STATUTORY INSTRUMENTS

1980 No. 477

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Legal Advice and Assistance Regulations 1980

Made - - - -	28*th March* 1980
Laid before Parliament	3*rd April* 1980
Coming into Operation	28*th April* 1980

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The Lord Chancellor, in exercise of the powers conferred on him by sections 2(5), 2A, 4, 5(3), 9(6), 11, 14 and 20 of the Legal Aid Act 1974 (a) and with the concurrence of the Treasury, hereby makes the following Regulations—

Title and commencement

1. These Regulations may be cited as the Legal Advice and Assistance Regulations 1980 and shall come into operation on 28th April 1980.

Revocations

2. The Regulations specified in Schedule 1 are hereby revoked.

Interpretation

3. In these Regulations, unless the context otherwise requires—

"the Act" means the Legal Aid Act 1974;

"advice" and "assistance" mean respectively advice and assistance under the Act;

"appropriate area committee" means the area committee appointed by the Council of The Law Society under the provisions of a scheme in whose area the application for advice and assistance has been made;

"appropriate authority" means an authority specified in regulation 16;

"appropriate local committee" means the local committee appointed by the appropriate area committee and includes a certifying committee set up under the provisions of a scheme in whose area an application for assistance by way of representation has been made or granted;

"assessed deficiency" means the amount by which the sum allowed to the solicitor by the appropriate area committee in assessing his bill under regulation 23 as being fair and reasonable remuneration for the work necessarily done exceeds any contribution payable by the client to the solicitor under section 4 of the Act together with the value of any charge arising under section 5 of the Act;

"assistance by way of representation" means assistance by way of representation under the Act;

"child" means a person under the age that is for the time being the upper limit of compulsory school age by virtue of section 35 of the Education Act 1944 (b) together with any Order in Council made under that section;

(a) 1974 c.4, as amended by the Legal Aid Act 1979, (c.26). (b) 1944 c.31.

"client" means a person seeking or receiving advice and assistance or on whose behalf advice and assistance is sought;

"an extension" means the grant of prior authority to exceed the limit applicable under section 3(2) of the Act and, where appropriate, the grant of prior authority to exceed any further limit under regulation 15(2) or (4), or 17(5);

"family income supplement" means family income supplement under the Family Income Supplements Act 1970 (**a**);

"the Fund" means the Legal Aid Fund;

"legal aid" means legal aid under Part I of the Act;

"patient" means a person who by reason of mental disorder within the meaning of the Mental Health Act 1959 (**b**) is incapable of managing and administering his property and affairs;

"scheme" means a scheme under section 15 of the Act;

"secretary" means the secretary of an appropriate area or local committee and includes any person duly authorised to act on the secretary's behalf to the extent that he is so authorised;

"supplementary benefit" means supplementary benefit under the Supplementary Benefits Act 1976(**c**).

Powers exercisable by secretaries

4. Subject to regulation 16, any function which an appropriate area or local committee is empowered to perform under these Regulations may be performed on behalf of that committee by its secretary, save the withdrawal of approval of assistance by way of representation under regulation 21.

Applications for advice and assistance

5.—(1) An application for advice and assistance shall be made by a client in person to the solicitor from whom the advice and assistance is sought, except where regulations 6 (attendance on behalf of a client) or 9 (clients resident outside England and Wales) apply.

(2) The client shall furnish the solicitor with the information necessary to enable the solicitor to determine—

(*a*) his disposable capitals and

(*b*) his disposable income or, where appropriate, whether he is in receipt of supplementary benefit or family income supplement.

(3) The information required by this regulation shall be furnished on a form approved by The Law Society.

Attendance on behalf of a client

6.—(1) Where a client cannot for good reason attend upon the solicitor in order to apply for advice and assistance he may authorise another person to attend upon his behalf.

(**a**) 1970 c.55. (**b**) 1959 c.72. (**c**) 1976 c.71.

(2) The person so authorised shall furnish the solicitor with the information necessary to enable the solicitor to determine the client's disposable capital and either his disposable income or, where appropriate, whether the client is in receipt of supplementary benefit or family income supplement.

(3) The information required by this regulation shall be furnished on a form approved by The Law Society.

Determination of disposable income and capital and maximum contribution

7.—(1) The solicitor to whom an application for advice and assistance is made shall determine the disposable income and capital of the client and, where appropriate, of any person whose resources may be treated as those of the client in accordance with Schedule 2 to these Regulations.

(2) Where the solicitor is satisfied that any of the persons whose disposable incomes are to be determined under paragraph (1) is in receipt of supplementary benefit or family income supplement, he shall not determine that person's disposable income.

(3) The solicitor shall also determine the maximum contribution, if any, payable to him by the client under section 4(2) of the Act in accordance with the provisions of Schedule 3 to these Regulations.

(4) A solicitor shall not give advice and assistance to any person until either the form referred to in regulation 5(3) has been signed by the client or, where appropriate, the form referred to in regulation 6(3) has been signed on behalf of the client, and in any case until the solicitor has determined the matters referred to in paragraphs (1) and (3).

Children and patients

8.—(1) A solicitor shall not accept an application for advice and assistance from a child unless he has been authorised to do so by the appropriate area committee and it shall withhold such authority unless it is satisfied that it is reasonable in the circumstances that the child should receive advice and assistance.

(2) A solicitor may accept an application for advice and assistance on behalf of a child or patient from—

(*a*) in the case of a child, his parent, guardian or other person in whose care he is; or

(*b*) in the case of a patient, his spouse, or receiver appointed under Part VIII of the Mental Health Act 1959 or nearest relative or guardian within the meaning of Part IV of the Mental Health Act 1959; or

(*c*) in the case of a child or a patient, a person acting for the purposes of any proceedings as his next friend or guardian *ad litem*; or

(*d*) in the case of a child or a patient, any other person where the appropriate area committee is satisfied that it is reasonable in the circumstances and has given prior authority for the advice and assistance to be given to such other person on behalf of the child or patient.

Clients resident outside England and Wales

9. Where the client resides outside England and Wales the appropriate area committee may give the solicitor prior authority to accept a postal application

for advice and assistance if it is satisfied that it is reasonable in the circumstances to do so.

Advice and assistance from more than one solicitor

10. A person shall not be given advice and assistance for the same matter by more than one solicitor without the prior authority of the appropriate area committee, and such authority may be given on such terms and conditions as the committee may in its discretion see fit to impose.

Separate matters

11. Where more than one separate matter is involved each matter shall be the subject of a separate application for advice and assistance provided that matters connected with or arising from proceedings for divorce or judicial separation, whether actual or prospective between the client and his spouse, shall not be treated as separate matters for the purpose of advice and assistance.

Refusal of advice and assistance

12. A solicitor shall be entitled for reasonable cause either to refuse to accept an application for advice and assistance or (having accepted an application) to decline to give advice and assistance and may, if he thinks fit, refuse to disclose his reasons for doing so to the client or person seeking advice and assistance on his behalf; but he shall give the appropriate area committee such information about such a refusal as the committee may require for the purpose of performing its functions under the scheme.

Power to require information

13. An appropriate area committee may require a solicitor who has given advice and assistance to furnish such information as it may from time to time require for the purpose of performing its functions under the scheme and the solicitor shall not be precluded, by reason of any privilege arising out of the relationship between solicitor and client, from disclosing such information to it.

Entrusting functions to others

14. Nothing in these Regulations shall prevent a solicitor from entrusting any function under these Regulations to a partner of his or to a competent and responsible representative of his employed in his office or otherwise under his immediate supervision.

Extensions

15.—(1) Subject to paragraph (2) and regulation 17(5), where it appears to the solicitor that the cost of giving advice and assistance is likely to exceed the limit applicable under section 3(2) of the Act, he shall apply to the appropriate area committee for an extension and shall furnish such information as may enable the committee to consider and determine that application.

(2) No extension shall be required under paragraph (1) if the advice and assistance relates to matters of such a kind, and its cost will not exceed such an amount, as may be specified in any notice given by the appropriate area committee, with the consent of The Law Society, that it will approve the said limit being exceeded in the classes of case mentioned in the notice.

(3) Where an appropriate area committee receives an application in accordance with paragraph (1) it shall consider—

(*a*) whether it is reasonable for the advice and assistance to be given; and

(*b*) whether the estimated amount of the costs to be incurred in giving advice and assistance is fair and reasonable.

(4) If the appropriate area committee is satisfied that it is reasonable for the advice and assistance to be given and that the estimated amount of the costs to be incurred in giving advice and assistance is fair and reasonable it shall grant an extension and shall prescribe such higher limit as it thinks fit and may limit the advice and assistance to such subject matter as it thinks fit.

Approval of assistance by way of representation

16.—The appropriate authorities for the approval of assistance by way of representation under section 2A of the Act in respect of the proceedings specified in Schedule 4 shall be—

(*a*) the appropriate area committee; or

(*b*) the appropriate local committee,

provided that a secretary may approve such an application on behalf of his committee and that in every case in which he does not do so he shall refer the application to his committee for its consideration and approval or refusal as the case may be.

Applications for approval of assistance by way of representation

17.—(1) Where it appears to the solicitor that the client needs assistance by way of representation, he shall apply to the appropriate authority for approval.

(2) The application shall be on a form approved by The Law Society and the solicitor shall supply such information as may enable the appropriate authority to consider and determine it.

(3) An application for approval shall not be granted unless it is shown that there are reasonable grounds for taking, defending, or being a party to the proceedings to which the application relates, and an application may be refused if it appears unreasonable that approval should be granted in the particular circumstances of the case.

(4) The appropriate authority may grant an application for approval in whole or in part and may impose such conditions as to the conduct of the proceedings to which its approval relates as it thinks fit, and in particular it shall be a condition of every approval that the prior permission of the appropriate area committee shall be required—

(*a*) to obtain a report or opinion of an expert; or

(*b*) to tender expert evidence; or

(*c*) to perform an act which is either unusual in its nature or involves unusually large expenditure;

unless such permission has been included in the grant of approval.

(5) An approval of assistance by way of representation shall include an extension in respect of the matter to which it relates and, without prejudice to paragraph 4, the appropriate authority may prescribe such higher limit as it thinks fit.

(6) Any decision of an appropriate authority regarding an application for assistance by way of representation shall be final.

Counsel

18. Where it appears to the solicitor that the proper conduct of proceedings in respect of which assistance by way of representation has been granted requires the instruction of counsel, he may apply to the appropriate authority for its approval and it shall grant its approval if it considers that the proper conduct of the proceedings requires counsel.

Representation by a solicitor within the precincts of the court

19. The approval of an appropriate authority shall not be required for assistance by way of representation given by a solicitor to any party to proceedings (whether criminal or civil) before a magistrates' court or to proceedings before a county court, provided that the cost of such assistance does not exceed the limit imposed by virtue of section 3(2) of the Act, where the assistance is given in compliance with a request which is made to the solicitor by the court or given in accordance with a proposal which is made by the solicitor and approved by the court and which (in either case)—

(*a*) is so made or approved at a time (whether at or after the beginning of the proceedings) when the solicitor is present within the precincts of the court, but

(*b*) is not made or approved at any such time as is mentioned in section 2(2) (*a*) or (*b*) of the Act.

Notification of approval of assistance by way of representation

20. Where assistance by way of representation has been approved and the client becomes a party to proceedings or is already a party to proceedings, the solicitor shall as soon as practicable notify any other party to the proceedings and the court in which the proceedings are pending.

Withdrawal of approval of assistance by way of representation

21.—(1) An appropriate area committee shall withdraw approval of assistance by way of representation from such date as it considers appropriate where, as a result of information which has come to its knowledge, it considers that—

(*a*) the client no longer has reasonable grounds for taking, defending or being a party to the proceedings, or for continuing to do so; or

(*b*) the client has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund; or

(*c*) it is unreasonable in the particular circumstances that the client should continue to receive assistance by way of representation.

(2) When approval of assistance by way of representation is withdrawn the appropriate area committee shall notify the solicitor who shall forthwith—

(*a*) inform his client; and

(*b*) if proceedings have been commenced, send a copy of the notice to the court and to any other party to the proceedings to which the approval related.

(3) Withdrawal of approval shall be without prejudice to any subsequent application for legal aid or for approval of assistance by way of representation in respect of the same proceedings.

Collection and refund of contributions

22.—(1) Where a client is required to make a contribution in respect of the cost of advice and assistance, the solicitor may collect that contribution in such instalments as may be agreed between him and the client and where the total contribution is likely to exceed the cost of giving advice and assistance, he shall not require the client to pay a sum higher than would be expected to defray his costs.

(2) Where the charges or fees properly chargeable for the advice and assistance are less than any contribution made by the client, the solicitor shall refund the balance.

Charges or fees payable out of the Legal Aid Fund

23.—(1) Where the charges or fees properly chargeable for the advice and assistance exceed any contribution payable by the client to the solicitor under section 4 of the Act together with the value of any charge arising under section 5 of the Act, the solicitor shall submit a bill to the appropriate area committee requesting payment of the deficiency.

(2) Where the bill does not relate to approved assistance by way of representation in respect of which counsel has been instructed, the appropriate area committee shall assess it and pay the assessed deficiency, if any, to the solicitor.

(3) Where the bill relates to approved assistance by way of representation in respect of which counsel has been instructed and the appropriate area committee considers that the proper conduct of the proceedings required counsel, or the instruction of counsel has been approved under regulation 18, it shall—

(*a*) assess the solicitor's fees and charges excluding counsel's fee, and pay the assessed deficiency, if any, to the solicitor, and

(*b*) assess the counsel's fee, allow him such sum as it considers fair and reasonable remuneration for work necessarily done by him and pay him the amount so allowed less the amount, if any, by which the value of any charge arising under section 5 of the Act together with the amount of any contribution payable by the client under section 4 of the Act exceeds the amount allowed to the solicitor on the assessment of his bill.

(4) Where the bill relates to approved assistance by way of representation in respect of which counsel has been instructed without obtaining prior approval under regulation 18, and the appropriate area committee considers that the proper conduct of the proceedings did not require counsel it shall—

(*a*) determine the assessed deficiency on the basis that counsel had not been instructed and the solicitor had conducted the case on his own;

(*b*) allow the amount which it would have allowed counsel under paragraph (3) above and pay counsel what it would have paid him under that paragraph to the extent of the assessed deficiency; and

(*c*) pay the balance of the net deficiency if any to the solicitor.

(5) If any solicitor or counsel is dissatisfied with any decision of an appropriate area committee as to the payment of a deficiency in his charges or fees for advice and assistance he may within 21 days of the date of the written notification to him make written representations to the Council of The Law Society who shall review the assessment of the committee and shall allow such amount

as appears to it to constitute fair and reasonable remuneration for work necessarily and reasonably done in connection with the matter on which the advice and assistance was sought, whether by confirming, increasing or decreasing the amount assessed by the committee.

Recovery of costs

24.—(1) Where moneys are payable to the client by virtue of an order for costs made in connection with proceedings for which assistance by way of representation has been approved, payment shall be made to the clerk to the justices who shall pay it to The Law Society and only the clerk to the justices shall be able to give a good discharge therefor.

(2) The appropriate area committee shall, save where a payment has been made under paragraph (3), pay to the solicitor such portion of the amount paid to The Law Society under paragraph (1) as corresponds to the charge created in his favour thereon under section 5(3) (*a*) of the Act, and pay any balance to the client.

(3) The appropriate area committee may in addition to any payment under regulation 23, pay the solicitor an amount not greater than the amount payable to The Law Society under paragraph (1) and where such a payment is made it shall require the solicitor to assign his charge under section 5(3) (*a*) of the Act to The Law Society.

Exceptions to charge on property recovered or preserved

25. The provisions of section 5(3) (*b*) of the Act shall not apply to the matters specified in Schedule 5.

Authority not to enforce the charge

26. Where in the opinion of the solicitor—

(*a*) it would cause grave hardship or distress to the client to enforce the charge on any money or property recovered or preserved for him, or

(*b*) the charge on any property recovered or preserved could be enforced only with unreasonable difficulty because of the nature of the property,

the solicitor may apply to the appropriate area committee for authority not to enforce, either wholly or partly, the charge and, if the committee so authorises, any deficiency in the solicitor's costs shall be computed as if section 5(3) (*b*) of the Act did not apply to that money or property or to such part of it as the committee may have authorised.

Costs awarded against a client

27. Where proceedings have been concluded in which a client is or was in receipt of assistance by way of representation and an order for costs has been made against him in those proceedings, the amount of his liability for costs (if any) shall be determined in accordance with Schedule 6 to these Regulations.

False statements, etc.

28. Where a client has wilfully failed to comply with the provisions of these Regulations as to the information to be furnished by him or, in furnishing such information, has knowingly made a false statement or false representation and after the failure occurred or the false statement or false representation was made

the client received advice and assistance, The Law Society may declare that the advice and assistance so given was not given under the Act and these Regulations and, if they do, shall so inform the client and the solicitor; and thereafter The Law Society shall be entitled to recover from the client any sums paid out of the Fund in respect of the advice and assistance so given.

Hailsham of St. Marylebone, C.

Dated 25th March 1980.

We concur,

Dated 28th March 1980.

David Waddington,
J. A. Douglas-Hamilton,

Two of the Lords Commissioners
of Her Majesty's Treasury.

SCHEDULE 1 *Regulation 2*

REGULATIONS REVOKED

Title	*Reference*
The Legal Advice and Assistance Regulations 1973	S.I. 1973/349
The Legal Advice and Assistance (Amendment) Regulations 1973	S.I. 1973/1474
The Legal Advice and Assistance (Amendment) Regulations 1977	S.I. 1977/182
The Legal Advice and Assistance (Amendment No. 2) Regulations 1977	S.I. 1977/1716
The Legal Advice and Assistance (Amendment) Regulations 1978	S.I. 1978/1569
The Legal Advice and Assistance (Amendment) Regulations 1979	S.I. 1979/281

SCHEDULE 2 *Regulation 7(1)*

ASSESSMENT OF RESOURCES

1. In this Schedule, unless the context otherwise requires—

"capital" means the amount or value of every resource of a capital nature;

"income" means the total income from all sources which the person concerned received or became entitled to during or in respect of the seven days up to and including the date of his application;

"the person concerned" means the person whose disposable capital and disposable income are to be determined.

2. Any question arising under this Schedule shall be decided by the solicitor to whom the client has applied and that solicitor, in deciding any such question, shall have regard to any guidance which may from time to time be given by The Law Society as to the application of this Schedule.

3. The disposable capital and disposable income of the person concerned shall be the capital and income as determined by the solicitor after deducting any sums which are to be left out of account or for which allowance is to be made under the provisions of this Schedule.

4. The resources of any person who, under section 17 of the Supplementary Benefits Act 1976 **(a)** is liable to maintain a child or who usually contributes substantially to a child's maintenance, or who has care and control of the child, not being a person who has such care and control by reason of any contract or for some temporary purpose, may be treated as the resources of the child, if, having regard to all the circumstances, including the age and resources of the child and to any conflict of interest it appears just and equitable to do so.

(a) 1976 c.71.

5. If it appears to the solicitor that the person concerned has, with intent to reduce the disposable capital or disposable income or maximum contribution, directly or indirectly deprived himself of any resource or has converted any part of his resources into resources which are to be left out of account wholly or partly, the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted, as the case may be.

6. In computing the capital and income of the person concerned—

(*a*) there shall be left out of account the value of the subject matter of any claim in respect of which he is seeking advice or assistance;

(*b*) the resources of any spouse of his shall be treated as his resources unless—

(i) the spouse has a contrary interest in the matter in respect of which he is seeking advice and assistance, or

(ii) the person concerned and his spouse are living separate and apart, or

(iii) in all the circumstances of the case it would be inequitable or impracticable to do so.

7. In computing the capital of the person concerned—

(*a*) there shall be left out of account the value of the main or only dwelling in which he resides and the value of his household furniture and effects, of articles of personal clothing and of the tools and implements of his trade;

(*b*) where the person concerned resides in more than one dwelling in which he has an interest there shall be taken into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which may be obtained by borrowing money on the security thereof;

(*c*) where the person concerned has living with him one or more of the following persons, namely, a spouse whose resources are required to be aggregated with his, a dependent child or a dependent relative wholly or substantially maintained by him, a deduction shall be made of £200 in respect of the first person, £120 in respect of the second and £60 in respect of each further person.

8. In computing the income of the person concerned—

(*a*) there shall be left out of account—

(i) any Income Tax paid or payable on income treated under the provisions of this Schedule as his income;

(ii) contributions estimated to have been paid under the Social Security Acts 1975-1979 **(a)** or any scheme made under those Acts during or in respect of the seven days up to and including the date of the application for advice and assistance;

(*b*) there shall be a deduction in respect of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent child and in respect of the maintenance of any dependent relative of the person concerned, being (in either of such cases) a member of his or her household, at the following rates—

(i) in the case of a spouse at a rate equivalent to 50 per cent. above the amount by which the amount of rate B in sub-paragraph (*a*) of paragraph 7 of Schedule 1 to the Supplementary Benefits Act 1976 **(b)** for a husband and wife exceeds the amount of rate B in sub-paragraph (*b*) of that paragraph for a person living alone;

(ii) in the case of a dependent child or a dependent relative at a rate equivalent to 50 per cent. above the amount in sub-paragraph (*c*) of paragraph 7 of the said Schedule 1 appropriate to the age of the child or relative, rate A being taken in the case of any person aged not less than 18 years.

(a) 1975 c.14 and 1979 c.18. (b) 1976 c.71.

9. If the person concerned is making bona fide payments for the maintenance of a spouse who is living apart, of a former spouse, of a child or relative who is not (in any such case) a member of the household of the person concerned, there shall be a deduction of such payment as was or will be made in respect of the seven days up to and including the date of the application for advice and assistance.

10. Where it appears to the solicitor that there has been some error or mistake in the determination of the disposable income, disposable capital or maximum contribution of the person concerned, he may re-determine the disposable income or disposable capital or maximum contribution or, as the case may be, amend the determination and in the latter case the amended determination shall for all purposes be substituted for the original determination.

SCHEDULE 3 *Regulation 7(3)*

CONTRIBUTIONS BY CLIENTS

The contribution payable by a client under section 4(2) of the Act where his disposable income falls within a range specified in the first column of the following table, is the amount specified in relation to that range in the second column.

Disposable income range	*Maximum Contribution*
Exceeding £40 but not exceeding £50 a week	£5
Exceeding £50 but not exceeding £53 a week	£9
Exceeding £53 but not exceeding £56 a week	£13
Exceeding £56 but not exceeding £59 a week	£17
Exceeding £59 but not exceeding £62 a week	£21
Exceeding £62 but not exceeding £65 a week	£25
Exceeding £65 but not exceeding £68 a week	£29
Exceeding £68 but not exceeding £71 a week	£33
Exceeding £71 but not exceeding £74 a week	£37
Exceeding £74 but not exceeding £77 a week	£41
Exceeding £77 but not exceeding £80 a week	£45
Exceeding £80 but not exceeding £85 a week	£49

SCHEDULE 4 *Regulation 16*

PROCEEDINGS IN RESPECT OF WHICH ASSISTANCE BY WAY OF REPRESENTATION MAY BE APPROVED

1. In this Schedule—

"proceedings in a magistrates' court" includes giving notice of appeal or applying for a case to be stated, within the ordinary time for so doing, and matters preliminary thereto.

2. Proceedings in respect of which assistance by way of representation may be approved are proceedings in a magistrates' court—

(*a*) for or in relation to an affiliation order within the meaning of the Affiliation Proceedings Act 1957**(a)**;

(*b*) for or in relation to an order under the Matrimonial Proceedings (Magistrates' Courts) Act 1960**(b)**;

(*c*) under the Guardianship of Minors Acts 1971**(c)** and 1973**(d)**;

(a) 1957 c.55. **(b)** 1960 c.48. **(c)** 1971 c.3. **(d)** 1973 c.29.

(*d*) under section 2 or 4 of the Children Act 1948(**a**), section 43 of the National Assistance Act 1948(**b**), section 22 of the Maintenance Orders Act 1950(**c**), section 4 of the Maintenance Orders Act 1958(**d**), section 3 of the Children and Young Persons Act 1963(**e**) or section 18 of the Supplementary Benefits Act 1976;

(*e*) in relation to an application for leave of the court to remove a child from a person's custody under section 34 or 34A of the Adoption Act 1958(**f**) or proceedings in which the making of an order under Part I of the Children Act 1975(**g**) is opposed by any party to the proceedings;

(*f*) proceedings in which the making of an order under Part II or section 29 or 55 of the Adoption Act 1976(**h**) is opposed by any party to the proceedings;

(*g*) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972(**i**) relating to a maintenance order made by a court of a country outside the United Kingdom;

(*h*) under Part II of the Children Act 1975(g);

(*i*) under section 63(2) of the Children Act 1975(g);

(*j*) for or in relation to an order under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978(j).

Regulation 25

SCHEDULE 5

EXCEPTIONS TO CHARGE ON PROPERTY RECOVERED OR PRESERVED

The provisions of section 5(3)(*b*) of the Act shall not apply to—

(*a*) any periodical payment of maintenance, which for this purpose means money or money's worth paid towards the support of a spouse, former spouse, child or any other person for whose support the payer has previously been responsible or has made payments;

(*b*) any dwelling, household furniture or tools of trade recovered or preserved for the client as a result of advice and assistance given to him by the solicitor;

(*c*) the first £2,500 of any money or of the value of any property recovered or preserved by virtue of—

(i) an order made, or deemed to be made, under the provisions of section 23(1)(*c*), 23(2), 24, 27(6)(*c*), or 35 of the Matrimonial Causes Act 1973(**k**);

(ii) an order made, or deemed to be made, under the provisions of sections 2 or 6 of the Inheritance (Provision for Family and Dependants) Act 1975(**l**);

(iii) an order made, or deemed to be made, under section 17 of the Married Women's Property Act 1882(**m**); or

(iv) an agreement which has the same effect as an order made, or deemed to be made, under any of the provisions specified in this sub-paragraph;

(**a**) 1948 c.43. (**b**) 1948 c.29. (**c**) 1950 c.37. (**d**) 1958 c.39. (**e**) 1963 c.37.

(**f**) 1958 c.5 (7 & 8 Eliz. 2).

(**g**) 1975 c.72, (Part II and section 63(2) have not yet been brought into force. They will be brought into force by an order, or orders, under s.108 of the Children Act 1975.)

(**h**) 1976 c.36. (This provision has not yet been brought into force. It will be brought into force by an order under s.74 of the Adoption Act 1976.)

(**i**) 1972 c.18.

(**j**) 1978 c.22. (Not all of these provisions have yet been brought into force. The remaining provisions will be brought into force by an order, or orders, under s.89(3) of the Domestic Proceedings and Magistrates' Courts Act 1978.)

(**k**) 1973 c.18. (**l**) 1975 c.63. (**m**) 1882 c.75.

(*d*) moneys payable as unemployment benefit, sickness benefit, invalidity benefit, retirement pension, death grant, maternity benefit, widows benefit, child special allowance, attendance allowance, invalid care allowance, mobility allowance, guardian allowance or injury benefit under the Social Security Act 1975, as amended;

(*e*) supplementary benefit, family income supplement and benefit payable under the Child Benefit Act 1975(**a**);

(*f*) allowances and benefit payable under the Industrial Injuries and Diseases (Old Cases) Act 1975(**b**);

(*g*) any rebate or allowance under Part II of the Housing Finance Act 1972(**c**);

(*h*) one-half of any redundancy payment within the meaning of Part VI of the Employment Protection (Consolidation) Act 1978(**d**) recovered or preserved for the client;

(*i*) any payment of money in accordance with an order made under section 136 of the Employment Protection (Consolidation) Act 1978 by the Employment Appeal Tribunal.

SCHEDULE 6 *Regulation 27*

Costs Awarded Against a Client

1. No costs attributable to the period during which a client was in receipt of assistance by way of representation shall be recoverable from him until the court has determined the amount of his liability in accordance with section 2A(5) of the Act:

Provided that where the assistance by way of representation does not relate to or has been withdrawn so that it no longer relates to the whole of the proceedings the court shall nevertheless make a determination in respect of that part of the proceedings to which the approval of assistance by way of representation relates.

2. The court may, if it thinks fit, refer to the clerk to the justices for investigation any question of fact relevant to the determination, requiring him to report his findings on that question to the court.

3. In determining the amount of the client's liability his dwelling-house and household furniture and the tools and implements of his trade shall be left out of account to the like extent as they are left out of account by the solicitor in determining the client's disposable income and disposable capital.

4. Any person, not being himself a client, who is a party to proceedings to which the client is a party may, at any time before the judgment, lodge with the clerk to the justices an affidavit exhibiting thereto a statement setting out the rate of his own income and amount of his own capital and any other facts relevant to the determination of his means in accordance with Section 2A(5) of the Act and shall serve a copy thereof together with the exhibit upon the client's solicitor and such affidavit and exhibit shall be evidence of the facts stated therein.

5. The court may, if it thinks fit, order the client and any party who has filed an affidavit in accordance with paragraph (4) of this Schedule to attend for oral examination as to his means and as to any other facts relevant to the determination of the amount of the client's liability and may permit any party to give evidence and call witnesses thereon.

(a) 1975 c.61. **(b)** 1975 c.16. **(c)** 1972 c.47. **(d)** 1978 c.44.

6. The court may direct:—

(*a*) that payment under the order for costs shall be limited to such amount payable in instalments or otherwise as the court thinks reasonable having regard to all the circumstances; or

(*b*) where the court thinks it reasonable for payment under sub-paragraph (*a*) not to be made immediately, that payment under the order for costs be suspended either until such date as the court may determine or *sine die*.

7. The party in whose favour an order is made may within 6 years from the date thereof apply to the court for the order to be varied on the grounds that:—

(*a*) material additional information as to the client's means, being information which could not have been obtained by that party with reasonable diligence at the time the order was made, is available; or

(*b*) there has been a change in the client's circumstances since the date of the order,

and on any such application the order may be varied as the court thinks fit but save as aforesaid the determination of the court shall be final.

8. Where an order for costs is made against a client who is concerned in the proceedings solely in a representative, fiduciary or official capacity, he shall have the benefit of section 2A(5) of the Act and his personal resources shall not (unless there is reason to the contrary) be taken into account for that purpose, but regard shall be had to the value of the property or estate, or the amount of the fund out of which he is entitled to be indemnified.

9. Where a client is a child, his means for the purpose of determining his liability for costs under section 2A(5) of the Act shall be taken as including the means of any person whose disposable income and disposable capital has, by virtue of Schedule 2 to these Regulations been included in assessing the child's resources.

10. Where an order for costs is made against a next friend or guardian *ad litem* of a client who is a child or patient, he shall have the benefit of section 2A(5) of the Act in like manner as it applies to a client, and the means of the next friend or guardian *ad litem* shall be taken as being the means of the child as defined in paragraph (9) or, as the case may be, of the patient.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations are made under the provisions of Parts I and III of the Legal Aid Act 1974, as amended by the Legal Aid Act 1979. They consolidate the previous regulations, with amendments, and introduce assistance by way of representation.

Assistance by way of representation may be approved in specified proceedings (regulation 16, Schedule 4). Approval may be subject to conditions and in particular prior authority must be obtained before obtaining a report or expert opinion (regulation 17). The regulations also deal with payments to solicitors and counsel (regulation 23), costs awarded to successful assisted persons, "clients", (regulation 24) as well as costs awarded against them (regulation 27).

The principal amendments to the previous regulations relate to the powers of secretaries of appropriate committees (regulation 4), and the submission of applications for advice and assistance: generally (regulation 5), applications on behalf of others (regulation 6), children and patients (regulation 8) and persons resident outside England and Wales (regulation 9). The regulations also contain the table of maximum contributions previously in section 4(3) of the Legal Aid Act 1974 (Schedule 3).