STATUTORY INSTRUMENTS

2006 No. 2494

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Representation Orders: Appeals etc.) Regulations 2006

Made - - - -	*11 September 2006*
Coming into force - -	*2nd October 2006*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 26 of, and paragraph 4 of Schedule 3 to, the Access to Justice Act 1999(**a**).

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament in accordance with section 25(9) of that Act.

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (Representation Orders: Appeals etc.) Regulations 2006 and come into force on 2nd October 2006.

Interpretation

2. In these Regulations—

"the Act" means the Access to Justice Act 1999;

"appropriate officer" means—

in a magistrates' court, the justices' clerk or the designated officer;

in the Crown Court, a court manager or a court officer designated by him to act on his behalf for the purposes of these Regulations;

in the Court of Appeal—

the Registrar of Criminal Appeals or the Head of the Civil Appeals Office, as appropriate; or

in either case, a court officer designated by him to act on his behalf for the purposes of these Regulations;

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

(**a**) 1999 c.22. Section 26 includes definitions of 'regulations' and 'prescribed'. The powers conferred by paragraph 4 of Schedule 3 were transferred to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887) and were transferred back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429). Those Orders also changed, and changed back, the reference to the Lord Chancellor in section 26.

"representation authority" has the same meaning as in the Criminal Defence Service (Representation Orders and Consequential Amendments) Regulations 2006(**a**);

"representation order" means a document granting a right to representation under section 14 of the Act.

General provisions

3.—(1) An appeal or a renewed application under these Regulations must be made on such form as is from time to time specified—

(a) in the case of appeals, and renewed applications under regulation 8, by the Commission; and

(b) in the case of renewed applications under regulations 6 and 7, by the Lord Chancellor.

(2) The individual must provide such further particulars and documents as the person or body determining the appeal or renewed application may require in relation to his appeal or application.

(3) An appeal or a renewed application will be determined without a hearing unless the person or body determining the appeal or application directs otherwise.

(4) Where an application is referred under regulation 6(2)(b), 7(2)(b) or 9(3)(b), it is to be treated thereafter as if it were an appeal.

(5) Written reasons must be given for any decision on an appeal or a renewed application.

(6) The date of any representation order granted on an appeal or a renewed application under these Regulations—

(a) in proceedings in the Court of Appeal, is the date on which the original application for the order was received, subject to regulation 10(6) of the Criminal Defence Service (General) (No. 2) Regulations 2001(**b**); and

(b) in other proceedings, is the date on which the original application was received.

Appeals: magistrates' courts

4.—(1) In this regulation "court" means the magistrates' court in which the proceedings in respect of which the individual is seeking a representation order are being or are to be heard and includes a single justice.

(2) An individual may appeal to the court against a decision to refuse to grant a representation order made on the grounds that the interests of justice do not require such an order to be granted.

(3) The court must either—

(a) uphold the decision; or

(b) decide that it would be in the interests of justice for a representation order to be granted.

(4) Where the court makes a decision under paragraph (3)(b), the individual may apply to the representation authority for a representation order; and—

(a) if the individual states in writing, verified by a statement of truth, that his financial resources have not changed since the date of his original application so as to make him financially ineligible for a representation order, the representation authority must grant the order; or

(b) if his financial resources may have so changed, the representation authority—

(i) must determine whether the individual is financially eligible to be granted a representation order in accordance with the Criminal Defence Service (Financial Eligibility) Regulations 2006(**c**); and

(ii) if he is so eligible, must grant the order.

(**a**) S.I. 2006/2493
(**b**) S.I. 2001/1437, amended by S.I. 2002/712.
(**c**) S.I. 2006/2492

5. An appeal does not lie against a decision to refuse to grant a representation order in respect of proceedings in a magistrates' court made on the grounds that the individual is not financially eligible to be granted such an order.

Renewals of application where representation order refused: Crown Court

6.—(1) An individual whose application for the grant of a representation order in respect of proceedings in the Crown Court has been refused on the grounds that the interests of justice do not require such an order to be granted may make a renewed application to the appropriate officer who, or court which, refused the application.

(2) Where a renewed application is made to the appropriate officer, he may—

(a) grant the order; or

(b) refer the application—

(i) in the Crown Court, to a judge of the Crown Court; or

(ii) in a magistrates' court, to the court or a District Judge (Magistrates' Court),

who may grant the order or refuse the application.

Renewals of application where representation order refused: Court of Appeal

7.—(1) An individual whose application for the grant of a representation order in respect of proceedings in the Court of Appeal has been refused by the court or the appropriate officer on the grounds that the interests of justice do not require such an order to be granted may make a renewed application to the court or the appropriate officer (as the case may be).

(2) Where a renewed application is made to the appropriate officer, he may—

(a) grant the order; or

(b) refer the application to a judge of the Court of Appeal, who may grant the order or refuse the application.

Renewals of application where representation order refused: Commission

8. An individual whose application for the grant of a representation order in respect of proceedings, other than proceedings in a magistrates' court, has been refused by the Commission on the grounds that the interests of justice do not require such an order to be granted may make a renewed application to the Commission, which may grant the order or refuse the application.

Withdrawals of representation order

9.—(1) An individual whose representation order has been withdrawn may apply on one occasion to the person who, or body which, withdrew the order to set aside the withdrawal.

(2) Any application must be made on such form as is from time to time specified—

(a) by the Commission, in the case of withdrawal by the Commission or by the representation authority in proceedings in a magistrates' court; and

(b) by the Lord Chancellor, in the case of withdrawal by the appropriate officer or the court in proceedings in the Crown Court or the Court of Appeal.

(3) Where an application is made to the appropriate officer, he may—

(a) set aside the withdrawal; or

(b) refer the application—

(i) in a magistrates' court, to the court or a District Judge (Magistrates' Court);

(ii) in the Crown Court, to a judge of the Crown Court; or

(iii) in the Court of Appeal, to a judge of the Court of Appeal,

who may set aside the withdrawal or refuse the application.

Transitional provisions

10. A renewed application which is pending immediately before 2nd October 2006 is to be dealt with as if these Regulations had not been made.

Revocation

11. The Criminal Defence Service (Representation Order Appeals) Regulations 2001(**a**) are revoked.

Vera Baird
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Date 11 September 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for appeals or renewed applications where an individual involved in criminal proceedings has been refused publicly funded representation on the grounds that the interests of justice do not require him to be granted an order giving a right to such representation. They take effect from 2nd October 2006, when the relevant amendments to the Access to Justice Act 1999 effected by the Criminal Defence Service Act 2006 (c.9) come into force. In the case of proceedings in magistrates' courts, the individual may appeal to the court. (There is no appeal where the order has been refused because the individual is financially ineligible to be granted an order.) In the case of proceedings in other courts, he may make a renewed application to the person who, or court which, refused the application. Where a representation order is withdrawn, the individual may apply for the withdrawal to be set aside.

A regulatory impact assessment has been prepared for instruments relating to the Criminal Defence Service Act, which is available from Criminal Legal Aid Strategy Division, Department for Constitutional Affairs, 54 Victoria Street, London SW1E 6QW and can also be found at http://www.dca.gov.uk/risk/crime-defence-act-ria.pdf.

(**a**) S.I. 2001/1168, amended by S.I. 2002/1620.

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