STATUTORY INSTRUMENTS

2009 No. 1853

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (General) (No. 2) (Amendment) Regulations 2009

Made - - - -	*13th July 2009*
Laid before Parliament	*14th July 2009*
Coming into force - -	*4th August 2009*

The Lord Chancellor makes these Regulations in exercise of the powers conferred by sections 15(2)(d) and (e) and 26 of the Access to Justice Act 1999(**a**).

Citation, commencement and cessation

1.—(1) These Regulations may be cited as the Criminal Defence Service (General) (No. 2) (Amendment) Regulations 2009 and come into force on 4th August 2009.

(2) Regulations 3 (in so far as it relates to the definition of "provisional representation order"), 4, 6 and 7 of these Regulations cease to have effect on 31st December 2011 and on that date regulation 16A of the Criminal Defence Service (General) (No. 2) Regulations 2001(**b**) shall have effect as it had effect immediately before the making of these Regulations.

Amendments to the Criminal Defence Service (General) (No. 2) Regulations 2001

2. The Criminal Defence Service (General) (No. 2) Regulations 2001 are amended as follows.

3. In regulation 2—

(a) after the definition of "judge of the court" insert—

""junior advocate" means any advocate who is not a Queen's Counsel;";

(b) after the definition of "litigator" insert—

""provisional representation order" means a document provisionally granting a right to representation under regulations made under paragraph 1A of Schedule 3 to the Act;".

4. After regulation 10, in Part IV, insert—

"Representation under provisional representation order

10A. A provisional representation order—

(**a**) 1999 c.22. Section 26 defines "prescribed" as prescribed by regulations and "regulations" as regulations made by the Lord Chancellor. The reference to the Lord Chancellor was changed to the Secretary of State by S.I. 2003/1887 and changed back to the Lord Chancellor by S.I. 2005/3429.

(**b**) S.I. 2001/1437. Relevant amending instruments are S.I. 2002/712, 2003/644, 2004/1196, 2004/2046, 2006/2490, 2007/2936, 2007/3550, and 2008/1879.

(a) includes representation by a litigator; and

(b) may include representation by—

(i) a junior advocate;

(ii) a Queen's Counsel; or

(iii) a junior advocate and a Queen's Counsel.".

5. In regulation 14—

(a) omit paragraph (1A);

(b) in each of paragraphs (2)(b)(i), (2)(b)(ii), (2)(b)(iv) (in both places), (2)(c)(i), (2)(c)(ii), (14)(a), (14)(b) and (15)(b), for "junior counsel" substitute "junior advocate";

(c) in paragraph (2)(b)(iii), for "junior counsel" substitute "junior advocates";

(d) in paragraph (5)(a), for "junior counsel" substitute "a junior advocate".

6. In regulation 16, after paragraph (2) insert—

"(3) Paragraphs (1) and (2) apply to provisional representation orders as they apply to representation orders, but as if "the Commission" were substituted for "the court" in each place where it appears.".

7. For regulation 16A substitute—

"**Selection of representative by two or more co-defendants etc.**

16A. Where—

(a) an individual who is granted a right to representation is one of two or more co-defendants whose cases are to be heard together, or

(b) an individual who is provisionally granted a right to representation is one of two or more people involved in an investigation whose cases, if proceedings were to result from the investigation, would be likely to be heard together,

that individual must select the same litigator as a co-defendant, unless there is or is likely to be a conflict of interest.".

Signed by authority of the Lord Chancellor

Bach
Parliamentary Under Secretary of State
Ministry of Justice

13th July 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Defence Service (General) (No. 2) Regulations 2001, which govern the provision of publicly funded legal services in criminal cases. They provide for legal representation under provisional representation orders in cases of investigations of serious or complex fraud governed by the Attorney General's Guidelines on plea discussions in such cases (regulation 4). The provisions in the 2001 Regulations on a change of representative and on cases involving more than one defendant are extended to provisional representation orders (regulations 6 and 7).

Regulation 5 changes references to junior counsel into references to junior advocates.

An impact assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.

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