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 (Provisional Representation Orders) Regulations 2009

Made - - - -	*2009*
Coming into force - -	*1st August 2009*

The Lord Chancellor, in exercise of the powers conferred by section 26 of, and paragraph 1A(1) of Schedule 3 to, the Access to Justice Act 1999(**a**), makes the following Regulations.

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and cessation

1. These Regulations—

(a) may be cited as the Criminal Defence Service (Provisional Representation Orders) Regulations 2009;

(b) come into force on 1st August 2009;

(c) cease to have effect on 31st December 2011.

Interpretation

2. In these Regulations—

"the Guidelines" means the Attorney General's Guidelines on plea discussions in cases of serious or complex fraud, published on 18th March 2009(**b**) and "invitation letter", "plea agreement", "plea discussions" and "serious or complex fraud" have the meanings given them in the Guidelines;

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

(**a**) 1999 c. 22. Paragraph 1A of Schedule 3 was inserted by section 56 of the Criminal Justice and Immigration Act 2008 (c. 4). Section 26 defines "prescribed" as prescribed by regulations and "regulations" as regulations made by the Lord Chancellor. The reference in section 26 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**) The Guidelines are available from the Attorney General's Office, 20 Victoria Street, London SW1H 0NF or at http://www.attorneygeneral.gov.uk/sub_publications_guidelines.htm.

"investigation" means an investigation in a case of serious or complex fraud which may result in criminal proceedings in which the prosecutor would be—

(a) the Director of the Serious Fraud Office;

(b) the Director of Revenue and Customs Prosecutions;

(c) the Financial Services Authority;

(d) the Office of Fair Trading; or

(e) the Director of Public Prosecutions;

"litigator" means the person named in the provisional representation order as representing the individual, being a solicitor, firm of solicitors or other appropriately qualified person;

"provisional representation order" means a document provisionally granting a right to representation.

Grant of provisional representation order

3. The Commission may, on the application of an individual, grant a provisional representation order to the individual where—

(a) the individual is involved in an investigation;

(b) the person who would be the prosecutor has sent an invitation letter to the individual or the individual's legal representative; and

(c) in the opinion of the Commission, if proceedings resulting from the investigation were to proceed to trial, the trial would be likely to last for more than 25 days.

Withdrawal and extension of provisional representation order

4.—(1) The Commission must withdraw a provisional representation order—

(a) where the individual notifies the person who would be the prosecutor that the individual does not wish to enter into plea discussions;

(b) where, in the opinion of the Commission, the plea discussions are unlikely to result in a plea agreement;

(c) where, in the opinion of the Commission, it is not in the interests of justice for the order to continue;

(d) where the person who would be the prosecutor notifies the individual that proceedings will not be brought against the individual;

(e) on the application of the individual;

(f) where proceedings are begun against the individual in respect of a charge related to the investigation; or

(g) three months after the grant of the order, where none of sub-paragraphs (a) to (f) applies.

(2) The individual may, at any time before the end of the period of three months from the grant of the provisional representation order, apply (once only) to the Commission to extend the order for a period of up to three months from the date of the extension.

Provisional representation orders at cessation

5. Where a provisional representation order is in existence immediately before these Regulations cease to have effect, the Commission must withdraw the order.

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)

These Regulations provide for the grant by the Legal Services Commission of a provisional right to publicly funded representation in cases of investigations of serious or complex fraud governed by the Attorney General's Guidelines on plea discussions in cases of serious or complex fraud. They also provide for the circumstances in which such orders must be withdrawn. The Regulations will cease to have effect on 31st December 2011.

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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