following shall be substituted for regulation 92:—

#### **“Retention and payment out of moneys by the Board**

**92.**—(1) The costs payable by the Board in respect of any work done under a certificate, after deduction of any sums paid under regulations 100 or 101 (payments on account), shall be—

- (a) the legal aid only costs;
- (b) any other costs determined under regulation 107A(2);

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(3) S.I.1981/1687. Relevant amendments are S.I.1983/1716, S.I. 1984/878, S.I.1986/636, S.I.1988/278, S.I.1989/236 and 2426, S.I. 1991/1328 and S.I.1992/793.

(4) S.I.1965/1776. Relevant amendments are S.I.1986/632, S.I. 1987/1423, S.I.1988/1340, S.I.1990/1689, S.I.1991/1884 and S.I. 1992/638.

(5) S.I.1988/1328, as amended by S.I.1989/385 and 1021, S.I.1990/490 and S.I.1991/530; these Rules have effect as part of the Family Proceedings (Costs) Rules 1991 (S.I.1991/1832) by virtue of rule 2(2) of those Rules.

- (c) where inter partes costs paid in favour of the assisted person are received by the Board, a sum equal to the amount by which the costs received exceed the costs referred to in sub-paragraph (b) above;
  - (d) where all the inter partes costs as agreed or determined in accordance with any direction or order given or made in the proceedings in favour of the assisted person are received by the Board together with interest, a sum equal to the balance of interest after deduction of interest on the costs to which sub-paragraph (b) refers.
- (2) Upon receipt of moneys paid to it under this Part of the Regulations the Board shall retain—
- (a) subject to regulation 103 and to paragraph (1)(c) and (d) above, any sum paid under an order or agreement for costs made in favour of the assisted person 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;
  - (c) any costs of proceedings taken by the Board under regulation 91(1),
- and shall pay the balance to the assisted person.”
- 8.** In regulations 96(3)(b) and in regulation 97(4), for the references to “regulation 92(b)” in each of the places where those words appear in those regulations there shall be substituted “regulation 92(2)(b)”.
- 9.** Regulation 100 shall be amended by inserting after paragraph (8) the following paragraph:—
- “(9) Claims for payments on account made under regulation 100(1), (2) or (6) or regulation 101(1)(b) shall be made at prescribed rates where such rates are prescribed for solicitors or counsel, as the case may be, in—
- (a) the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994(6); or
  - (b) the Legal Aid in Family Proceedings (Remuneration) Regulations 1991(7).”
- 10.** Regulation 104(2) shall be omitted.
- 11.** In regulation 105—
- (a) the following shall be substituted for paragraph (1):—

“(1) In this regulation and in regulation 106A, “assessment” means an assessment of costs with a view to ensuring that the amounts of costs to be allowed are those which would be allowed on a taxation under regulation 107A(2).”;
  - (b) at the beginning of paragraph (2) there shall be inserted “Subject to regulation 106A”;
  - (c) in paragraphs (2A), (3)(a) and (3)(d) for the words “on the standard basis” in each of the places at which those words occur, there shall be substituted “under regulation 107A(2)”;
  - (d) in paragraph (3) after the words “Subject to paragraph (2A)” there shall be inserted the words “and regulation 106A”;
  - (e) paragraph (3)(b) shall be omitted.
- 12.** Regulation 106 shall be omitted.
- 13.** The following regulation shall be added after regulation 105A:—

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(6) S.I.1994/228.

(7) S.I.1991/2038 as amended by S.I.1991/2112, S.I.1992/596, S.I. 1993/1117 and S.I.1994/230.

**“Assessment and taxation where agreed costs have been paid**

**106A.**—(1) In the circumstances described in paragraph (2) below, there shall be no taxation or assessment except in accordance with this regulation.

(2) The circumstances are—

- (a) where proceedings to which an assisted person has been a party are, as regards an assisted person (other than a person referred to in Order 62, rule 16 of the Rules of the Supreme Court 1965), settled without any direction of the court as to costs on terms including a provision for the payment of agreed costs in favour of the assisted person;
- (b) where proceedings to which an assisted person has been a party are brought to an end by a judgment, decree or final order and there has been agreement as to the costs to be paid in favour of the assisted person; or
- (c) where the retainer of an assisted person’s solicitor or counsel is determined in circumstances to which regulation 105(2) refers and there is an agreement for the payment of agreed costs in favour of the assisted person,

and the agreed costs have been paid.

(3) The assisted person’s solicitor may apply to the Area Director for an assessment limited to legalaid only costs if the solicitor is of the opinion that the amount of those costs, when determined, including counsel’s fees (if any) would not be more than £1,000.

(4) The assisted person’s solicitor may apply for a taxation under regulation 107A(2) limited to legal aid only costs if the solicitor is of the opinion that the amount of those costs, when determined, including counsel’s fees (if any) would be more than £500.

(5) Before any assessment or taxation under paragraphs (3) or (4), the assisted person’s solicitor shall confirm in writing to the relevant authority that the agreed costs have been paid.

(6) The relevant authority may require the production of any information which it considers relevant for the purposes of discharging its functions with respect to a determination under this regulation.

(7) Paragraphs (4) to (8) of regulation 105 shall apply where costs are assessed by an Area Director under paragraph (3) above as they apply under that regulation.”

**14.** Regulations 103, 107 and 111 shall be amended by substituting for the words “on the standard basis” in each of the places where those words occur in regulation 103(5), regulation 107(3) and (4) and in regulation 111, the words “under regulation 107A(2)”.

**15.** The following regulations shall be inserted after regulation 107:—

**“Basis of Taxation**

**107A.**—(1) This regulation applies on any assessment, review or taxation of the costs of an assisted person in proceedings where the costs are, or may be, paid out of the fund.

(2) Costs to which this regulation applies shall be determined on the standard basis subject to—

- (a) the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 in proceedings to which those Regulations apply;
- (b) the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 in proceedings to which those Regulations apply.

(3) Any assessment, review or taxation under this Regulation shall—

- (a) subject to the provisions of sub-paragraphs (a) and (b) of paragraph (2), be in accordance with Part XII of these Regulations;
- (b) be conducted together with any determination of the costs of the proceedings required in accordance with any direction or order given or made in the proceedings.

### **Recovery of costs**

**107B.**—(1) Where an agreement or order provides for costs to be paid by any other party (in this regulation referred to as “the paying party”) in favour of the assisted person, the assisted person’s solicitor may recover a sum in respect of costs from the paying party subject to the provisions of this regulation and regulation 91(2B).

(2) The costs which the assisted person’s solicitor may recover by virtue of this regulation shall not exceed the total of the sums referred to in sub-paragraphs (c) and (d) of regulation 92(1).

(3) The assisted person’s legal representatives shall not be prevented from recovering from the paying party the sums in respect of costs to which this regulation refers by

- (a) any rule of law which limits the costs recoverable by a party to proceedings to the amount which he is liable to pay his legal representatives; or
- (b) regulation 64 (restriction on payment otherwise than from the fund).

(4) Subject to reimbursement of the Board in respect of costs to which regulation 92(1) (b) refers and any interest thereon, any costs recovered from the paying party by virtue of this Regulation shall belong to the solicitor.”

**16.** Regulation 113 shall be amended as follows:—

- (a) in paragraph (1) after the words “the taxation” there shall be inserted “under regulation 107A(2)”;
- (b) in paragraph (2) (a) the words “(except a decision under regulation 106)” shall be omitted.

Dated 24th January 1994

*Mackay of Clashfern, C.*

We consent,

*Irvine Patnick  
Tim Wood*

Two of the Lords Commissioners of Her Majesty’s Treasury

Dated 2nd February 1994

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations amend the Civil Legal Aid (General) (Regulations) 1989 to take account of the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 which come into force at the same time as these Regulations. The principal changes are as follows.

(1) The amendments to regulation 91 incorporate provisions relevant where the assisted person's solicitor wishes to take proceedings for the recovery of costs to which regulation 107B refers.

(2) The amendments to regulations 100 and 101 provide that payments on account shall be claimed at the prescribed rate in proceedings to which either the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 or the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 apply.

(3) Regulation 106A provides that where the assisted person's inter partes costs (costs payable by another party) are agreed and paid, the only costs which will be taxed or assessed will be the legal aid only costs.

(4) Regulation 107A specifies the circumstances in which the costs of representing an assisted person will be paid to his legal representatives at prescribed rates. This will occur where the legal aid fund will (for example, in relation to legal aid only costs), or may (if inter partes costs are not recovered) have to bear those costs.

(5) The basis of taxation under regulation 107A is the standard basis subject to the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 or the Legal Aid in Family Proceedings (Remuneration) Regulations 1991 in proceedings to which those Regulations apply.

(6) Regulation 107B enables the assisted person's solicitor to recover certain costs in addition to the costs determined at prescribed rates from the party against whom an order for inter partes costs has been made.