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S T A T U T O R Y I N S T R U M E N T S

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**2002 No.**

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

The Civil Legal Aid (General) (Amendment No. 2) Regulations 2002

<i>Made - - - -</i>	<i>2002</i>
<i>Laid before Parliament</i>	<i>2002</i>
<i>Coming into force</i>	<i>1 / 1 2002</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 16, 34 and 43 of the Legal Aid Act 1988(a), having had regard to the matters specified in section 34(9) and having consulted the General Counsel of the Bar and the Law Society, and with the consent of the Treasury, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Civil Legal Aid (General) (Amendment No. 2) Regulations 2002 and shall come into force on [ ] 2002.

**Interpretation**

2. In these Regulations, a reference to a regulation by number alone means the regulation so numbered in the Civil Legal Aid (General) Regulations 1989(b).

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

3. In regulation 102, in paragraph (a), “any proceedings” shall be substituted for “the proceedings to which the certificate relates”.

4. The following shall be inserted after regulation 102:

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- (a) 1988 c. 34; see the definition of “regulations” in section 43. This Act is repealed by Part I of Schedule 15 to the Access to Justice Act 1999 (c. 22), subject to immaterial exceptions, and to transitional provisions and savings contained in S.I. 2000/774 and 916.
- (b) S.I. 1989/339. These Regulations are revoked by virtue of the repeal of enabling provisions in the Legal Aid Act 1988, subject to the transitional provisions and savings contained in S.I. 2000/774. That instrument also made various relevant amendments to these Regulations, as did S.I. 1994/1822, 2000/451 and 627, and 2001/2663 and 3735.

**“Production of documentation and disclosure of information**

**102A.** A solicitor shall promptly produce to the Commission any documentation in his possession or control, and disclose any information, which the Commission may request from time to time in connection with any proceedings in respect of which it has made payment to the solicitor.

**Recoupment of losses and excesses**

**102B.** (1) Where the fund incurs loss in the circumstances mentioned in regulation 102, the solicitor shall pay to the Commission a sum equivalent to the amount of such loss.

(2) Where for whatever reason a solicitor has been paid an amount greater than that to which he is entitled, the Commission may recover the excess either by way of repayment by the solicitor or by way of deduction from any other sum which may be due to him.”.

5. The following shall be inserted after regulation 104(3):

“(4) Paragraphs (3A) to (11) of regulation 105 shall apply and regulation 105A shall apply where costs are assessed by an Area Director under paragraph (1) as they apply to an assessment under that regulation; provided that the references to the time limit in regulation 105(3A) shall be construed as references to:

(a) the date three months after the termination of the solicitor’s retainer, where the retainer is determined before proceedings are begun, or where the assisted person’s certificate is revoked or discharged; or

(b) otherwise, the date three months after the determination of the proceedings, whether in a magistrates’ court or another court.

(5) Subject to paragraph (4), regulations 105 to 110 shall not apply to costs in respect of proceedings in a magistrates’ court to which this regulation applies.”.

6. (1) The following shall be inserted at the beginning of regulation 105(3A):

“Subject to paragraph (10),”.

- (2) Regulation 105(9) shall be deleted.

- (3) For regulation 105(10) there shall be substituted:

“(10) Where a solicitor or counsel has failed to comply with the time limit in paragraph (3A), the costs shall be assessed and the Area Director shall consider what, if any, reduction is reasonable and proportionate in all the circumstances; provided that costs shall not be reduced unless the solicitor or counsel has been allowed a reasonable opportunity to show cause in writing why the costs should not be reduced.”.

(4) In regulation 105(11), “(9) or” shall be deleted.

Signed by the authority of the Lord Chancellor

Dated

Parliamentary Secretary, Lord Chancellor's  
Department

We consent

Two of the Lords Commissioners of Her Majesty's Treasury

Dated

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## **EXPLANATORY NOTE**

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

These Regulations make amendments to the Civil Legal Aid (General) Regulations 1989 (S.I. 1989/339). They apply to transitional cases to which the principal Regulations continue to apply by virtue of the provisions in the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000 (S.I. 2000/774).

The Regulations:

- (a) make provision regarding the deferment and recoupment of costs paid to a solicitor in cases where the principal Regulations have been breached, or where there has been an overpayment;
- (b) apply provisions of regulations 105 and 105A of the 1989 Regulations to assisted proceedings in magistrates' courts; and
- (c) amend the provisions regarding the late submission of bills of costs.