

Status: Point in time view as at 01/02/1991.

Changes to legislation: Legal Aid Act 1988, SCHEDULE 7 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 7

Section 45.

TRANSITION

Preliminary

- 1 In this Schedule— “the 1974 Act ” means the ^{M1}Legal Aid Act 1974; and
“the appointed day ” means the day appointed by the Lord Chancellor under section 47(2) of this Act for the coming into force of section 3(2) thereof.

Marginal Citations

M1 1974 c. 4.

The Legal Aid Fund

- 2 (1) On the appointed day the legal aid fund (“the Old Fund ”) maintained by the Law Society under section 17 of the 1974 Act shall be wound up.
- (2) If, as at the appointed day, after taking account of all receipts and expenses of the Law Society attributable to their functions under the 1974 Act and the ^{M2}Legal Aid Act 1982 (“the 1982 Act ”), there is in relation to the Old Fund any surplus or deficit—
- (a) such surplus shall be paid by the Law Society to the Lord Chancellor; and
 - (b) such deficit shall be made up by payment to the Law Society by the Lord Chancellor of the amount of the deficit.
- (3) Notwithstanding their repeal by this Act—
- (a) sections 15(9) and 18 of the 1974 Act shall continue to have effect for the purposes of requiring the Law Society to account for the Old Fund and to report on the discharge of its functions under that Act up to the appointed day; and
 - (b) section 17(5) of that Act shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society;

and, if the appointed day falls on a day which is not the last day of the financial year (for the purposes of the said section 18), references in those sections to the financial year shall be construed as references to the period commencing on the day immediately following the end of the last complete financial year and ending with the appointed day.

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- (4) The Lord Chancellor shall pay to the Law Society such expenses incurred after the appointed day in connection with their functions under sections 15(9) and 18 of the 1974 Act as appear to him to be reasonable.
- (5) Any payments received by the Lord Chancellor under sub-paragraph (2)(a) above shall be paid by him into the legal aid fund established by the Board under section 6.
- (6) Any amount required to be paid by the Lord Chancellor under sub-paragraph (2)(b) or (4) above shall be defrayed out of money provided by Parliament.

Marginal Citations

M2 1982 c. 44.

Rights, obligations and property

- 3 (1) Subject to paragraph 2, on the appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1974 Act and the 1982 Act shall become rights, obligations and property of the Board.
- (2) Any payments which are required to be made into or out of the Old Fund in connection with legal aid or advice or assistance under the 1974 Act shall, on and after the appointed day, be paid to or by the Board.

Transfer of functions

- 4 (1) Any grant of legal aid under Part I of the 1974 Act which is in force immediately before the appointed day shall, on and after the appointed day, have effect as a grant by the Board of representation under Part IV of this Act.
- (2) Any approval given in connection with the grant of legal aid or advice or assistance under Part I of the 1974 Act which is in force immediately before the appointed day shall, on and after the appointed day, have effect as an approval by the Board in connection with the corresponding advice, assistance or representation under Part III or IV of this Act.
- (3) Anything which, immediately before the appointed day, is in the process of being done by or in relation to the Law Society in connection with any function which it has relating to legal aid or advice or assistance under Part I of the 1974 Act, may be continued, on and after the appointed day, by or in relation to the Board.

Legal aid contribution orders

- 5 Notwithstanding their repeal by this Act, the provisions of the 1974 Act and the 1982 Act with respect to legal aid contribution orders shall continue to have effect in relation to any such order made in connection with a legal aid order made by virtue of section 28(11A) of the 1974 Act (legal aid for proceedings for contempt).

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The Board: transfers of employment

- 6 (1) The Board shall make, not later than such date as the Lord Chancellor may determine, an offer of employment by the Board to such of the persons employed immediately before that date by the Law Society for the purpose of their functions under the 1974 Act as fall within such descriptions as the Lord Chancellor designates for the purposes of this paragraph or are persons whom the Board wishes to employ.
- (2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (3) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.
- 7 (1) Where a person becomes an employee of the Board on acceptance of an offer made under paragraph 6, then, for the purposes of the ^{M3}Employment Protection (Consolidation) Act 1978, his period of employment with the Law Society shall count as a period of employment by the Board, and the change of employment shall not break the continuity of the period of employment.
- (2) Where an offer is made under paragraph 6 to any person, none of the agreed redundancy procedures applicable to employees of the Law Society shall apply to him.
- (3) Where a person employed by the Law Society ceases to be so employed—
- (a) on becoming a member of the staff of the Board on accepting an offer under paragraph 6, or
- (b) having unreasonably refused such an offer,
- Part VI of the Employment Protection (Consolidation) Act 1978 shall not apply to him and he shall not be treated for the purposes of any scheme in force under section 19 of the 1974 Act as having been retired on redundancy.
- (4) Where a person to whom an offer under paragraph 6 has been made continues in employment in the Law Society after having not unreasonably refused that offer he shall be treated for all purposes as if no offer under paragraph 6 had been made to him.

Marginal Citations

M3 1978 c. 44.

- 8 (1) Any dispute as to whether an offer purporting to be made under paragraph 6 complies with that paragraph shall be referred to and be determined by an industrial tribunal.
- (2) An industrial tribunal shall not consider a complaint referred to it under subparagraph (1) above unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

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- (3) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from the decision of, or in proceedings before, an industrial tribunal under this paragraph.
- (4) Except as mentioned in sub-paragraph (3) above, no appeal shall lie from the decision of an industrial tribunal under this paragraph.
- 9 (1) In the event of the Board assuming under section 3(4) any of the functions specified in that subsection the Lord Chancellor shall by regulations make such provision corresponding to paragraphs 6, 7 and 8 in respect of employees to whom this paragraph applies as appears to him to be appropriate.
- (2) This paragraph applies to persons employed—
- (a) in the civil service of the State, or
 - (b) by a magistrates' courts committee,
- and so employed wholly or mainly in connection with the functions referred to in sub-paragraph (1) above.

Pensions

- 10 Any arrangements made by the Law Society under section 19 of the 1974 Act in respect of any pension shall be treated on and after the appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 10(2) of Schedule 1 to this Act, and any pension scheme administered by the Law Society immediately before the appointed day shall be deemed to be a pension scheme established and administered by the Board under that paragraph and shall continue to be administered accordingly.

Representation in affiliation proceedings: transitory provision

- 11 Until the repeal of the ^{M4}Affiliation Proceedings Act 1957 by the ^{M5}Family Law Reform Act 1987 takes effect, Schedule 2 to this Act shall be taken to include proceedings in the Crown Court or a magistrates' court for or in relation to an affiliation order within the meaning of the Affiliation Proceedings Act 1957.

Marginal Citations

M4 1957 c. 55.

M5 1987 c. 42.

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