

2004 No. 1196

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (General) (No.2) (Amendment) Regulations 2004

<i>Made</i> - - - -	<i>23rd April 2004</i>
<i>Laid before Parliament</i>	<i>26th April 2004</i>
<i>Coming into force</i> - -	<i>17th May 2004</i>

The Secretary of State, in exercise of the powers conferred upon the Lord Chancellor by sections 12(2)(g), 13(1), 15(2)(d) and 22(1) of the Access to Justice Act 1999(a) and now vested in him(b), makes the following Regulations:

1.—(1) These Regulations may be cited as the Criminal Defence Service (General) (No.2) (Amendment) Regulations 2004 and shall come into force on 17th May 2004.

(2) In these Regulations, a regulation referred to by number alone means the regulation so numbered in the Criminal Defence Service (General) (No. 2) Regulations 2001(c).

2.—(1) At the end of regulations 3(2)(f) and 3(2)(g) omit “and”.

(2) After regulation 3(2)(h) insert—

“; and

- (i) proceedings under sections 2, 5 and 6 of the Anti-social Behaviour Act 2003(d) relating to the making or extension of a closure order, and appeals against such an order”.

3. After regulation 4 insert—

“Advice prior to the grant of a representation order

4A. Advice given prior to the grant of a representation order in the Crown Court shall be deemed to have been given under that order where:

- (a) the interests of justice required that the advice was provided as a matter of urgency;
- (b) there was no undue delay in making the application for a representation order; and

(a) 1999 c.22; section 13 was amended by the Criminal Defence Service (Advice and Assistance) Act 2001 (c. 4), section 1. "Prescribed" is defined in section 26 of the Access to Justice Act 1999.

(b) By virtue of the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), articles 4(1) and 9, Schedule 1 and Schedule 2 paragraph 11(1).

(c) S.I. 2001/1437; amended by S.I. 2002/712 and S.I. 2002/2785.

(d) 2003 c.38.

- (c) the advice was given by the representative who was subsequently assigned under the representation order.”.

4. After regulation 16 insert—

“Selection of a representative by two or more co-defendants

16A. Where an individual who is granted a right to representation is one of two or more co-defendants whose cases are to be heard together, that individual must select the same representative as a co-defendant unless there is, or is likely to be, a conflict of interest.”.

5. In regulation 22, after “advocate” insert “, whether acting under a representation order or otherwise,”.

Signed by authority of the Secretary of State

Dated 23rd April 2004

David Lammy
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Defence Service (General) (No. 2) Regulations 2001 (S.I.2001/1437) (“the 2001 Regulations”).

Regulation 2 provides that orders for closure of a property under section 2 of the Anti-social Behaviour Act 2003 (c.38), for an extension of the period for closure under section 5, or an appeal against such a closure or extension under section 6 of that Act are criminal proceedings for the purposes of section 12 of the Access to Justice Act 1999 (c.22).

Regulation 3 inserts a new regulation 4A into the 2001 Regulations to provide that advice given in certain circumstances before the grant of a representation order is to be funded as part of the order rather than separately under the advice and assistance scheme.

Regulation 4 inserts a new regulation 16A into the 2001 Regulations to provide that two or more co-defendants must select the same representative unless there is a conflict of interest.

Regulation 5 makes a minor amendment to clarify the position under regulation 22 of the 2001 Regulations.

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**The Criminal Defence Service (General) (No.2) (Amendment)
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£3.00

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E0645 4/2004 140645T 19585

ISBN 0-11-049233-1



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