

The Community Legal Service (Financial) Regulations 2000

The Community Legal Service (Financial) Regulations 2000 (as amended)

The Community Legal Service (Financial) Regulations 2000

(S.I. 2000 No. 516)

These Regulations have been amended by the Community Legal Service (Financial) (Amendment) Regulations 2001 (S.I. 2001 No. 950) with effect from 9 April 2001, the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997) with effect from 1 October 2001, the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663) with effect from 3 December 2001, the Community Legal Service (Financial) (Amendment) Regulations 2002 (S.I. 2002 No. 709) with effect from 8 April 2002, the Community Legal Service (Financial) (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 1766) with effect from 5 August 2002, the Community Legal Service (Financial) (Amendment) Regulations 2003 (S.I. 2003 No. 650) with effect from 6 October 2003, the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003 (S.I. 2003 No. 762) with effect from 6 April 2003, the Community Legal Service (Financial) (Amendment No. 2) Regulations 2003 (S.I. 2003 No. 2838) with effect from 1 December 2003, the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589) with effect from 1, 4 and 11 April, the Community Legal Service (Financial) (Amendment No. 2) Regulations 2005 (S.I. 2005 No. 1097) with effect from 5 April 2005, the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793) with effect from 25 July 2005, the Adoption and Children Act 2002 (Consequential Amendments) Order 2005 (S.I. 2005 No. 3504) with effect from 30 December 2005, the Community Legal Service (Financial) (Amendment) Regulations 2006 (S.I. 2006 No. 713) with effect from 10 April 2006, the Community Legal Service (Financial) (Amendment No.2) Regulations 2006 (S.I. 2006 No. 2363) with effect from 2 October 2006, the Community Legal Service (Financial) (Amendment) Regulations 2006 (S.I.2007 No.906) with effect from 9 April 2007 and the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No.2442) with effect from 1 October 2007.

Legal Services Commission, England and Wales

<i>Made</i>	<i>18th February 2000</i>
<i>Laid before Parliament</i>	<i>1st March 2000</i>
<i>Coming into force</i>	<i>1st April 2000</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 7 and 10 of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations:

PART I

GENERAL

1. Citation and commencement

These Regulations may be cited as the Community Legal Service (Financial) Regulations 2000 and shall come into force on 1st April 2000.

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1B-040

2. Interpretation

- (1) In these Regulations, unless the context requires otherwise—
- “the Act” means the Access to Justice Act 1999;
 - “application” means an application to receive funded services, made by or on behalf of a client in accordance with the Funding Code;
 - [“assessing authority means” means the Commission, except where under contract or under the Funding Code the Commission has delegated this function to the supplier;”]⁹
 - [“asylum claim” means a claim that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the protocol to the Convention or to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950, for the claimant to be removed from or required to leave the United Kingdom;]⁴
 - “certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client;
 - “client” means an individual who applies for or receives funded services and, in the case of actual or contemplated proceedings, is a party or prospective party to the proceedings;
 - “clinical negligence proceedings” means proceedings which include:
 - (a) a claim for damages in respect of breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or
 - (b) a claim for damages in respect of alleged professional negligence in the conduct of such a claim;
 - “Commission” means the Legal Services Commission established under section 1 of the Act;
 - “CPR” means the Civil Procedure Rules 1998, and a reference to a Part or a rule, prefixed by “CPR”, means the Part or rule so numbered in the CPR;
 - “disposable income” and “disposable capital” mean, respectively, the income and capital of the person concerned, calculated in accordance with regulations 16 to 37;
 - “family proceedings” means proceedings which arise out of family relationships, including proceedings in which the welfare of children is determined. Family proceedings also include all proceedings under any one or more of the following:
 - (a) the Matrimonial Causes Act 1973;
 - (b) the Inheritance (Provision for Family and Dependents) Act 1975;
 - (c) the Adoption Act 1976;
 - (d) the Domestic Proceedings and Magistrates’ Courts Act 1978;
 - (e) Part III of the Matrimonial and Family Proceedings Act 1984;
 - (f) Parts I to V of the Children Act 1989¹; (g) Part IV of the Family Law Act 1996; [(ga)the Adoption and Children Act 2002;]⁵
 - [(gb)the Civil Partnership Act 2004; and]⁶
 - (h) the inherent jurisdiction of the High Court in relation to children.
 - “Funding Code” means the code approved under section 9 of the Act;
 - “funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

¹ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

[“immigration matter” means any relevant matter as defined in section 82 of the Immigration and Asylum Act 1999;]⁷

“the Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part”²;

[“the Independent Living Funds” means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1993) Fund;

“the Independent Living Fund” means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those

...

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...

persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

“the Independent Living (Extension) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

“the Independent Living (1993) Fund” means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;]⁴

[“the Lord Chancellor’s Authorisation” means the Lord Chancellor’s Authorisation on funding for representation at inquests issued in November 2001 under section 6(8)(b) of the Act, as amended from time to time;]⁸

[“Multi-Party Action” means any action or actions, in which a number of clients have causes of action, which involve common issues of fact or law arising out of the same cause or event;]¹

“partner” except in the expression “partner in a business” 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;

“personal injury proceedings” means proceedings for damages in respect of death or any disease or impairment of the client’s physical or mental condition, excluding proceedings for clinical negligence;

“person concerned” means the person:

- (a) whose eligibility is to be assessed; or
- (b) whose resources are to be treated as the resources of the client under these Regulations;

“solicitor” means solicitor or other person who is an authorised litigator within the meaning of section 119(1) of the Courts and Legal Services Act 1990; and

“supplier” means the solicitor, mediator or agency being requested to provide or providing funded services to the client; and

[“wider public interest” means the potential of proceedings to produce real benefits for individuals other than the client (other than any general benefits which normally flow from proceedings of the type in question).]²

(2) References to the levels of service listed in paragraph (3) shall be construed as references to the application for, or receipt or provision of, those levels of service in accordance with the Funding Code.

(3) The levels of service referred to in paragraph (2) are:

- (a) Legal Help;
- (b) Help at Court;
- (c) Legal Representation;
- (d) Family Mediation;

² Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

- (e) Family Help (Lower)³;
- (f) Family Help (Higher)⁴;
- [(g) *Support Funding*;
- (h) *Litigation Support*]³.

NOTES

- ¹ Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2003 (S.I. 2003 No. 650).
- ² Inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).
- ³ Omitted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).
- ⁴ Deleted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)
- ⁵ Inserted by the Adoption and Children Act 2002 (Consequential Amendments) Order 2005 (S.I. 2005 No. 3504).
- ⁶ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).
- ⁷ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).
- ⁸ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).
- ⁹ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

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PART II

ELIGIBILITY, ASSESSMENT AND CONTRIBUTIONS

1B-041

3. Financial eligibility

(1) The following services shall be available without reference to the client's financial resources:

- (a) services consisting exclusively of the provision of general information about the law and legal system and the availability of legal services;
- (b) . . .¹ legal advice consisting of such amount of Legal Help[, and Help at Court]¹ as is authorised under a contract to be provided without reference to the client's financial resources;
- (c) Legal Representation in proceedings under the Children Act 1989[, except appeals against final orders,]⁶ applied for by or on behalf of:
 - (i) a child in respect of whom an application is made for an order under:
 - (a) section 31 (care or supervision order);
 - (b) section 43 (child assessment order);
 - (c) section 44 (emergency protection order); or
 - (d) section 45 (extension or discharge of emergency protection order);
 - (ii) a parent of such a child, or a person with parental responsibility for such a child within the meaning of the Children Act 1989; or
 - (iii) a child who is brought before a court under section 25 (use of accommodation for restricting liberty) who is not, but wishes to be, legally represented before the court;
- [(ca) Family Help (Lower)⁵ applied for by a parent of a child, or a person with parental responsibility for a child within the meaning of the Children Act 1989, in respect of whom a Local Authority has given notice of potential proceedings under section 31 of

³ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

⁴ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

⁵ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

- that Act.]⁶
- (d) Legal Representation[, applied for by or on behalf of any of the parties referred to in subparagraph (c),]² in proceedings related to any proceedings in sub-paragraph (c) which are being heard together with those proceedings or in which an order is being sought as an alternative to an order in those proceedings;
 - (e) Legal Help in potential proceedings or Legal Representation in proceedings or potential proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983(b), where the client's case or application to the Tribunal is, or is to be, the subject of the proceedings⁶;
 - (f) Legal Representation by a solicitor in England and Wales of a person whose application under the Hague Convention or the European Convention has been submitted to the Central Authority in England and Wales under section 3(2) or 14(2) of the Child Abduction and Custody Act 1985; and
 - (g) Legal Representation of a person who:
 - (i) appeals to a magistrates' court against the registration of, or the refusal to register, a maintenance order made in a Hague Convention country under the Maintenance Orders (Reciprocal Enforcement) Act 1972; or
 - (ii) applies for the registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982[; or]³
 - [(iii) applies for the registration of a judgment under Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters]³ [or
 - (iv) [applies for either the registration of or the registration and enforcement of a judgment under Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility]⁴

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- and who benefited from complete or partial assistance with, or exemption from, costs or expenses in the country in which the maintenance order was made or the judgment was given;
- (h) such services as are funded through grants under section 6(3)(c) of the Act except where the terms of the grant provide otherwise]¹ [;
 - (i) Legal Help or Legal Representation for a person who is subject to a control order, consisting of advice in connection with that order, help with an application to the Secretary of State under section 7(1) of the Prevention of Terrorism Act 2005, or representation in control order proceedings.]⁵
- (2) In this regulation—
- “Central Authority” has the same meaning as in sections 3 and 14 of the Child Abduction and Custody Act 1985;
 - [“control order” and “control order proceedings” have the same meanings as in the Prevention of Terrorism Act 2005;]⁵
 - “European Convention” means the convention defined in section 12(1) of the Child Abduction and Custody Act 1985;
 - “Hague Convention” means the convention defined in section 1(1) of the Child Abduction and Custody Act 1985;
 - “Hague Convention country” has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993; and
 - “the Maintenance Orders (Reciprocal Enforcement) Act 1972” means that Act as applied with such exceptions, adaptations and modifications as are specified in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993.

NOTES

⁶ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹ Words revoked and words inserted by the Community Legal Service (Financial) (Amendment No.2) Regulations 2001 (S.I. 2001 No. 2997).

² Inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

³ Inserted by the Civil Jurisdiction and Judgments Order 2001 S.I. 2001 No. 3929.

⁴ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

⁵ Inserted by the Community Legal Service (Financial) (Amendment No 2) Regulations 2005 (S.I. 2005 No. 1097).

⁶ Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-042

[4.—(1) Subject to regulation 3, the assessing authority to which an application is made shall determine the financial eligibility of the client in accordance with these Regulations.

[(2) Where the assessing authority is satisfied that the client is in receipt, directly or indirectly, of –

- (a) income support,
- (b) income-based jobseeker's allowance, or
- (c) guarantee state pension credit (under section 1(3)(a) of the State Pension Credit Act 2002),

he shall be eligible for all the levels of service listed in regulation 2(3) without making (where applicable) any contributions.]¹

[(3) Where the assessing authority is satisfied that the client is in receipt, directly or indirectly, of support provided under section [4 or]⁵ 95 of the Immigration and Asylum Act 1999, he shall be eligible for [

- (a) Legal Help in relation to an asylum claim or immigration matter;
- (b) Help at Court and Legal Representation before—
 - (i) the Asylum and Immigration Tribunal; and
 - (ii) the High Court in respect of an application under section 103A of the Nationality, Immigration and Asylum Act 2002.]⁶]⁴

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NOTES

¹ Regulation 4(2) was substituted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

² Amended by the Community Legal Service (Financial) (Amendment) Regulations 2003 (S.I. 2003 No. 650).

³ Amended by the Community Legal Service (Financial) (Amendment) Regulations 2002 (S.I. 2002 No. 709).

⁴ Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2006 (S.I. 2006 No. 713).

⁵ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).

⁶ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).

1B-043

[5.—(1) This regulation has effect subject to regulations 3, 4 and 5A.

(2) Except where paragraph (3) applies, where a client's monthly disposable income does not exceed £672 and his disposable capital does not exceed £8,000, he shall be eligible for funded services.

(3) Where a client's monthly disposable income does not exceed £672 and his disposable capital does not exceed £3,000, he shall be eligible for Legal Representation in respect of an immigration claim before —

- (i) the Asylum and Immigration Tribunal; and
- (ii) the High Court in respect of an application under section 103A of the Nationality, Immigration and Asylum Act 2002.]¹

NOTES

¹ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-044

[5A.—(1) For the purposes of this regulation, “gross income” means total income from all sources, before any deductions are made [other than those payments which are to be disregarded under regulation 19, and any housing benefit paid under the Social Security Contributions and Benefits Act 1992]².

(2) This regulation does not apply to any applications to which regulation 4(2) applies.

(3) In relation to the calculation of gross income:

- (a) regulations 6, 10, 11, 12 and 15 shall apply as if “gross income” were substituted for “disposable income” each time it appears; and
- (b) regulations 21 and 23 shall not apply.

(4) Subject to [paragraph (5) and]² regulation 3, where the gross monthly income of the person concerned exceeds [£2,435]⁴ the assessing authority shall refuse any application for funded services.]¹

[(5) Where the person concerned has more than four dependant children in respect of whom he receives child benefit, the sum referred to in paragraph (4) shall be increased by [£205]⁴ in respect of the fifth and each subsequent child.]²

NOTES

¹ Regulation 5A was inserted by the Community Legal Services (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Inserted by the Community Legal Services (Financial) (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 1766).

³ Amended by the Community Legal Services (Financial) (Amendment) Regulations 2003 (S.I. 2003 No. 650).

⁴ Substituted by the Community Legal Services (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-045**[5B. Waiver of eligibility limit in Multi-Party Actions of wider public interest**

(1) . . .²

(2) Paragraph (3) applies where:

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(a) the Commission funds Legal Representation [*or Support Funding*]³ in a Multi-Party Action which it considers has a significant wider public interest; and

[(b) the Commission considers it cost-effective to fund those services only in relation to specific issues within the Multi-Party Action]².

(3) Where this paragraph applies, the Commission may, if it considers it equitable to do so, disapply the eligibility limits in regulations 5 []⁴ and 5A.]¹

NOTES

¹ Regulation 5B was inserted by the Community Legal Services (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Amended by the Community Legal Services (Financial) (Amendment) Regulations 2003 (S.I. 2003 No. 650).

³ Omitted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

⁴ Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-046

[5C. Waiver of eligibility limit in certain inquests¹

(1) This regulation applies to an application for the funding of [services in relation to an inquest]² into the death of a member of the immediate family of the client.

(2) [Where this regulation applies—

(a) the Commission may, if it considers it equitable to do so, request the Lord Chancellor to disapply the eligibility limits in regulations 5⁸ and 5A in respect of an application for funding which falls outside the scope of the Lord Chancellor's Authorisation;

(b) the Commission may, if it considers it equitable to do so, disapply the eligibility limits in regulations 5⁸ and 5A in respect of an application for funding which falls within the scope of the Lord Chancellor's Authorisation]⁴

(3) In considering whether to make such a request [or waiver],⁵ the Commission shall have regard in particular to any applicable Convention rights under Article 2 of Schedule 1 to the Human Rights Act 1998.

(4) On receipt of a request under [paragraph (2)(a) the Lord Chancellor]⁶ may, if he thinks [it equitable]⁷, disapply the eligibility limits.]¹

NOTES

¹ Regulation 5C was inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2003 (S.I. 2003 No. 2838).

² Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

³ Inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

⁴ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).

⁵ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).

⁶ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).

⁷ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).

⁸ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

[5D. Waiver of eligibility limit and contributions in cross-border disputes

(1) This regulation applies to an application to the Commission by a client domiciled or habitually resident in another Member State for the funding of services in relation to a cross-border dispute.

(2) Where this regulation applies, the Commission must –

(a) disapply the relevant eligibility limits in regulations 5 and 5A if the client proves that he is unable to pay the cost of proceedings in England and Wales in relation to the dispute as a result of differences in the cost of living between the client's Member State of domicile or habitual residence and England and Wales; and

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(b) waive part or all of any contributions payable under regulation 38, if and to such extent as the client proves that he is unable to pay them as a result of such differences in the cost of living.

(3) In this regulation –

“cross-border dispute” means a dispute where a client is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the

decision is to be enforced;

“Member State” means a member state of the European Union except Denmark.

(4) For the purposes of this regulation the Member State in which a client is domiciled shall be determined in accordance with Article 59 of Council Regulation (EC) No.44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.]¹

NOTES

¹ Regulation 5D was inserted by the Community Legal Service (Financial) (Amendment) Regulations 2004 (S.I. 2004 No. 2899).

[5E. Waiver of eligibility limit in proceedings for protection from harm to the person

(1) This regulation applies to an application by a client for the funding of Legal Representation in proceedings where the client seeks –

- (a) an injunction or other order for protection from harm to the person; or
- (b) committal for breach of any such order.

(2) Where this regulation applies the Commission may, if it considers it equitable to do so, disapply the eligibility limits in regulations 5 and 5A²]¹

NOTES

¹ Regulation 5E was inserted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

² Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-047

6. Assessment of resources

Where an application is made, the client shall provide the assessing authority with the information necessary to enable it to:

- (a) determine whether he satisfies the conditions set out in regulation 4; and
- (b) calculate, where relevant, his disposable income and disposable capital and those of any other person concerned.

1B-048

[7.—(1) The assessing authority shall [subject to regulation 4(2)]²:

- (a) []² calculate the disposable income and disposable capital of the person concerned in accordance with regulations 16 to 37;
- (b) calculate the gross income of the person concerned in accordance with regulation 5A; and
- (c) calculate any contribution payable in accordance with regulations 38 and 39.

(2) When calculating:

- (a) disposable income for the purposes of regulation 5 [(2), (3), (5) or (6)]³; or
- (b) gross income for the purposes or regulation 5A,

the period of calculation shall be one month.

(3) For the purposes of this regulation and regulation 15, one month means the period of one calendar month which ends on the date on which the application is made, or such other equivalent period as the Commission considers appropriate.

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(4) Where the assessing authority calculates that a client has disposable income or disposable capital of an amount which makes him ineligible to receive funded services, it shall refuse the

application.]¹

NOTES

¹ Regulation 7 was substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Words in brackets were inserted and omitted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

³ Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-049

8. The supplier shall not provide any funded services to the client prior to the assessment of resources in accordance with regulation 7 other than:

- (a) in accordance with Funding Code procedures; or
- (b) where authorisation to do so is given by the Commission in a contract.

1B-050

9. Where the assessing authority is the supplier, any question arising under regulations 10 to 41 shall be decided by the supplier and the 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 these Regulations.

1B-051

10. Application in representative, fiduciary or official capacity

Where the client is acting only in a representative, fiduciary or official capacity, the assessing authority shall, in calculating his disposable income and disposable capital, and the amount of any contribution to be made:

- (a) assess the value of any property or estate or the amount of any fund out of which he is entitled to be indemnified; and
- (b) unless it considers that he might benefit from the proceedings, disregard his personal resources.

1B-052

11. Resources of other persons

(1) Subject to paragraph (2), in calculating the disposable income and disposable capital of the client, the resources of his partner shall be treated as his resources.

(2) The resources of the client's partner shall not be treated as his resources if he has a contrary interest in the dispute in respect of which the application is made.

(2A) Paragraph (3) does not apply where eligibility is being assessed for Legal Representation in proceedings other than Family Proceedings.²

(3) [*Except where eligibility is being assessed under regulation 5(6),*]³ Where the client 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.

(4) Where it appears to the assessing authority that:

- (a) another person is or has been [or is likely to be]¹ substantially maintaining the person concerned, or
- (b) any of the resources of another person have been [or are likely to be]¹ made available to the person concerned,

the assessing authority may treat all or any part of the resources of that other person as the resources of the person concerned[, and may assess or estimate the value of those resources as

well as it is able]¹.

(5) In this regulation and regulation 12, “person” includes a company, partnership, body of trustees and any body of persons, whether corporate or not corporate.

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¹ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997).

² Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

³ Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-053

12. Deprivation or conversion of resources

If it appears to the assessing authority that the person concerned has, with intent to reduce the amount of his disposable income or disposable capital, whether for the purpose of making himself eligible to receive funded services, reducing his liability to pay a contribution, or otherwise:

- (a) directly or indirectly deprived himself of any resources,
- (b) transferred any resources to another person, or
- (c) converted any part of his resources into resources which under these Regulations are to be wholly or partly disregarded,

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

1B-054

13. Duty to report change in financial circumstances

The client shall forthwith inform the assessing authority of any change in his financial circumstances (or those of any other person concerned) [of which he is, or should reasonably be, aware,]¹ which has occurred since any assessment of his resources, and which might affect the terms on which the client was assessed as eligible to receive funded services.

NOTES

¹ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997).

1B-055

14. Amendment of assessment due to error or receipt of new information

Where:

- (a) it appears to the assessing authority that there has been an error in the assessment of a person’s resources or contribution, or in any calculation or estimate upon which such assessment was based, or
- (b) new information which is relevant to the assessment has come to light,

the assessing authority may make an amended assessment, and may take such steps as appear equitable to give effect to it in relation to any period during which funded services have already been provided.

1B-056

15. Further assessments

(1) Where the eligibility of the person concerned was assessed under regulation 5² and it appears that his circumstances may have altered so that:

(a) his [normal]¹ disposable income may have increased by an amount greater than [£60]¹ or decreased by an amount greater than [£25]¹, or

(b) his disposable capital may have increased by an amount greater than £750, the assessing authority shall, subject to paragraph (6), make a further assessment of the person's resources and contribution (if any) in accordance with these Regulations.

(2) For the purposes of the further assessment, the period of calculation shall be the period of [one month]¹ following the date of the change of circumstances or such other period of [one month]¹ as the assessing authority considers to be appropriate.

(3) Where a further assessment is made, the amount or value of every resource of a capital nature acquired since the date of the original application shall be ascertained as at the date of receipt of that resource.

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(4) Any capital contribution which becomes payable as a result of a further assessment shall be payable in respect of the cost of the funded services, including costs already incurred.

(5) Where a certificate is discharged as a result of a further assessment of capital, the assessing authority may require a contribution to be paid in respect of costs already incurred.

(6) The assessing authority may decide not to make a further assessment under paragraph (1) if it considers such a further assessment inappropriate, having regard in particular to the period during which funded services are likely to continue to be provided to the client.

NOTES

¹ Amended by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997).

² Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-057

16. Calculation of income

The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of calculation[, but *where the eligibility of the person concerned is being assessed under regulation 5(6),*² in calculating such income the Commission may have regard to his average income during such other period as it considers appropriate].¹

NOTES

¹ Inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-058

17.—(1) The income from a trade, business or gainful occupation other than an occupation at a wage or salary shall be deemed to be whichever of the following the assessing authority considers more appropriate and practicable:

(a) the profits which have accrued or will accrue to the person concerned in respect of the period of calculation; or

(b) the drawings of the person concerned.

(2) In calculating the profits under paragraph (1)(a):

(a) the assessing authority may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared;

- and
- (b) there shall be deducted all sums necessarily expended to earn those profits, but no deduction shall be made in respect of the living expenses of the person concerned or any member of his family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of his remuneration.

1B-059

18.—(1) For the purposes of this regulation, “national insurance contributions” means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992.

(2) In calculating the disposable income of the person concerned, any income tax and national insurance contribution paid, or where eligibility is being assessed for General Family Help or Legal Representation payable, on that income in respect of the period of calculation shall be deducted.²

(3) . . .¹

NOTES

¹ Paragraph (3) was deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

--- Looseleaf Page Break (26) ---

1B-060

19. In calculating the disposable income [or the gross income]¹ of the person concerned, the following payments shall be disregarded:

- (a) under the Social Security Contributions and Benefits Act 1992:
- (i) disability living allowance;
 - (ii) attendance allowance paid under section 64 or Schedule 8 paragraphs 4 or 7(2);
 - (iii) constant attendance allowance paid under section 104 as an increase to a disablement pension;
 - (iv) any payment made out of the social fund;
 - [(v) carer’s allowance]²;
 - (vi) council tax benefit;]
- (b) any direct payments made under the Community Care, Service for Carers and Children’s Services (Direct Payments) (England) Regulations 2003(a) or the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004(b)⁴; and
- (c) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker’s allowance;
- [(d) severe disablement allowance paid under the Social Security (Severe Disablement Allowance) Regulations 1984;
- (e) exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983;
- (f) any pensions paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006(c)⁴; and
- (g) to the extent that it exceeds the relevant figure referred to in regulation 20(2)(b), any financial support paid under any agreement for the care of a foster child;⁴
- [(h) any payment made out of the Independent Living Fund 2006⁷.]³

NOTES

⁷ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 1766).

² Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2004 (S.I. 2004 No. 2899).

³ Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2006 (S.I. 2006 No. 713).

⁴ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-061

20.—(1) For the purposes of this regulation, “the Schedule” means Schedule 2 to the Income Support (General) Regulations 1987.

(2) Subject to 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 the Schedule), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of the 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; 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 the Schedule.

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(3) The assessing authority may reduce any rate provided by virtue of paragraph (1) by taking into account the income and other resources of the dependant child or dependant relative to such extent as appears to the assessing authority 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 regulation, regard shall be had to their income and other resources.

1B-062

21. Where the person concerned is making and, throughout such period as the assessing authority considers adequate, has regularly made payments for the maintenance of:

- (a) a former partner;
- (b) a child; or
- (c) a relative

who is not a member of his household, a reasonable amount shall be deducted in respect of such payments.

1B-063

22. . . .¹

NOTES

¹ Deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

1B-064

[23.]—(1) Where the income of the person concerned consists, wholly or partly, of a wage or

salary from employment, there shall be deducted –

- (a) the sum of £45 per month; and
- (b) where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home by reason of his employment.

(2) Where the income of the person consists, wholly or partly, of income from a trade, business or gainful occupation other than an occupation at a wage or salary, there shall be deducted, where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home whilst he is engaged in that trade, business or gainful occupation.]¹

NOTES

¹ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

1B-065

24.—(1) . . .¹

(2) Paragraphs (3) to (5) apply only if the person concerned is a householder.

(3) In calculating the disposable income of the person concerned, the net rent payable by him in respect of his main or only dwelling, or such part of it as is reasonable in the circumstances, shall be deducted; and the assessing authority shall decide which is the main dwelling where the person concerned resides in more than one dwelling.

(4) For the purpose of this regulation, “net rent” includes:

- (a) any [monthly]³ rent payable;
- (b) any [monthly]³ instalment (whether of interest or capital) in respect of [a debt secured by a mortgage or charge on the property]¹
- (c) . . .²

(5) In calculating the amount of net rent payable, there shall be deducted:

- (a) any housing benefit paid under the Social Security Contributions and Benefits Act 1992;
- (b) any proceeds of sub-letting any part of the premises; and

--- Looseleaf Page Break (28) ---

- (c) an amount reasonably attributable to any person other than the person concerned, his partner or any dependant, who is accommodated in the premises otherwise than as a sub-tenant.

(6) If the person concerned is not a householder, a reasonable amount in respect of the cost of his living accommodation shall be deducted.

[(7) If no deduction has been made under regulation 20(2), the maximum amount to be deducted under paragraph (3) or, as the case may be, (6) shall be £545.]⁴

NOTES

¹ Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

² Deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

³ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

⁴ Inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

1B-066

25. . . .¹

NOTES

¹ Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

1B-067

26. Subject to the provisions of these Regulations, in calculating the disposable capital of the person concerned, the amount or value of every resource of a capital nature belonging to him on the date on which the application is made shall be included.

1B-068

27. In so far as any resource of a capital nature does not consist of money, its value shall be taken to be:

- (a) the amount which that resource would realise if sold; or
- (b) the value assessed in such other manner as appears to the assessing authority to be equitable.

1B-069

28. Where money is due to the person concerned, whether it is payable immediately or otherwise and whether payment is secured or not, its value shall be taken to be its present value.

1B-070

29. The value to the person concerned of any life insurance or endowment policy shall be taken to be the amount which he could readily borrow on the security of that policy.

1B-071

30. Other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, nothing shall be included in the disposable capital of the person concerned in respect of:

- (a) the household furniture and effects of the main or only dwelling house occupied by him;
- (b) articles of personal clothing; and
- (c) the tools and equipment of his trade, unless they form part of the plant or equipment of a business to which the provisions of regulation 31 apply.

[30A. Subject to regulation 31, in calculating the value of the interest of the person concerned in any resource of a capital nature which he owns jointly or in common with any other person, the assessing authority may treat that resource as being owned –

- (a) in equal shares; or
- (b) in such other proportions as appear to the assessing authority to be equitable.]¹

NOTES

¹ Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

--- Looseleaf Page Break (29) ---

1B-072

31.—(1) Where eligibility is being assessed for —

- (a) Legal Representation, except Legal Representation for an immigration claim before
 - (i) the Asylum and Immigration Tribunal; and
 - (ii) the High Court in respect of an application under section 103A of the Nationality, Immigration and Asylum Act 2002; and
- (b) Family Help (Higher)⁸, paragraphs (2) to (4) apply.²

(2) Where the person concerned is the sole owner of or partner in a business, the value of the business to him shall be taken to be the greater of:

⁸ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

- (a) such sum, or his share of such sum, as could be withdrawn from the assets of his business without substantially impairing its profits or normal development; and
- (b) such sum as that person could borrow on the security of his interest in the business without substantially injuring its commercial credit.

(3) Where the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in a business, the assessing authority may, instead of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were a sole owner or partner in a business and calculate the amount of his capital in respect of that resource in accordance with paragraph (2).

(4) Where the person concerned owns solely, jointly or in common with other persons, any interest on the termination of a prior estate, whether

- (a) legal or equitable;
- (b) vested or contingent;
- (c) in reversion or remainder; and
- (d) whether in real or personal property or in a trust or other fund

the value of such interest shall be calculated in such manner as is both equitable and practicable.

(5) Where eligibility is being assessed for other levels of service², the sums mentioned in this regulation shall be disregarded.

1B-073

[32.]—(1) In calculating the disposable capital of the client, the value of any interest in land shall be taken to be the amount for which that interest could be sold less, subject to paragraphs (2) and (3), the amount of any debt secured by a mortgage or charge on the property.

(2) The total amount to be deducted under this regulation on an assessment of the client's disposable capital shall not exceed £100,000 in respect of all secured debts.

(3) Where –

- (a) the interests in land which are taken into account in an assessment of the client's disposable capital include interests in both –
 - (i) the main or only dwelling in which the client resides; and
 - (ii) one or more other properties, and
- (b) debts totalling more than £100,000 are secured on the main or only dwelling and one or more of the other properties,

the deduction to be made under this regulation shall be made in respect of the debts secured on the other properties first.

(4) Where the client resides in more than one dwelling, the assessing authority shall decide which is the main dwelling for the purposes of this regulation and regulations 32A and 32B.

32A.—(1) In calculating the disposable capital of the client, the amount or value of the subject matter of the dispute to which the application relates shall, subject to paragraphs (2) and (3), be disregarded.

(2) Where eligibility is being assessed for Legal Representation and Family Help (Higher)⁹, the total amount to be disregarded under this regulation shall not exceed £100,000.

(3) Where eligibility is being assessed for Legal Representation and Family Help (Higher)¹⁰ if –

- (a) the subject matter of the dispute includes interests of the client in –
 - (i) the main or only dwelling in which the client resides; and
 - (ii) other resources of a capital nature, and

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- (b) the total value of those interests (after the application of regulation 32) exceeds £100,000,
the assessing authority shall disregard the value of the client's interest in his main or only

⁹ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹⁰ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

dwelling first.

32B.—(1) In calculating the disposable capital of the client, the value (after the application of regulations 32 and 32A) of his interest (if any) in the main or only dwelling in which he resides shall, subject to paragraph (2), be disregarded.

(2) The amount to be disregarded under this regulation shall not exceed £100,000.¹

NOTES

¹ Regulation 32 deleted and replaced by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

² Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-074

33. In calculating the disposable capital of the person concerned, there shall be disregarded:

- (a) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker's allowance; and
- (b) the whole of any payment made out of the social fund under the Social Security Contributions and Benefits Act 1992 or any arrears of payments made under the Community Care (Direct Payments) Act 1996 [or under regulations made under section 57 of the Health and Social Care Act 2001 (direct payments)]¹.
- [(c) the whole of any payment made out of the Independent Living Funds].²

NOTES

¹ Inserted by the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003 (S.I. 2003 No. 762).

² Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2006 (S.I. 2006 No. 713).

1B-075

34. . . .¹

NOTES

¹ Deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

1B-076

35.—(1) [Where –

[(a) *eligibility is being assessed under regulation 5(2), 5(3), 5(5) or 5(6);*]⁴

- (a) the client or any other person concerned is aged 60 or over; and
- (b) the total monthly disposable income (excluding any net income derived from capital) of the client and any other person concerned is less than the first figure prescribed in regulation 38(2)(a), that is, [£289]⁵

the amount of capital shown in the following table shall be disregarded]²:

[monthly disposable income (excluding net income derived from capital	amount of capital disregard
Up to £25	£100,000
£26–50	£90,000
£51–75	£80,000

£76–100	£70,000
£101–125	£60,000

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£126–150	£50,000
£151–175	£40,000
£176–200	£30,000
£201–225	£20,000
£226–[279] ⁴	£10,000] ¹

(2) ...³

NOTES

¹ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

³ Deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

⁴ Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

⁵ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-077

[36. Where eligibility is being assessed for Legal Representation and Family Help (Higher)¹¹ , in calculating the disposable capital of the person concerned, any interim payment made to him in any court proceedings may be disregarded.]¹

NOTES

¹ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-078

[37. Where eligibility is being assessed for Legal Representation and Family Help (Higher)¹² , in calculating the disposable capital or the person concerned, any capital resource may be disregarded where:

- (a) he is restrained from dealing with that resource by order of the court;
- (b) he has requested the court which made the order to release part or all of that resource for use in connection with the proceedings to which the application for funding relates; and
- (c) that request has been refused.]¹

NOTES

¹¹ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹² Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-079

[38. Contributions

- (1) Subject to regulation 15, all contributions shall be:
 - (a) assessed at the beginning of the case; and
 - (b) payable to the assessing authority.
- (2) Subject to regulation 4(2), where—
 - (a) eligibility is being assessed for—
 - (i) Legal Representation except Legal Representation before —
 - (aa) the Asylum and Immigration Tribunal; and
 - (bb) the High Court in respect of an application under section 103A of the Nationality, Immigration and Asylum Act 2002;
 - (ii) Family Help (Higher)¹³; or
 - (iii) such other services as are required or authorised by the Lord Chancellor to be funded under section 6(8) of the Act; and

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- (b) his monthly disposable income exceeds £289,
a client shall make the following contributions;
 - (i) one quarter of any such income between £285 and £426;
 - (ii) one third of any such income between £427 and £565; and
 - (iii) one half of any remaining disposable income.⁷
- (2A) Subject to regulation 4(2), where—
 - (a) eligibility is being assessed for—
 - (i) Legal Representation other than Legal Representation in respect of an asylum claim before—
 - (aa) the Asylum and Immigration Tribunal; and
 - (bb) the High Court in respect of an application under section 103A of the Nationality, Immigration and Asylum Act 2002;
 - (ii) General Family Help;
 - (iii) such other services as are required or authorised by the Lord Chancellor to be funded under section 6(8) of the Act; and
 - (b) his disposable capital exceeds £3,000,
a client shall make a contribution of the lesser of the excess and the sum which the assessing authority considers to be the likely maximum cost of the funded services.”⁸
- (3) All contributions under paragraph (2)[(a)]⁹ shall be payable monthly throughout the period the certificate is in force.
- (4) All contributions under paragraph (2A)⁷ shall be payable upon assessment.
- (5) Paragraph (6) applies where:
 - (a) eligibility is being assessed for Legal Representation or General Family Help⁷; and
 - (b) the Commission considers that:
 - (i) there are other persons or bodies, including those who have the same or a similar interest to the client or who might benefit from any proceedings, who can reasonably be expected to contribute to the cost of the funded services; or
 - (ii) some other source of funding exists which could be used to contribute to that cost.
- (6) Where this paragraph applies, the Commission may add a reasonable additional amount to the contribution (if any) due from the client.
- (7) The Commission may subsequently vary the amount of any additional contribution

¹³ Substituted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

payable under paragraph (6).

[(8) Paragraph (9) applies where the Commission funds Legal Representation [*or Support Funding*]² in proceedings which it considers to have a significant wider public interest and either:

- (a) the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation; or
- (b) the Commission is funding those services in a Multi-Party Action and it considers it cost-effective to fund those services only in relation to specific issues within that action.]³

[(8A) Paragraph (9) also applies where the Commission funds services in relation to an inquest into the death of a member of the immediate family of the client]⁴.

(9) Where this paragraph applies, the Commission may, if it considers it equitable to do so, waive part or all of the contributions payable under this regulation[except where paragraph 10 applies].^{5 1}

[(10) Where under section 6(8)(b) of the Act the Lord Chancellor authorises the Commission to fund services in relation to an inquest into the death of a member of the immediate family of the client, the Lord Chancellor may, if he considers it equitable to do so, waive part or all of the contributions payable under this regulation].⁶

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NOTES

¹ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Omitted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

³ Amended by the Community Legal Service (Financial) (Amendment) Regulations 2003 (S.I. 2003 No. 650).

⁴ Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

⁵ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).

⁶ Added by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2006 (S.I. 2006 No. 2363).

⁷ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

⁸ Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

⁹ Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-080

39. Where more than one certificate is in force in respect of the client at any one time, contributions from income under only one certificate shall be payable, and the Commission may decide under which certificate contributions shall be paid.

1B-081

40.—(1) Where a certificate has been discharged or revoked and the contribution made by the client exceeds the net cost of the funded services, the excess shall be refunded to the client.

(2) The net cost of the funded services means the cost paid by the Commission less any costs recovered by the Commission from another party.

(3) Where funding is provided by the Commission under a contract which does not differentiate between the remuneration for the client's case and remuneration for other cases, or require the cost of individual cases to be assessed, the reference in paragraph (2) to the cost paid by the Commission shall be construed as a reference to such part of the remuneration payable under the contract as may be specified in writing by the Commission.

(4) For the purposes of this regulation and regulation 43, where a certificate is discharged the cost of any assessment proceedings under CPR Part 47 or of taxation in the House of Lords

shall not be included as part of the cost of the funded services, and the cost of drawing up a bill is not part of the cost of assessment proceedings.

1B-082

41. Where the Commission has revoked a certificate in accordance with Part 15 of the Funding Code:

- (a) the client shall pay to the Commission all costs paid or payable by it under the certificate, less any amount already paid by way of contribution; and
- (b) the solicitor shall have the right to recover from the client the difference between the amount paid or payable to him by the Commission and the full amount of his costs assessed on the indemnity basis under CPR rule 44.4.

PART III

THE STATUTORY CHARGE

1B-083

42. Calculation of the statutory charge

In regulations 43 to 53—

“relevant dispute” means the dispute in connection with which funded services are provided;

“relevant proceedings” means proceedings in connection with which funded services are provided;

“recovered”, in relation to property or money, means property or money recovered or preserved by a client, whether for himself or for any other person;

“settlement fee” means the separate fee payable in addition to the standard fee which a supplier may claim in accordance with the unified contract where a case settles under Family Help (Lower)¹⁴;

“standard fee” means the basic fee payable for the relevant category of law in accordance with the unified contract¹⁵;

“statutory charge” means the charge created by section 10(7) of the Act in respect of the amount defined in regulation 43; and

“success fee” is defined in accordance with section 58 of the Courts and Legal Services Act 1990.

“supplier” means a party to the unified contract other than the Commission¹⁶;

“unified contract” means the contract between the Commission and a supplier for the provision of funded services which consists of the contract document, the schedule, the contract standard terms and the specification.(c)¹⁷

--- Looseleaf Page Break (34) ---

1B-084

43.—(1) Subject to paragraphs [(3), (4), (4A)¹⁸ and (5)]¹, where any money or property is recovered for a client in a relevant dispute or proceedings, the amount of the statutory charge shall be the aggregate of the sums referred to in section 10(7)(a) and (b) of the Act.

(2) For the purposes of this regulation:

- (a) the sum referred to in section 10(7)(a) shall be defined in accordance with regulation 40(2) to (4), less any contribution paid by the client;
- (b) the sum referred to in section 10(7)(b) shall include:

¹⁴ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹⁵ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹⁶ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹⁷ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

¹⁸ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

- (i) any interest payable under regulation 52; and
 - (ii) any sum which the client has agreed to pay only in specific circumstances under section 10(2)(c) of the Act [*including that proportion of any success fee payable by a client in receipt of Litigation Support which he has agreed should be payable to the Commission under the terms of a conditional fee agreement*].²
- (3) Subject to paragraphs (4) or (4A), the amount of the statutory charge must not include sums expended by the Commission in funding any of the following services—
- (a) Legal Help;
 - (b) Help at Court;
 - (c) Family Mediation; or
 - (d) Family Help (Lower).
- (4) Where the client receives Family Help (Higher) or Legal Representation in connection with a dispute or proceedings for which Legal Help, Help at Court or Family Help (Lower) was also granted, the amount of the statutory charge—
- (a) will include the sums expended by the Commission under paragraph (3)(a), (b) or (d);
 - (b) will not include any settlement fee paid in relation to family proceedings.
- (4A) Where the cost of the funded services provided for a client under Family Help (Lower) exceeds the level which would otherwise have qualified for a standard fee, the amount of the statutory charge—
- (a) will include the sums expended by the Commission under paragraph (3)(a) and (d) which exceed the level which would otherwise have qualified for a standard fee;
 - (b) will not include any settlement fee paid in relation to family proceedings¹⁹.
- (5) The amount of the charge created by section 10(7) of the Act shall not include reasonable costs incurred by the supplier in accordance with his statutory obligations under the Disability Discrimination Act 1995³.

NOTES

¹ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2003 (S.I. 2003 No. 650).

² Words in italics omitted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

³ Substituted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-085

44. Exemptions from the statutory charge

- (1) The charge created by section 10(7) of the Act shall not apply to any of the following:
- (a) any periodical payment of maintenance;
 - (aa) any sum or sums ordered to be paid under sections 25B(4) or 25C of the Matrimonial Causes Act 1973;²
 - (b) other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, the client's clothes or household furniture or the tools or implements of his trade;
 - (c) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependants) Act 1975 or Part IV of the Family Law Act 1996;
 - [(d) other than for the purposes of registration under regulation 52(1)(c), the first £3,000 of any money or the value of any property recovered by virtue of an order made or deemed to be made under any of the enactments specified in paragraph (2), or an agreement which has the same effect as such an order, but where the enforcement of*

¹⁹ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

*the charge is postponed under regulation 52 this exemption will apply when the amount of the charge is paid;]*¹

- (e) one-half of any redundancy payment within the meaning of Part XI of the Employment Rights Act 1996 recovered by the client;
- [(f) *any payment of money made in accordance with an order made by the Employment Appeal Tribunal (excluding an order for costs);]*³

--- Looseleaf Page Break (35) ---

- (g) where the statutory charge is in favour of the supplier, the client's main or only dwelling; or
- (h) any sum, payment or benefit which, by virtue of any provision of or made under an Act of Parliament, cannot be assigned or charged.

[(2) the enactments referred to in paragraph (1)(d) are:

- (a) section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or (f), 31(7A) or (7B), or 35 or the Matrimonial Causes Act 1973;*
- (b) section 2 or 6 of the Inheritance (Provision for Family and Dependents) Act 1975;*
- (c) sections 17 of the Married Women's Property Act 1882;*
- (d) section 2(1)(b) or (d), 6(1) or (5), or 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978; and*
- (e) Schedule 1 to the Children Act 1989.]*¹

(4) In paragraph (1)(a), "maintenance" means money or money's worth paid towards the support of a former partner, child or any other person for whose support the payer has previously been responsible or has made payments.

NOTES

¹ Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589) in relation to applications for funding made after 1 April 2005.

² Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

³ Deleted by the Community Legal Service (Financial) (Amendment) Regulations 2007 (S.I. 2007 No. 906).

1B-086

45.—(1) Subject to paragraph (2), the statutory charge shall be in favour of the Commission.

(2) Subject to paragraph (3), where it relates to the cost of Legal Help, Help at Court or Family Help (Lower)²⁰, the statutory charge shall be in favour of the supplier.

(3) Where Legal Help, Help at Court or Family Help (Lower)²¹ has been provided, the statutory charge shall be in favour of the Commission if it attaches to money or property recovered after a certificate has been granted in relation to the same matter.

1B-087

46. Supplier's authority to waive statutory charge

(1) This regulation applies only where the statutory charge is in favour of the supplier.

(2) The Commission may grant a supplier authority, either in respect of individual cases or generally, to waive either all or part of the amount of the statutory charge where its enforcement would cause grave hardship or distress to the client or would be unreasonably difficult because of the nature of the property.

1B-088

47. Waiver of charge in case of wider public interest

(1) ...¹

²⁰ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

²¹ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2007 (S.I.2007 No. 2442)

(2) Paragraph (3) applies where:

- (a) the Commission funds Legal Representation [*or Support Funding*]² in proceedings which it considers have a significant wider public interest; and
- (b) the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation.

(3) Where this paragraph applies, the Commission may, if it considers it equitable to do so, waive some or all of the amount of the statutory charge.

NOTES

¹ Deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Words in italics omitted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

--- Looseleaf Page Break (36) ---

1B-089

48. Application of regulations 49 to 53

Regulations 49 to 53 apply only in relation to a statutory charge in favour of the Commission.

1B-090

49. Operation of statutory charge where certificate revoked or discharged

(1) Where a certificate has been revoked or discharged, section 10(7) of the Act shall apply to any money or property recovered as a result of the client continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings.

(2) In paragraph (1), “client” means the person whose certificate has been revoked or discharged, or, as the case may be, his personal representatives, trustee in bankruptcy or the Official Receiver.

1B-091

50. Operation of statutory charge on money in court

(1) Paragraph (2) applies where any money recovered by a client in any proceedings is ordered to be paid into or remain in court and invested for the benefit of the client.

(2) Where this paragraph applies, the statutory charge shall attach only to such part of the money as, in the opinion of the Commission, will be sufficient to safeguard the interests of the Commission, and the Commission shall notify the court in writing of the amount so attached.

1B-092

51. Enforcement of statutory charge

Subject to regulation 52, the Commission may enforce the statutory charge in any manner which would be available to a chargee in respect of a charge given between parties.

1B-093

52.—(1) [Where the condition in regulation 52A is satisfied the Commission]¹ may postpone the enforcement of the statutory charge where¹:

- (a) by order of the court or agreement it relates to property to be used as a home by the client or his dependants, or, where the relevant proceedings were family proceedings, to money to pay for such a home;
- (b) the Commission is satisfied that the property in question will provide such security

- for the statutory charge as it considers appropriate; and
- (c) as soon as it is possible to do so, the Commission registers a charge under the [Land Registration Act 2002]² to secure the amount in regulation 43 or, as appropriate, takes equivalent steps (whether in England and Wales or in any other jurisdiction) to protect its interest in the property.

(2) Where the client wishes to purchase a property in substitution for the property over which a charge is registered under paragraph (1)(c), the Commission may release the charge if the conditions in paragraph (1)(b) and (c) are satisfied.

(3) Where the enforcement of the statutory charge is postponed, interest shall accrue for the benefit of the Commission in accordance with regulation 53.

(4) Without prejudice to the provisions of the [Land Registration Act 2002]¹ and the Land Charges Act 1972, all conveyances and acts done to defeat, or operating to defeat, any charge shall, except in the case of a bona fide purchaser for value without notice, be void as against the Commission.

[52A. The Commission may only postpone enforcement of the statutory charge if it appears to the Commission that it would be unreasonable for the client to repay the amount of the charge.

52B. —(1) The Commission may review any decision to postpone enforcement of the charge at any time and, unless it appears to the Commission that it would be unreasonable for the client to repay the amount of the charge which has been postponed, it shall either—

- (i) proceed to enforce the charge; or

--- Looseleaf Page Break (37) ---

- (ii) where the conditions in regulation 52(1) (a) to (c) are satisfied continue to postpone enforcement of the charge, in which case the provisions of regulation 52(3) shall also continue to apply.

(2) If the Commission continues to postpone enforcement under paragraph (1) (ii) it may do so on such terms or conditions as to repayment of the amount of the charge by way of interim payments of either capital or interest or both, or otherwise, as appear to the Commission to be appropriate.]³

NOTES

¹ Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

² Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No. 589).

³ Inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2005 (S.I. 2005 No. 1793).

1B-094

53. Payment and recovery of interest

(1) Where interest is payable by the client under regulation 52, that interest shall continue to accrue until the amount of the statutory charge is paid.

(2) The client may make interim payments of interest or capital in respect of the outstanding amount of the statutory charge, but no interim payment shall be used to reduce the capital outstanding while any interest remains outstanding.

[(3) Where interest is payable by the client under regulation 52:

- (a) it shall run from the date when the charge is first registered;

[(b) the applicable rate shall be –

- (i) 8% per annum until 31st March 2002;
(ii) 5% per annum from 1st April 2002 until 30th September 2005;
(iii) 8% per annum from 1st October 2005;]²

(c) ...²

(d) ...²

(e) the capital on which it is calculated shall be the lesser of:

- (i) the amount of the statutory charge outstanding from time to time, less any interest accrued by virtue of regulation 52(3), or

- (ii) the value of the property recovered at the time of such recovery, [*less the amount of any exemption under regulation 44(1)(d) which would apply were the amount of the charge to be paid.*²¹]

NOTES

¹ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

² Amended by the Community Legal Service (Financial) (Amendment) Regulations 2005 (S.I. 2005 No.589): the wording in italics does not apply to statutory charges arising in respect of applications for funding made on or after 1 April 2005.

Dated 18th February 2000

Irvine of Lairg, C.

--- Looseleaf Page Break (38) ---

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the financial aspects of the provision of services funded by the Legal Services Commission in civil matters.

They make provision for the assessment of the financial resources of the person concerned in order to determine eligibility to receive funded services and to assess any contribution to be made. They also provide for the scope and operation of the statutory charge.

--- Looseleaf Page Break (39) ---

The Community Legal Service (Costs) Regulations 2000 (as amended)

The Community Legal Service (Costs) Regulations 2000

(S.I. 2000 No. 441)

These Regulations have been amended by the Community Legal Service (Costs) (Amendment) Regulations 2001 (S.I. 2001 No. 822) with effect from 2 April 2001, the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001 No. 3649), with effect from 1 December 2001, the Community Legal Service (Costs) (Amendment) Regulations 2003 (S.I. 2003 No. 649) with effect from 7 April 2003, the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005 No.2114) with effect from 5 December 2005 the Adoption and Children Act 2002 (Consequential Amendments) Order 2005 (S.I. 2005 No. 3504) with effect from 30 December 2005 and the Community Legal Service (Costs) (Amendment) Regulations 2007 (S.I. 2007 No. 2444) with effect from 1 October 2007.

Legal Services Commission, England and Wales

Made

18th March 2000

Laid before Parliament

25th February 2000

Coming into force

1st April 2000

The Lord Chancellor, in exercise of the powers conferred on him by sections 10, 11(2), (3) and (4)(a), (c) and (e) to (g) and section 22(1), (5) and (6) of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations:

PART I

GENERAL

1B-095

1. Citation and commencement

These Regulations may be cited as the Community Legal Service (Costs) Regulations 2000 and shall come into force on 1st April 2000.

1B-096

2. Interpretation

In these Regulations—

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

“certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client;

[“child” means a person under 18;]¹

“client” means an individual who receives funded services;

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

“costs judge” has the same meaning as in the CPR;

“costs order” means an order that a party pay all or part of the costs of proceedings;

“costs order against the Commission” means an order, made under regulation 5 of the Community Legal Service (Cost Protection) Regulations 2000 (but not one under regulation 6 of those Regulations), that the Commission pay all or part of the costs of a

...

--- Looseleaf Page Break (40) ---

...

party to proceedings who has not received funded services in relation to those proceedings under a certificate, other than a certificate which has been revoked;

“cost protection” means the limit on costs awarded against a client set out in section 11(1) of the Act;

“court” includes any tribunal having the power to award costs in favour of, or against, a party;

“CPR” means the Civil Procedure Rules 1998, and a reference to a Part or rule, prefixed by “CPR”, means the Part or rule so numbered in the CPR;

“Director” means any Director appointed by the Commission in accordance with the Funding Code and any other person authorised to act on his behalf, except a supplier²²;

²² Inserted by the Community Legal Service (Costs) (Amendment) Regulations 2007 (S.I. 2007 No. 2444)

“Financial Regulations” means the Community Legal Service (Financial) Regulations 2000;

“Funding Code” means the code approved under section 9 of the Act;

“full costs” means, where a section 11(1) costs order is made against a client, the amount of costs which that client would, but for section 11(1) of the Act, have been ordered to pay;

“funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

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--- Looseleaf Page Break (42) ---

[“litigation friend” has the meaning given by CPR Part 21;]¹

“partner”, in relation to a party to proceedings, means a person with whom that party lives as a couple, and includes a person with whom the party is not currently living but from whom he is not living separate and apart;

[“patient” means a person who by reason of mental disorder within the meaning of the Mental Health Act 1983 is incapable of managing and administering his own affairs;]¹

“proceedings” include proceedings in any tribunal which is a court, as defined, in this paragraph;

“receiving party” means a party in favour of whom a costs order is made;

[“Regional Director” means any Regional Director appointed by the Commission in accordance with the Funding Code and any other person authorised to act on his behalf, except a supplier;]²³

“rules of court”, in relation to a tribunal, means rules or regulations made by the authority having power to make rules or regulations regulating the practice and procedure of that tribunal and, in relation to any court, includes practice directions;

“section 11(1) costs order” means a costs order against a client where cost protection applies;

“solicitor” means solicitor or other person who is an authorised litigator within the meaning of section 119(1) of the Courts and Legal Services Act 1990;

“statement of resources” means:

(a) a statement, verified by a statement of truth, made by a party to proceedings setting out:

(i) his income and capital and financial commitments during the previous year and, if applicable, those of his partner;

(ii) his estimated future financial resources and expectations and, if applicable, those of his partner; and

(iii) a declaration stating whether he, and if applicable his partner, has deliberately foregone or deprived himself of any resources or expectations, together (if applicable and as far as is practical) with details of those resources or expectations and the manner in which they have been foregone or deprived;

(iv) particulars of any application for funding made by him in connection with the proceedings; and

(v) any other facts relevant to the determination of his resources; or]²

(b) a statement, verified by a statement of truth, made by a client receiving funded services, setting out the information provided by the client under regulation 6 of the Financial Regulations, and stating that there has been no significant change in the client’s financial circumstances since the date on which the information was provided or, as the case may be, details of any such change;

“statement of truth” has the same meaning as in CPR Part 22;

“supplier” means any person or body providing funded services to the client, including any authorised advocate (within the meaning of section 119(1) of the Courts and Legal Services Act 1990) engaged by the client’s solicitor to act in proceedings.

²³ Deleted by the Community Legal Service (Costs) (Amendment) Regulations 2007 (S.I. 2007 No. 2444)

NOTES

¹ Inserted by the Community Legal Service (Costs) (Amendment) Regulations 2003 (S.I. 2003 No. 649).

² Substituted by the Community Legal Service (Costs) (Amendment) Regulations 2003 (S.I. 2003 No. 649).

1B-097

3. Effect of these Regulations

Nothing in these Regulations shall be construed, in relation to proceedings where one or more parties are receiving, or have received, funded services, as:

- (a) requiring a court to make a costs order where it would not otherwise have made a costs order; or

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- (b) affecting the court's power to make a wasted costs order against a legal representative.

1B-098

4. Termination of retainer where funding is withdrawn

(1) The following paragraphs of this regulation apply where funding is withdrawn by revoking or discharging the client's certificate.

(2) Subject to paragraphs (3) and (4), on the revocation or discharge of the client's certificate, the retainer of any supplier acting under that certificate shall terminate immediately.

(3) Termination of retainers under paragraph (2) shall not take effect unless and until any procedures under the Funding Code for review of the decision to withdraw the client's funding are concluded, and confirm the decision to withdraw funding.

(4) The solicitor's retainer shall not terminate until he has complied with any procedures under the Funding Code that require him to send or serve notices.

PART II

COSTS ORDERS AGAINST CLIENT AND AGAINST COMMISSION

1B-099

5. Application of regulations 6 to 13

Regulations 6 to 13 apply only where cost protection applies.

1B-100

6. Security for costs

Where in any proceedings a client is required to give security for costs, the amount of that security shall not exceed the amount (if any) which is a reasonable one having regard to all the circumstances, including the client's financial resources and his conduct in relation to the dispute to which the proceedings relate.

1B-101

7. Assessment of resources

(1) The first £100,000 of the value of the client's interest in the main or only dwelling in which he resides shall not be taken into account in having regard to the client's resources for the purposes of section 11(1) of the Act.

(2) Where, but only to the extent that, the court considers that the circumstances are

exceptional, having regard in particular to the quantity or value of the items concerned, the court may take into account the value of the client's clothes and household furniture, or the tools and implements of his trade, in having regard to the client's resources for the purposes of section 11(1) of the Act.

(3) Subject to paragraph (4), in having regard to the resources of a party for the purposes of section 11(1) of the Act, the resources of his partner shall be treated as his resources.

(4) The resources of a party's partner shall not be treated as that party's resources if the partner has a contrary interest in the dispute in respect of which the funded services are provided.

(5) Where a party is acting in a representative, fiduciary or official capacity, the court shall not take the personal resources of the party into account for the purposes of section 11(1) of the Act, but shall have regard to the value of any property or estate, or the amount of any fund out of which he is entitled to be indemnified, and may also have regard to the resources of the persons, if any, including that party where appropriate, who are beneficially interested in that property, estate or fund.

[(6) For the purposes of section 11(1) of the Act, where a party is acting as a litigation friend to a client who is a child or a patient, the court shall not take the personal resources of the litigation friend into account in assessing the resources of the client.]¹

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NOTES

¹ Inserted by the Community Legal Service (Costs) (Amendment) Regulations 2003 (S.I. 2003 No. 649).

1B-102

8. Statements of resources

(1) Any person who is a party to proceedings in which another party is a client may make a statement of resources, and file it with the court.

(2) A person making and filing a statement of resources under paragraph (1) shall serve a copy of it on the client.

(3) Where a copy of a statement of resources has been served under paragraph (2) not less than seven days before the date fixed for a hearing at which the amount to be paid under a section 11(1) costs order falls, or may fall, to be decided, the client shall also make a statement of resources, and shall produce it at that hearing.

1B-103

9. Procedures for ordering costs against client and Commission

(1) [Where the court is considering whether to make]¹ a section 11(1) costs order, it shall consider whether, but for cost protection, it would have made a costs order against the client and, if so, whether it would, on making the costs order, have specified the amount to be paid under that order.

(2) If the court considers that it would have made a costs order against the client, but that it would not have specified the amount to be paid under it, the court shall, when making the section 11(1) costs order:

- (a) specify the amount (if any) that the client is to pay under that order if, but only if:
 - (i) it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the client to pay, in accordance with section 11(1) of the Act; and
 - (ii) it is satisfied that, if it were to determine the full costs at that time, they would exceed the amount referred to in sub-paragraph (i);
- (b) otherwise, it shall not specify the amount the client is to pay under the . . .² costs order.

(3) If the court considers that it would have made a costs order against the client, and that it would have specified the amount to be paid under it, the court shall, when making the section 11(1) costs order:

- (a) specify the amount (if any) that the client is to pay under that order if, but only if, it considers that it has sufficient information before it to decide what amount is, in that case, a reasonable amount for the client to pay, in accordance with section 11(1) of the Act;
 - (b) otherwise, it shall not specify the amount the client is to pay under the . . .² costs order.
- (4) Any order made under paragraph (3) shall state the amount of the full costs.
- (5) The amount (if any) to be paid by the client under an order made under paragraph (2)(b) or paragraph (3)(b), and any application for a costs order against the Commission, shall be determined in accordance with regulation 10, and at any such determination following an order made under paragraph (2)(b), the amount of the full costs shall also be assessed.
- (6) Where the court makes a section 11(1) costs order that does not specify the amount which the client is to pay under it, it may also make findings of fact, as to the parties' conduct in the proceedings or otherwise, relevant to the determination of that amount, and those findings shall be taken into consideration in that determination.

NOTES

¹ Inserted by the Community Legal Service (Costs) (Amendment) Regulations 2001 (S.I. 2001 No. 822).

² Words "section 11(1)" deleted by the Community Legal Service (Costs) (Amendment) Regulations 2001 (S.I. 2001 No. 822) with effect from 2 April 2001.

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1B-104

10.—(1) The following paragraphs of this regulation apply where the amount to be paid under a section 11(1) costs order, or an application for a costs order against the Commission, is to be determined under this regulation, by virtue of regulation 9(5).

(2) The receiving party may, within three months after a section 11(1) costs order is made, request a hearing to determine the costs payable to him.

(3) A request under paragraph (2) shall be accompanied by:

- (a) if the section 11(1) costs order does not state the full costs, the receiving party's bill of costs, which shall comply with any requirements of relevant rules of court relating to the form and content of a bill of costs where the court is assessing a party's costs;
- (b) [unless the conditions set out in paragraph (3A) are satisfied, a statement of resources; and]¹
- (c) if the receiving party is seeking, or, subject to the determination of the amount to be paid under the section 11(1) costs order, may seek, a costs order against the Commission, written notice to that effect.

[3A) The conditions referred to in paragraph (3)(b) above are that—

- (a) the court is determining an application for a costs order against the Commission;
- (b) the costs were not incurred in a court of first instance.]²

(4) The receiving party shall file the documents referred to in paragraph (3) with the court and at the same time serve copies of them:

- (a) on the client, if a determination of costs payable under section 11(1) of the Act is sought; and
- (b) on the Director, if notice has been given under paragraph (3)(c).

(5) Where documents are served on the client under paragraph (4)(a), the client shall make a statement of resources.

(6) The client shall file the statement of resources made under paragraph (5) with the court, and serve copies of it on the receiving party and, if notice has been given under paragraph (3)(c), on the Director, not more than 21 days after the client receives a copy of the receiving party's statement of resources.

(7) The client may, at the same time as filing and serving a statement of resources under paragraph (6), file, and serve on the same persons, a statement setting out any points of dispute in relation to the bill of costs referred to in paragraph (3)(a).

(8) If the client, without good reason, fails to file a statement of resources in accordance with paragraph (6), the court shall determine the amount which the client shall be required to pay under the section 11(1) costs order (and, if relevant, the full costs), having regard to the statement made by the receiving party, and the court need not hold an oral hearing for such determination.

(9) If the client files a statement of resources in accordance with paragraph (6), or the period for filing such notice expires, or if the costs payable by the client have already been determined, the court shall set a date for the hearing and, at least 14 days before that date, serve notice of it on:

- (a) the receiving party;
 - (b) the client (unless the costs payable by the client have already been determined); and
 - (c) if a costs order against the Commission is or may be sought, the Director.
- (10) The court's functions under this regulation may be exercised:
- (a) in relation to proceedings in the House of Lords, by the Clerk to the Parliaments;
 - (b) in relation to proceedings in the Court of Appeal, High Court or a county court, a costs judge or a district judge;
 - (c) in relation to proceedings in a magistrates' court, by a single justice or by the justices' clerk;
 - (d) in relation to proceedings in the Employment Appeal Tribunal, by the Registrar of that Tribunal.

(11) The amount of costs to be determined under this regulation may include the costs incurred in relation to a request made under this regulation.

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NOTES

¹ Substituted by the Community Legal Service (Costs) (Amendment) Regulations 2003 (S.I. 2003 No. 649).

² Inserted by the Community Legal Service (Costs) (Amendment) Regulations 2003 (S.I. 2003 No. 649).

1B-105

[10A.]—(1) Subject to paragraph (2), where the court makes a section 11(1) costs order but does not specify the amount which the client is to pay under it, the court may order the client to pay an amount on account of the costs which are the subject of the order.

(2) The court may order a client to make a payment on account of costs under this regulation only if it has sufficient information before it to decide the minimum amount which the client is likely to be ordered to pay on a determination under regulation 10.

(3) The amount of the payment on account of costs shall not exceed the minimum amount which the court decides that the client is likely to be ordered to pay on such a determination.

(4) Where the court orders a client to make a payment on account of costs—

- (a) it shall order the client to make the payment into court; and
- (b) the payment shall remain in court unless and until the court:
 - (i) makes a determination under regulation 10 of the amount which the client should pay to the receiving party under the section 11(1) costs order, and orders the payment on account or part of it to be paid to the receiving party in satisfaction or part satisfaction of the client's liability under that order; or
 - (ii) makes an order under paragraph (5)(b) or (5)(c) of this regulation that the payment on account or part of it be repaid to the client.

(5) Where a client has made a payment on account of costs pursuant to an order under paragraph (1) of this regulation—

- (a) the receiving party shall request a hearing under regulation 10 to determine the amount of costs payable to him;
- (b) if the receiving party fails to request such a hearing within the time permitted by regulation 10(2), the payment on account shall be repaid to the client;
- (c) if upon the hearing under regulation 10 the amount of costs which it is determined that the client should pay is less than the amount of the payment on account, the difference shall be repaid to the client.¹

¹ Inserted by the Community Legal Service (Costs) (Amendment) Regulations 2001 (S.I. 2001 No. 822) with effect from 2 April 2001.

1B-106

11. Appeals, etc

(1) Subject to the following paragraphs of this regulation, and to regulation 12, any determination made under regulation 9 or regulation 10 shall be final.

(2) Any party with a financial interest in an assessment of the full costs may appeal against that assessment, if and to the extent that that party would, but for these Regulations, be entitled to appeal against an assessment of costs by the court in which the relevant proceedings are taking place.

(3) Where, under regulation 9(2)(a), the court has specified the amount which a client is required to pay under a section 11(1) costs order, the client may apply to the court for a determination of the full costs and if, on that determination, the amount of the full costs is less than the amount which the court previously specified under regulation 9(2)(a), the client shall instead be required to pay the amount of the full costs.

(4) The receiving party or the Commission may appeal, on a point of law, against the making of a costs order against the Commission (including the amount of costs which the Commission is required to pay under the order), or against the court's refusal to make such an order.

--- Looseleaf Page Break (47) ---

1B-107

12. Variation and late determination of amount of costs

(1) The following paragraphs of this regulation apply where the court makes a section 11(1) costs order.

(2) Where the amount (if any) which the client is required to pay under the section 11(1) costs order, together with the amount which the Commission is required to pay under any costs order against the Commission, is less than the full costs, the receiving party may, on the ground set out in paragraph (4)(a), apply to the court for an order varying the amount which the client is required to pay under the section 11(1) costs order.

(3) Where the court has not specified the amount to be paid under the section 11(1) costs order, and the receiving party has not, within the time limit in regulation 10(2), applied to have that amount determined in accordance with regulation 10, the receiving party may, on any of the grounds set out in paragraph (4), apply for a determination of the amount that the client is required to pay.

(4) The grounds referred to in paragraphs (2) and (3) are the grounds that:

- (a) there has been a significant change in the client's circumstances since the date of the order;
- (b) material additional information as to the client's financial resources is available, and that information could not with reasonable diligence have been obtained by the receiving party in time to make an application in accordance with regulation 10; or
- (c) there were other good reasons justifying the receiving party's failure to make an application within the time limit in regulation 10(2).

(5) Any application under paragraph (2) or (3) shall be made by the receiving party within six years from the date on which the section 11(1) costs order is first made.

(6) On any application under paragraph (2), the order may be varied as the court thinks fit, but the amount of costs ordered (excluding any costs ordered to be paid under paragraph (9)) shall not exceed the amount of the full costs as stated in any previous order of the court.

(7) When the amount which the client is required to pay under the section 11(1) costs order has been determined under regulation 9(2)(a), and the receiving party applies under paragraph (2) for an order varying that amount:

- (a) the receiving party shall file with the application under paragraph (2) his bill of costs,

- which shall comply with any requirements of relevant rules of court relating to the form and content of a bill of costs where the court is assessing a party's costs; and
- (b) the court shall, when determining the application, assess the full costs.
- (8) Where the receiving party has received funded services in relation to the proceedings, the Commission may make an application under paragraph (2) or paragraph (3), and:
- (a) when making the application the Commission shall file with the court a statement of the receiving party's costs or, if those costs have not been assessed, the receiving party's bill of costs; and
 - (b) paragraphs (4) to (6) shall apply to that application as if "the Commission" were substituted for "the receiving party" in those paragraphs.
- (9) The amount of costs to be determined under this regulation may include the costs incurred in relation to an application made under this regulation.

1B-108

13. Rights to appear

- (1) The Director may appear at:
 - (a) any hearing in relation to which notice has been given under regulation 10(3)(c);
 - (b) the hearing of any appeal under regulation 11(4); or
 - (c) the hearing of any application under regulation 12(8).
- (2) The Director may, instead of appearing under paragraph (1), give evidence in the form of a written statement to the court, verified by a statement of truth.
- (3) The Director shall file with the court any statement under paragraph (2), and serve a copy on the receiving party, not less than seven days before the hearing to which it relates.

--- Looseleaf Page Break (48) ---

PART III

PROPERTY AND COSTS RECOVERED FOR A FUNDED CLIENT

1B-109

14. Application of this Part

- (1) In this Part—
 - "the awarded sum" means the amount of costs to be paid in accordance with a client's costs order or a client's costs agreement;
 - "client's costs order" and "client's costs agreement" mean, respectively, an order and an agreement that another party to proceedings or prospective proceedings pay all or part of the costs of a client;
 - "Fund" means the Community Legal Service Fund established under section 5 of the Act;
 - "the funded sum" means the amount of remuneration payable by the Commission to a supplier for the relevant work under a contract or any other arrangements that determine that supplier's remuneration, including those that apply by virtue of article 4 of the Community Legal Service (Funding) Order 2000; and, where funding is provided by the Commission under a contract which does not differentiate between the remuneration for the client's case and remuneration for other cases, means such part of the remuneration payable under the contract as may be specified in writing by the Commission as being the funded sum;
 - "relevant work" means the funded services provided in relation to the dispute or proceedings to which the client's costs order or client's costs agreement relates;
 - "remuneration" includes fees and disbursements and value added tax on fees and disbursements;
 - "statutory charge" means the charge created by section 10(7) of the Act.

1B-110

15. Amount of costs under client's costs order or client's costs agreement

(1) Subject to the following paragraphs of this regulation, the amount of the costs to be paid under a client's costs order or client's costs agreement shall, subject to regulation 16, be determined on the same basis as it would be if the costs were to be paid to a person who had not received funded services.

(2) Subject to paragraph (3), the amount of the awarded sum shall not be limited to the amount of the funded sum by any rule of law which limits the costs recoverable by a party to proceedings to the amount he is liable to pay to his legal representatives.

(3) Paragraph (2) applies only to the extent that the Commission has authorised the supplier under section 22(2)(b) of the Act to take payment for the relevant work other than that funded by the Commission.

1B-111

16. Costs of serving notices and other documents

The amount of costs to be paid under a client's costs order or client's costs agreement may include costs incurred in filing with the court, or serving on any other party to proceedings, notices or any other documents in accordance with these Regulations, the Financial Regulations or the Funding Code.

1B-112

17. Application of regulations 18 to 24

(1) Regulations 18 to 24 apply only where funded services have been provided under a certificate.

(2) If the client is no longer being represented by a solicitor, all money to which regulation 18(1) applies shall be paid (or repaid) to the Commission, and all references in ...

--- Looseleaf Page Break (49) ---

... regulations 18(1) and 19 to the client's solicitor shall be construed as references to the Commission.

1B-113

18. Money recovered to be paid to solicitor

(1) Subject to the following paragraphs of this regulation, and to regulation 17(2), all money payable to or recovered by a client in connection with a dispute by way of damages, costs or otherwise, whether or not proceedings were begun, and whether under an order of the court or an agreement or otherwise, shall be paid to the client's solicitor, and only the client's solicitor shall be capable of giving a good discharge for that money.

(2) Paragraph (1) shall not apply to:

- (a) any periodical payment of maintenance; or
- (b) any money recovered or preserved by a client in any proceedings which:
 - (i) has been paid into, or remains in, court, and is invested for the client's benefit; and
 - (ii) under regulation 50 of the Financial Regulations, is not subject to the statutory charge.

(3) Where the client's solicitor has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), he shall inform the Commission immediately.

1B-114

19. Notice to third parties

(1) Where money is payable under regulation 18, and that money is payable by a trustee in

bankruptcy, a trustee or assignee of a deed of arrangement, a liquidator of a company in liquidation, a trustee of a pension fund or any other third party (“the third party”) the client’s solicitor shall send to the third party notice that funded services have been funded for the client by the Commission.

(2) Notice under paragraph (1) shall operate as a request by the client that money payable under regulation 18 be paid to his solicitor, and shall be a sufficient authority for that purpose.

1B-115

20. Solicitor to pay money recovered to Commission

(1) The client’s solicitor shall forthwith:

- (a) inform the Director of any money or other property recovered or preserved, and send him a copy of the order or agreement by virtue of which the property was recovered or preserved;
- (b) subject to the following paragraphs of this regulation, pay to the Commission all money or other property received by him under regulation 18.

(2) Paragraph (1)(b) shall not apply to any money or other property to which the statutory charge does not apply, by virtue of the Financial Regulations.

(3) Where he considers it essential to protect the client’s interests or welfare, the Director shall pay, or direct the client’s solicitor to pay, to the client any money received by way of any interim payment made in accordance with an order made under CPR rule 25.6, or in accordance with an agreement having the same effect as such an order.

(4) The Director may direct the client’s solicitor to:

- (a) pay to the Commission under paragraph (1)(b) only such sums as, in the Director’s opinion, should be retained by the Commission in order to safeguard its interests; and
- (b) pay any other money to the client.

(5) Where the solicitor pays money to the Commission in accordance with this regulation, he shall identify what sums relate respectively to:

- (a) costs;
- (b) damages;
- (c) interest on costs; and

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- (d) interest on damages.

1B-116

21. Postponement of statutory charge

(1) In this regulation:

“conveyancer” means a solicitor or any other person who lawfully provides conveyancing services;

“family proceedings” means proceedings which arise out of family relationships, including proceedings in which the welfare of children is determined. Family proceedings also include all proceedings under any one or more of the following:

- (a) the Matrimonial Causes Act 1973;
- (b) the Inheritance (Provision for Family and Dependants) Act 1975;
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates’ Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I, II and IV of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996;
- [(ga) the Adoption and Children Act 2002;]²
- (h) the inherent jurisdiction of the High Court in relation to children; [and
- (i) the Civil Partnership Act 2004;]¹

“purchase money” means money recovered or preserved by the client in family proceedings which, by virtue of an order of the court or an agreement, is to be used to purchase a home to be used by the client or the client’s dependants, and “the purchased property” means the property purchased or to be purchased with that

money.

(2) The following paragraphs of this regulation apply, and (subject to paragraph (6)) regulation 20(1)(b) does not apply, where the Commission decides to postpone enforcement of the statutory charge under regulation 52 of the Financial Regulations.

(3) The solicitor may release the purchase money to the seller or the seller's representative on completion of the purchase of the purchased property; and shall as soon as practicable provide the Commission with sufficient information to enable it to protect its interest in accordance with regulation 52(1)(c) of the Financial Regulations.

(4) The client's solicitor may release the purchase money to a conveyancer acting for the client in the purchase of the purchased property, if he is satisfied that adequate steps have been, or will be, taken to protect the interests of the Commission.

(5) The steps referred to in paragraph (4) shall include, but are not limited to, the securing of an undertaking from the conveyancer referred to in that paragraph to:

- (a) provide the information referred to in paragraph (3); and
- (b) repay the purchase money under paragraph (6).

(6) Where the purchase of the purchased property has not been completed within 12 months after the date of the Commission's decision referred to in paragraph (2), or such longer period as the Commission considers reasonable, regulation 20(1)(b) shall apply and the purchase money shall accordingly be repaid to the Commission.

NOTES

¹ Inserted by the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005 (S.I. 2005 No. 2114).

² Inserted by the Adoption and Children Act 2002 (Consequential Amendments) Order 2005 (S.I. 2005 No. 3504).

1B-117

22. Retention and payment out of money by the Commission

(1) The Commission shall deal with the money paid to it under this Part in accordance with this regulation.

(2) The Commission shall retain:

- (a) an amount equal to the costs incurred in taking steps under regulation 23;

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- (b) an amount equal to that part of the funded sum already paid to the supplier in respect of the relevant work; and
- (c) where costs are paid to the Commission together with interest, an amount equal to that interest, less the amount of any interest payable to the supplier under paragraph (3)(b)(ii).

(3) The Commission shall pay to the supplier:

- (a) any outstanding amount of the funded sum payable to him in respect of the relevant work;
- (b) where costs are ordered or agreed to be paid to the client, and those costs are received by the Commission, and those costs (less any amount retained under paragraph (2)(a) or payable under paragraph (5)) exceed the funded sum:
 - (i) an amount equal to the amount of the excess; and
 - (ii) where those costs are paid to the Commission together with interest, an amount equal to the interest attributable to the excess referred to in sub-paragraph (i).

(4) Paragraph (5) applies where a solicitor has acted on behalf of the client in proceedings before that client receives funded services in respect of the same proceedings, or has a lien on any documents necessary to proceedings to which a client is a party, and has handed them over subject to the lien, but applies only so far as is consistent with the express terms of any contract between the Commission and the solicitor.

(5) Where the solicitor referred to in paragraph (4) gives the Commission written notice that this paragraph applies, the Commission shall pay to that solicitor the costs to which that solicitor would have been entitled if those costs had been assessed on an indemnity basis.

(6) Where the amount of costs payable under paragraph (5) have not been assessed by the court, they may instead be assessed by the Commission.

(7) Where the amount received by the Commission, less any amount retained under paragraph (2)(a), is insufficient to meet the funded sum and any sum payable under paragraph (5), the Commission shall apportion the amount received proportionately between the two.

(8) The Commission shall pay all the money paid to it under this Part, which is not paid or retained under paragraphs (2) to (5), to the client.

1B-118

23. Enforcement of orders etc in favour of client

(1) Where, in relation to any dispute to which a client is a party, whether or not proceedings are begun:

- (a) an order or agreement is made providing for the recovery or preservation of property by the client (whether for himself or any other person); or
- (b) there is a client's costs order or client's costs agreement the Commission may take any steps, including proceedings in its own name, as may be necessary to enforce or give effect to that order or agreement.

(2) A client may, with the consent of the Director, take proceedings to give effect to an order or agreement under which he is entitled to recover or preserve money or other property.

(3) Subject to paragraph (4), the client's solicitor may take proceedings for the recovery of costs where a client's costs order or a client's costs agreement has been made.

(4) Where the client's costs order or client's costs agreement relates wholly or partly to costs incurred in carrying out work which is remunerated, or to be remunerated, in the funded sum, but those costs have not been reimbursed by payment from any other party in favour of the client, the solicitor shall require the consent of the Director before taking proceedings to which paragraph (3) refers.

(5) Where the Commission takes proceedings, it may authorise any person to make a statement, file a proof or take any other step in the proceedings in its name.

(6) The costs incurred by the Commission in taking any step to enforce an order or agreement where paragraph (1) applies shall be a first charge on any property or sum so recovered.

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1B-119

24. Interest on damages

(1) Where the Commission receives damages paid in favour of a client it shall, subject to the following paragraphs, pay to the client a sum representing gross interest earned while the damages are being held by the Commission.

(2) Without prejudice to its other powers to invest money, the Commission shall maintain and may deposit damages to which this regulation refers in one general account at [a deposit-taker].¹

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--- Looseleaf Page Break (54) ---

(3) The rate of interest payable to the client under this regulation shall be 0.5% per annum less than the rate payable on damages deposited in the general account.

(4) The Commission shall not be required to pay interest where the damages received do not exceed £500 or where the period during which they are held by the Commission is less than 28 days.

(5) Interest shall be payable for the period beginning on the third business day after the date on which damages are received by the Commission to and including the date on which the Commission determines the amount to be paid under regulation 22(8).

(6) In this regulation—

...²

...²

“business day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971;

[“deposit taker” means the Bank of England, or the branch, situated in England or Wales, of either—

- (a) a person with permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits;]¹

“general account” means an interest bearing account opened in the name of the Commission, the title of which does not identify any client.

[(7) The definition of “deposit taker” in paragraph (6) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 22 to that Act.]³

NOTES

¹ Words substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001 No. 3649).

² Definitions deleted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001 No. 3649).

³ Inserted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001 No. 3649).

Dated 18th February 2000

Irvine of Lairg, C.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations deal with aspects of the Community Legal Service established by Part I of the Access to Justice Act 1999 (“the Act”) relating to costs, and, in particular:

- (a) the giving of security for costs (*regulation 6*);
- (b) the amount of a funded client’s resources for the purposes of section 11(1) of the Act (*regulation 7*);
- (c) the procedure for quantifying a costs order against a funded client and for the making of a costs order against the Legal Services Commission (*regulations 8 to 13*);

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- (d) the determination of costs under an order for costs in favour of a funded client (*regulations 15 and 16*);
- (e) the receipt and application of property and costs recovered on behalf of a funded client (*regulations 18 to 24*).

These Regulations also make provision for the termination of the retainer of a supplier of funded services, upon the withdrawal of funding (*regulation 4*).

PREPARATION

(a) High Court and county court proceedings

Column 1	Column 2	Column 3
	High Court	County Court
ITEM		
1. Writing routine letters	£4.25 per item	£3.65 per item
2. Receiving routine letters	£2.10 per item	£1.85 per item
3. Routine telephone calls	£4.25 per item	£3.65 per item
4. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	Where the proceedings were conducted in the divorce registry or in another court on the South-Eastern Circuit at the time when the relevant work was done:	
	£46.75 per hour	£41.00 per hour
	All other Circuits: £43.75 per hour	£38.75 per hour
5. In addition to items 1-4 above, to cover the general care and conduct of the proceedings	Plus 50%	Plus 50%
6. Travelling and waiting time in connection with the above matters	£32.00 per hour	£29.25 per hour

1B-203

PART II

CONFERENCES WITH COUNSEL

7. Attending counsel in conference	£37.00 per hour	£32.50 per hour
8. Travelling and waiting	£32.00 per hour	£29.25 per hour

1B-204

PART III
ATTENDANCES

9. Attending with counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£37.00 per hour	£32.50 per hour
10. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	£55.75 per hour	£55.25 per hour
11. Travelling and waiting	£32.00 per hour	£29.25 per hour

1B-205

PART IV
FEES FOR JUNIOR COUNSEL

12. With a brief on an unopposed application for an injunction, or procedural issue	Standard £88.25 Maximum £146.25	£76.25 £127.00
13. With a brief on the trial of a cause or matter or on the hearing of an ancillary application or on a children appointment where the hearing lasts for		
(a) one hour	Standard £133.50 Maximum £268.00	£114.25 £228.50
(b) a half day	Standard £184.75 Maximum £304.50	£159.25 £268.00
(c) a full day	Standard £368.50 Maximum £568.75	£317.75 £508.50
(d) more than a full day	Discretionary	Discretionary
14. For each day or part of a day on which the trial of a cause or matter, or the hearing of an ancillary application,	Discretionary	Discretionary

or a children appointment, is continued after the first day		
15. Conference (including time reasonably spent in preparation and conference, but not otherwise remunerated)	Standard £20.25 per half hour	Standard £17.75 per half hour

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16. (a) Complex items of written work (such as advices on evidence, opinions and affidavits of a substantial nature, requests for particulars or answers)	Standard £96.25 per item	Standard £82.75 per item
(b) All other written work	Standard £57.00 per item	Standard £50.25 per item
17. Except where the court is within 40 kilometres of Charing Cross or where there is no local Bar in the court town, or within 40 kilometres thereof, for travelling time	Standard £18.50 per hour plus expenses	Standard £15.85 per hour plus expenses

1B-206

PART V

DETAILED ASSESSMENT AND APPEAL IN RELATION TO DETAILED ASSESSMENT¹

18. Preparing the bill (where allowable) and completing the detailed assessment (excluding preparing for and attending the detailed assessment)	£32.00–£ 89.25	£32.00–£ 51.00
19. Preparing for and attending the detailed assessment (including travelling and waiting)	Discretionary	Discretionary
20. Appeal to costs judge, district judge or judge (including preparation)	Discretionary	Discretionary

NOTES

¹ Amended by the Legal Aid in Family Proceedings (Remuneration) (Amendment) Regulations 2001 (S.I. 2001 No. 830).

(b) Magistrates' court proceedings

Class of work	Rate	
Preparation	£44.00 per hour	(£46.75 per hour for a fee-earner whose office is situated within legal aid area 1)
Advocacy	£55.25 per hour	
Attendance at court where counsel assigned	£30.00 per hour	
Travelling and waiting	£24.60 per hour	
Routing letter written and routine telephone	£3.40 per item	£3.55 per item for a fee-earner whose office is situated within legal aid area 1)

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Schedule 2A¹

Prescribed Family Proceedings

1B-207

PART I

PREPARATION

(a) High Court and county court proceedings

Column 1	Column 2	Column 3
	High Court	County court
1. Writing routine letters	£ 7.05 per item	£ 6.15 per item
2. Receiving routine letters	£ 3.50 per item	£ 3.10 per item
3. Routine telephone calls	£ 7.05 per item	£ 6.15 per item
4. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses,	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit

and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	at the time when the relevant work was done: £ 78.40 per hour All other circuits: £73.05 per hour	at the time when the relevant work was done: £ 68.50 per hour All other circuits: £64.80 per hour
6. Travelling and waiting time in connection with the above matters	£ 35.75 per hour	£ 32.45 per hour

1B-208

PART II

CONFERENCES WITH COUNSEL

Column 1	Column 2	Column 3
	High Court	County court
7. Attending counsel in conference	£ 41.25 per hour	£ 36.30 per hour
8. Travelling and waiting	£ 35.75 per hour	£ 32.45 per hour

--- Looseleaf Page Break (124) ---

1B-209

PART III

ATTENDANCES

Column 1	Column 2	Column 3
	High Court	County court
9. Attending with counsel at the trial or hearing of any cause or hearing of any summons or other application at court, or other appointment	£ 41.25 per hour	£ 36.30 per hour
10. Attending without counsel at the trial or hearings of any cause or the hearing of any summons or other application at court, or other appointment	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit

	at the time when the relevant work was done: £ 78.40 per hour All other circuits: £73.05 per hour	at the time when the relevant work was done: £ 68.50 per hour All other circuits: £64.80 per hour
11. Travelling and waiting	£ 35.75 per hour	£ 32.45 per hour

1B-210

PART V

DETAILED ASSESSMENT AND APPEAL IN RELATION TO DETAILED ASSESSMENT

Column 1	Column 2	Column 3
	High Court	County court
18. Preparing the bill (where allowable) and completing the detailed assessment (excluding preparing for and attending the hearing of the detailed assessment)	£ 35.70–£ 99.85 [<i>per hour</i>]	£ 35.70–£ 56.95 [<i>per hour</i>]*
19. Preparing for and attending the hearing of the detailed assessment (including travelling and waiting)	Discretionary	Discretionary
20. Appeal to costs judge, district judge or judge (including preparation)	Discretionary	Discretionary

* The words “per hour” in columns 2 and 3 were deleted by the Legal Aid in Family Proceedings (Remuneration) (Amendment No.3) Regulations 2001 (S.I. 2001 No. 2417).

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(b) Magistrates’ court proceedings

Preparation	£ 48.95 per hour – (£52.25 per hour for a fee-earner whose office is situated in the Legal Services Commission’s London Region)
Advocacy	£ 61.90 per hour
Attendance at court where counsel assigned	£ 33.30 per hour

Travelling and waiting	£ 27.50 per hour
Routine letters written and telephone calls	£ 3.80 per item – (£4.00 per item for a fee-earner whose office is situated in the Legal Services Commission's London Region)

Schedule 2A²

Prescribed Family Proceedings

1B-210.1

PART I

PREPARATION

High Court, county court and magistrates' court proceedings

	High Court	County court and magistrates' court
1. Writing routine letters	£7.05 per item	£6 per item
2. Receiving routine letters	£3.50 per item	£3 per item
3. Routine telephone calls	£7.05 per item	£6 per item
4. All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit at the time when the relevant work was done: £78.40 per hour All other circuits: £73.05 per hour	Where the fee earner's office is situated on the South Eastern Circuit: £66 per hour Where the fee earner's office is situated outside the South Eastern Circuit: £61 per hour

--- Looseleaf Page Break (126) ---

6. Travelling and waiting	£35.75 per hour	Where the fee
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		<p>earner's office is situated on the South Eastern Circuit:</p> <p>£32 per hour</p> <p>Where the fee earner's office is situated outside the South Eastern Circuit:</p> <p>£31 per hour</p>
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1B-210.2

PART II

CONFERENCES WITH COUNSEL

	High Court	County court and magistrates' court
7. Attending counsel in conference	£41.25 per hour	£36 per hour
8. Travelling and waiting	£35.75 per hour	<p>Where the fee earner's office is situated on the South Eastern Circuit:</p> <p>£32 per hour</p> <p>Where the fee earner's office is situated outside the South Eastern Circuit:</p> <p>£31 per hour</p>

1B-210.3

PART III

ATTENDANCES

	High Court	County court and magistrates' court
9. Attending with counsel at the trial or hearing of any cause or	£41.25 per hour	£36 per hour

the hearing of any summons or other application at court, or other appointment		
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10. Attending without counsel at the trial or hearing of any cause or the hearing of any summons or other application at court, or other appointment	Where proceedings were conducted in the divorce registry or in another court on the South Eastern Circuit at the time when the relevant work was done: £78 per hour All other circuits: £73.07 per hour	Where the fee earner's office is situated on the South Eastern Circuit: £66 per hour Where the fee earner's office is situated outside the South Eastern Circuit: £63 per hour
11. Travelling and waiting	£35.75 per hour	Where the fee earner's office is situated on the South Eastern Circuit: £32 per hour Where the fee earner's office is situated outside the South Eastern Circuit: £31 per hour

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PART V

DETAILED ASSESSMENT AND APPEAL IN RELATION TO DETAILED ASSESSMENT

	High Court	County court and magistrates' court
12. Preparing the bill (where allowable) and completing the detailed assessment (excluding preparing for and attending the hearing of the detailed assessment)	£35.70 - £99.85	£35.70 - £56.95
13. Preparing for and attending the hearing of the	Discretionary	Discretionary

detailed assessment (including travelling and waiting)		
14. Appeal to costs judge, district judge or judge (including preparation)	Discretionary	Discretionary

NOTES

¹ Schedule 2A substituted by the Legal Aid in Family Proceedings (Remuneration) (Amendment) Regulations 2001 (S.I. 2001 No.830).

² Schedule 2A substituted by the Legal Aid in Family Proceedings (Remuneration) (Amendment) Regulations 2007 (S.I. 2007 No.742).