
STATUTORY INSTRUMENTS

2001 No. 1437

**The Criminal Defence Service
(General) (No. 2) Regulations 2001**

PART II

SCOPE

Criminal proceedings

3.—(1) For the purposes of this regulation, “the 1998 Act” means the Crime and Disorder Act 1998 **(1)**.

(2) The following proceedings are criminal proceedings for the purposes of section 12(2)(g) of the Act:

- (a) civil proceedings in a magistrates' court arising from failure to pay a sum due or to obey an order of that court where such failure carries the risk of imprisonment;
- (b) proceedings under sections 1, 2 and 4 of the 1998 Act relating to anti-social behaviour orders or sex offender orders;
- (c) proceedings under section 8(1)(b) of the 1998 Act relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;
- (d) proceedings under section 8(1)(c) of the 1998 Act relating to parenting orders made on the conviction of a child;
- (e) proceedings under section 9(5) of the 1998 Act to discharge or vary a parenting order made as mentioned in sub-paragraph (c) or (d);
- (f) proceedings under section 10 of the 1998 Act to appeal against a parenting order made as mentioned in sub-paragraph (c) or (d); and
- (g) proceedings under sections 14B, 14D, 14G, 14H, 21B and 21D of the Football Spectators Act 1989**(2)** (banning orders and references to a court).

(3) Proceedings:

- (a) in the Crown Court, following committal for sentence by a magistrates' court;
- (b) to quash an acquittal under the Criminal Procedure and Investigations Act 1996**(3)**; and
- (c) for confiscation and forfeiture in connection with criminal proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998**(4)**

are to be regarded as incidental to the criminal proceedings from which they arise.

(1) 1998 c. 37.

(2) 1989 c. 37. Sections 14B, 14D, 14G and 14H were inserted by paragraph 2, and sections 21B and 21D by paragraph 4, of Schedule 1 to the Football (Disorder) Act 2000 (c. 25).

(3) 1996 c. 25.

(4) S.I.1998/3132. Order 115 was amended by S.I. 1999/1008.

(4) Applications for judicial review or habeas corpus relating to any criminal investigations or proceedings are not to be regarded as incidental to such criminal investigations or proceedings.

Advice and assistance—scope

4. The Commission shall fund such advice and assistance, including advocacy assistance, as it considers appropriate in relation to any individual who:

- (a) is the subject of an investigation which may lead to criminal proceedings;
- (b) is the subject of criminal proceedings;
- (c) requires advice and assistance regarding his appeal or potential appeal against the outcome of any criminal proceedings or an application to vary a sentence;
- (d) requires advice and assistance regarding his sentence;
- (e) requires advice and assistance regarding his application or potential application to the Criminal Cases Review Commission;
- (f) requires advice and assistance regarding his treatment or discipline in prison (other than in respect of actual or contemplated proceedings regarding personal injury, death or damage to property);
- (g) is the subject of proceedings before the Parole Board;
- (h) requires advice and assistance regarding representations to the Home Office in relation to a mandatory life sentence or other parole review;
- (i) is a witness in criminal proceedings and requires advice regarding self-incrimination; or
- (j) is a volunteer.

Advice and assistance—financial eligibility

5.—(1) The following advice and assistance may be granted without reference to the financial resources of the individual:

- (a) all advice and assistance provided to an individual who is arrested and held in custody at a police station or other premises;
- (b) all advocacy assistance before a magistrates' court or the Crown Court;
- (c) all advice and assistance provided by a court duty solicitor in accordance with his contract with the Commission;
- (d) all advice and assistance provided to a volunteer during his period of voluntary attendance; and
- (e) all advice and assistance provided to an individual being interviewed in connection with a serious service offence.

(2) For the purposes of paragraph (1), a serious service offence is an offence under the Army Act 1955(5), the Air Force Act 1955(6) or the Naval Discipline Act 1957(7) which cannot be dealt with summarily.

(3) Advocacy assistance may be granted to an individual regarding his treatment or discipline in prison (other than in respect of actual or contemplated proceedings regarding personal injury, death or damage to property), or where he is the subject of proceedings before the Parole Board, if his weekly disposable income does not exceed £186 and his disposable capital does not exceed £3,000.

(5) 1955 c. 18. This Act, together with the Air Force Act 1955 and the Naval Discipline Act 1957, was amended by the Armed Forces Discipline Act 2000 (c. 4).

(6) 1955 c. 19.

(7) 1957 c. 53.

(4) Except where paragraph (1) applies, the Commission, or a person acting on behalf of the Commission where such function has been delegated in accordance with section 3(4) of the Act, shall determine the financial eligibility of the individual in accordance with the following paragraphs.

(5) Except where paragraph (1) or (3) applies, an individual is eligible for advice and assistance if his weekly disposable income does not exceed £87 and his disposable capital does not exceed £1,000.

(6) The Commission shall assess the disposable income and disposable capital of the individual and, where appropriate, of any person whose financial resources may be treated as those of the individual, in accordance with Schedule 1 to these Regulations.

(7) Where the Commission is satisfied that any person whose disposable income is to be assessed under paragraph (6) is directly or indirectly in receipt of any qualifying benefit, it shall take that person's disposable income as not exceeding the sum for the time being specified in paragraph (3) or (5), as appropriate.

(8) The following are qualifying benefits for the purposes of paragraph (7):

- (a) income support;
- (b) income-based jobseeker's allowance;
- (c) working families' tax credit, provided that the amount (if any) to be deducted under section 128(2)(b) of the Social Security Contributions and Benefits Act 1992⁽⁸⁾ has been determined at not more than £70 per week; and
- (d) disabled person's tax credit, provided that the amount (if any) to be deducted under section 129(5)(b) of the Social Security Contributions and Benefits Act 1992 has been determined at not more than £70 per week.

(9) Where the Commission is satisfied that any person whose disposable capital is to be assessed in accordance with paragraph (3) is directly or indirectly in receipt of income support or income-based jobseeker's allowance, it shall take that person's disposable capital as not exceeding the capital sum for the time being specified in paragraph (3).

⁽⁸⁾ 1992 c. 4; Sections 128 and 129 were amended, respectively, by the Tax Credits Act 1999 (c. 10), section 1(2), Schedule 1, paragraphs 1 and 2(g); and sections 1(2) and 14(1) to (5) and (9), Schedule 1, paragraphs 1 and 2(h).