Draft Regulations laid before Parliament under section 25(9) of the Access to Justice Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Information Requests) Regulations 2009

Made - - - -	*2009*
Coming into force - -	*2nd March 2009*

The Lord Chancellor makes these Regulations in exercise of the powers conferred by section 26 of, and paragraph 6(2)(f), (3)(d) and (4) of Schedule 3 to, the Access to Justice Act 1999(**a**).

The Commissioners for Her Majesty's Revenue and Customs have agreed to the making of regulation 3 of these Regulations in accordance with paragraph 6(3)(d) of Schedule 3 to that Act.

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(**b**).

Citation, commencement, interpretation and relevant authority

1.—(1) These Regulations may be cited as the Criminal Defence Service (Information Requests) Regulations 2009 and come into force on 2nd March 2009.

(2) In these Regulations—

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

"the 2003 Act" means the Income Tax (Earnings and Pensions) Act 2003(**c**);

"the 2005 Act" means the Income Tax (Trading and Other Income) Act 2005(**d**);

"application" means an application for the grant of a right to representation under section 14 of the 1999 Act;

"partner" means a person with whom the individual lives as a couple (including a person with whom the individual is not currently living but from whom the individual is not living separate and apart);

(**a**) 1999 c.22. Section 26, which was amended by section 2(6) of the Criminal Defence Service Act 2006 (c.9), contains definitions of "regulations", "relevant authority" and "prescribed". The reference to the Lord Chancellor in the definition of "regulations" was changed to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887) and changed back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429). Paragraph 6 was inserted by section 57 of the Criminal Justice and Immigration Act 2008 (c.4).
(**b**) Section 25(9) was amended by section 57 of the Criminal Justice and Immigration Act 2008.
(**c**) 2003 c.1.
(**d**) 2005 c.5.

"prescribed benefit" means a benefit listed in the table in regulation 2 of the Criminal Defence Service (Information Requests) (Prescribed Benefits) Regulations 2009(**a**).

(3) The Legal Services Commission or a court officer or other person to whom the Commission, in accordance with section 3(4) of the 1999 Act, has delegated its functions under paragraph 2A of Schedule 3 to the 1999 Act is the relevant authority for the purposes of paragraph 6 of Schedule 3 to the 1999 Act and is referred to in these Regulations as "the relevant authority".

Information request: Secretary of State

2. An information request made to the Secretary of State by the relevant authority under paragraph 6(1)(a) of Schedule 3 to the 1999 Act may include a request for the disclosure of information as to whether the individual—

(a) has been in receipt of any prescribed benefit during the period of two years before the date of the request and, if so—

(i) which prescribed benefit;

(ii) the amount received;

(iii) the period of receipt;

(b) has or at the date of the application had a partner and, if so, the full name, date of birth and national insurance number of that partner.

Information request: Commissioners

3. An information request made to the Commissioners by the relevant authority under paragraph 6(1)(b) of Schedule 3 to the 1999 Act may include a request for the disclosure of any of the following information—

(a) the amount of any of the following types of income of the individual charged to income tax for each of the last two years of assessment before the year in which the application was made—

(i) employment income under Part 2 of the 2003 Act;

(ii) pension income under Part 9 of the 2003 Act;

(iii) social security income under Part 10 of the 2003 Act;

(iv) trading income under Part 2 of the 2005 Act;

(v) property income under Part 3 of the 2005 Act;

(vi) savings and investment income under Part 4 of the 2005 Act;

(vii) any other income under the 2005 Act;

(b) the amount of any chargeable gains charged to capital gains tax under the Taxation of Chargeable Gains Act 1992(**b**) for each of the last two years of assessment before the year in which the application was made;

(c) whether the individual is one of two or more persons carrying on a trade, profession or business in partnership and, if so, the name of that partnership;

(d) whether the individual is a director of a company and, if so, the name of that company;

(e) whether the individual is or was at the date of the application in receipt of any of the following benefits—

(i) child benefit under section 141 of the Social Security Contributions and Benefits Act 1992(**c**);

(ii) child tax credit under Part 1 of the Tax Credits Act 2002(**d**);

(**a**) S.I. 2009/[].
(**b**) 1992 c.12.
(**c**) 1992 c.4.
(**d**) 2002 c.21.

(iii) working tax credit under Part 1 of the Tax Credits Act 2002;

(iv) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992;

(f) whether the individual has or at the date of the application had a partner and, if so, the full name, date of birth and national insurance number of that partner.

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under Schedule 3 to the Access to Justice Act 1999 the authority responsible for granting rights to publicly funded representation for criminal cases in magistrates' courts may make information requests to the Commissioners for Her Majesty's Revenue and Customs and the Secretary of State for information about an individual who has applied for representation, to facilitate the making of decisions about financial eligibility. These Regulations provide that information requests to the Commissioners may include requests for information about the individual's income, capital gains and specified benefits, whether the individual is a partner in a business or a director of a company and whether the individual is living with someone as a couple. They also provide that an information request to the Secretary of State (in practice, the Secretary of State for Work and Pensions) may ask about the individual's benefit status for the previous two years and whether the individual is living with someone as a couple.

The impact assessment which was prepared for section 57 of the Criminal Justice and Immigration Act 2008 is applicable to this instrument. It is available at www.justice.gov.uk/publications/criminal-justice-bill.htm and from Criminal Legal Aid Strategy Division, Ministry of Justice, 102 Petty France, London SW1H 9AJ.

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.00

E3642 1/2009 193642T 19585