

2001 No. 1437

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

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

Made - - - - 11th April 2001

Laid before Parliament 11th April 2001

Coming into force in accordance with regulation 1

The Lord Chancellor, in exercise of the powers conferred on him by sections 12, 13, 15 and 20 of, and Schedule 3 to, the Access to Justice Act 1999^(a), and section 1(2) of the Criminal Defence Service (Advice and Assistance) Act 2001^(b) makes the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (General) (No. 2) Regulations 2001 and shall come into force on the day after the day on which they are made, but regulations 4 and 5 shall have effect from and including 2nd April 2001 as if these Regulations had come into force on that date.

Interpretation

2. In these Regulations:

“the Act” means the Access to Justice Act 1999;

“advocacy assistance” means assistance in the form of advocacy;

“advocate” means:

a barrister; or

a solicitor who has obtained a higher courts advocacy qualification in accordance with regulations and rules of conduct of the Law Society;

^(a) 1999 c. 22. Section 13 was amended by section 1 of the Criminal Defence Service (Advice and Assistance) Act 2001 (c. 4).

^(b) 2001 c. 4.

“assisted person” means a person in receipt of funded services;

“appropriate officer” means:

in the case of the Crown Court, the court manager;

in the case of a magistrates’ court, the justices’ clerk; and

in the case of the Court of Appeal, the Courts-Martial Appeal Court or the House of Lords, the registrar of criminal appeals

and, in any case, includes an officer designated by him to act on his behalf in that regard;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“the Costs Committee” means a committee appointed under arrangements made by the Commission to deal with, inter alia, applications for appeal against, or review of, assessments of costs;

“funded services” means services which are provided directly for an individual and funded for that individual as part of the Criminal Defence Service established under sections 12 to 18 of the Act;

“judge of the court” means, in relation to a magistrates’ court, a single justice;

“representation order” means a document granting a right to representation under section 14 of the Act;

“very high cost case” means a case with regard to which:

- (a) if the case proceeds to trial, that trial would be likely to last for 25 days or longer; or
- (b) the defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor’s fees and disbursements, advocate’s fees, and VAT); and

“volunteer” means a person who, for the purpose of assisting with an investigation, attends voluntarily at a police station or a customs office, or at any other place where a constable or customs officer is present, or accompanies a constable or customs officer to a police station or a customs office or any other such place, without having been arrested.

PART II

SCOPE

Criminal proceedings

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

(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

(a) 1998 c. 37.

- (g) proceedings under sections 14B, 14D, 14G, 14H, 21B and 21D of the Football Spectators Act 1989(a) (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(b); and
- (c) for confiscation and forfeiture in connection with criminal proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998(c)

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

(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(d), the Air Force Act 1955(e) or the Naval Discipline Act 1957(f) which cannot be dealt with summarily.

(a) 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).

(b) 1996 c. 25.

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

(d) 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).

(e) 1955 c. 19.

(f) 1957 c. 53.

(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.

(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^(a) 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).

PART III

APPLICATIONS FOR REPRESENTATION ORDERS

Representation order

6.—(1) Any application for the grant of a representation order shall be made on form A in Schedule 2 to these Regulations and, subject to regulation 10(5) and (6), the date of any representation order shall be the date upon which such form, properly completed, is received in accordance with these Regulations.

(2) Any application for the grant of a representation order in respect of the proceedings mentioned in section 12(2)(a) to (f) of the Act shall be made in accordance with regulations 8, 9 and 10.

(3) Any application for the grant of a representation order in respect of the proceedings mentioned in regulation 3(2) (criminal proceedings for the purposes of section 12(2)(g) of the Act):

- (a) shall be made to the Commission; and
- (b) may be granted only by 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.

(4) Where an application under paragraph (3) is refused, the Commission shall provide to the applicant:

(a) 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).

- (a) written reasons for the refusal; and
- (b) details of the appeal process.

(5) Where the person who requires representation is aged less than 17, the application for the grant of a representation order may be made by his parent or guardian on his behalf.

(6) The appropriate officer of each court shall keep a record of every application to that court for a representation order, and of its outcome.

(7) The appropriate officer shall send to the Lord Chancellor such information from the record mentioned in paragraph (6) as the Lord Chancellor may request.

General power to grant representation

7. The court, a judge of the court, or the registrar of criminal appeals may grant a representation order at any stage of the proceedings in the circumstances set out in these Regulations whether or not an application has been made for such an order.

Proceedings in a magistrates' court

8.—(1) Other than where regulation 6(3) applies, an application for a representation order in respect of proceedings in a magistrates' court may be made:

- (a) orally or in writing to the court; or
- (b) in writing to the appropriate officer.

(2) Where an application is made to the court, it may refer it to the appropriate officer for determination.

(3) Where an application is refused, the appropriate officer shall provide to the applicant:

- (a) written reasons for the refusal; and
- (b) details of the appeal process.

Proceedings in the Crown Court

9.—(1) Other than where regulation 6(3) applies, an application for a representation order in respect of proceedings in the Crown Court may be made:

- (a) orally or in writing to the Crown Court;
- (b) in writing to the appropriate officer of that court;
- (c) orally or in writing to a magistrates' court at the conclusion of any proceedings in that magistrates' court;
- (d) orally or in writing to a magistrates' court inquiring into the offence as examining justices or sending for trial under section 51 of the Crime and Disorder Act 1998(a);
- (e) where a magistrates' court has been given a notice of transfer under section 4 of the Criminal Justice Act 1987(b) (serious fraud cases), in writing to the appropriate officer of that magistrates' court;
- (f) in the case of an appeal to the Crown Court from a magistrates' court, in writing to the appropriate officer of that magistrates' court;
- (g) where the applicant was granted a representation order for proceedings in a magistrates' court and was committed for trial in the Crown Court under section 6(2) of the Magistrates' Courts Act 1980(c), in writing to the appropriate officer of the magistrates' court ordering the committal; and
- (h) in the case of a retrial ordered under section 7 of the Criminal Appeal Act 1968(d), orally or in writing to the court ordering the retrial.

(2) An application for a representation order in respect of representations to the High Court against a voluntary bill of indictment may be made:

(a) 1998 c. 37.

(b) 1987 c. 38, as amended by the Criminal Justice Act 1988 (c. 33), the Legal Aid Act 1988 (c. 34) and the Crime and Disorder Act 1998 (c. 37).

(c) 1980 c. 43.

(d) 1968 c. 19.

- (a) in writing to the appropriate officer of the Crown Court; or
- (b) orally to the judge considering the voluntary bill

and where any such order is granted it shall also apply to any proceedings to which the applicant is indicted.

(3) Where an application is made to the court, it may refer it to the appropriate officer for determination.

- (4) Where an application is refused, the appropriate officer shall provide to the applicant:
 - (a) written reasons for the refusal; and
 - (b) details of the appeal process.

Proceedings in the Court of Appeal (Criminal Division) and the House of Lords

10.—(1) An application for a representation order in respect of proceedings in the Court of Appeal or the House of Lords may be made:

- (a) orally to the Court of Appeal, or a judge of the court; or
- (b) in writing to the Court of Appeal, a judge of the court, or the registrar of criminal appeals (“ the registrar”).

(2) Where an application is made to the court, it may refer it to a judge or the registrar for determination.

(3) Where an application is made to a judge, he may refer it to the registrar for determination.

(4) The registrar may:

- (a) grant the application; or
- (b) refer it to the court or a judge of the court.

(5) A representation order shall not be granted until notice of leave to appeal has been given in respect of the proceedings which are the subject of the application.

(6) Where a representation order is granted in respect of proceedings in the Court of Appeal, a judge or the registrar may specify the stage of the proceedings at which the representation order shall take effect.

(7) The House of Lords may not grant a representation order in respect of any proceedings.

PART IV

SELECTION OF REPRESENTATIVE

Representation in magistrates’ courts and some Crown Court proceedings

11.—(1) The right conferred by section 15(1) of the Act, as regards representation in respect of any proceedings to which this regulation applies, shall be exercisable only in relation to those representatives who are:

- (a) employed by the Commission to provide such representation; or
- (b) authorised to provide such representation under a crime franchise contract with the Commission which commences on or after 2nd April 2001 and specifies the rate of remuneration for such representation.

(2) This regulation applies to:

- (a) any criminal proceedings in a magistrates’ court;
- (b) any proceedings in the Crown Court mentioned in regulation 3(2);
- (c) any appeal by way of case stated from a magistrates’ court; and
- (d) any proceedings which are preliminary or incidental to proceedings mentioned in subparagraphs (a) to (c).

(3) This regulation does not apply to proceedings referred to in section 12(2)(f) of the Act (proceedings for contempt in the face of a court).

Advocates in magistrates' courts

12.—(1) A representation order for the purposes of proceedings before a magistrates' court may only include representation by an advocate in the case of:

- (a) any indictable offence, including an offence which is triable either way; or
- (b) proceedings under section 9 of, or paragraph 6 of Schedule 1 to, the Extradition Act 1989^(a)

where the court is of the opinion that, because of circumstances which make the proceedings unusually grave or difficult, representation by both a solicitor and an advocate would be desirable.

(2) A representation order for the purposes of proceedings before a magistrates' court may not include representation by an advocate other than as provided in paragraph (1).

Representation in the Crown Court, Court of Appeal (Criminal Division) and House of Lords

13.—(1) Subject to paragraph (2) and regulation 11, the right conferred by section 15(1) of the Act, as regards representation in respect of any proceedings in the Crown Court (other than proceedings mentioned in regulation 3(2)), Court of Appeal or House of Lords, shall be exercisable only in relation to those representatives who are:

- (a) employed by the Commission to provide such representation; or
- (b) authorised to provide such representation under a crime franchise contract with the Commission.

(2) Where the Commission has determined that representation in a very high cost serious fraud case shall be provided by members of the Serious Fraud Panel, such right shall be limited to representatives who are for the time being members of that Panel.

(3) For the purposes of this regulation:

- (a) a very high cost serious fraud case is a very high cost case with regard to which the offence with which the defendant is charged is primarily or substantially founded on allegations of fraud or other serious financial impropriety, or involves complex financial transactions; and
- (b) the Serious Fraud Panel is a panel of solicitors appointed under arrangements made by the Commission to deal with such cases.

(4) This regulation does not apply to any proceedings referred to in section 12(2)(f) of the Act.

Advocates in the Crown Court, Court of Appeal (Criminal Division) and House of Lords

14.—(1) A representation order may provide for the services of a Queen's Counsel or of more than one advocate in respect of the whole or any specified part of any proceedings only in the cases specified and in the manner provided for by the following paragraphs of this regulation; and in this regulation "junior counsel" means any advocate other than a Queen's Counsel.

(2) Subject to paragraphs (3) to (9), a representation order may provide for the services of a Queen's Counsel or of more than one advocate in any of the following terms:

- (a) a Queen's Counsel alone;
- (b) where two advocates are required:
 - (i) a Queen's Counsel with a junior counsel;
 - (ii) a Queen's Counsel with a noting junior counsel;
 - (iii) two junior counsel; or
 - (iv) a junior counsel with a noting junior counsel;
- (c) where three advocates are required:
 - (i) in any of the terms provided for in sub-paragraph (b) plus an extra junior counsel; or

(a) 1989 c. 33.

(ii) in any of the terms provided for in sub-paragraph (b) plus an extra noting junior counsel.

(3) A representation order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(a) if and only if:

(a) in the opinion of the court the case for the assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel; and

(b) either:

(i) a Queen's Counsel or senior Treasury counsel has been instructed on behalf of the prosecution; or

(ii) the case for the assisted person is exceptional compared with the generality of cases involving similar offences.

(4) A representation order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(b)(iii) or (iv) if and only if:

(a) in the opinion of the court the case for the assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented by a single advocate; and

(b) either:

(i) two or more advocates have been instructed on behalf of the prosecution;

(ii) the case for the assisted person is exceptional compared with the generality of cases involving similar offences;

(iii) the number of prosecution witnesses exceeds 80; or

(iv) the number of pages of prosecution evidence exceeds 1,000

and for this purpose the number of pages of prosecution evidence shall include all witness statements, documentary and pictorial exhibits and records of interview with the assisted person and with other defendants forming part of the committal documents or included in any notice of additional evidence.

(5) A representation order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(b)(i) or (ii) if and only if:

(a) in the opinion of the court the case for the assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel assisted by junior counsel; and

(b) either:

(i) the case for the assisted person is exceptional compared with the generality of cases involving similar offences; or

(ii) a Queen's Counsel or senior Treasury counsel has been instructed on behalf of the prosecution and one of the conditions in paragraph (4)(b)(i), (iii) or (iv) is satisfied.

(6) A representation order may be made in the terms of paragraph (2)(c) if and only if:

(a) the proceedings arise from a prosecution brought by the Serious Fraud Office;

(b) the court making the order considers that three advocates are required; and

(c) in the case of proceedings in the Crown Court, the conditions in paragraph (4) or (5) are satisfied.

(7) The fact that a Queen's Counsel has been or is proposed to be assigned under this regulation shall not by itself be a reason for making an order in any of the terms provided for by paragraph (2)(b) or (c).

(8) Where a Queen's Counsel has been or is proposed to be assigned under this regulation, no order in any of the terms provided for by paragraph (2)(b) or (c) shall be made where the case relates to an appeal to the Court of Appeal or to the House of Lords and it appears to the court at the time of making the order that representation can properly be undertaken by a Queen's Counsel alone.

- (9) No order shall be made or amended so as to provide for representation:
- (a) in the terms of paragraph (2)(b) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(a);
 - (b) in the terms of paragraph (2)(b)(i) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(ii), (iii) or (iv);
 - (c) in the terms of paragraph (2)(b)(ii) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(iii) or (iv);
 - (d) in the terms of paragraph (2)(b)(iii) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(iv);
 - (e) in any of the terms provided for by paragraph (2)(c)(i) unless the court making the order is of the opinion that the assisted person could not be adequately represented under the corresponding order under paragraph (2)(c)(ii).
- (10) Every application for a representation order in any of the terms provided for by paragraph (2), or for an amendment under paragraph (15), shall be in writing specifying:
- (a) the terms of the order sought and the grounds of the application; and
 - (b) which of the conditions in paragraphs (3), (4), (5), (6) and (9) is relied upon in support of the order sought, and on what grounds it is contended that each such condition is fulfilled.
- (11) A court may, before making a representation order in the terms provided for by paragraph (2) or amending the order under paragraph (15), require written advice from any advocate already assigned to the applicant on the question of what representation is needed in the proceedings.
- (12) A court making a decision whether to make an order under paragraph (2) or to amend an order under paragraph (15) shall make annotations to the written application under paragraph (10), stating whether each of the conditions relied upon in support of the order made or sought is fulfilled.
- (13) Subject to paragraph (14), a decision to make or amend a representation order so as to provide for the services of a Queen's Counsel or of more than one advocate may only be made:
- (a) in the course of a trial or of a preliminary hearing, pre-trial review or pleas and directions hearing, by the judge presiding at that trial or hearing;
 - (b) where the proceedings are in the Crown Court, by a High Court judge, the resident judge of the Crown Court or (in the absence of the resident judge) a judge nominated for that purpose by the presiding judge of the circuit; or
 - (c) where the proceedings are in the Court of Appeal, by the registrar, a High Court judge or a judge of the Court of Appeal.
- (14) A magistrates' court which may grant a representation order as respects any proceedings in the Crown Court by virtue of these Regulations may make:
- (a) a representation order providing for the services of a Queen's Counsel without a junior counsel where the proceedings are a trial for murder and the order is made upon committal, transfer or sending for trial; or
 - (b) a representation order providing for the services of a Queen's Counsel with one junior counsel where the prosecution is brought by the Serious Fraud Office and the order is made upon receiving a notice of transfer under section 4 of the Criminal Justice Act 1987

but shall have no other power to make an order under this regulation.

(15) In proceedings to which paragraph (3), (4), (5) or (6) applies, a representation order may be amended:

- (a) in any terms provided for by paragraph (2) in accordance with the provisions of this regulation; or

(b) to provide for representation by one junior counsel only.

(16) In every case in which a representation order is made under this regulation for the provision of funded services in terms provided for by paragraph (2)(b) or (c), it shall be the duty of:

- (a) each representative:
 - (i) to keep under review the need for more than one advocate to be present in court or otherwise providing services; and
 - (ii) to consider whether the representation order should be amended as provided for in paragraph (15);
- (b) Queen's Counsel, where the services of a Queen's Counsel are provided, to keep under review the question whether he could act alone.

(17) It shall be the duty of each representative, if of the opinion that the representation order should be amended as provided for in paragraph (15), to notify that opinion in writing:

- (a) to the other representatives for the assisted person; and
- (b) to the court

and the court shall, after considering the opinion and any representations made by any other representatives for the assisted person, determine whether and in what manner the representation order should be amended.

15. The court may grant a representation order for representation by an advocate alone:

- (a) in any proceedings referred to in section 12(2)(f) of the Act;
- (b) in respect of an appeal to the Court of Appeal or the Courts-Martial Appeal Court; or
- (c) in cases of urgency where it appears to the court that there is no time to instruct a solicitor:
 - (i) in respect of an appeal to the Crown Court; or
 - (ii) in proceedings in which a person is committed to or appears before the Crown Court for trial or sentence, or appears or is brought before that court to be dealt with.

Change of representative

16.—(1) Where a representation order has been granted an application may be made to the court before which the proceedings are heard to select a representative in place of a representative previously selected, and any such application shall state the grounds on which it is made.

(2) The court may:

- (a) grant the application where:
 - (i) the representative considers himself to be under a duty to withdraw from the case in accordance with his professional rules of conduct and, in such a case, the representative shall provide details of the nature of such duty;
 - (ii) there is a breakdown in the relationship between the assisted person and the representative such that effective representation can no longer be provided and, in such a case, the representative shall provide details of the nature of such breakdown;
 - (iii) through circumstances beyond his control, the representative is no longer able to represent the assisted person; or
 - (iv) some other substantial compelling reason exists; or
- (b) refuse the application.

PART V

WITHDRAWAL OF REPRESENTATION

17.—(1) The court before which the proceedings are heard, or, in respect of any proceedings mentioned in regulation 3(2), the Commission, must consider whether to withdraw the representation order in any of the following circumstances:

- (a) where any charge or proceedings against the assisted person are varied, the court or the Commission, as appropriate, must consider whether the interests of justice continue to require that he be represented in respect of the varied charge or proceedings;
- (b) where the assisted person declines to accept a representation order in the terms which are offered;
- (c) at the request of the assisted person; or
- (d) where the representative named on the representation order declines to continue to represent the assisted person.

(2) Where representation is withdrawn, the appropriate officer or the Commission, as appropriate, shall provide written notification to the assisted person and to the solicitor (or, where there was no solicitor assigned, to the advocate), who shall inform any assigned advocate (or, where notification is given to the advocate, any other assigned advocate).

(3) On any subsequent application by the assisted person for a representation order in respect of the same proceedings, he shall declare the previous withdrawal of representation and the reason for it.

PART VI

MISCELLANEOUS

Transfer of documents

18. Where an individual is committed or sent for trial by a lower court to a higher court, or appeals or applies for leave to appeal from a lower court to a higher court, the appropriate officer of the lower court shall send to the appropriate officer of the higher court the following documents:

- (a) a copy of any representation order previously made in respect of the same proceedings; and
- (b) a copy of any application for a representation order which has been refused.

Authorisation of expenditure

19.—(1) Where it appears to the solicitor necessary for the proper conduct of proceedings in the Crown Court for costs to be incurred under the representation order by taking any of the following steps:

- (a) obtaining a written report or opinion of one or more experts;
- (b) employing a person to provide a written report or opinion (otherwise than as an expert);
- (c) obtaining any transcripts or recordings; or
- (d) performing an act which is either unusual in its nature or involves unusually large expenditure

he may apply to the Costs Committee for prior authority to do so.

(2) The Commission may authorise a person acting on behalf of the Costs Committee to grant prior authority in respect of any application made under paragraph (1).

(3) Where the Costs Committee or a person acting on its behalf authorises the taking of any step specified in paragraph (1), it shall also authorise the maximum to be paid in respect of that step.

20. A representative assigned to an assisted person in any proceedings in the Crown Court may apply to the court for prior authority for the incurring of travelling and accommodation expenses in order to attend at the trial or other main hearing in those proceedings.

21.—(1) No question as to the propriety of any step, or as to the amount of the payment within the maximum authorised, with regard to which prior authority has been given under regulation 19 or 20 or under any contract, shall be raised on any determination of costs unless the representative knew or should reasonably have known that the purpose for which it was given had become unnecessary.

(2) Payment may be allowed on a determination of costs in respect of any step with regard to which prior authority may be given, notwithstanding that no such authority was given or that the maximum authorised was exceeded.

Restriction on payment

22. Where a representation order has been made, the assisted person's solicitor or advocate shall not receive or be a party to the making of any payment for work done in connection with the proceedings in respect of which the representation order was made except such payments as may be made:

- (a) by the Lord Chancellor or the Commission; or
- (b) in respect of any expenses or fees incurred in:
 - (i) preparing, obtaining or considering any report, opinion or further evidence, whether provided by an expert witness or otherwise; or
 - (ii) obtaining any transcripts or recordings

where an application for an authority to incur such fees or expenses has been refused by the Costs Committee.

Notification of very high cost cases

23.—(1) This regulation applies to very high cost cases where funded services are provided.

(2) Any solicitor who has conduct of a case which is a very high cost case shall notify the Commission in writing accordingly as soon as is practicable.

(3) Where a solicitor fails to comply with the provisions of this regulation without good reason, and as a result there is a loss to public funds, the court or Costs Committee, as appropriate, may refuse payment of his costs up to the extent of such loss.

(4) No payment under paragraph (3) shall be refused unless the solicitor has been given a reasonable opportunity to show why it should not be refused.

Duty to report abuse

24. Notwithstanding the relationship between or rights of a representative and client or any privilege arising out of such relationship, where the representative for an applicant or assisted person knows or suspects that that person:

- (a) has intentionally failed to comply with any provision of regulations made under the Act concerning the information to be furnished by him; or
- (b) in furnishing such information has knowingly made a false statement or false representation

the representative shall immediately report the circumstances to the Commission.

Revocation

25. The Criminal Defence Service (General) Regulations 2001^(a) are revoked.

Signed by the authority of the Lord Chancellor

Dated 11th April 2001

Willy Bach
Parliamentary Secretary,
Lord Chancellor's Department

(a) S.I. 2001/1144.

SCHEDULE 1

ASSESSMENT OF RESOURCES

1. In this Schedule, unless the context otherwise requires:

“capital” means the amount or value of every resource of a capital nature;

“income” means the total income from all sources which the person concerned has received or may reasonably expect to receive in respect of the seven days up to and including the date of his application;

“partner” means a person with whom the person concerned lives as a couple, and includes a person with whom the person concerned is not currently living but from whom he is not living separate and apart;

“the person concerned” means the person whose disposable capital and disposable income are to be assessed;

“supplier” means the solicitor or firm of solicitors being requested to provide or providing funded services to the individual.

2. Any question arising under this Schedule shall be decided by the supplier to whom the individual has applied and that supplier, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Commission as to the application of this Schedule.

3. The disposable capital and disposable income of the person concerned shall be the capital and income as assessed by the supplier after deducting any sums which are to be left out of account or for which allowance is to be made under the provisions of this Schedule.

4. Where the person concerned is a child, the resources of a parent, guardian or any other person who is responsible for maintaining him, or who usually contributes substantially to his maintenance, shall be treated as his resources, unless, having regard to all the circumstances including the age and resources of the child and any conflict of interest, it appears inequitable to do so.

5. If it appears to the supplier that the person concerned has, with intent to reduce the amount of his disposable capital or disposable income, whether for the purpose of making himself eligible for advice and assistance or otherwise:

(a) directly or indirectly deprived himself of any resources; or

(b) converted any part of his resources into resources which are to be left out of account wholly or partly

the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted as the case may be.

6.—(1) In calculating the capital and income of the person concerned, the resources of his partner shall be treated as his resources unless:

(a) the partner has a contrary interest in the matter in respect of which he is seeking advice and assistance; or

(b) in all the circumstances of the case it would be inequitable or impractical to do so.

(2) In calculating the capital and income of the person concerned, there shall be left out of account so much of any back to work bonus received under section 26 of the Jobseekers Act 1995^(a) as is by virtue of that section to be treated as payable by way of a jobseeker’s allowance.

7. In calculating the capital of the person concerned:

(a) there shall be left out of account the value of his household furniture and effects, of his clothes and of tools and implements of his trade;

(b) the value of any interest in land shall be taken to be the amount for which that interest could be sold less the amount of any mortgage debt or hereditary security, subject to the following:

(i) in calculating the value of his interests, the total amount to be deducted in respect of all mortgage debts or hereditary securities shall not exceed £100,000;

^(a) 1995 c. 18.

- (ii) in making the deductions in sub-paragraph (i), any mortgage debt or hereditament security in respect of the main or only dwelling shall be deducted last; and
 - (iii) the first £100,000 of the value of his interest (if any) in the main or only dwelling in which he resides, after the application of sub-paragraphs (i) and (ii), shall be disregarded;
- (c) where the person concerned resides in more than one dwelling, the supplier shall decide which is the main dwelling; and
- (d) where the person concerned has living with him one or more of the following persons, namely, a partner whose resources are required to be aggregated with his, a dependent child or a dependent relative wholly or substantially maintained by him, a deduction shall be made of £335 in respect of the first person, £200 in respect of the second and £100 in respect of each further person.

8.—(1) In calculating the disposable income of the person concerned, there shall be left out of account:

- (a) any income tax paid or payable on income treated under the provisions of this Schedule as his income;
- (b) any contributions estimated to have been paid under Part I of the Social Security Contributions and Benefits Act 1992 during or in respect of the seven days up to and including the date of the application for advice and assistance;
- (c) the following payments made under the Social Security Contributions and Benefits Act 1992:
 - (i) disability living allowance;
 - (ii) attendance allowance paid under section 64(a) or Schedule 8 paragraphs 4 or 7(2);
 - (iii) constant attendance allowance paid under section 104 as an increase to a disablement pension; and
 - (iv) any payment made out of the social fund; and
- (d) any payment made under the Community Care (Direct Payments) Act 1996(b).

(2) Subject to sub-paragraph (3), in calculating the disposable income of the person concerned there shall be a deduction at or equivalent to the following rates (as they applied at the beginning of the period of calculation):

- (a) in respect of the maintenance of his partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of paragraph 1(3)(c) of Schedule 2 to the Income Support (General) Regulations 1987(c), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of that Schedule); and
- (b) in respect of the maintenance of any dependant child or dependant relative of his, where such persons are members of his household:
 - (i) in the case of a dependant child or a dependant relative aged 15 or under at the beginning of the period of calculation, the amount specified at (a) in column 2 in paragraph 2(1) of the Schedule referred to in sub-paragraph (a); and
 - (ii) in the case of a dependant child or a dependant relative aged 16 or over at the beginning of the period of calculation, the amount specified at (b) in column 2 in paragraph 2(1) of that Schedule.

(3) The supplier may reduce any rate provided by virtue of paragraph (2) by taking into account the income and other resources of the dependant child or dependant relative to such extent as appears to him to be equitable.

(4) In ascertaining whether a child is a dependant child or whether a person is a dependant relative for the purposes of this paragraph, regard shall be had to their income and other resources.

(a) Section 64(4) was inserted by section 66(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

(b) 1996 c. 30.

(c) S.I. 1987/1967; the relevant amending instruments are S.I. 1996/2545; 1999/264 and 2555; and 2000/440 and 1993.

9. If the person concerned is making bona fide payments for the maintenance of a former partner, a child or a relative who is not (in any such case) a member of his household, there shall be a deduction of such payment as was or will be made in respect of the seven days up to and including the date of the application for advice and assistance.

10. Where it appears to the supplier that there has been some error or mistake in the assessment of the disposable income or disposable capital of the person concerned, he may reassess the disposable income or disposable capital or, as the case may be, amend the assessment and in the latter case the amended assessment shall for all purposes be substituted for the original assessment.

SCHEDULE 2

Form A

APPLICATION FOR THE RIGHT TO REPRESENTATION IN CRIMINAL
PROCEEDINGS MAGISTRATES' COURT OR CROWN COURT

I apply for the right to representation for the purposes of proceedings before the Crown/
magistrates'/youth court

**1. Personal
details**

1a. Surname

1b. Forenames

1c. Title (Mr, Mrs, Ms, Miss or another)

1d. Date of birth

1e. Home address

1f. Present address
(if different from above)

2. Case Details

2a. What charges have been
brought against you? Describe
briefly what it is that you are
accused of doing: e.g. theft of £10
worth of CD's or assault on a
neighbour

2b. Are there any co-defendants
in this matter?

No/Yes (if yes give their names)

2c. Give reasons why you and
your co-defendants cannot be
represented by the same solicitors

3. The Court Proceedings

3a. I am due to appear before

The	magistrates' court/youth court
Date	at am/pm

or

3b. I appeared before

The	magistrates' court/youth court
Date	at am/pm

And

(tick whichever applies)

My case has been sent to the Crown Court for trial under Section 51 of the Crime and Disorder Act 1998	
--	--

My case has been transferred to the Crown Court for trial	
---	--

I was convicted and committed for sentence to the Crown Court	
---	--

I was convicted and/or sentenced and I wish to appeal against the conviction/sentence	
---	--

4. Outstanding matters

If there are any other *outstanding* criminal charges or cases against you, give details including the court where you are due to appear.

--

5. Reasons for wanting representation

To avoid the possibility of your application being delayed, or publicly funded representation being refused because the court does not have enough information about the case, you must complete the rest of this form. When deciding whether to grant publicly funded representation the court will need to know why it is in the interests of justice for you to be represented. If you need help in completing the form you should speak to a solicitor

	Details	Reasons for grant or refusal (for court use only)
5a. It is likely that I will lose my liberty (<i>you should consider seeing a solicitor before answering this question</i>)		
5b. I am currently subject to a sentence that is suspended or non-custodial that if breached may allow the court to deal with me for the original offence. Please give details		
5c. It is likely that I will lose my livelihood		
5d. It is likely that I will suffer serious damage to my reputation		
5e. A substantial question of law is involved (<i>You will need the help of a solicitor to answer this question</i>)	(Please give authorities to be quoted with law reports references)	

	Details	Reasons for grant or refusal (for court use only)
5f. I shall be unable to understand the court proceedings or state my own case because: i) My understanding of English is inadequate ii) I suffer from a disability		
5g. Witnesses have to be traced and/or interviewed on my behalf (<i>State circumstances</i>)		
5h. The case involves expert cross examination of a prosecution witness (<i>give brief details</i>)		
5i. It is in someone else's interests that I am represented		
5j. Any other reasons Give full particulars		

6. Legal Representation

- a) If you do not give the name of a solicitor, the court will select a solicitor for you.
- b) You must tell the solicitor that you have named him.
- c) If you have been charged together with another person or persons, the court may assign a solicitor other than the solicitor of your choice.

The solicitor I wish to act for me is:
--

Give the firm's name and address (if known)

Declaration to be completed on behalf of the solicitor named above

- i) I certify that the named solicitor above has a crime franchise contract or a general criminal contract, or an individual case contract.

I understand that only firms with a general criminal contract or individual case contract may provide representation in the magistrates' court.

Signed

Date

7. Declaration

If you knowingly make a statement which is false or knowingly withhold information, you may be prosecuted.
If convicted, you may be sent to prison for up to three months or be fined or both (section 21 Access to Justice Act 1999)

I apply for representation for the charge(s) that are currently before the court.

I understand that should my case proceed to the Crown Court or any higher court, the court may order that I pay for some or all of the costs of representation incurred in the proceedings by way of a Recovery of Defence Costs Order.

I understand that should my case proceed to the Crown Court or any higher court, I will have to furnish details of my means to the court and/or the Legal Services Commission.

Signeddated

FOR COURT USE ONLY

Any additional factors considered when determining the application, including any information given orally.

Decision on Interests of Justice Test

I have considered all available details of all the charges and it is/is not in the interests of justice that representation be granted for the following reasons:

SignedAppropriate Officer
DATE

--	--	--	--	--	--

To be completed where right to representation extends to Crown Court

Statement of means Form B given to defendant on(date)

Indicate type of case:

Indictable only Yes/No

Section 51 Offence Yes/No

Either-Way Offence and elected/not suitable for summary trial Yes/No

First date of hearing at Crown Court.....

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the provision of advice and assistance and representation by the Criminal Defence Service under Part I of the Access to Justice Act 1999.

They provide for, inter alia,

- (a) the proceedings which are prescribed as criminal proceedings for the purposes of section 12(2)(g) of the Act;
- (b) the circumstances in which an individual may receive advice and assistance, including with regard to his financial eligibility;
- (c) the manner in which applications for the grant of a representation order are to be made;
- (d) the representatives who may provide legal services; and
- (e) the withdrawal of representation.

They also provide for the revocation of the Criminal Defence Service (General) Regulations 2001, which they replace.

2001 No. 1437

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

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

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