



**THE OFFENDERS LEGAL AID REGULATIONS 1972,
AMENDMENT NO. 7**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 27th day of November 1989

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 3 of the Offenders Legal Aid Act 1954, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Offenders Legal Aid Regulations 1972, Amendment No. 7, and shall be

read together with and deemed part of the Offenders Legal Aid Regulations 1972* (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 1st day of January 1990.

2. Interpretation—The principal regulations are hereby amended by revoking regulation 2, and substituting the following regulation:

“2. (1) In these regulations, unless the context otherwise requires,—

“‘The Act’ means the Offenders Legal Aid Act 1954:

“‘District Court’ includes a Youth Court:

“‘Judge’ includes a District Court Judge:

“‘Practitioner’ means a barrister or solicitor of the High Court.

“(2) In these regulations, a reference to a numbered form is a reference to the form so numbered in the First Schedule to these regulations.”

3. Application for legal aid—The principal regulations are hereby amended by revoking regulation 4 (as substituted by regulation 2 of the Offenders Legal Aid Regulations 1972, Amendment No. 1), and substituting the following regulation:

“4. An application for the grant of legal aid shall, unless the Court otherwise allows,—

(a) Be made in form 1; and

(b) Be accompanied by a statement of the applicant’s means, which statement shall be in the form provided by the Registrar of the Court.”

4. Hearing of application—Regulation 5 of the principal regulations is hereby amended by revoking subclauses (1) and (2), and substituting the following subclause:

“(1) Where, by the Act or these regulations, power is conferred on a Court in respect of an application for the grant of legal aid, that power may be exercised by the Court at the hearing or at any other time by a Judge or Registrar of the Court.”

5. Persons jointly charged—Regulation 7 of the principal regulations is hereby amended by inserting, after the word “Court”, the words “or a Judge or Registrar of the Court”.

6. Assignment of practitioner—The principal regulations are hereby amended by revoking regulation 8 (as amended by regulation 5 of the Offenders Legal Aid Regulations 1972, Amendment No. 4), and substituting the following regulation:

“8. (1) Where a Court or Judge directs that legal aid be granted to any person, the Registrar of the Court in which the application is heard, or the Registrar of the Court in which the proceeding is to be determined, shall, subject to any direction of the Court or the Judge, assign a practitioner from the list or (as the case may require) the appropriate subdivision of the list kept pursuant to regulation 3 of these regulations.

*S.R. 1972/176

Amendment No. 1: S.R. 1976/269

Amendment No. 2: (Revoked by S.R. 1984/317)

Amendment No. 3: (Revoked by S.R. 1984/317)

Amendment No. 4: S.R. 1984/317

Amendment No. 5: (Revoked by S.R. 1988/146)

Amendment No. 6: S.R. 1988/146

“(2) If there is no such list, or if none of the practitioners named in the list or (as the case may require) the appropriate subdivision of the list is willing or reasonably available to act, the Registrar shall, subject to any direction of the Court or the Judge, assign some other practitioner who is willing to act.

“(3) Notwithstanding anything in subclauses (1) and (2) of this regulation, where legal aid is granted to any person in respect of a charge of murder or treason, any practitioner whom that person desires to defend him or her, and who is willing to act, may be assigned, whether or not the name of that practitioner appears on the list.

“(4) Where a Registrar directs that legal aid be granted to any person, that Registrar shall assign a practitioner in accordance with subclauses (1) to (3) of this regulation as if the direction had been given by the Court.

“(5) No more than one counsel shall be assigned in any case, unless because of the complexity of the proceedings the Court or a Judge or Registrar otherwise directs.

“(6) At the request of the assigned practitioner, the Registrar may at any stage of the proceedings assign any other practitioner in the assigned practitioner’s place.”

7. New regulations inserted—The principal regulations are hereby amended by inserting, after regulation 9, the following regulations:

“**9A. Notice of result of application**—(1) The Registrar of any Court in which an application for the grant of legal aid is heard shall, as soon as practicable after a direction is made in respect of that application, give notice to the applicant of the result of that application.

“(2) Every such notice shall be in form 2, and may be given by personally delivering the notice to the applicant or by posting it to the applicant in a letter addressed to the applicant at the address stated on the application.

“(3) Where such notice is given by letter, the notice shall be deemed to have been received by the applicant when the letter would have been delivered in the ordinary course of post.

“**9B. Review of decision of Registrar**—(1) Every application under section 2A of the Act for a review of the decision of a Registrar shall be in form 3.

“(2) Every such application shall be made within 14 days after notice of the decision is delivered or posted to the applicant, or within such further time as a Judge of the Court to which the application is to be made may allow on application made before or after the expiration of that period.”

8. Cancellation of legal aid—Regulation 10 (1) of the principal regulations is hereby amended by inserting, after the word “Court” in both places where it occurs, the words “or Judge”.

9. Practitioners not to receive other remuneration—Regulation 11 of the principal regulations is hereby amended—

(a) By omitting from the proviso to subclause (1) the words “or a District Court Judge, as the case may require,”;

(b) By inserting in the proviso to subclause (2), after the word “Judge”, the words “of the High Court”.

10. Fees of assigned practitioners—(1) Regulation 12 (3) of the principal regulations is hereby amended—

(a) By omitting the words “or District Court Judge”:

(b) By adding the words “, but in no case shall any fee so authorised exceed the maximum fee that would be payable to a Crown Solicitor, in accordance with the certified scale of fees for the time being in force under the Crown Solicitors Regulations 1987*, if a Crown Solicitor had been assigned in the proceedings”.

(2) Regulation 12 (5) of the principal regulations is hereby amended by omitting the expression “subclauses (1) and (2) of regulation 5”, and substituting the expression “regulation 5 (1)”.

11. Claim for fees, expenses, or disbursements—Regulation 17 (2) of the principal regulations is hereby amended by omitting the words “or District Court Judge”.

12. New First Schedule substituted—The principal regulations are hereby amended by revoking the First Schedule (as inserted by regulation 3 (1) of the Offenders Legal Aid Regulations 1972, Amendment No. 1), and substituting the First Schedule set out in the Schedule to these regulations.

13. Revocations—The following regulations are hereby consequentially revoked:

(a) Regulations 2 and 3 (1) of, and the Schedule to, the Offenders Legal Aid Regulations 1972, Amendment No. 1:

(b) Regulation 5 of the Offenders Legal Aid Regulations 1972, Amendment No. 4.

SCHEDULE

Reg. 12

NEW FIRST SCHEDULE SUBSTITUTED
"FIRST SCHEDULE

Forms

Form 1

Reg. 4

APPLICATION FOR LEGAL AID
Section 2, Offenders Legal Aid Act 1954

OLA No. /19

I,, born on,
(Name) (Date of birth)
of, apply for legal aid.
(Address) (Occupation)

I state as follows:

1. *I am to appear in the District Court at [Location]
on the day of 19 on
(a) charge(s) of [Nature of each charge faced]
[or]

*I am to appear in the High Court at [Location] on
the day of 19 for

*Trial on (a) charge(s) of [Nature of each charge faced]
[or]

*Sentence on (a) charge(s) of [Nature of each charge for
which sentence is to be pronounced]
[or]

*An appeal against [State whether appeal is against
conviction, or sentence, or both, and the nature of the charge(s) leading to the
conviction and sentence]
[or]

*I am appealing [or applying for leave to appeal] to the Court of Appeal
against [State whether appeal is against conviction, or
sentence, or both, and the nature of the charge(s) leading to the conviction and
sentence]

*Delete whichever is not applicable.

2. A statement of my means is attached.

3. My contact telephone numbers are: (home)
..... (work).

Signature of Applicant:

Date:

SCHEDULE—*continued*

“FIRST SCHEDULE—*continued*

Form 1—*continued*

APPLICATION FOR LEGAL AID—*continued*

FOR OFFICE USE ONLY

Legal Aid Granted/Refused

.....
Judge of the Court of Appeal
Judge of the High Court
District Court Judge
Registrar of the Court of Appeal
(*or High Court or District Court*)

Counsel Assigned [Name]

..... Registrar.

Scale 1 2

.....
Judge of the Court of Appeal
Judge of the High Court
District Court Judge

SCHEDULE—*continued*

“FIRST SCHEDULE—*continued*

Form 2

Reg. 9A (2)

NOTICE OF RESULT OF APPLICATION FOR LEGAL AID

Offenders Legal Aid Act 1954

In the Court OLA No.
at

TO: [Full name], of [Address],
..... [Occupation].

Your application for legal aid has been considered by a Judge (or District Court Judge or Registrar).

*You have been granted legal aid.

*You have been granted legal aid subject to the following directions:
[Specify the directions].

*You have been refused legal aid.

*The barrister or solicitor who has been appointed to represent you is
[Specify the barrister or solicitor's name, the name and address of his/her firm (if any),
and his/her contact telephone number].

*Delete if inapplicable.

.....
Registrar

.....
Date

NOTES

1. If you have been granted legal aid, you should contact the barrister or solicitor appointed to represent you without delay.
2. If you have been granted legal aid subject to any directions, you must comply with those directions. If you have any questions about them, you should discuss them with the barrister or solicitor appointed to represent you.
3. If your application for legal aid was considered by a Registrar, and you are dissatisfied in any way with the Registrar's decision, you have the right to apply for a review of that decision.

You must apply for a review within 14 days after notification of the Registrar's decision was delivered or posted to you. (The Court may extend that period in some cases).

You may obtain a form of application for a review from any Court office.



SCHEDULE—continued

“FIRST SCHEDULE—continued

Reg. 9B (1)

Form 3

APPLICATION FOR REVIEW OF DECISION OF REGISTRAR

Section 2A, Offenders Legal Aid Act 1954

In the Court OLA No.
at

I, [Full name], of [Address],
..... [Occupation], apply for a review of the Registrar’s
decision made in the District Court (or High Court or Court of Appeal)
at on the day of
19..... in respect of my application for legal aid.

This application is made on the following grounds: [State the grounds on
which the application is made].

Signature of applicant
Date

To: The Registrar,
..... Court,

This application is filed by
whose address for service is at

DATE OF HEARING

I appoint at at the
..... Court at for the hearing of this application.

.....
Registrar
.....
Date

DECISION OF JUDGE

The Registrar’s decision is
*confirmed.
*reversed.
*modified as follows: [Give details].
*Delete if inapplicable.

.....
Judge of the Court of Appeal
Judge of the High Court
District Court Judge
.....
Date.”

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 January 1990, amend the Offenders Legal Aid Regulations 1972.

The amendments are, in large part, consequent on the enactment of the Offenders Legal Aid Amendment Act 1989. The effect of that Act is that Court Registrars may now determine applications for offenders legal aid. These regulations amend the procedures set out in the principal regulations accordingly.

These regulations also amend the principal regulations so that—

- (a) Murder and treason cases are no longer an exception to the rule that only one counsel may be assigned in respect of a defendant. In all cases one counsel is to be assigned unless the complexity of the proceedings otherwise require;
- (b) A limit is imposed on the power to authorise payment of fees that exceed the scales set out in the Second Schedule to the principal regulations. In future, where any such payment is authorised, the fee is not to exceed the maximum fee that would be payable to a Crown Solicitor in accordance with the scale of fees certified by the Solicitor-General pursuant to the Crown Solicitors Regulations 1987.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 30 November 1989.

These regulations are administered in the Department of Justice.