

Regulations Round-Up

In addition to the eligibility changes and increases in scope described on pages 2-3, a number of other regulation changes are expected for April and May. At the time of going to print most of these regulations have yet to be finalised but full details will appear in the next Legal Aid Handbook. No remuneration changes are anticipated. These are the expected changes:

Mediation Pilots

These pilots were explained in the last edition of Focus. It is expected that by 1 May 1997 Part III of the Family Law Act 1996 will be brought into force and there will be regulations to provide for financial eligibility for mediation as well as dealing with the relationship between mediation and civil legal aid during the pilot.

Takeover of Means Assessment

A Functions Order has been approved by Parliament allowing for the Legal Aid Board to take over the responsibility for civil means assessment. This will be most important for the Special Investigations Unit which investigates complex cases. The unit will be operational in London as from 1 April 1997.

Criminal Standard Fees

There are two expected changes to Criminal Standard Fees.

Firstly, all committals for trials will be brought within the Standard Fees system. This is in line with the reforms contained in the Criminal Procedure and Investigation Act 1996. With effect from 1 April 1997 committals will qualify as a category 3 claim for a standard fee.

Secondly, as from a date yet to be confirmed, bail proceedings and other proceedings ancillary to a criminal case will not qualify for a separate standard fee. This regulation change will reverse the decision in the case of *R -v- Legal Aid Board ex parte Hepstonstalls*. The regulation will provide that bail proceedings, contempt proceedings and anything else flowing from the substantive criminal proceedings will not attract a separate standard fee.

Civil Legal Aid

Several changes are being introduced by the Civil Legal Aid (General) (Amendment) Regulations 1997 which will come into force on 31 March 1997. These provide that:

1. Solicitors may apply for a payment on account under Regulation 101 even after a certificate has been discharged. This confirms existing practice.
2. A person's tools of trade are to be made exempt from the legal aid statutory charge. This change will avoid the difficulty created in cases such as *Brooks -v- Harris*. Payments under the Secretary of State's Earnings Top-Up Scheme are also made exempt from the statutory charge.
3. Regulations 78 and 79 have been amended so that it is clear that if a person fails to disclose a material fact, makes an untrue statement or fails to co-operate in relation to one legal aid certificate, the Board is entitled to revoke or discharge other legal aid certificates.

Legal Aid Eligibility 1997

New eligibility limits will take effect from 7 April 1997. A new updated Key Card will be sent to all legal aid account holders shortly.

Income limits are rising by about 2.6%. Capital limits will remain unchanged. The rules on dependants' allowances are being changed in line with benefit changes.

Now that benefit changes are aligned to school years, children aged 11, 16 or 18 may fall into one of two bands depending on when their birthday falls. The rules are as follows:

- 11 year olds – if applying for legal aid before 1 September 1997, use the higher allowance for 11-16 year olds only if the child became 11 before 7 April 1997. If applying on or after 1 September 1997, use the higher

allowance only if the child became 11 before 1 September. In other cases use lower allowance for "up to 11".

- 16 year olds – if applying for legal aid before 1 September 1997, use the higher allowance for 16-18 year olds only if the child became 16 before 7 April 1997. If applying on or after 1 September 1997, use the higher allowance only if the child became 16 before 1 September. Otherwise use lower allowance for 11-16 year olds.
- 18 year olds – the higher allowance only applies where the dependant became 18 before 7 April 1997. In other cases use the allowance for 16-18 year olds.
- Over 18 – at time of printing further regulation changes are anticipated to

clarify the rules for allowances for dependants who are over 18. Any changes to the figures below will be published when known.

Note that all types of legal aid payments under the new Community Care Direct Payment scheme, which allows local authorities to release money directly to individuals to pay for care costs, are disregarded for legal aid purposes.

Franchisees should note these rules/rates replace those set out in the most recent edition of Guidance on Exercise of Devolved Powers (GEDP).

(Issue 2: April 1997)

LEGAL AID ELIGIBILITY FROM 7 APRIL 1997

1. Green Form – Legal Advice and Assistance

Income limit: £77 per week

Weekly dependants' allowances:

Partner		£28.00
Dependants	Up to 11*	£16.90
	11 to 16*	£24.75
	16 to 18*	£29.60
	18* and over	£38.90

*See text above for 11, 16 and 18 year olds.

Capital limits:

No dependants	£1000
One dependant	£1335
Two dependants	£1535
Plus £100 for each additional dependant	

Contribution system: none. Ineligible if weekly disposable income exceeds £77.

State benefits: automatically qualify on income if in receipt of income support, income-based job seekers allowance, family credit or disability working allowance, but may still be out of scope on capital.

2. ABWOR

Income limit: £166 per week.

Weekly dependants' allowances: as for green form – see above.

Capital Limits:

No dependants	£3000
One dependant	£3335
Two dependants	£3535
Plus £100 for each additional dependant	

Contribution system: free if weekly disposable income up to £69. If between £69 and £166, weekly contribution of one-third of excess income over £69.

State benefits: automatically qualify on income free of contribution if in receipt of income support, income-based job seekers allowance, family credit, or disability working allowance. Automatically qualify on capital if in receipt of income support or income-based job seekers allowance.

3. Civil legal aid

	£ per year
Lower income limit	£2563
Upper income limit	£7595 (£8370 for personal injury)
Lower capital limit	£3000
Upper capital limit	£6750 (£8560 for personal injury)

Yearly dependants' allowances:

Partner		£1460
Dependants	Up to 11*	£881
	11 to 16*	£1291
	16 to 18*	£1543
	18* and over	£2028

*See text above for 11, 16 and 18 year olds.

Capital disregards for pensioners:

Annual disposable income (excluding net income derived from capital)	Amount of capital (disregarded)
up to £370	£35,000
£371 - £670	£30,000
£671 - £970	£25,000
£971 - £1270	£20,000
£1271 - £1570	£15,000
£1571 - £1870	£10,000
£1871 - £2563	£5,000

Contribution system: contribution from capital of excess over £3,000. Ongoing monthly contribution from income of 1/36th of excess over £2563 for the life of the certificate.

State benefits: automatically qualify for civil legal aid free of contribution if in receipt of income support or income-based job seekers allowance.

4. Criminal Legal Aid

Free legal aid income limit: £49
Free legal aid capital limit: £3,000

No upper income or capital limit.

Weekly dependants' allowances: as for Green Form.

Contribution system: contributions from capital of the excess over £3,000.

Weekly contributions from income of £1 for every £3 or part of £3 by which weekly disposable income exceeds £49, except that no contribution is payable if the disposable income is less than £50 per week.

State benefits: automatically eligible free of contribution if in receipt of income support, income-based job seekers allowance, family credit or disability working allowance.

Increases in Scope of Legal Aid

In **FOCUS 17** we gave details of legal aid covered through ABWOR for prisoners detained at Her Majesty's Pleasure. Parliament has now approved the necessary regulations to place this arrangement on a proper statutory footing with effect from 1 April 1997. Two other changes in the scope of legal aid are being made:

Representation for Fine Defaulters in Magistrates' Courts

Following a case in the European Court of Human Rights called *Benham v- UK*, the Court held that Mr Benham, who faced imprisonment through failure to pay his poll tax, should have been entitled to representation under the legal aid scheme. Although under domestic law the proceedings involving Mr Benham were not criminal, the Court held that he was entitled to representation in the interests of justice.

The Lord Chancellor has therefore made amendments to the scope of the Duty Solicitor Scheme and ABWOR to cover persons in the magistrates court who are before the court as a result of failure to pay a fine or other sum or failure to obey an order of the Court, where such failure may lead to the risk of imprisonment. Regulation 7 (4) of the Legal Advice and Assistance (Scope) Regulations 1989 is being extended to cover these cases, whether or not they are criminal.

The overwhelming majority of such cases will be dealt with under the Duty Solicitor Scheme. However, there may be exceptional cases where the Duty Solicitor Scheme is not available or sufficient to provide representation, in which case as from **1 June 1997** it will be possible to make an application to the area office for ABWOR for any such cases. The Regulations provide for a

new special merits test for this type of ABWOR. ABWOR may be refused if it is more appropriate for the case to be dealt with by the duty solicitor or if it is not in the interests of justice for ABWOR to be granted. Solicitors applying for ABWOR should address these issues on the application form. For example, a separate application for ABWOR might be justified if the case involved some complicated issue of law which the duty solicitor could not easily deal with and where the risk of imprisonment was substantial.

ABWOR of this type is subject to the normal ABWOR eligibility and contribution regime. Remuneration is at normal ABWOR rates, not at the enhanced rate applicable to Mental Health Review Tribunals. In due course form changes will be made to cover this type of ABWOR but meanwhile solicitors should apply under the normal form and tick the "Other" box on that form.

National Assistance Act 1948, Section 47

Section 47 provides for the removal to suitable premises of people who for any of a variety of reasons are in need of care and attention. The application for removal can be made in the interests of the person whose removal is sought or to prevent serious nuisance or injury to the health of other people. The order to remove a person may be made for a period not exceeding three months in the first instance and may be extended by the court.

With effect from 1 April 1997 ABWOR will be available to cover proceedings of this type. Usual eligibility and remuneration rules will apply. When applying for ABWOR tick the "Other" box on the form.

Introducing New Transaction Criteria

In **FOCUS 17** we told you about developments relating to Transaction Criteria and New Franchised Categories of Work. One of the key developments covered in that article was a recent project to update and expand transaction criteria audit scope in-house and in consultation with the profession. Within the project, revised sets of criteria have been produced to replace the existing ones in Welfare Benefits. These have been updated to cover recent changes in procedures, as well as being made less benefit specific, allowing more file types to fall within the criteria scope. In addition, two new sets of criteria have also been developed, to cover cases relating to Disability Living Allowance (DLA) in the Welfare Benefits category, and to cover Homelessness cases in the Housing category.

Recent consultation on the final draft sets of criteria was very encouraging, with many practitioners, practitioner associations and representative organisations providing helpful and constructive feedback. With the consultation exercise completed, the next step in the process is to introduce the new and replacement criteria. Proposals for implementation are now being discussed with the Law Society and other practitioner associations and will be confirmed by the end of March. Within these discussions it is proposed that revised criteria would be introduced for use at audits on or after **5 May 1997**; certain sets would be introduced with immediate effect while others would be piloted for a specific period of time. Criteria in areas not previously covered (ie Homelessness and DLA) would be piloted until February 1998, with files being audited and reports produced, but without the

scores counting towards compliance - as was the case for all sets of criteria in the first year of franchising. Sets of criteria in areas previously covered (ie Backdating, Overpayments and Appeals) would simply replace the current ones from 5 May, with the scores counting towards category compliance, as they do now.

Subject to agreement of the proposals, this means that after 5 May, new and/or replacement criteria will be used to audit relevant casefiles if you have a franchise in either the Welfare Benefit or Housing franchise categories. For those with a franchise in the Welfare Benefit category, a sample of files will be audited using the replacement transaction criteria (ie Backdating, Overpayments and Appeals) and these scores will be used to determine category compliance; the existing category compliance rate of 65% will continue to apply. Additional files may also be audited using the pilot DLA criteria, but the scores from these files will be reported separately from the replacement criteria sets and will not count towards category compliance. In the same way, files audited using the pilot Homelessness criteria will be recorded separately from the sample of files audited, for category compliance purposes, against the existing criteria in Housing. Analysis of the pilot criteria audits will be carried out for 9 months, with a view to introducing the criteria formally (with scores counting towards category compliance) from February 1998.

If you have not already seen the new and replacement transaction criteria during development or consultation and would like to obtain copies, they will be available in your Area Office from Monday 14 April 1997.

Proposed Payment Dates

There are two payment runs for solicitors and counsel each month. The proposed payment dates for the first six months of the 1997/98 financial year are set out below. Please note that these dates are subject to amendment by the Board should it be necessary but, where possible, you will be told of changes in advance.

If you are paid by BACS (Bank Automated Clearing Service) the proposed payment date shown is the date on which you will receive a payment in your bank. For some smaller banks the BACS credit may appear a day later. The proposed payment date will also be the date by which the last of the cheque/remittance advices are despatched from the Financial Services Settlement Section.

Remittance advices are despatched using DX or first class post.

If you are still being paid by cheque, we recommend that you consider changing your payment method to BACS. BACS offers a more efficient way of receiving your payments. It provides payment direct into a bank account while still receiving a remittance advice. This removes the need to handle cheques, unlike paying in across a bank counter. BACS provides immediately cleared funds unlike cheque clearance which can take four to six days. If you require any advice or assistance about

payment by BACS, please contact the Master Index Section by telephone on 0171 813 1000, ext 8626.

Details of the amount due to you may be obtained by contacting either the area office or the Solicitors/Counsel Settlement Section on 0171-813 1000, ext 8625.

But, if you have a query regarding an individual item shown on a remittance advice, you should contact the relevant area office, which authorises and processes all such bills.

KEEPING US UP TO DATE

Names, addresses, DX, fax and telephone numbers and bank details for BACS payments are held on the Board's Master Index database.

Please send any changes relating to your firm or chambers to the Master Index Section which is located in 85 Gray's Inn Road, London, WC1X 8AA.

Proposed Payment Dates for April 1997 – September 1997

First Payment date of the Month	Second Payment date of the Month
Monday, 14 April 1997	Monday, 28 April 1997
Tuesday, 13 May 1997	Thursday, 29 May 1997
Friday, 13 June 1997	Monday, 30 June 1997
Monday, 14 July 1997	Monday, 28 July 1997
Wednesday, 13 August 1997	Friday, 29 August 1997
Monday, 15 September 1997	Monday, 29 September 1997

Additional copies of Focus can be obtained from the Press and Publications Office, Legal Aid Head Office, 85 Gray's Inn Road, London WC1X 8AA.

Any comments about Focus should be sent to Caroline O'Dwyer at the same address.

