



# Legal Aid Act 1988

## 1988 CHAPTER 34

### PART VI

#### LEGAL AID IN SPECIAL CASES

##### *Care proceedings*

#### **27 Representation in care proceedings: scope and competent authorities**

- (1) This section and section 28 apply, subject to subsection (2) below, to the following proceedings (referred to as “care proceedings”), that is to say—
- proceedings under section 1 of the 1969 Act or under section 21A of the 1980 Act (care proceedings);
  - proceedings under section 15 or 21 of the 1969 Act (variation and discharge of supervision or care orders);
  - proceedings under section 2(12), 3(8), 16(8) or 21(4) of the 1969 Act or section 21A of the 1980 Act (appeals in such proceedings);
  - proceedings under section 3 of the Children and Young Persons Act 1963 (application by parent or guardian for an order directing a local authority to take proceedings under section 1 of the 1969 Act);
  - proceedings under section 3, 5 or 67(2) of the 1980 Act (proceedings in connection with resolutions by local authorities with respect to the assumption of parental rights and duties); and
  - proceedings under Part 1A of the 1980 Act (access orders);
- and representation for the purposes of care proceedings to which this section applies shall be available to any person subject to and in accordance with section 28.
- (2) Subsection (1) above may be varied by regulations so as to restrict the categories of proceedings for the purposes of which representation is available under this section and section 28.
- (3) Representation for the purposes of care proceedings before a juvenile court extends to the proceedings before any juvenile court to which the case is remitted.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Subject to any provision made by virtue of subsection (6) below, the authorities competent, on an application made for the purpose, to grant representation for the purposes of care proceedings are—
- (a) as respects proceedings before a juvenile court, the court;
  - (b) as respects appeals from decisions of juvenile courts to the Crown Court, the Crown Court or the juvenile court from which the appeal is brought;
  - (c) as respects appeals from decisions of juvenile courts to the High Court, the Board;
  - (d) as respects proceedings before a justice of the peace under section 12E of the 1980 Act (applications for emergency orders), the justice of the peace.
- (5) In the event of the Lord Chancellor making an order under section 3(4) as respects the function of granting representation for the purposes of any care proceedings, the Board shall be competent as respects those proceedings, on an application made for the purpose.
- (6) An order under section 3(4) may make provision restricting or excluding the competence of any authority mentioned in subsection (4) above and may contain such transitional provisions as appear to the Lord Chancellor necessary or expedient.
- (7) In this section and section 28—
- “the 1969 Act” means the Children and Young Persons Act 1969;
  - “the 1980 Act” means the Child Care Act 1980; and
  - “remitted” in relation to a juvenile court, means remitted under section 2(11) of the 1969 Act.

## **28 Care proceedings: availability**

- (1) Representation for the purposes of care proceedings to which this section applies shall be available to any person, other than a local authority, who is a party to the proceedings.
- (2) Subject to subsection (4) below, representation may be granted where it appears to the competent authority to be desirable to do so in the interests of justice.
- (3) Subject to subsection (4) below, representation must be granted where a child—
  - (a) is brought before a juvenile court under section 21A of the 1980 Act, and
  - (b) is not legally represented before the court but wishes to be.
- (4) Representation shall not be granted to any person unless it appears to the competent authority that his financial resources are such as, under regulations, make him eligible for representation.
- (5) Where a doubt arises whether representation should be granted to any person, the doubt shall be resolved in that person’s favour.
- (6) Representation granted by a competent authority may be amended or withdrawn, whether by that or another authority competent to grant representation.
- (7) Regulations may provide for an appeal to lie to a specified court or body against any refusal by a juvenile court to grant representation for the purposes of care proceedings and for that other court or body to make any grant of representation that could have been made by the juvenile court.

### *Contempt proceedings*

#### **29 Representation in contempt proceedings**

- (1) This section applies to any proceedings where a person is liable to be committed or fined—
  - (a) by a magistrates' court under section 12 of the Contempt of Court Act 1981;
  - (b) by a county court under section 14, 92 or 118 of the County Courts Act 1984;
  - (c) by any superior court for contempt in the face of that or any other court;and in this Act “proceedings for contempt” means so much of any proceedings as relates to dealing with a person as mentioned in paragraph (a), (b) or (c) above.
- (2) In any proceedings for contempt against a person the court may order that he be granted representation under this section for the purposes of the proceedings if it appears to the court to be desirable to do so in the interests of justice.
- (3) In this section, “superior court” means the Court of Appeal, the High Court, the Crown Court, the Courts-Martial Appeal Court, the Restrictive Practices Court, the Employment Appeal Tribunal and any other court exercising in relation to its proceedings powers equivalent to those of the High Court, and includes the House of Lords in the exercise of its jurisdiction in relation to appeals from courts in England and Wales.

### *Supplementary*

#### **30 Supplementary**

- (1) In Part V, the following provisions—
  - (a) sections 23 and 24 together with Schedule 3, and
  - (b) section 25,shall apply for the purposes of representation in care proceedings to which sections 27 and 28 apply as they apply for the purposes of representation under that Part in criminal proceedings with the modification mentioned below.
- (2) The modification referred to above is the substitution for paragraphs 9(b) and 10(2) (b) of Schedule 3 of the following sub-paragraph—
  - “(b) references to the proceedings for the purposes of which a grant of representation has been made include, where the proceedings result in the giving of a direction under section 2(11) of the Children and Young Persons Act 1969 (duty in care proceedings to direct that the infant be brought before a juvenile court acting for the area in which he resides), the proceedings before the court before which the legally assisted person is brought in pursuance of the direction.”
- (3) In Part V, section 25 shall apply for the purposes of representation in proceedings for contempt as it applies for the purposes of representation under that Part in criminal proceedings.