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

2010 No. xxxx

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Representation Orders: Appeals etc.) (Amendment) Regulations 2010

Made - - - - 2010

Coming into force in accordance with regulation 1

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.

1.—(1) These Regulations may be cited as the Criminal Defence Service (Representation Orders: Appeals etc.) (Amendment) Regulations 2010 and come into force on the day after the day on which they are made.

(2) These Regulations apply to decisions, on or after the date on which the Regulations come into force, not to grant a representation order to an individual on the grounds that the interests of justice do not require such an order to be granted.

(3) In paragraph (2) "representation order" means a document granting a right to representation under section 14 of the Access to Justice Act 1999.

2. For regulation 4 of the Criminal Defence Service (Representation Orders: Appeals etc.) Regulations 2006(**b**) substitute—

"Renewed applications and 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 and a District Judge (Magistrates' Courts).

(2) Where the representation authority refuses to grant a representation order to an individual on the grounds that the interests of justice do not require such an order to be

(**a**) 1999 c. 22. Section 26 of the Act 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. 2006/2494, amended by S.I. 2009/3329.

granted, the individual may renew the application for a representation order to that authority.

(3) The representation authority must grant the representation order or refuse the application.

(4) Where the representation authority refuses the application, the individual may appeal to the court against the refusal.

(5) The court must either—

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

(b) dismiss the appeal.

(6) Where the court makes a decision under paragraph (5)(a), 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 the individual's financial resources have not changed since the date of the original application so as to make the individual financially ineligible for a representation order, the authority must grant such an order; or

(b) if the resources may have so changed, the representation authority 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(**a**) and, if the individual is so eligible, must grant such an order.".

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

(**a**) S.I. 2006/2492, amended by S.I. 2007/2937, 2008/723, 2008/1839, 2009/1887 and 2009/2878.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Defence Service (Representation Orders: Appeals etc.) Regulations 2006, which provide for appeals and renewed applications where an individual who is involved in criminal proceedings has been refused publicly funded representation on the grounds that the interests of justice do not require the grant of a representation order. These Regulations provide that in magistrates' courts' cases the individual may make a renewed application to the authority responsible for granting representation orders in magistrates' courts, after which there is an appeal to the court.

An impact assessment has not been prepared for this instrument as no impact on business or the private or voluntary sector is foreseen.

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