

The Legal Aid (Prescribed Panels) Regulations 1999 (as amended)

(S.I. 1999 No. 166)

These Regulations have been amended by the Legal Aid (Prescribed Panels) Regulations 1999 (S.I. 1999 No. 3378) with effect from 1 January 2000 and the Legal Aid (Prescribed Panels) Regulations 2000 (S.I. 2000 No. 1930) with effect from 2 October 2000. Changes made by both amending instruments are shown in bold.

Legal Aid and Advice, England and Wales

Made 28th January 1999

Coming into force 1st February 1999

The Lord Chancellor, in exercise of the powers conferred on him by sections 32(7) and 43 of the Legal Aid Act 1988, makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament:

1. Citation and commencement

These Regulations may be cited as the Legal Aid (Prescribed Panels) Regulations 1999 and shall come into force on 1st February 1999.

2. Interpretation

In these Regulations:

“the Act” means the Legal Aid Act 1988;

“authorised litigator” has the meaning given in section 119(1) of the Courts and Legal Services Act 1990;

“clinical negligence claim” means a claim for damages in respect of an alleged breach of duty of care committed in the course of the provision of clinical or medical services (including dental or nursing services);

“Clinical Negligence Franchise Panel” has the meaning given in regulation 3;

"Family Franchise Panel" has the meaning given in regulation 5;

"family proceedings" has the meaning given in regulation 6;

"Immigration Franchise Panel" has the meaning given in regulation 7;

"immigration proceedings" has the meaning given in regulation 8;

"the Commission" means the Legal Services Commission established under section 1 of the Access to Justice Act 1999;

"Crime Franchise Panel" has the meaning given in regulation 9;

"criminal proceedings" has the meaning given in regulation 10.

3. Right to select legal representative in clinical negligence and similar claims

There shall be a panel of authorised litigators, called the Clinical Negligence Franchise Panel, which shall comprise those authorised litigators who from time to time are authorised under a franchising contract with the Board to provide advice, assistance and representation in claims to which regulation 4 applies.

4.

- (1) This regulation applies to:
 - (a) clinical negligence claims;
 - (b) claims for damages in respect of an alleged trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);
 - (c) claims for damages in respect of alleged professional negligence in the conduct of a claim falling within paragraph (a) or paragraph (b) above; or
 - (d) claims which include any claim falling within paragraphs (a), (b) or (c) above.
- (2) The right conferred by section 32(1) of the Act, as regards advice or assistance or representation by an authorised litigator in respect of any claim to which this regulation applies, shall be exercisable only in relation to authorised litigators who are for the time being members of the Clinical Negligence Franchise Panel.
- (3) Paragraph (2) shall not affect the Board's powers under section 32(2) of the Act (assignment, or limitation on selection, of legal representative).

Right to select legal representative in family proceedings

5. There shall be a panel of authorised litigators, called the Family Franchise Panel, which shall comprise those authorised litigators who from time to time are authorised under a contract with the Board to provide representation and assistance by way of representation in claims to which regulation 6 applies.

6.

- (1) **This regulation applies to any family proceedings.**
- (2) **"Family proceedings" means proceedings which arise out of family relationships.**
- (3) **Proceedings which arise out of family relationships include:**
 - (a) **proceedings in which the welfare of children is determined; and**
 - (b) **all proceedings to which Parts III or IV of the Act apply under the following:**

- (i) the Matrimonial Causes Act 1973;
 - (ii) the Inheritance (Provision for Family and Dependants) Act 1975;
 - (iii) the Adoption Act 1976;
 - (iv) the Domestic Proceedings and Magistrates' Courts Act 1978;
 - (v) the Matrimonial and Family Proceedings Act 1984;
 - (vi) the Child Abduction and Custody Act 1985;
 - (vii) the Family Law Act 1986;
 - (viii) the Children Act 1989;
 - (ix) section 30 of the Human Fertilisation and Embryology Act 1990;
 - (x) sections 20 and 27 of the Child Support Act 1991];
 - (xi) Part IV of the Family Law Act 1996;
 - (xii) the inherent jurisdiction of the High Court in relation to children; and
 - (xiii) in magistrates' courts, under section 43 of the National Assistance Act 1948, section 22 of the Maintenance Orders Act 1950, section 4 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 or section 106 of the Social Security Administration Act 1992.
- (4) "Family proceedings" does not include proceedings for judicial review.
- (5) The right conferred by section 32(1) of the Act, as regards representation and assistance by way of representation by an authorised litigator in respect of any proceedings to which this regulation applies, shall be exercisable only in relation to authorised litigators who are for the time being members of the Family Franchise Panel.
- (6) Paragraph (5) shall not affect the Board's powers under section 32(2) of the Act (assignment, or limitation on selection, of legal representative).

Right to select legal representative in immigration proceedings

7. There shall be a panel of authorised litigators, called the Immigration Franchise Panel, which shall comprise those authorised litigators who from time to time are authorised under a contract with the Board to provide representation in claims to which regulation 8 applies.

8.

- (1) This regulation applies to any immigration proceedings.**
- (2) "Immigration proceedings" means any proceedings relating to immigration, nationality or asylum in:**
 - (a) the House of Lords;**
 - (b) the Court of Appeal; or**
 - (c) the High Court.**
- (3) The right conferred by section 32(1) of the Act, as regards representation by an authorised litigator in respect of any proceedings to which this regulation applies, shall be exercisable only in relation to authorised litigators who are for the time being members of the Immigration Franchise Panel.**
- (4) Paragraph (3) shall not affect the Board's powers under section 32(2) of the Act (assignment, or limitation on selection, of legal representative).¹**

Right to select legal representative in criminal proceedings funded by the Commission

- 9. There shall be a panel of authorised litigators, called the Crime Franchise Panel, which shall comprise those authorised litigators who from time to time are authorised by the terms of a franchising contract with the Commission to provide advice or assistance or representation in relation to some or all of the matters to which regulation 10 applies.**

10.

- (1) This regulation applies to advice and assistance and representation funded by the Commission in relation to actual or contemplated criminal investigations or proceedings.**
- (2) "criminal proceedings" means:**
 - (i) the proceedings mentioned in section 12(2) of the Access to Justice Act 1999;**
 - (ii) applications for judicial review or habeas corpus relating to criminal investigations or proceedings;**
 - (iii) prison disciplinary hearings;**

¹ Regulations 5, 6, 7 and 8 were inserted by the Legal Aid (Prescribed Panels) (Amendment) Regulations 1999 (S.I. 1999 No. 3378).

- (iv) representations to prison governors and other prison authorities regarding the status, security classification, discipline, transfer and treatment of prisoners;
 - (v) representations to the Home Office relating to mandatory life sentences and other parole reviews;
 - (vi) Parole Board proceedings;
 - (vii) representations to the High Court against a voluntary bill of indictment;
 - (viii) proceedings under the Criminal Procedure and Investigations Act 1996 to quash an acquittal;
 - (ix) proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998 for confiscation or forfeiture in connection with criminal proceedings;
 - (x) proceedings in a magistrates' court arising from failure to pay a fine or to obey an order of that court where such failure carries the risk of imprisonment;
 - (xi) proceedings under sections 1, 2 and 4 of the Crime and Disorder Act 1998 relating to anti-social behaviour orders or sex offender orders;
 - (xii) proceedings under section 8(1)(b) of the Crime and Disorder Act 1998 relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;
 - (xiii) proceedings under section 8(1)(c) of the Crime and Disorder Act 1998 relating to parenting orders made on the conviction of a child; and
 - (xiv) applications to the Criminal Cases Review Commission.
- (3) The right conferred by section 32(1) of the Act, as regards advice or assistance or representation by an authorised litigator in respect of any proceedings to which this regulation applies, shall be exercisable only in relation to authorised litigators who are for the time being members of the Crime Franchise Panel in respect of the proceedings in question.
- (4) Paragraph (3) shall not affect the Commission's powers under section 32(3) or (8) of the Act².

Irvine of Lairg, C.

Dated 28th January 1999

² Regulations 9 and 10 were inserted by the Legal Aid (Prescribed Panels) (Amendment) Regulations 2000 (S.I. 2000 No. 1930).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations designate the Clinical Negligence Franchise Panel as a prescribed panel for the purposes of section 32(7) of the Legal Aid Act 1988, in respect of claims for clinical negligence, and related claims, and provides that an assisted person's right to select an authorised litigator for the purpose of representation or advice and assistance in respect of such claims is limited to members of the Clinical Negligence Franchise Panel.