



Church of England (Legal Aid) Measure 1994

1994 No. 3

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Church of England (Legal Aid) Measure 1994

No. 3

A Measure passed by the General Synod of the Church of England to consolidate with amendments the provisions concerning legal aid contained in the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988. [21st July 1994]

1.—(1) The General Synod shall continue to maintain the Legal Aid Fund to which the General Synod and the Church Commissioners may contribute such sums as each shall from time to time decide.

Legal Aid Fund
and Legal Aid
Commission.

(2) After every ordinary election to the General Synod the Standing Committee of the General Synod shall appoint a commission, to be known as the Legal Aid Commission, which shall be charged with the duty of administering the Legal Aid Fund.

(3) The Legal Aid Fund shall be held by the Central Board of Finance on behalf of the General Synod, and the Board may, subject to and in accordance with the provisions of this Measure, make such payments out of the Fund as may be authorised by a certificate in writing issued by the Legal Aid Commission under section 2 of this Measure.

(4) The members of the Legal Aid Commission shall be entitled to hold office until their successors, who may be the same persons, come into office; and if a member of the Commission dies, resigns or otherwise vacates his office, the Standing Committee shall appoint another person to hold office for the unexpired portion of the term of office of the person in whose place he is appointed.

2.—(1) Where any proceedings mentioned in the first column of Schedule 1 to this Measure are taken or are proposed to be taken in the province of Canterbury or the province of York, any person mentioned in the second column of that Schedule in relation to those proceedings may apply to the Legal Aid Commission for financial assistance in respect of costs incurred in connection with those proceedings.

Applications for
legal aid.

(2) On an application under subsection (1) above, the Commission may, subject to and in accordance with the provisions of this Measure, issue a certificate authorising the payment out of the Legal Aid Fund of the whole or part of the costs incurred by the applicant, after the date of the issue of the certificate, in or in relation to or directly or indirectly arising out of the proceedings concerned; and any payment made or authorised under this subsection is in this Measure referred to as "legal aid".

(3) The Commission may issue a certificate for the payment of the costs, or part of the costs, incurred by any person subject to such conditions specified in the certificate as the Commission thinks fit.

(4) Without prejudice to the generality of subsection (3) above, where on an application under subsection (1) above the Commission considers that legal aid should be granted in respect of some but not all of the costs incurred by the applicant, in or in relation to or directly or indirectly arising out of the proceedings concerned, the Commission may issue a certificate for—

- (a) the payment of a contribution towards those costs of an amount specified in the certificate, or
- (b) the payment of those costs subject to a contribution from the applicant of an amount so specified, or
- (c) the payment of such proportion of those costs as may be so specified, or
- (d) the payment of the costs of, or a specified proportion of the costs of, such part of the proceedings as may be so specified, whether by reference to issues in or stages of those proceedings.

(5) Before deciding whether to grant any legal aid under this section and, if so, to what extent, the Commission shall have regard to all the circumstances of the case and, in particular, shall consider the financial resources of the applicant (including the financial resources of the wife or husband of the applicant), and legal aid shall not be granted if it appears to the Commission that the applicant could afford to proceed without legal aid.

(6) Except as expressly provided by rules made under this Measure, the Commission shall not grant legal aid to any person in connection with any proceedings unless that person shows that he has reasonable grounds for taking or defending the proceedings or being a party thereto.

Supplementary
provisions as to
legal aid.

3.—(1) Subject to the provisions of this Measure, where a certificate is issued under section 2 of this Measure for the payment out of the Legal Aid Fund of the costs or part of the costs of any person, that payment shall be made to the solicitor who has acted for that person.

(2) Where a certificate is issued under section 2 of this Measure for the payment of the costs, or part of the costs, incurred by any person, the solicitor who has acted for that person shall not be entitled to receive from, or on behalf of, that person more than the amount (if any) by which the total amount of those costs, as taxed or assessed in accordance with rules made under section 4 of this Measure, exceeds the amount payable to that solicitor out of the Legal Aid Fund under that certificate.

- (3) Except as expressly provided by rules made under this Measure—
- (a) the fact that legal aid is granted in respect of the services of counsel or a solicitor shall not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of that relationship; and
 - (b) the fact that any person is granted legal aid shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.

4.—(1) The Standing Committee of the General Synod may make such rules as it considers necessary or desirable for giving effect to, or for preventing abuses of, this Measure, and rules made under this subsection may in particular—

Rules.

- (a) make provision as to the procedure to be observed in relation to an application for legal aid;
- (b) make provision as to the information to be furnished by any person applying for or receiving legal aid and as to the provision of information by any solicitor or counsel acting for any such person;
- (c) make provision for the circumstances in which the Legal Aid Commission may amend, revoke or discharge a certificate issued by the Commission and as to the effect of such amendment, revocation or discharge;
- (d) make provision for regulating the procedure in proceedings in respect of which legal aid is granted and in particular make provision—
 - (i) as to the taxation of costs in respect of which legal aid is granted, including any such costs incurred in connection with proceedings not actually begun;
 - (ii) as to the assessment of those costs, without taxation, by such person as may be specified in the rules, but with a view to allowing as nearly as may be the same amount as on taxation;
 - (iii) as to the cases in which and the extent to which a person to whom legal aid is granted may be required to give security for costs, and the manner in which it may be given;
- (e) make provision for the enforcement for the benefit of the Legal Aid Fund of any order or agreement for costs made in favour of a person to whom legal aid is granted;
- (f) make provision enabling the chairman of the Commission or such officer of the Commission as may be specified in the rules, in such circumstances as may be so specified, to issue an interim certificate on behalf of the Commission for the payment of the costs, or part of the costs, incurred by any person before the determination by the Commission of that person's application for the grant of legal aid;
- (g) make provision enabling the Commission to appoint committees to carry out such of its functions as may be specified in the rules.

(2) The Standing Committee of the General Synod may by rules vary the provisions of Schedule 1 to this Measure so as to add to or exclude from the proceedings therein mentioned any proceedings specified in the rules (being proceedings under a provision of a Measure of the General Synod or of any Canon, rules or regulations made under such a Measure), including this Measure, and any such rules may make any consequential changes in the second column of that Schedule; except that the provisions of that Schedule shall not be varied so as to enable legal aid to be granted in connection with proceedings before any court or tribunal before which persons have no right, and are not normally allowed, to be heard by counsel or solicitor.

(3) Any rules made under subsection (1) above may make different provision in relation to different proceedings.

(4) Any rules made under this section shall be laid before the General Synod and shall not come into force until they have been approved by the General Synod, whether with or without amendment.

(5) Where the Standing Committee determines that rules made under this section do not need to be debated by the General Synod then, unless—

(a) notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the rules to be debated, or

(b) notice is so given by any such member that he wishes to move an amendment to the rules,

the rules shall for the purposes of subsection (4) above be deemed to have been approved by the General Synod without amendment.

1946 c. 36.

(6) The Statutory Instruments Act 1946 shall apply to any rules approved by the General Synod under this section as if they were a statutory instrument and as if this Measure were an Act providing that any such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Transitional
provisions.

1988 No. 1.

5.—(1) Where—

(a) any proceedings mentioned in the first column of Schedule 1 to the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 have been taken; or

(b) in relation to any such proceedings proposed to be taken, a certificate under section 2 of that Measure has been issued,

before the coming into force of this Measure, Part I of the said Measure of 1988 shall have effect in relation to such proceedings or certificate as if this Measure had not been enacted.

(2) The Legal Aid Commission appointed under section 1 of the said Measure of 1988 and in existence immediately before the coming into force of this Measure shall continue to exist for the purposes of this Measure as if it had been appointed under section 1 of this Measure.

(3) Any rules made under section 4(1) of the said Measure of 1988 and in force immediately before the coming into force of this Measure shall continue to have effect as if made under section 4(1) of this Measure.

6. This Measure shall extend to the whole of the provinces of Canterbury and York except the Channel Islands and the Isle of Man, but the provisions thereof may be applied to the Channel Islands as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, or either of them, in accordance with those Measures and if an Act of Tynwald or an instrument made in pursuance of an Act of Tynwald so provides, shall extend to the Isle of Man subject to such exceptions, adaptations or modifications as may be specified in the Act of Tynwald or instrument. Extent.

7.—(1) Part I of and Schedule 1 to the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 are hereby repealed. Repeal and consequential amendments.
1988 No. 1.

(2) The enactments mentioned in Schedule 2 to this Measure shall have effect subject to the consequential amendments specified in that Schedule.

8.—(1) This Measure may be cited as the Church of England (Legal Aid) Measure 1994. Short title and commencement.

(2) This Measure shall come into force on such date as the Archbishops of Canterbury and York may jointly appoint.

SCHEDULES

Sections 2(1) and
4(2).

SCHEDULE 1

PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN

	<i>Description of proceedings</i>	<i>Description of applicants</i>
1963 No. 1.	1. Proceedings in any ecclesiastical court or before any commission, committee, bishop or examiner in respect of an offence under the Ecclesiastical Jurisdiction Measure 1963.	Any accused person.
1977 No. 1.	2. Proceedings on an enquiry under Part I of the Incumbents (Vacation of Benefices) Measure 1977 conducted by a provincial tribunal.	The incumbent concerned in the proceedings.
1983 No. 1.	3. Proceedings under Schedule 4 to the Pastoral Measure 1983 (including any interview by a pastoral committee).	Any person having a right to compensation conferred by paragraphs 1, 2, 3 or 4 of the said Schedule 4.
	4. Proceedings under Schedule 4 to the Pastoral Measure 1983 as extended by subsection (3) of section 13 of the Incumbents (Vacation of Benefices) Measure 1977 (including any interview by a pastoral committee).	Any incumbent having a right to compensation conferred by subsection (1) of the said section 13.
1988 No. 1.	5. Proceedings on an appeal under any Canon made in pursuance of section 7 of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 against revocation of a licence granted to a minister, deaconess, lay worker or stipendiary reader.	The appellant.
	6. Proceedings on an appeal under section 50 of the Ecclesiastical Jurisdiction Measure 1963 against an intended deposition of a priest or deacon from Holy Orders.	The appellant.

SCHEDULE 2

Section 7(2).

CONSEQUENTIAL AMENDMENTS

Ecclesiastical Jurisdiction Measure 1963

1963 No. 1.

1. In section 60 of the Ecclesiastical Jurisdiction Measure 1963 (which relates to costs)—

- (a) in subsection (1) for the words “Part I of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988” there shall be substituted the words “the Church of England (Legal Aid) Measure 1994”;
- (b) in subsection (2) for the words “Part I of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988” there shall be substituted the words “the Church of England (Legal Aid) Measure 1994”.
- (c) in subsection (4) for the words “Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988” there shall be substituted the words “Church of England (Legal Aid) Measure 1994”.

Pastoral Measure 1983

1983 No. 1.

2. In paragraph 16(1) of Schedule 4 to the Pastoral Measure 1983 (rules made by Church Commissioners) for the words “Part I of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988” there shall be substituted the words “the Church of England (Legal Aid) Measure 1994”.

Care of Churches and Ecclesiastical Jurisdiction Measure 1991

1991 No. 1.

3. In section 26(2) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (functions of Rule Committee) for the words “Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988” there shall be substituted the words “Church of England (Legal Aid) Measure 1994”.

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