

*Status: Point in time view as at 20/12/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Church of England (Miscellaneous Provisions) Measure 2018. (See end of Document for details)*

## SCHEDULE

Section 10

### AMENDMENTS TO CHURCH OF ENGLAND (LEGAL AID) RULES 1995

#### *Introduction*

- 1 The Church of England (Legal Aid) Rules 1995 (S.I. 1995/2034) are amended as follows.

VALID FROM 01/03/2019

#### *Meetings and procedure of Legal Aid Commission*

- 2 (1) In rule 5 (meetings and procedure of Legal Aid Commission), after paragraph (1) insert—

“(1A) The Commission shall elect one of its members to carry out the following functions in any circumstances where the chairman is unable to do so—

- (a) the giving of an instruction under paragraph (2) below;
- (b) the giving of an approval under a delegation given under paragraph (4) below;
- (c) the giving of a casting vote under rule 11(1A) or 15(1A).”

- (2) For paragraph (2) of that rule substitute—

“(2) If the chairman of the Commission considers that it has business which can properly be conducted by correspondence, the chairman may instruct the secretary to circulate to the members written proposals requiring the Commission's approval.

- (3) Unless objection is received from members in such numbers and within such period from the date on which they were sent as the Commission may specify, the proposals are to be treated on the expiry of that period as approved by the Commission as if they had been approved at a duly convened meeting.

- (4) The Commission may delegate to the chairman the approval of any matter which requires decision and which, because of its urgency, cannot be dealt with at a meeting of the Commission or by correspondence as mentioned in paragraph (2).

- (5) A delegation under paragraph (4)—

- (a) may be general or specific, and
- (b) is subject to such conditions as the Commission may from time to time impose.”

- (3) After paragraph (5) of that rule (inserted by sub-paragraph (2) of this paragraph) insert—

“(6) A power conferred on the secretary by a provision of these Rules may be exercised by the deputy of the secretary.”

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- (4) In consequence of the amendment made by sub-paragraph (3) of this paragraph, in rule 10 (interim certificates), omit paragraph (3) (which enables the deputy to exercise the secretary's powers in specified cases).

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*Electronic service of documents*

- 3 In rule 6 (service of notices etc.), in paragraph (1)—
- (a) in the opening words, omit “either”,
  - (b) after sub-paragraph (a) (but before the following “or”) insert—  
“aa) by electronic means;”, and
  - (c) in the full-out words, after “shall be sent” insert “ either by electronic means or ”.

VALID FROM 01/03/2019

*Casting vote for chairman on decision whether to grant or terminate legal aid*

- 4 In rule 11 (determination of application for legal aid), after paragraph (1) insert—  
“(1A) Where the Commission's decision on an application for legal aid is tied, the chairman is to have a second, casting vote.”
- 5 (1) In rule 15 (discharge or revocation of certificate), after paragraph (1) insert—  
“(1A) Where the Commission's decision on the discharge or revocation of a certificate is tied, the chairman is to have a second, casting vote.”
- (2) In paragraph (4) of that rule, before “a result of” insert “ as ”.

VALID FROM 01/03/2019

*Assessment of costs*

- 6 (1) In rule 26 (assessment of costs), after paragraph (4) insert—  
“(4A) The power of the Commission under paragraph (3) or (4) to assess costs may be exercised by the chairman in consultation with the secretary in a case where—
- (a) an interim certificate for legal aid has been issued under rule 10, or
  - (b) a certificate for legal aid has been issued under rule 11 (whether or not an interim certificate was granted in that case) for the payment of a contribution towards costs not exceeding £2,000 (or any greater sum for the time being authorised by the Commission for the purposes of this paragraph).”

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(2) After paragraph (4A) of that rule (inserted by sub-paragraph (1) of this paragraph) insert—

“(4B) The Commission shall have power to require the production of such information or documents (in addition to the solicitor's bill of costs) as it considers necessary for carrying out an assessment of costs under this rule.”

(3) In paragraph (1)(b) of that rule—

- (a) for “£1000” substitute “ £3,000 ”, and
- (b) for “this rule” substitute “ this paragraph ”.

(4) In each of paragraphs (3) and (4) of that rule, before “may” insert “ , subject to paragraph (4A), ”.

(5) In paragraph (5)(b) of that rule, after “the Commission” insert “ , or the chairman when acting under paragraph (4A), ”.

(6) In rule 27 (appointment of committee), in paragraph (1), at the end insert “ (and in a case where rule 26 applies, the power under this paragraph is not exercisable in so far as costs have been assessed by the chairman of the Commission acting under paragraph (4A) of that rule). ”

*Delay by solicitor in putting in bill of costs*

7 (1) After rule 27 insert—

*“Delay in putting in bill of costs*

28 (1) In a case where an interim certificate for legal aid has been issued under rule 10 but the assisted person's solicitor has, without good reason, not put in a bill of costs for assessment by the end of three months beginning with the date on which the certificate was issued, the Commission may disallow the whole of the costs.

(2) In any other case where costs are to be assessed under rule 26 but the assisted person's solicitor has, without good reason, not put in a bill of costs for assessment by the end of three months beginning with the date on which the certificate concerned was issued, the Commission may disallow the whole of the costs.

(3) In a case where, on a taxation or assessment of costs under these Rules, an assisted person's solicitor has been required to put in a new bill of costs but has, without good reason, not done so before the end of three months beginning with the date on which the taxation or assessment was concluded, the Commission may disallow the whole of the costs.

(4) An assisted person's solicitor may, before the end of the three months provided for under paragraph (1), (2) or (3), make an application to the secretary for the chairman to allow the solicitor a further period of up to three months in which to put in the bill.

(5) An application under paragraph (4)—  
(a) shall be in writing,

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- (b) shall specify the further period sought and the reason for making the application,
  - (c) shall be accompanied by evidence in support, and
  - (d) shall be lodged with the secretary.
- (6) Where the chairman considers that an application under paragraph (4) should not be granted, the chairman shall, before making a final decision, inform the assisted person's solicitor that the solicitor is to be afforded an opportunity to make representations as to why the solicitor should be allowed the further period sought.
- (7) Representations under paragraph (6)—
- (a) shall be in writing, and
  - (b) shall be lodged with the secretary before the end of 10 days beginning with the date on which the solicitor is informed of the opportunity to make the representations.
- (8) As soon as the chairman has made a final decision on an application under paragraph (4), the secretary shall notify the solicitor in writing of the decision, together with a statement of the reason for it.
- (9) The further period which may be allowed on the grant of an application under paragraph (4)—
- (a) shall not exceed three months, but
  - (b) may be shorter than the period sought in the application.
- (10) Where an application under paragraph (4) is granted, paragraph (1), (2) or (3) (as the case may be) has effect in relation to the solicitor as if the reference to three months beginning as mentioned there were instead a reference to the further period allowed on the application beginning with—
- (a) if the decision to grant the application is made before the end of the three months, the end of that period, or
  - (b) if the decision is made after the end of that period, the day on which the decision is made.
- (11) In a case where the bill of costs includes disbursements, the Commission may exercise its power under paragraph (1), (2) or (3) by disallowing the whole of the costs except for one or more of the disbursements.
- (12) Where the chairman is unable to consider an application under paragraph (4) or representations under paragraph (6), the power to do so may be exercised by the secretary in consultation with two members of the Commission, at least one of whom is legally qualified within the meaning of section 9A of the Administration of Justice Act 1985.”
- (2) This paragraph applies in a case where the three months referred to in paragraph (1), (2) or (3) of the new rule 28 (inserted by sub-paragraph (1) of this paragraph) came to an end before the commencement of this paragraph (as well as in a case where they come to an end afterwards).

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