



Legal Aid Act 1988

1988 CHAPTER 34

PART VII

GENERAL AND SUPPLEMENTARY

31 Act not generally to affect position of legal representatives or other parties

- (1) Except as expressly provided by this Act or regulations under it—
 - (a) the fact that the services of counsel or a solicitor are given under this Act shall not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of such relationship; and
 - (b) the rights conferred by this Act on a person receiving advice, assistance or representation under it 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.
- (2) Without prejudice to the generality of subsection (1)(b) above, for the purpose of determining the costs of a legally assisted person in pursuance of an order for costs or an agreement for costs in his favour (other than an order under Part II of the Prosecution of Offences Act 1985) the services of his solicitor and counsel shall be treated as having been provided otherwise than under this Act and his solicitor shall be treated as having paid counsel's fees.
- (3) A person who provides advice, assistance or representation under this Act shall not take any payment in respect of the advice, assistance or representation except such payment as is made by the Board or authorised by, or by regulations under, this Act.
- (4) The revocation under this Act of a grant (or, in the case of Part III, of approval for a grant) of advice, assistance or representation to a legally assisted person shall not affect the right of any legal representative of his, arising otherwise than under a contract, to remuneration for work done before the date of the revocation.

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32 Selection and assignment of legal representatives

- (1) Subject to the provisions of this section, a person entitled to receive advice or assistance or representation may select—
 - (a) the solicitor to advise or assist or act for him, and
 - (b) if the case requires counsel, his counsel,from among the solicitors and counsel willing to provide advice, assistance or representation under this Act.
- (2) Where the Board limits a grant of representation under Part IV to representation in pursuance of a contract made by the Board, it may, as it thinks fit, assign to the legally assisted person a solicitor or a solicitor and counsel or direct that he may only select a solicitor from among those with whom such a contract subsists.
- (3) A person's right to select his solicitor or counsel is subject, in the case of representation under Part V, to regulations under subsection (8) below.
- (4) Subsection (1) above does not confer any right of selection in relation to proceedings under section 29 for the purposes of proceedings for contempt.
- (5) Where a court grants representation to a person for the purposes of proceedings for contempt, it may assign to him for the purposes of the proceedings any counsel or solicitor who is within the precincts of the court at the time.
- (6) The selection by or assignment to a person of solicitor or counsel shall not prejudice the law and practice relating to the conduct of proceedings by a solicitor or counsel or the circumstances in which a solicitor or counsel may refuse or give up a case or entrust it to another.
- (7) Regulations may provide that the right conferred by subsection (1) above shall be exercisable only in relation to solicitors who are for the time being members of a prescribed panel.
- (8) Regulations may provide as respects representation under Part V that subsection (1) above shall not apply in cases of any prescribed description and that in any such case a prescribed authority shall assign solicitor or counsel or solicitor and counsel in accordance with regulations under section 2(7) to the person entitled to receive such representation.
- (9) No solicitor or counsel who is for the time being excluded from legal aid work under section 47(2) of the Solicitors Act 1974 (powers of Solicitors Disciplinary Tribunal) or section 42 of the Administration of Justice Act 1985 (exclusion of barristers from legal aid work) may be selected or assigned under this section.
- (10) Notwithstanding subsection (1) above, a solicitor who has been selected to act for a person under that subsection may himself select to act for that person, as the solicitor's agent, any other solicitor who is not for the time being excluded from selection.

33 Legal aid complaints against barristers and their exclusion from legal aid work

The following sections shall be substituted for sections 41 and 42 of the Administration of Justice Act 1985—

“41 Application to legal aid complaints against barristers of disciplinary provisions

- (1) The disciplinary provisions applicable to barristers shall apply to legal aid complaints relating to the conduct of barristers as they apply to other complaints about their conduct.
- (2) Subject to any exclusion or restriction made by those provisions, any disciplinary tribunal which hears a legal aid complaint relating to the conduct of a barrister may, if it thinks fit and whether or not it makes any other order, order that any fees—
 - (a) otherwise payable in connection with his services under or in accordance with the Legal Aid Act 1988, or
 - (b) otherwise chargeable in connection with his services in respect of advice or assistance made available under Part III of that Act,shall be reduced or cancelled.
- (3) Accordingly, in so far as any of sections 9, 11, 15(6) and (7) and 25(2) of the Legal Aid Act 1988 (which relate to remuneration for legal aid work) has effect in relation to any fees reduced or cancelled by an order under subsection (2) above, it shall so have effect subject to the provisions of that order.
- (4) An appeal shall lie in the case of an order under subsection (2) above in the same manner as an appeal would lie in the case of any other order of such a tribunal.
- (5) The reference in subsection (2) above to a disciplinary tribunal is a reference to a tribunal acting under the disciplinary provisions applicable to barristers and it includes a reference to a member exercising any functions of the tribunal delegated to him.

42 Exclusion of barristers from legal aid work

- (1) Subject to any exclusion or restriction made by the disciplinary provisions applicable to barristers, where a disciplinary tribunal hears a charge of professional misconduct or breach of professional standards against a barrister, it may order that he shall be excluded from legal aid work, either temporarily or for a specified period, if it determines that there is good reason for the exclusion arising out of—
 - (a) his conduct in connection with any such services as are mentioned in section 40(1), or
 - (b) his professional conduct generally.
- (2) Subsection (4) of section 41 shall apply to an order under subsection (1) as it applies to an order under subsection (2) of that section.
- (3) The disciplinary provisions applicable to barristers shall include provision enabling a barrister who has been excluded from legal aid work under this section to apply for an order terminating his exclusion from such work.
- (4) In this section—
 - (a) the reference to a disciplinary tribunal shall be construed in accordance with section 41(5); and

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- (b) references to a person being excluded from legal aid work are references to his being excluded from those who may be selected or assigned under section 32 of the Legal Aid Act 1988.”

34 Regulations

- (1) The Lord Chancellor may make such regulations as appear to him necessary or desirable for giving effect to this Act or for preventing abuses of it.
- (2) Without prejudice to the generality of subsection (1) above, any such regulations may—
 - (a) make provision as to the matters which are or are not to be treated as distinct matters for the purposes of advice or assistance under Part III, as to the proceedings which are or are not to be treated as distinct proceedings for the purposes of representation under Part IV, and as to the apportionment of sums recoverable or recovered by virtue of any order for costs made generally with respect to matters or proceedings treated as distinct;
 - (b) regulate the procedure of any court or tribunal in relation to advice, assistance or representation under this Act or orders for costs made thereunder and authorise the delegation (subject to appeal) or the exercise of their functions by members, officers or other courts or the judges or members of other courts;
 - (c) regulate the availability of advice, assistance or representation (other than for the purposes of proceedings for contempt) and the making of contributions towards its provision by reference to the financial resources or, in prescribed cases, the aggregate financial resources, of persons and provide for the courts, persons or bodies who are to determine the financial resources of persons and the persons who are to be required or permitted to furnish information for those purposes;
 - (d) provide for the cases in which a person may be refused advice, assistance or representation or have the grant of it withdrawn or revoked by reason of his conduct when seeking or receiving advice, assistance or representation (whether in the same or a different matter);
 - (e) make provision for the remuneration and payment of the expenses of solicitors and counsel and for the courts, persons or bodies by whom, and the manner in which, any determinations which may be required for those purposes are to be made, reviewed or appealed;
 - (f) make provision for the recovery of sums due to the Board and for making effective the charge created by this Act on property recovered or preserved for a legally assisted person and regulating the release or postponement of the enforcement of any charge (however created) in favour of the Board.
- (3) Regulations may also modify this Act for the purposes of its application to prescribed descriptions of persons or in prescribed circumstances.
- (4) Without prejudice to subsection (3) above, regulations may also modify this Act for the purposes of its application—
 - (a) in cases where its modification appears to the Lord Chancellor necessary for the purpose of fulfilling any obligation imposed on the United Kingdom or Her Majesty’s Government in the United Kingdom by any international agreement; or
 - (b) in relation to proceedings for securing the recognition or enforcement in England and Wales of judgments given outside the United Kingdom for whose

recognition or enforcement in the United Kingdom provision is made by any international agreement.

- (5) Regulations made for the purposes mentioned in subsection (2)(b) above may include provisions—
 - (a) as to the determination of costs incurred in connection with proceedings not actually begun; and
 - (b) as to the cases in which and extent to which a person receiving advice, assistance or representation may be required to give security for costs, and the manner in which it may be so given.
- (6) Regulations made for the purposes mentioned in subsection (2)(c) above may provide that the income or capital of a person in receipt of prescribed social security benefits is to be taken as not exceeding a prescribed amount.
- (7) Regulations made for the purposes mentioned in subsection (2)(e) above may include provisions—
 - (a) imposing conditions for the allowance of remuneration and expenses;
 - (b) attaching financial penalties in the event of appeals or reviews of determinations being unsuccessful;
 - (c) authorising the making of interim payments of remuneration or in respect of expenses.
- (8) Regulations made for the purposes mentioned in subsection (2)(f) above may include provisions—
 - (a) for the enforcement for the benefit of the Board of an order or agreement for costs made in favour of a legally assisted person;
 - (b) for making a solicitor's right to payment by the Board wholly or partly dependent on his performance of the duties imposed on him by regulations made for the purposes of that paragraph; and
 - (c) requiring interest to be charged at a prescribed rate in circumstances where enforcement of a charge in favour of the Board is postponed.
- (9) The Lord Chancellor, in making regulations for the purposes mentioned in subsection (2)(e) above as respects any description of legal aid work, shall have regard, among the matters which are relevant, to—
 - (a) the time and skill which it requires;
 - (b) the general level of fee income arising from it;
 - (c) the general level of expenses of barristers and solicitors which is attributable to it;
 - (d) the number and general level of competence of barristers and solicitors undertaking it;
 - (e) the effect of the regulations on the handling of the work; and
 - (f) the cost to public funds of any provision made by the regulations.
- (10) Before making regulations for the purposes mentioned in subsection (2)(e) above, the Lord Chancellor shall consult the General Council of the Bar and the Law Society.
- (11) Regulations under this Act may make different provision for different descriptions of advice, assistance or representation, for different cases or classes of case, for different areas or for other different circumstances and for different descriptions of persons.

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- (12) Before making regulations as to the procedure of any court or tribunal, the Lord Chancellor shall so far as practicable consult any rule committee or similar body by whom or on whose advice rules of procedure for the court or tribunal may be made apart from this provision or whose consent or concurrence is required to any such rules so made.
- (13) No regulations shall be made under this section which include provision for the purposes mentioned in subsection (2)(c) or (e) above except with the consent of the Treasury.
- (14) In subsection (6) above “social security benefits” means any benefit provided under section 20(1) of the Social Security Act 1986 (income-related benefits).

35 Advisory Committee

- (1) The existing advisory committee shall continue in being to advise the Lord Chancellor on such questions relating to the provision of advice, assistance or representation under this Act as he may from time to time refer to them and to make recommendations or furnish comments to him on such matters as they consider appropriate.
- (2) Appointments to the committee by the Lord Chancellor, whether by way of replacing existing members or making additional appointments, shall be made so as to secure that the committee is constituted of persons having knowledge of the work of the courts and social conditions.
- (3) The Lord Chancellor may pay to the members of the advisory committee such travelling and other allowances as he may, with the consent of the Treasury, determine; and any expenses of the Lord Chancellor under this subsection shall be defrayed out of money provided by Parliament.
- (4) It shall be the duty of the advisory committee to provide to the Lord Chancellor, as soon as possible after 31st March in each year, a report containing any advice, recommendations or comments of theirs on questions or matters arising during the preceding twelve months.
- (5) The Lord Chancellor shall lay before each House of Parliament a copy of the annual report of the committee made to him under subsection (4) above.
- (6) The Lord Chancellor may, by order dissolve the advisory committee on such day as is specified in the order and on that day this section shall cease to have effect except as regards the defrayal out of money provided by Parliament of the allowances falling to be paid thereafter under subsection (3) above.
- (7) In this section “the existing advisory committee” means the advisory committee in existence under section 21 of the Legal Aid Act 1974 at the passing of this Act.

36 Orders and regulations: general

- (1) Any power under this Act to make an order or regulations shall be exercisable by statutory instrument.
- (2) As respects orders under this Act other than orders under section 47—
 - (a) except in the case of an order under section 3(4) and 35(6), any instrument containing the order shall be subject to annulment in pursuance of a resolution of either House of Parliament;

- (b) in the case of an order under section 3(4) or 35(6), no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.
- (3) As respects regulations under this Act—
- (a) except in the case of regulations under section 8, 14(2) and 32(7), any instrument containing the regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament;
 - (b) in the case of regulations under section 8, 14(2) or 32(7), no such regulations shall be made unless a draft of them has been laid before and approved by resolution of each House of Parliament.

37 Laying of Board’s annual reports before Parliament

The Lord Chancellor shall lay before each House of Parliament a copy of the annual report of the Board made to him under section 5(3).

38 Restriction of disclosure of information

- (1) Subject to the following provisions of this section, no information furnished for the purposes of this Act to the Board or any court or other person or body of persons upon whom functions are imposed or conferred by regulations and so furnished in connection with the case of a person seeking or receiving advice, assistance or representation shall be disclosed otherwise than—
- (a) for the purpose of enabling or assisting the Lord Chancellor to perform his functions under or in relation to this Act,
 - (b) for the purpose of enabling the Board to discharge its functions under this Act,
 - (c) for the purpose of facilitating the proper performance by any court, tribunal or other person or body of persons of functions under this Act,
 - (d) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings for an offence under this Act,
 - (e) in connection with any other proceedings under this Act, or
 - (f) for the purpose of facilitating the proper performance by any tribunal of disciplinary functions as regards barristers or solicitors.
- (2) This section does not apply to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (3) Subsection (1) above shall not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case it was furnished and, where he did not furnish it himself, with that of the person or body of persons who did.
- (4) A person who, in contravention of this section, discloses any information furnished to the Board or any court or other person or body of persons for the purposes of this Act shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) Proceedings for an offence under this section shall not be brought without the written consent of the Attorney General.
- (6) For the avoidance of doubt it is hereby declared that information furnished to counsel or a solicitor as such by or on behalf of a person seeking or receiving advice, assistance

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or representation under this Act is not information furnished to the Board or a person upon whom functions are imposed or conferred as mentioned in subsection (1) above.

39 Proceedings for misrepresentation etc

- (1) If any person seeking or receiving advice, assistance or representation under this Act—
- (a) intentionally fails to comply with regulations as to the information to be furnished by him, or
 - (b) in furnishing any information required by regulations knowingly makes any false statement or false representation,

he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both.

- (2) Notwithstanding anything in the Magistrates' Courts Act 1980, proceedings in respect of an offence under subsection (1) above may be brought at any time within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify a prosecution comes to his knowledge.
- (3) Nothing in subsection (2) above shall authorise the commencement of proceedings for an offence at a time more than two years after the date on which the offence was committed.
- (4) A county court shall have jurisdiction to hear and determine any action brought by the Board to recover the loss sustained by it on account of its legal aid fund by reason of—
- (a) the failure of a person seeking or receiving advice, assistance or representation to comply with regulations as to the information to be furnished by him, or
 - (b) a false statement or false representation made by such a person in furnishing information for the purposes of this Act,

notwithstanding that the claim in the action is for a greater amount than that which for the time being is the county court limit for the purposes of section 15 of the County Courts Act 1984.

40 Adaptation of rights of indemnity in cases of advice, assistance or representation in civil proceedings

- (1) This section shall have effect for the purpose of adapting in relation to Parts III and IV any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.
- (2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of Part III or Part IV shall be disregarded.
- (3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives in connection with those proceedings advice, assistance or representation then (without prejudice to the effect of the indemnity in relation to his contribution, if any, under section 9 or 16) the right shall enure also for the benefit of the Board as if any expenses incurred by the Board on his account in connection with the advice, assistance or representation had been incurred by him.
- (4) Where a person's right to be indemnified enures for the benefit of the Board under subsection (3) above in a case where he has been represented in pursuance of a contract

made with the Board on terms which do not differentiate between the remuneration for his and other cases, the reference in that subsection to any expenses incurred by the Board on his account shall be construed as a reference to such part of the remuneration payable under the contract as may be specified in writing by the Board.

(5) Where—

- (a) a person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of an agreement and is subject to any express condition conferring on those liable under it any right with respect to the bringing or conduct of the proceedings, and
- (b) those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of the opportunity,

the right to be indemnified shall be treated for the purpose of subsection (3) above as not being subject to that condition.

(6) Nothing in subsections (3) and (5) above shall be taken as depriving any person or body of persons of the protection of any enactment or, except as provided in subsection (5), as conferring any larger right to recover money in respect of any expenses than the person receiving advice, assistance or representation would have had if the expenses had been incurred by him.

41 Application to Crown

This Act binds the Crown.

42 Finance

(1) The Lord Chancellor shall pay to the Board out of money provided by Parliament—

- (a) such sums as are required (after allowing for payments by the Board into its legal aid fund under paragraphs (a), (b), (c), (d) and (f) of section 6(3)) to meet the payments which, under subsection (2) of that section, are to be paid by the Board out of that fund; and
- (b) such sums as he may, with the approval of the Treasury, determine are required for the other expenditure of the Board.

(2) The Lord Chancellor may, with the approval of the Treasury—

- (a) determine the manner in which and times at which the sums referred to in subsection (1)(a) above shall be paid to the Board; and
- (b) impose conditions on the payment of the sums referred to in subsection (1) (b) above.

43 Definitions

In this Act—

“advice”, “assistance” and “representation” have the meanings assigned to them by section 2(2), (3) and (4) respectively subject, however, to the other provisions of that section;

“the Board” has the meaning assigned to it by section 3(1);

“determination”, in relation to the costs of advice or assistance or representation for the purposes of proceedings, includes taxation and assessment;

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“financial resources”, in relation to any person, includes any valuable facility which is available to him;

“order for costs” includes any judgment, order, decree, award or direction for the payment of the costs of one party to any proceedings by another party, whether given or made in those proceedings or not;

“prescribed” means prescribed by regulations made by the Lord Chancellor under this Act;

“proceedings for contempt” has the meaning assigned to it by section 29(1);

“regulations” means regulations made by the Lord Chancellor under this Act;

“sentence”, in relation to a person, includes any order made on his conviction of an offence;

“solicitor” means solicitor of the Supreme Court;

“statutory inquiry” has the meaning assigned to it by section 19(1) of the Tribunals and Inquiries Act 1971; and

“tribunal” includes an arbitrator or umpire, however appointed, and whether the arbitration takes place under a reference by consent or otherwise.