Draft Regulations laid before Parliament under section 25(9A) of the Access to Justice Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No. xxxx

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Financial Eligibility) Regulations 2006

Made - - - -	*2006*
Coming into force - -	*2nd October 2006*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 26 of, and paragraph 3B of Schedule 3 to, the Access to Justice Act 1999(**1**).

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament in accordance with section 25(9A) of that Act.

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (Financial Eligibility) Regulations 2006 and come into force on 2nd October 2006.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Access to Justice Act 1999;

"child care costs" means the costs of care which is provided by one or more of the following care providers—

(a) a school on school premises, out of school hours;

(b) a local authority, out of school hours—

(**1**) 1999 c.22. Section 26 includes definitions of 'regulations' and 'prescribed'. The reference to the Lord Chancellor in section 26 was changed to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887) and was changed back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429). Paragraph 3B of Schedule 3 and section 25(9A) were inserted by section 2(2) and (5) of the Criminal Defence Service Act 2006 (c.9).

(i) for children who are not disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 15th birthday;

(ii) for children who are disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 16th birthday;

(c) a child care provider approved in accordance with the Tax Credit (New Category of Care Provider) Regulations 1999(**2**);

(d) persons registered under Part XA of the Children Act 1989(**3**);

(e) persons referred to in paragraph 1 or 2 of Schedule 9A to the Children Act 1989, in schools or establishments referred to in those paragraphs;

(f) persons prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002(**4**);

other than costs paid in respect of the child's compulsory education or by the individual to his partner (or vice versa) in respect of any child for whom either or any of them is responsible in accordance with regulation 10 of the Council Tax Benefit Regulations 2006(**5**), or in respect of care provided by a relative of the child wholly or mainly in the child's home;

"the Commission" means the Legal Services Commission established under section 1 of the Act;

"gross annual income" means total annual income, as at the date of the application for a representation order, from all sources, other than the receipt of any of the following—

(a) any of the following payments made under the Social Security Contributions and Benefits Act 1992(**6**)—

(i) attendance allowance paid under section 64;

(ii) severe disablement allowance;

(iii) carer's allowance;

(iv) disability living allowance;

(v) constant attendance allowance paid under section 104 or paragraph 4 or 7(2) of Schedule 8 as an increase to a disablement pension;

(vi) council tax benefit;

(vii) any payment made out of the social fund;

(b) any direct payments made under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003(**7**) or the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004(**8**);

(c) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(**9**);

(**2**) S.I. 1999/3110.
(**3**) 1989 c.41; Part XA and Schedule 9A were inserted by section 79 of the Care Standards Act 2000 (c.14).
(**4**) 2002 c.21.
(**5**) S.I. 2006/215.
(**6**) 1992 c.4.
(**7**) S.I. 2003/762.
(**8**) S.I. 2004/1748.
(**9**) S.I. 1983/686.

(d) any pensions paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pensions Order 2006(**10**);

(e) any Independent Living Funds payments;

(f) any financial support paid under an agreement for the care of a foster child;

"the Independent Living Funds" means the Independent Living Fund, the Independent Living (Extension) Fund and the Independent Living (1983) Fund;

"the Independent Living Fund" means the charitable trust established out of funds provided by the Secretary of State for the purpose of providing financial assistance to those persons incapacitated by or otherwise suffering from very severe disablement who are in need of such assistance to enable them to live independently;

"the Independent Living (Extension) Fund" means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

"the Independent Living (1993) Fund" means the Trust of that name established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part;

"partner" means a person with whom the individual lives as a couple, and includes a person with whom the individual is not currently living but from whom he is not living separate and apart;

"period of calculation" means the period of one year ending on the date on which an application for a representation order is made;

"representation authority" means the Commission or a court officer or other person to whom the Commission, in accordance with section 3(4) of the Act, has delegated its functions under paragraph 2A of Schedule 3 to the Act;

"representation order" means a document granting a right to representation under section 14 of the Act.

(2) Subject to the proviso in regulation 7(1), in these Regulations a reference to the financial resources, income or financial circumstances of the individual includes a reference to the financial resources, income or financial circumstances of his partner.

Scope

3. These Regulations apply to those criminal proceedings which—

(a) are referred to in section 12(2)(a) to (f) of the Act and in regulation 3(2) (other than sub-paragraph (h)) of the Criminal Defence Service (General) (No. 2) Regulations 2001(**11**); and

(b) are in a magistrates' court.

Relevant authority

4. The representation authority is the relevant authority for the purposes of section 26 of, and paragraph 3B of Schedule 3 to, the Act.

(**10**) S.I. 2006/606.
(**11**) S.I. 2001/1437. Relevant amending instruments are S.I.2002/712, 2002/2785, 2004/1196 and 2005/2784.

Assessment by representation authority

5.—(1) The representation authority must assess whether the financial resources of the individual are such that he is eligible to be granted a representation order in accordance with this regulation and regulations 7 to 10.

(2) The representation authority must treat an individual who at the date of the application is under the age of 16 or who is under the age of 18 and in full-time education as financially eligible for a representation order, and paragraphs (3) to (5) of this regulation and regulations 7 to 14 do not apply in such a case.

(3) Where the representation authority is satisfied that the individual is directly or indirectly in receipt of a qualifying benefit, it must take his gross annual income as not exceeding the sum specified for the time being in regulation 9(2).

(4) The following are qualifying benefits for the purposes of paragraph (3)—

(a) income support;

(b) income-based jobseeker's allowance;

(c) guarantee credit under section 1(3)(a) of the State Pension Credit Act 2002(**12**).

(5) Except where paragraph (2) or (3) applies, the representation authority must calculate the gross annual income and, if applicable, the annual disposable income of the individual in accordance with regulations 7 to 10.

Furnishing evidence

6. The representation authority may at any time require the individual to provide documentary evidence in support of his application.

Resources of other persons

7.—(1) In calculating the income of the individual, the representation authority must treat the resources of his partner as his resources, unless the partner has a contrary interest in the proceedings in respect of which he is seeking a representation order.

(2) Where it appears to the representation authority that—

(a) another person is or has been or is likely to be substantially maintaining the individual or his partner; or

(b) any of the resources of another person have been or are likely to be made available to the individual or his partner,

the representation authority may assess or estimate the value of the resources of that other person and may treat all or any part of them as the resources of the individual.

Deprivation etc of resources

8. If it appears to the representation authority that the individual or his partner has, with intent to reduce the amount of his resources, whether for the purpose of making the individual eligible for a representation order or otherwise—

(a) directly or indirectly deprived himself of any resources; or

(b) transferred any resources to another person,

the resources of which he has so deprived himself, or which he has transferred, are to be treated as part of the individual's resources.

(**12**) 2002 c.16.