STATUTORY INSTRUMENTS

1999 No. 2575

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Legal Advice and Assistance (Amendment) (No. 3) Regulations 1999

Made - - -	*14th September 1999*
Laid before Parliament	*14th September 1999*
Coming into force	*5th October 1999*

The Lord Chancellor, in exercise of the powers conferred on him by sections 11(2), 34 and 43 of the Legal Aid Act 1988**(a)**, having had regard to the matters specified in section 34(9) and having consulted the General Council of the Bar and the Law Society, and with the consent of the Treasury, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Legal Advice and Assistance (Amendment) (No. 3) Regulations 1999 and shall come into force on 5th October 1999.

Interpretation

2. In these Regulations a reference to any regulation or Schedule by number alone means the regulation or Schedule so numbered in the Legal Advice and Assistance Regulations 1989**(b)**.

Transitional provisions

3.—(1) These Regulations shall apply to applications for advice and assistance under regulation 9 made on or after 5th October 1999.

(2) Where a person at any time on or after 5th October 1999 receives family credit or disability working allowance under Part VII of the Social Security Contributions and Benefits Act 1992**(c)** in pursuance of a decision made before that date, his disposable income shall be assessed as if regulations 5 and 6 of these Regulations had not come into force.

Amendments to the Legal Advice and Assistance Regulations 1989

4.—(1) In regulation 10(1), for "Where" there shall be substituted "Subject to paragraph (5), where".

(2) After regulation 10(4) there shall be inserted:

"(5) A client may authorise another person to attend on the solicitor on his behalf in accordance with paragraph (1) only if, at the time when the authorisation is given, the client is either present in, or resides in, England and Wales.".

5. In regulation 13(2), for "income support, income-based jobseeker's allowance, family credit or disability working allowance" there shall be substituted "any qualifying benefit".

6. After regulation 13(2) there shall be inserted:–

"(2A) The following are qualifying benefits for the purposes of paragraph (2) above:–

(a) 1988 c. 34; sections 16, 34 and 43 were amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraphs 60 and 63; and by the Family Law Act 1996 (c. 27), section 26 and Schedule 8, paragraph 44. Section 43 is an interpretation provision and is cited because of the meaning given to "regulations".

(b) S.I. 1989/340, amended by S.I. 1992/591 and 1996/2308.

(c) 1992 c. 4.

(a) income support;

(b) working families' tax credit, provided that the amount (if any) to be deducted under section 128(2)(b) of the Social Security Contributions and Benefits Act 1992**(a)** has been determined at not more than £70 a week;

(c) disabled person's tax credit, provided that the amount (if any) to be deducted under section 129(5)(b) of the Social Security Contributions and Benefits Act 1992 has been determined at not more than £70 a week; and

(d) income-based jobseeker's allowance.".

7.—(1) Regulation 17 shall stand as paragraph (1) of regulation 17, and in that paragraph, after "provided that", there shall be inserted "(subject to paragraph (2))".

(2) After regulation 17(1) there shall be inserted:–

"(2) Matters in relation to which the advice or assistance is mediation-related advice or assistance (as defined in regulation 32(1)) shall be treated as separate matters from those in relation to which the advice or assistance is not mediation-related advice or assistance.".

8.—(1) Regulation 32 shall stand as paragraph (1) of regulation 32 and there shall be inserted at the end of that paragraph "or in relation to the cost of giving mediation-related advice or assistance".

(2) After regulation 32(1) there shall be inserted:

"(2) In this regulation–

"mediation-related advice or assistance" means advice or assistance where:

(a) the advice or assistance is given to a person who is a party to mediation in a dispute relating to family matters;

(b) the subject matter of the advice or assistance forms all or part of the subject matter of the mediation; and

(c) at the time when the advice or assistance was given, the mediation has not come to an end as regards the subject matter of the advice or assistance, provided that for the purposes of this sub-paragraph mediation, as regards any matter, shall not be taken to have come to an end by reason of the parties having reached agreement, unless and until the terms of that agreement are made binding on the parties, by way of a binding agreement, a consent order, or otherwise;

"family matters" has the meaning given in section 13A(2) of the Act**(b)**;

"mediation" has the meaning given in section 2(3A) of the Act**(c)**.".

Signed by authority of the Lord Chancellor

Keith Vaz
Parliamentary Secretary
Lord Chancellor's Department

Dated 14th September 1999

We consent

Jim Dowd
Clive Betts
Two of the Lords Commissioners of Her Majesty's Treasury

Dated 14th September 1999

(a) 1992 c. 4 as amended by the Tax Credits Act 1999 (c. 10).
(b) Inserted by Family Law Act 1996 (c. 27), section 26(1).
(c) Inserted by Family Law Act 1996 (c. 27), section 26(2).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Advice and Assistance Regulations 1989, so as to replace references to family credit and disability working allowance with references to working families' tax credit and disabled person's tax credit, following the changes made by the Tax Credits Act 1999. A recipient of one of these tax credits will be eligible for advice and assistance provided that the amount to be deducted from the weekly maximum allowance does not exceed £70. Those in receipt of family credit or disability working allowance under a decision made before the coming into force of these Regulations will continue to be eligible for advice and assistance.

The Regulations also:

(a) exclude the costs of giving advice and assistance related to mediation in family matters from the charge under section 11(2)(b) of the Legal Aid Act 1988, and provide that such advice and assistance shall be treated as a separate matter from other advice and assistance and

(b) restrict the procedure, under regulation 10 of the 1989 Regulations, whereby a client may authorise another person to attend on the solicitor on his behalf, to clients present or resident in England and Wales.

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