

2006 No. 2490

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Criminal Defence Service (General) (No. 2) (Amendment)
Regulations 2006**

<i>Made</i> - - - -	<i>11th September 2006</i>
<i>Laid before Parliament</i>	<i>11th September 2006</i>
<i>Coming into force</i> - -	<i>2nd October 2006</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred on him by sections 13(1), 15(2) and 26 of, and paragraphs 2(1), (4) and (5) and 3 of Schedule 3 to, the Access to Justice Act 1999(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Criminal Defence Service (General) (No. 2) (Amendment) Regulations 2006 and come into force on 2nd October 2006.

(2) In these Regulations, a regulation or Schedule referred to by number alone means the regulation or Schedule so numbered in the Criminal Defence Service (General) (No. 2) Regulations 2001(b).

Amendments to the Criminal Defence Service (General) (No. 2) Regulations 2001

2. In regulation 2 (interpretation), in the definition of “appropriate officer”, after “justice’s clerk” insert “or designated officer”.

3. In regulation 5(8)(e) (advice and assistance – financial eligibility), omit “state pension”.

4. In regulation 6 (representation order)—

(a) for paragraph (1), substitute—

“(1) The date of any representation order is the date on which the application for the grant of such an order is received in accordance with these Regulations.”;

(b) in paragraph (2), for “the proceedings mentioned in section 12(2)(a) to (f) of the Act, and those mentioned in regulation 3(2)(h)” substitute “proceedings in the Crown Court or the Court of Appeal which are mentioned in section 12(2)(a) to (f) of the Act and in regulation 3(2)(h)”;

(a) 1999 c.22. Section 26 includes definitions of ‘regulations’ and ‘prescribed’. The powers conferred by sections 13, 15 and 26 and paragraphs 2 and 3 of Schedule 3 were transferred to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887) and were transferred back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429). Paragraph 2 of Schedule 3 was amended by section 1(2) to (5) of the Criminal Defence Service Act 2006 (c.9).

(b) S.I. 2001/1437. Relevant amending instruments are S.Is. 2002/712, 2003/644 and 2004/2046.

- (c) in paragraph (2), omit “8,”;
- (d) in paragraph (5), for “17” substitute “18”.

5. In regulation 7 (general power to grant representation), for “the proceedings” substitute “criminal proceedings (other than criminal proceedings in a magistrates’ court)”.

6. Omit regulation 8 (proceedings in a magistrates’ court).

7. In regulation 9(1) (proceedings in the Crown Court)—

- (a) after “may be made”, insert “, where an application for such an order in respect of the proceedings in a magistrates’ court has not been made or has been refused”;
- (b) in each of sub-paragraphs (c) and (d), omit “orally or”;
- (c) in sub-paragraph (g), omit “was granted a representation order for proceedings in a magistrates’ court and”.

8. In regulation 17 (withdrawal of representation)—

(a) for paragraph (1) substitute—

“(1) Where any charge or proceedings against the assisted person are varied, the court before which the proceedings are heard or, in respect of any proceedings mentioned in regulation 3(2)(a) to (g), the Commission, must—

- (a) consider whether the interests of justice continue to require that he be represented in respect of the varied charge or proceedings; and
- (b) withdraw the representation order if the interests of justice do not so require.

(1A) The court before which the proceedings are heard or, in respect of any proceedings mentioned in regulation 3(2)(a) to (g), the Commission, must consider whether to withdraw the representation order in any of the following circumstances—

- (a) where the assisted person declines to accept the order in the terms which are offered;
- (b) otherwise at the request of the assisted person; or
- (c) where the representative named in the representation order declines to continue to represent the assisted person.”;

(b) in paragraph (3), for the words from “he shall declare” to the end, substitute—

- “(a) he must declare the withdrawal of the previous representation order and the reason for it; and
- (b) where the representation order was withdrawn in the circumstances set out in paragraph (1) or paragraph (1A)(a) or (b) and a representation order is subsequently granted, the court or the Commission, as appropriate, must select the same representative, unless it considers that there are good reasons why it should select a different representative.”.

9. In paragraph 8(1)(c) of Schedule 1 (assessment of resources)—

- (a) in sub-paragraph (ii), omit “or Schedule 8 paragraphs 4 or 7(2)”;
- (b) in sub-paragraph (iii), after “section 104” insert “or paragraph 4 or 7(2) of Schedule 8”.

10. Omit Schedule 2 (form A).

Date 11 September 2006

Vera Baird
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Defence Service (General) (No 2) Regulations 2001 (S.I. 2001/1437) in consequence of the transfer of responsibility for granting rights to representation in criminal proceedings in magistrates' courts from the court to the Legal Services Commission (regulations 4 to 7). They also remove the requirement that applications for representation orders be made on a prescribed form (regulations 4 and 10) and add a provision that where a representation order is withdrawn and a new order granted, the same representative should usually be appointed (regulation 8). Regulations 2 to 4 and 7 to 9 make other minor amendments to the 2001 Regulations. The Regulations take effect on 2nd October 2006, when the relevant amendments to the Access to Justice Act 1999 made by the Criminal Defence Service Act 2006 come into force.

A regulatory impact assessment has been prepared for instruments relating to the Criminal Defence Service Act, which is available from Criminal Legal Aid Strategy Division, Department for Constitutional Affairs, Selborne House, 54 Victoria Street, London SW1E 6QW and can also be found at <http://www.dca.gov.uk/risk/crime-defence-act-ria.pdf>.

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