
STATUTORY INSTRUMENTS

1991 No. 1924

**LEGAL AID AND ADVICE,
ENGLAND AND WALES**

The Legal Aid Act 1988 (Children Act 1989) Order 1991

Made - - - - *25th July 1991*
Laid before Parliament *5th September 1991*
Coming into force - - *14th October 1991*

The Lord Chancellor, in exercise of the powers conferred on him by sections 99(5), 104 of and paragraph 40 of Schedule 14 to the Children Act 1989(1), hereby makes the following Order—

Citation and commencement

1. This Order may be cited as the Legal Aid Act 1988 (Children Act 1989) Order 1991 and shall come into force on 14th October 1991.

Amendment of the Legal Aid Act 1988(2)

2. In section 15 of the Legal Aid Act 1988 (availability of, and payment for, representation under provisions relating to civil legal aid)—

- (a) in subsection (1) for the words “(3B)” there shall be substituted “(3D)”;
- (b) the following subsections shall be inserted after subsection (3B)—

“(3C) Subject to subsection (3A) but regardless of subsections (2) or (3), representation under this Part must be granted to the child in respect of whom the application is made, to any parent of such a child and to any person with parental responsibility for him within the meaning of the 1989 Act to cover proceedings relating to an application for the following orders under that Act—

- (a) an order under section 31 (a care or supervision order);
- (b) an order under section 43 (a child assessment order);
- (c) an order under section 44 (an emergency protection order); or
- (d) an order under section 45 (extension or discharge of an emergency protection order).

(1) 1989 c. 41.
(2) 1988 c. 34

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3D) Subject to subsections (2) and (3), representation must be granted to cover proceedings relating to an appeal against an order made under section 31 of the 1989 Act to a person who has been granted representation by virtue of subsection (3C).

(3E) Subject to subsections (1) and (3A) but regardless of subsections (2) or (3), representation under this Part must be granted where a person applies to be or has been joined as a party to any of the proceedings mentioned in subsection (3C).”

Saving provisions

3. The provisions in Schedule 15 of the Children Act 1989 which repeal sections 27, 28, 30(1) and (2) of and paragraphs 2(a) and (e) of Part I of Schedule 2 to the Legal Aid Act 1988 shall apply only to applications for legal aid in respect of proceedings commenced on or after 14th October 1991.

Dated 25th July 1991

Mackay of Clashfern, C

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the Legal Aid Act 1988:

- (a) by waiving the means and merits tests in respect of applications for legal aid by a child, his parents and any person with parental responsibility for him in relation to proceedings under sections 31, 43, 44 and 45 of the Children Act 1989 (orders relating to the care and supervision, assessment or emergency protection of children) (the new section 15(3C));
- (b) by waiving the means test for those parties mentioned in (a) above who are then parties to an appeal in relation to care proceedings (the new section 15(3D));
- (c) by waiving the merits test in respect of other persons who apply to be or who are joined as parties to the proceedings specified in (a) above (the new section 15(3E)).

These provisions can be summarised as follows:

Proceedings	Parties	Means/merits waived	Section
section 31, 43, 44 and 45	child, parents, parental responsibility	means and merits	15(3C)
appeal of care proceedings	as above	means	15(3D)
application to join/joined as party to ss 31, 43, 44 and 45	any	merits	15(3E)

The existing provisions in the Legal Aid Act 1988 relating to the availability of legal aid for care proceedings and civil legal aid in magistrates' courts are preserved in relation to proceedings commenced prior to the Children Act 1989 coming into force.