



# Legal Aid Act 1988

## 1988 CHAPTER 34

### PART I

#### PRELIMINARY

#### **1 Purpose of this Act**

The purpose of this Act is to establish a framework for the provision under Parts II, III, IV, V and VI of advice, assistance and representation which is publicly funded with a view to helping persons who might otherwise be unable to obtain advice, assistance or representation on account of their means.

#### **2 Interpretation**

- (1) This section has effect for the interpretation of this Act.
- (2) “Advice” means oral or written advice on the application of English law to any particular circumstances that have arisen in relation to the person seeking the advice and as to the steps which that person might appropriately take having regard to the application of English law to those circumstances.
- (3) “Assistance” means assistance in taking any of the steps which a person might take, including steps with respect to proceedings, having regard to the application of English law to any particular circumstances that have arisen in relation to him, whether by taking such steps on his behalf (including assistance by way of representation) or by assisting him in taking them on his own behalf.
- (4) “Representation” means representation for the purposes of proceedings and it includes—
  - (a) all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings;
  - (b) all such assistance as is usually so given in civil proceedings in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings; and
  - (c) in the case of criminal proceedings, advice and assistance as to any appeal;

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and related expressions have corresponding meanings.

- (5) Regulations may specify what is, or is not, to be included in advice or assistance of any description, or representation for the purposes of proceedings of any description, to which any Part or provision of a Part of this Act applies and the regulations may provide for the inclusion, in prescribed circumstances, of advice or assistance given otherwise than under this Act.
- (6) Advice, assistance and representation under this Act, except when made available under Part II, is only by persons who are solicitors or barristers, but in the case of Part II, may be by other persons.
- (7) In any particular case, advice, assistance and representation under this Act, except when made available under Part II, shall be by solicitor and, so far as necessary counsel; but regulations may prescribe the circumstances in which representation is to be by counsel only or by solicitor only and regulate representation by more than one counsel.
- (8) The Lord Chancellor may, if it appears to him to be necessary to do so 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, by order direct that such advice or assistance relating to the application of other laws than English law as is specified in the order shall be advice or assistance for any of the purposes of this Act.
- (9) For the purposes of the application of subsection (8) above in the case of an obligation to provide for the transmission to other countries of applications for legal aid under their laws, the reference to advice or assistance relating to the application of other laws includes a reference to advice or assistance for the purposes of making and transmitting such an application.
- (10) In this Act "person" does not include a body of persons corporate or unincorporate which is not concerned in a representative, fiduciary or official capacity so as to authorise advice, assistance or representation to be granted to such a body.
- (11) In this Act "legally assisted person" means any person who receives, under this Act, advice, assistance or representation and, in relation to proceedings, any reference to an assisted party or an unassisted party is to be construed accordingly.

## **PART II**

### **LEGAL AID BOARD AND LEGAL AID**

#### **3 The Legal Aid Board**

- (1) There shall be established a body to be known as the Legal Aid Board (in this Act referred to as "the Board").
- (2) Subject to subsections (3) and (4) below, the Board shall have the general function of securing that advice, assistance and representation are available in accordance with this Act and of administering this Act.
- (3) Subsection (2) above does not confer on the Board any functions with respect to the grant of representation under Part VI for the purposes of proceedings for contempt.

- (4) Subsection (2) above does not confer on the Board any of the following functions unless the Lord Chancellor so directs by order and then only to the extent specified in the order.

The functions referred to are—

- (a) determination of the costs of representation under Part IV;
  - (b) functions as respects representation under Part V other than determination of the costs of representation for the purposes of proceedings in magistrates' courts;
  - (c) functions as respects representation under Part VI for the purposes of care proceedings other than proceedings on an appeal from the decision of a juvenile court to the High Court;
  - (d) determination of the financial resources of persons for the purposes of this Act.
- (5) Subject to subsection (6) below, the Board shall consist of no fewer than 11 and no more than 17 members appointed by the Lord Chancellor; and the Lord Chancellor shall appoint one of the members to be chairman.
- (6) The Lord Chancellor may, by order, substitute, for the number for the time being specified in subsection (5) above as the maximum or minimum membership of the Board, such other number as he thinks appropriate.
- (7) The Board shall include at least two solicitors appointed after consultation with the Law Society.
- (8) The Lord Chancellor shall consult the General Council of the Bar with a view to the inclusion on the Board of at least two barristers.
- (9) In appointing persons to be members of the Board the Lord Chancellor shall have regard to the desirability of securing that the Board includes persons having expertise in or knowledge of—
- (a) the provision of legal services;
  - (b) the work of the courts and social conditions; and
  - (c) management.
- (10) Schedule 1 to this Act shall have effect with respect to the Board.

#### **4 Powers of the Board**

- (1) Subject to the provisions of this Act, the Board may do anything—
- (a) which it considers necessary or desirable to provide or secure the provision of advice, assistance and representation under this Act; or
  - (b) which is calculated to facilitate or is incidental or conducive to the discharge of its functions;
- and advice, assistance and representation may be provided in different ways in different areas in England and Wales and in different ways in different fields of law.
- (2) Without prejudice to the generality of subsection (1) above, the Board shall have power—
- (a) to enter into any contract including, subject to subsection (7) below, any contract to acquire or dispose of land;

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- (b) to make grants (with or without conditions, including conditions as to repayment);
  - (c) to make loans;
  - (d) to invest money;
  - (e) to promote or assist in the promotion of publicity relating to the functions of the Board;
  - (f) to undertake any inquiry or investigation which the Board considers necessary or expedient in relation to the discharge of its functions; and
  - (g) to give the Lord Chancellor such advice as it may consider appropriate in relation to the provision of advice, assistance and representation under this Act.
- (3) Subsection (1) above does not confer on the Board power to borrow money or to acquire and hold shares in bodies corporate or take part in forming bodies corporate.
- (4) The powers to provide advice, assistance or representation under this Part and to secure its provision under this Part by means of contracts with, or grants or loans to, other persons or bodies—
- (a) shall not be exercisable unless the Lord Chancellor so directs and then only to the extent specified in the direction; and
  - (b) if exercisable, shall be exercised in accordance with any directions given by him.
- (5) The power to secure the provision of representation under Part IV by means of contracts with other persons shall only be exercisable in the classes of case prescribed in regulations.
- (6) Advice, assistance and representation provided by the Board under this Part may be granted with or without limitations and may be amended, withdrawn or revoked.
- (7) The power under subsection (2) above to enter into contracts to acquire or dispose of land shall not be exercised without the approval in writing of the Lord Chancellor.
- (8) The Board may, from time to time, prepare and submit to the Lord Chancellor proposals for the assumption by it of any functions in relation to the provision of advice, assistance or representation under this Act.

## **5 Duties of the Board**

- (1) The Board shall, from time to time, publish information as to the discharge of its functions in relation to advice, assistance and representation including the forms and procedures and other matters connected therewith.
- (2) The Board shall, from time to time, furnish to the Lord Chancellor such information as he may require relating to its property and to the discharge or proposed discharge of its functions.
- (3) It shall be the duty of the Board to provide to the Lord Chancellor, as soon as possible after 31st March in each year, a report on the discharge of its functions during the preceding twelve months.
- (4) The Board shall deal in any report under subsection (3) above with such matters as the Lord Chancellor may from time to time direct.

- (5) The Board shall have regard, in discharging its functions, to such guidance as may from time to time be given by the Lord Chancellor.
- (6) Guidance under subsection (5) above shall not relate to the consideration or disposal, in particular cases, of—
  - (a) applications for advice, assistance or representation;
  - (b) supplementary or incidental applications or requests to the Board in connection with any case where advice, assistance or representation has been made available.
- (7) For the purposes of subsection (2) above the Board shall permit any person authorised by the Lord Chancellor for the purpose to inspect and make copies of any accounts or documents of the Board and shall furnish such explanations of them as that person or the Lord Chancellor may require.

## **6 Board to have separate legal aid fund**

- (1) The Board shall establish and maintain a separate legal aid fund.
- (2) Subject to regulations, there shall be paid out of the fund—
  - (a) such sums as are, by virtue of any provision of or made under this Act, due from the Board in respect of remuneration and expenses properly incurred in connection with the provision, under this Act, of advice, assistance or representation;
  - (b) costs awarded to any unassisted party under section 13 or 18;
  - (c) any part of a contribution repayable by the Board under section 16(4) or 23(7); and
  - (d) such other payments for the purposes of this Act as the Lord Chancellor may, with the concurrence of the Treasury, determine.
- (3) Subject to regulations, there shall be paid into the fund—
  - (a) any contribution payable to the Board by any person in respect of advice, assistance or representation under this Act;
  - (b) any sum awarded under an order of a court or agreement as to costs in any proceedings in favour of any legally assisted party which is payable to the Board;
  - (c) any sum which is to be paid out of property recovered or preserved for any legally assisted party to any proceedings;
  - (d) any sum in respect of the costs of an unassisted party awarded under section 13 or 18 which is repaid to the Board under that section;
  - (e) the sums to be paid by the Lord Chancellor in pursuance of section 42(1)(a); and
  - (f) such other receipts of the Board as the Lord Chancellor may, with the concurrence of the Treasury, determine.

## **7 Accounts and audit**

- (1) The Board shall keep separate accounts with respect to—
  - (a) its legal aid fund; and
  - (b) the receipts and expenditure of the Board which do not relate to that fund;and shall prepare in respect of each financial year a statement of accounts.

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- (2) The accounts shall be kept and the statement of accounts shall be prepared in such form as the Lord Chancellor may, with the approval of the Treasury, direct.
- (3) The accounts shall be audited by persons to be appointed in respect of each financial year by the Lord Chancellor in accordance with a scheme of audit approved by him, and the auditors shall be furnished by the Board with copies of the statement and shall prepare a report to the Lord Chancellor on the accounts and statement.
- (4) No person shall be qualified to be appointed auditor under subsection (3) above unless he is—
  - (a) a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of section 389(1)(a) of the Companies Act 1985;
  - (b) authorised by the Secretary of State under section 389(1)(b) of that Act to be appointed auditor of a company; or
  - (c) a member of the Chartered Institute of Public Finance and Accountancy;
 but a firm may be so appointed if each of its members is qualified to be so appointed.
- (5) Upon completion of the audit of the accounts, the auditors shall send to the Lord Chancellor a copy of the statement of accounts and of their report, and the Lord Chancellor shall send a copy of the statement and of the report to the Comptroller and Auditor General.
- (6) The Lord Chancellor and the Comptroller and Auditor General may inspect the accounts and any records relating to them.
- (7) The Lord Chancellor shall lay before each House of Parliament a copy of every statement of accounts and report of the auditors sent to him under subsection (5) above.
- (8) In this section “financial year” means the period beginning with the day on which the Board is established and ending with 31st March next following and each subsequent period of 12 months ending with 31st March in each year.

### PART III

#### ADVICE AND ASSISTANCE

#### **8 Scope of this Part**

- (1) Subject to the provisions of this section, this Part applies to any advice or assistance and advice and assistance under this Part shall be available to any person subject to and in accordance with the provisions of this section and sections 9, 10 and 11.
- (2) This Part only applies to assistance by way of representation if, and to the extent that, regulations so provide; and regulations may make such provision in relation to representation for the purposes of any proceedings before a court or tribunal or at a statutory inquiry.
- (3) Advice or assistance of all descriptions or advice or assistance of any prescribed description is excluded from this Part, or is so excluded as regards any area, if regulations so provide; and if regulations provide for all descriptions to be excluded as regards all areas then, so long as the regulations so provide, this Part (other than this subsection) shall not have effect.

- (4) Advice or assistance of any prescribed description is restricted to its provision to prescribed descriptions of persons if regulations so provide.
- (5) This Part does not apply to advice or assistance given to a person in connection with proceedings before a court or tribunal or at a statutory inquiry at a time when he is being represented in those proceedings under any other Part of this Act.

## **9 Availability of, and payment for, advice and assistance**

- (1) Advice and assistance to which this Part applies shall be available to any person whose financial resources are such as, under regulations, make him eligible for advice or assistance under this Part.
- (2) If regulations so provide, advice or assistance to which this Part applies shall be available, in prescribed circumstances and subject to any prescribed conditions, to persons without reference to their financial resources.
- (3) Subject to any prescribed exceptions, assistance by way of representation under this Part shall not be given without the approval of the Board.
- (4) Approval under subsection (3) above may be given with or without limitations and may be amended, withdrawn or revoked.
- (5) Except as provided by subsection (6) or (7) below, the legally assisted person shall not be required to pay to his solicitor any charge or fee.
- (6) Except as provided by subsection (7) below, a legally assisted person shall, if his financial resources are such as, under regulations, make him liable to make a contribution, be liable to pay to his solicitor, in respect of the advice or assistance, charges or fees of such amount as is determined or fixed by or under the regulations.
- (7) A legally assisted person to whom advice or assistance is made available by virtue of regulations under subsection (2) above shall, in circumstances prescribed by the regulations and, if the regulations apply only to persons of a prescribed description, he is a person of that description, be liable to pay to his solicitor, in respect of the advice or assistance, a fee of such amount as is fixed by or under the regulations (in lieu of a contribution under subsection (6) above).

## **10 Financial limit on prospective cost of advice or assistance**

- (1) Where at any time (whether before or after the advice or assistance has begun to be given) it appears to a solicitor that the cost of giving advice or assistance to a person under this Part is likely to exceed the prescribed limit—
  - (a) the solicitor shall determine to what extent that advice or assistance can be given without exceeding that limit; and
  - (b) shall not give it (nor, as the case may be, instruct counsel to give it) so as to exceed that limit except with the approval of the Board.
- (2) Approval under subsection (1)(b) above may be given with or without limitations and may be amended, withdrawn or revoked.
- (3) For the purposes of this section the cost of giving advice or assistance shall be taken to consist of such of the following as are applicable in the circumstances, namely—

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- (a) any disbursements, that is to say, expenses (including fees payable to counsel) which may be incurred by the solicitor or his firm in, or in connection with, the giving of the advice or assistance; and
- (b) any charges or fees (other than charges for disbursements) which would be properly chargeable by the solicitor or his firm in respect of the advice or assistance.

## **11 Payment for advice or assistance otherwise than through legally assisted person's contribution**

- (1) This section applies to any charges or fees which, apart from section 9, would be properly chargeable in respect of advice or assistance given under this Part, in so far as those charges or fees are not payable by the legally assisted person in accordance with that section.
- (2) Except in so far as regulations otherwise provide, charges or fees to which this section applies shall constitute a first charge for the benefit of the solicitor—
  - (a) on any costs which are payable to the legally assisted person by any other person in respect of the matter in connection with which the advice or assistance is given, and
  - (b) on any property which is recovered or preserved for the legally assisted person in connection with that matter.
- (3) In so far as the charge created by subsection (2) above in respect of any charges or fees to which this section applies is insufficient to meet them, the deficiency shall, subject to subsection (5) below, be payable to the solicitor by the Board.
- (4) For the purposes of subsection (2) above, it is immaterial, in the case of costs, whether the costs are payable by virtue of a judgment, order of a court or otherwise and, in the case of property, what its nature is and where it is situated and the property within the charge includes the legally assisted person's rights under any compromise or settlement arrived at to avoid proceedings or bring them to an end.
- (5) For the purpose of determining what charges or fees would be properly chargeable, and whether there is a deficiency to be paid by the Board, charges or fees in respect of advice or assistance under this Part shall, in prescribed circumstances, be determined in such manner as may be prescribed.

## **12 Limit on costs against person receiving assistance by way of representation**

- (1) Where a person receives any assistance by way of representation in any proceedings before a court or tribunal or at a statutory inquiry, then, except in so far as regulations otherwise provide, his liability by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including the financial resources of all the parties and their conduct in connection with the dispute.
- (2) Regulations shall make provision as to the court, tribunal or person by whom that amount is to be determined and the extent to which any determination of that amount is to be final.
- (3) None of the following, namely, a legally assisted person's dwelling house, clothes, household furniture and the tools and implements of his trade shall—



- (a) be taken into account in assessing his financial resources for the purposes of this section, or
  - (b) be subject to execution or any corresponding process in any part of the United Kingdom to enforce the order,
- except so far as regulations may prescribe.

### **13 Costs of successful unassisted parties**

- (1) This section applies to proceedings in which a person who receives assistance by way of representation is a party and which are finally decided in favour of an unassisted party.
- (2) In any proceedings to which this section applies the court by which the proceedings are so decided may, subject to subsections (3) and (4) below, make an order for the payment by the Board to the unassisted party of the whole or any part of the costs incurred by him in the proceedings.
- (3) Before making an order under this section, the court shall consider what order for costs should be made against the assisted party and for determining his liability in respect of such costs.
- (4) An order under this section in respect of any costs may only be made if—
  - (a) an order for costs would be made in the proceedings apart from this Act;
  - (b) as respects the costs incurred in a court of first instance, those proceedings were instituted by the assisted party and the court is satisfied that the unassisted party will suffer severe financial hardship unless the order is made; and
  - (c) in any case, the court is satisfied that it is just and equitable in all the circumstances of the case that provision for the costs should be made out of public funds.
- (5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under this section, or against a refusal to make such an order, except on a point of law.
- (6) In this section “costs” means costs as between party and party, and includes the costs of applying for an order under this section; and where a party begins to receive the assistance after the proceedings have been instituted, or ceases to receive the assistance before they are finally decided or otherwise receives the assistance in connection with part only of the proceedings, the reference in subsection (2) above to the costs incurred by the unassisted party in the proceedings shall be construed as a reference to so much of those costs as is attributable to that part.
- (7) For the purposes of this section proceedings shall be treated as finally decided in favour of the unassisted party—
  - (a) if no appeal lies against the decision in his favour;
  - (b) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted; or
  - (c) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal;

and where an appeal against the decision is brought out of time the court by which the appeal (or any further appeal in those proceedings) is determined may make an order

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for the repayment by the unassisted party to the Board of the whole or any part of any sum previously paid to him under this section in respect of those proceedings.

- (8) Where a court decides any proceedings in favour of the unassisted party and an appeal lies (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under this section forthwith, but if an order is made forthwith it shall not take effect—
- (a) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;
  - (b) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.
- (9) For the purposes of this section “court” includes a tribunal.

## PART IV

### CIVIL LEGAL AID

#### 14 Scope of this Part

- (1) This Part applies to such proceedings before courts or tribunals or at statutory inquiries in England and Wales as—
- (a) are proceedings of a description for the time being specified in Part I of Schedule 2 to this Act, except proceedings for the time being specified in Part II of that Schedule, and
  - (b) are not proceedings for which representation may be granted under Part V, and representation under this Part shall be available to any person subject to and in accordance with sections 15 and 16.
- (2) Subject to subsection (3) below, Schedule 2 may be varied by regulations so as to extend or restrict the categories of proceedings for the purposes of which representation is available under this Part, by reference to the court, tribunal or statutory inquiry, to the issues involved, to the capacity in which the person seeking representation is concerned or otherwise.
- (3) Regulations under subsection (2) above may not have the effect of adding any proceedings before any court or tribunal or at any statutory inquiry before or at which persons have no right, and are not normally allowed, to be represented by counsel or a solicitor.
- (4) Regulations under subsection (2) above which extend the categories of proceedings for the purposes of which representation is available under this Part shall not be made without the consent of the Treasury.

#### 15 Availability of, and payment for, representation under this Part

- (1) Subject to subsections (2) and (3) below, representation under this Part for the purposes of proceedings to which this Part applies shall be available to any person whose financial resources are such as, under regulations, make him eligible for representation under this Part.

- (2) A person shall not be granted representation for the purposes of any proceedings unless he satisfies the Board that he has reasonable grounds for taking, defending or being a party to the proceedings.
- (3) A person may be refused representation for the purposes of any proceedings if, in the particular circumstances of the case it appears to the Board—
  - (a) unreasonable that he should be granted representation under this Part, or
  - (b) more appropriate that he should be given assistance by way of representation under Part III;and regulations may prescribe the criteria for determining any questions arising under paragraph (b) above.
- (4) Representation under this Part may be granted by the Board with or without limitations and may be amended, withdrawn or revoked.
- (5) Where the case is one in which the Board has power to secure the provision of representation under this Part by means of contracts with other persons, the grant of representation under this Part may be limited under subsection (4) above as regards the persons who may represent the legally assisted person to representation only in pursuance of a contract made with the Board.
- (6) Except in so far as he is required under section 16 to make a contribution, a legally assisted person shall not be required to make any payment in respect of representation under this Part and it shall be for the Board to pay his solicitor for acting for him and to pay any fees of counsel for so acting.
- (7) The Board's obligation under subsection (6) above is—
  - (a) in the case of representation provided in pursuance of a contract between the Board and the legally assisted person's solicitor, to make such payments as are due under the contract; and
  - (b) in the case of representation provided otherwise than in pursuance of such a contract, to make such payments as are authorised by regulations.
- (8) Nothing in subsection (6) above affects the duty of the solicitor to pay in the first instance expenses incurred in connection with the proceedings that would ordinarily be paid in the first instance by a person's solicitor.

## **16 Reimbursement of Board by contributions and out of costs or property recovered**

- (1) A legally assisted person shall, if his financial resources are such as, under regulations, make him liable to make such a contribution, pay to the Board a contribution in respect of the costs of his being represented under this Part.
- (2) The contribution to be required of him by the Board shall be determined by the Board in accordance with the regulations and may take the form of periodical payments or one or more capital sums or both.
- (3) The contribution required of a person may, in the case of periodical payments, be made payable by reference to the period during which he is represented under this Part or any shorter period and, in the case of a capital sum, be made payable by instalments.
- (4) If the total contribution made by a person in respect of any proceedings exceeds the net liability of the Board on his account, the excess shall be repaid to him.

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- (5) Any sums recovered by virtue of an order or agreement for costs made in favour of a legally assisted person with respect to the proceedings shall be paid to the Board.
- (6) Except so far as regulations otherwise provide—
- (a) any sums remaining unpaid on account of a person's contribution in respect of the sums payable by the Board in respect of any proceedings, and
  - (b) a sum equal to any deficiency by reason of his total contribution being less than the net liability of the Board on his account,
- shall be a first charge for the benefit of the Board on any property which is recovered or preserved for him in the proceedings.
- (7) For the purposes of subsection (6) above it is immaterial what the nature of the property is and where it is situated and the property within the charge includes the rights of a person under any compromise or settlement arrived at to avoid the proceedings or bring them to an end and any sums recovered by virtue of an order for costs made in his favour in the proceedings (not being sums payable to the Board under subsection (5) above).
- (8) The charge created by subsection (6) above on any damages or costs shall not prevent a court allowing them to be set off against other damages or costs in any case where a solicitor's lien for costs would not prevent it.
- (9) In this section references to the net liability of the Board on a legally assisted person's account in relation to any proceedings are references to the aggregate amount of—
- (a) the sums paid or payable by the Board on his account in respect of those proceedings to any solicitor or counsel, and
  - (b) any sums so paid or payable for any advice or assistance under Part III in connection with those proceedings or any matter to which those proceedings relate,
- being sums not recouped by the Board by sums which are recoverable by virtue of an order or agreement for costs made in his favour with respect to those proceedings or by virtue of any right of his to be indemnified against expenses incurred by him in connection with those proceedings.
- (10) Where a legally assisted person has been represented in any proceedings 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 subsection (9)(a) above to the sums paid or payable by the Board on his account in respect of the proceedings 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.

## **17 Limit on costs against assisted party**

- (1) The liability of a legally assisted party under an order for costs made against him with respect to any proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including the financial resources of all the parties and their conduct in connection with the dispute.
- (2) Regulations shall make provision as to the court, tribunal or person by whom that amount is to be determined and the extent to which any determination of that amount is to be final.

- (3) None of the following, namely, a legally assisted person's dwelling house, clothes, household furniture and the tools and implements of his trade shall—
- (a) be taken into account in assessing his financial resources for the purposes of this section, or
  - (b) be subject to execution or any corresponding process in any part of the United Kingdom to enforce the order,
- except so far as regulations may prescribe.

## **18 Costs of successful unassisted parties**

- (1) This section applies to proceedings to which a legally assisted person is a party and which are finally decided in favour of an unassisted party.
- (2) In any proceedings to which this section applies the court by which the proceedings were so decided may, subject to subsections (3) and (4) below, make an order for the payment by the Board to the unassisted party of the whole or any part of the costs incurred by him in the proceedings.
- (3) Before making an order under this section, the court shall consider what order for costs should be made against the assisted party and for determining his liability in respect of such costs.
- (4) An order under this section in respect of any costs may only be made if—
- (a) an order for costs would be made in the proceedings apart from this Act;
  - (b) as respects the costs incurred in a court of first instance, those proceedings were instituted by the assisted party and the court is satisfied that the unassisted party will suffer severe financial hardship unless the order is made; and
  - (c) in any case, the court is satisfied that it is just and equitable in all the circumstances of the case that provision for the costs should be made out of public funds.
- (5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under this section, or against a refusal to make such an order, except on a point of law.
- (6) In this section “costs” means costs as between party and party, and includes the costs of applying for an order under this section; and where a party begins to receive representation after the proceedings have been instituted, or ceases to receive representation before they are finally decided or otherwise receives representation in connection with part only of the proceedings, the reference in subsection (2) above to the costs incurred by the unassisted party in the proceedings shall be construed as a reference to so much of those costs as is attributable to that part.
- (7) For the purposes of this section proceedings shall be treated as finally decided in favour of the unassisted party—
- (a) if no appeal lies against the decision in his favour;
  - (b) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted; or
  - (c) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal;

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and where an appeal against the decision is brought out of time the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the unassisted party to the Board of the whole or any part of any sum previously paid to him under this section in respect of those proceedings.

- (8) Where a court decides any proceedings in favour of the unassisted party and an appeal lies (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under this section forthwith, but if an order is made forthwith it shall not take effect—
- (a) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;
  - (b) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.
- (9) For the purposes of this section “court” includes a tribunal.

## PART V

### CRIMINAL LEGAL AID

#### 19 Scope of this Part

- (1) This Part applies to criminal proceedings before any of the following—
- (a) a magistrates' court;
  - (b) the Crown Court;
  - (c) the criminal division of the Court of Appeal or the Courts-Martial Appeal Court; and
  - (d) the House of Lords in the exercise of its jurisdiction in relation to appeals from either of those courts;
- and representation under this Part shall be available to any person subject to and in accordance with sections 21, 22, 23, 24 and 25.
- (2) Representation under this Part for the purposes of the proceedings before any court extends to any proceedings preliminary or incidental to the proceedings, including bail proceedings, whether before that or another court.
- (3) Representation under this Part for the purposes of the proceedings before a magistrates' court extends to any proceedings before a juvenile court or other magistrates' court to which the case is remitted.
- (4) In subsection (2) above in its application to bail proceedings, “court” has the same meaning as in the Bail Act 1976, but that subsection does not extend representation to bail proceedings before a judge of the High Court exercising the jurisdiction of that Court.
- (5) In this Part—
- “competent authority” is to be construed in accordance with section 20;
  - “Court of Appeal” means the criminal division of that Court;
  - “criminal proceedings” includes proceedings for dealing with an offender for an offence or in respect of a sentence or as a fugitive offender and also includes proceedings instituted under section 115 of the Magistrates' Courts Act 1980 (binding over) in respect of an actual or apprehended breach of the

peace or other misbehaviour and proceedings for dealing with a person for a failure to comply with a condition of a recognizance to keep the peace or be of good behaviour;

“proceedings for dealing with an offender as a fugitive offender” means proceedings before a metropolitan stipendiary magistrate under section 9 of the Extradition Act 1870, section 7 of the Fugitive Offenders Act 1967 or section 6 of the Criminal Justice Act 1988; and

“remitted”, in relation to a juvenile court, means remitted under section 56(1) of the Children and Young Persons Act 1933;

and any reference, in relation to representation for the purposes of any proceedings, to the proceedings before a court includes a reference to any proceedings to which representation under this Part extends by virtue of subsection (2) or (3) above.

## **20 Competent authorities to grant representation under this Part**

- (1) Subject to any provision made by virtue of subsection (10) below, the following courts are competent to grant representation under this Part for the purposes of the following proceedings, on an application made for the purpose.
- (2) The court before which any proceedings take place, or are to take place, is always competent as respects those proceedings, except that this does not apply to the House of Lords; and, in the case of the Court of Appeal and the Courts-Martial Appeal Court, the reference to proceedings which are to take place includes proceedings which may take place if notice of appeal is given or an application for leave to appeal is made.
- (3) The Court of Appeal or, as the case may be, the Courts-Martial Appeal Court is also competent as respects proceedings on appeal from decisions of theirs to the House of Lords.
- (4) The magistrates' court—
  - (a) which commits a person for trial or sentence or to be dealt with in respect of a sentence,
  - (b) which has been given a notice of transfer under section 4 of the Criminal Justice Act 1987 (transfer of serious fraud cases), or
  - (c) from which a person appeals against his conviction or sentence,is also competent as respects the proceedings before the Crown Court.
- (5) The magistrates' court inquiring into an offence as examining justices is also competent, before it decides whether or not to commit the person for trial, as respects any proceedings before the Crown Court on his trial.
- (6) The Crown Court is also competent as respects applications for leave to appeal and proceedings on any appeal to the Court of Appeal under section 9(11) of the Criminal Justice Act 1987 (appeals against orders or rulings at preparatory hearings).
- (7) On ordering a retrial under section 7 of the Criminal Appeal Act 1968 (new trials ordered by Court of Appeal or House of Lords on fresh evidence) the court ordering the retrial is also competent as respects the proceedings before the Crown Court.
- (8) Any magistrates' court to which, in accordance with regulations, a person applies for representation when he has been arrested for an offence but has not appeared or been brought before a court is competent as respects the proceedings in relation to the offence in any magistrates' court.

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- (9) In the event of the Lord Chancellor making an order under section 3(4) as respects the function of granting representation under this Part for the purposes of proceedings before any court, the Board shall be competent as respects those proceedings, on an application made for the purpose.
- (10) An order under section 3(4) may make provision restricting or excluding the competence of any court mentioned in any of subsections (2) to (8) above and may contain such transitional provisions as appear to the Lord Chancellor necessary or expedient.

## **21 Availability of representation under this Part**

- (1) Representation under this Part for the purposes of any criminal proceedings shall be available in accordance with this section to the accused or convicted person but shall not be available to the prosecution except in the case of an appeal to the Crown Court against conviction or sentence, for the purpose of enabling an individual who is not acting in an official capacity to resist the appeal.
- (2) Subject to subsection (5) below, representation may be granted where it appears to the competent authority to be desirable to do so in the interests of justice; and section 22 applies for the interpretation of this subsection in relation to the proceedings to which that section applies.
- (3) Subject to subsection (5) below, representation must be granted—
  - (a) where a person is committed for trial on a charge of murder, for his trial;
  - (b) where the prosecutor appeals or applies for leave to appeal to the House of Lords, for the proceedings on the appeal;
  - (c) where a person charged with an offence before a magistrates' court—
    - (i) is brought before the court in pursuance of a remand in custody when he may be again remanded or committed in custody, and
    - (ii) is not, but wishes to be, legally represented before the court (not having been legally represented when he was so remanded),
 for so much of the proceedings as relates to the grant of bail; and
  - (d) where a person—
    - (i) is to be sentenced or otherwise dealt with for an offence by a magistrates' court or the Crown Court, and
    - (ii) is to be kept in custody to enable enquiries or a report to be made to assist the court,
 for the proceedings on sentencing or otherwise dealing with him.
- (4) Subject to any provision made under section 3(4) by virtue of section 20(10), in a case falling within subsection (3)(a) above, it shall be for the magistrates' court which commits the person for trial, and not for the Crown Court, to make the grant of representation for his trial.
- (5) Representation shall not be granted to any person unless it appears to the competent authority that his financial resources are such as, under regulations, make him eligible for representation under this Part.
- (6) Before making a determination for the purposes of subsection (5) above in the case of any person, the competent authority shall, except in prescribed cases, require a



statement of his financial resources in the prescribed form to be furnished to the authority.

- (7) Where a doubt arises whether representation under this Part should be granted to any person, the doubt shall be resolved in that person's favour.
- (8) Where an application for representation for the purposes of an appeal to the Court of Appeal or the Courts-Martial Appeal Court is made to a competent authority before the giving of notice of appeal or the making of an application for leave to appeal, the authority may, in the first instance, exercise its power to grant representation by making a grant consisting of advice on the question whether there appear to be reasonable grounds of appeal and assistance in the preparation of an application for leave to appeal or in the giving of a notice of appeal.
- (9) Representation granted by a competent authority may be amended or withdrawn, whether by that or another authority competent to grant representation under this Part.
- (10) Regulations may provide for an appeal to lie to a specified court or body against any refusal by a magistrates' court to grant representation under this Part and for that other court or body to make any grant of representation that could have been made by the magistrates' court.
- (11) Subsection (3) above shall have effect in its application to a person who has not attained the age of eighteen as if the references in paragraphs (c) and (d) to remand in custody and to being remanded or kept in custody included references to being committed under section 23 of the Children and Young Persons Act 1969 to the care of a local authority or a remand centre.

## **22 Criteria for grant of representation for trial proceedings**

- (1) This section applies to proceedings by way of a trial by or before a magistrates' court or the Crown Court or on an appeal to the Crown Court against a person's conviction.
- (2) The factors to be taken into account by a competent authority in determining whether it is in the interests of justice that representation be granted for the purposes of proceedings to which this section applies to an accused shall include the following—
  - (a) the offence is such that if proved it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of his livelihood or serious damage to his reputation;
  - (b) the determination of the case may involve consideration of a substantial question of law;
  - (c) the accused may be unable to understand the proceedings or to state his own case because of his inadequate knowledge of English, mental illness or other mental or physical disability;
  - (d) the nature of the defence is such as to involve the tracing and interviewing of witnesses or expert cross-examination of a witness for the prosecution;
  - (e) it is in the interests of someone other than the accused that the accused be represented.
- (3) The Lord Chancellor may, by order, vary the factors listed in subsection (2) above by amending factors in the list or by adding new factors to the list.

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## **23 Reimbursement of public funds by contributions**

- (1) Where representation under this Part is granted to any person whose financial resources are such as, under regulations, make him liable to make a contribution, the competent authority shall order him to pay a contribution in respect of the costs of his being represented under this Part.
- (2) Where the legally assisted person has not attained the age of sixteen, the competent authority may, instead of or in addition to ordering him to make a contribution, order any person—
  - (a) who is an appropriate contributor in relation to him, and
  - (b) whose financial resources are such as, under regulations, make him liable to make a contribution,to pay a contribution in respect of the costs of the representation granted to the legally assisted person.
- (3) Regulations may authorise the making of a contribution order under subsection (1) or (2) above after the grant of representation in prescribed circumstances.
- (4) The amount of the contribution to be required under subsection (1) or (2) above by the competent authority shall be such as is determined in accordance with the regulations.
- (5) A legally assisted person or appropriate contributor may be required to make his contribution in one sum or by instalments as may be prescribed.
- (6) Regulations may provide that no contribution order shall be made in connection with a grant of representation under this Part for the purposes of proceedings in the Crown Court, the Court of Appeal or the House of Lords in a case where a contribution order was made in connection with a grant of such representation to the person in question in respect of proceedings in a lower court.
- (7) Subject to subsection (8) below, if the total contribution made in respect of the costs of representing any person under this Part exceeds those costs, the excess shall be repaid—
  - (a) where the contribution was made by one person only, to him; and
  - (b) where the contribution was made by two or more persons, to them in proportion to the amounts contributed by them.
- (8) Where a contribution has been made in respect of the costs of representing any person under this Part in any proceedings and an order for costs is made in favour of that person in respect of those proceedings, then, where sums due under the order for costs are paid to the Board or the Lord Chancellor under section 20(2) of the Prosecution of Offences Act 1985 (recovery regulations)—
  - (a) if the costs of the representation do not exceed the sums so paid, subsection (7) above shall not apply and the contribution shall be repaid;
  - (b) if the costs of the representation do exceed the sums so paid, subsection (7) above shall apply as if the costs of the representation were equal to the excess.
- (9) References in subsection (8) above to the costs of representation include any charge or fee treated as part of those costs by section 26(2).
- (10) In this Part—
  - “appropriate contributor”, means a person of a description prescribed under section 34(2)(c); and
  - “contribution order” means an order under subsection (1) or (2) above.

## **24 Contribution orders: supplementary**

- (1) Where a competent authority grants representation under this Part and in connection with the grant makes a contribution order under which any sum is required to be paid on the making of the order, it may direct that the grant of representation shall not take effect until that sum is paid.
- (2) Where a legally assisted person fails to pay any relevant contribution when it is due, the court in which the proceedings for the purposes of which he has been granted representation are being heard may, subject to subsection (3) below, revoke the grant.
- (3) A court shall not exercise the power conferred by subsection (2) above unless, after affording the legally assisted person an opportunity of making representations in such manner as may be prescribed, it is satisfied—
  - (a) that he was able to pay the relevant contribution when it was due; and
  - (b) that he is able to pay the whole or part of it but has failed or refused to do so.
- (4) In subsection (2) above “relevant contribution”, in relation to a legally assisted person, means any sum—
  - (a) which he is required to pay by a contribution order made in connection with the grant to him of representation under this Part, and
  - (b) which falls due after the making of the order and before the conclusion of the proceedings for the purposes of which he has been granted such representation.
- (5) Regulations with respect to contribution orders may—
  - (a) provide for their variation or revocation in prescribed circumstances;
  - (b) provide for their making in default of the prescribed evidence of a person’s financial resources;
  - (c) regulate their making after the grant of representation;
  - (d) authorise the remission or authorise or require the repayment in prescribed circumstances of sums due or paid under such orders; and
  - (e) prescribe the court or body by which any function under the regulations is to be exercisable.
- (6) Schedule 3 to this Act shall have effect with respect to the enforcement of contribution orders.

## **25 Payment of costs of representation under this Part**

- (1) Where representation under this Part has been granted to any person the costs of representing him shall be paid—
  - (a) by the Lord Chancellor, or
  - (b) by the Board,as the Lord Chancellor may direct.
- (2) Subject to regulations, the costs of representing any person under this Part shall include sums on account of the fees payable to his counsel or solicitor and disbursements reasonably incurred by his solicitor for or in connection with his representation.
- (3) The costs required by this section to be paid in respect of representing him shall not include any sum in respect of allowances to witnesses attending to give evidence in

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the proceedings for the purposes of which he is represented in any case where such allowances are payable under any other enactment.

**26 Payment for advice or assistance where representation under this Part is subsequently granted**

- (1) This section has effect where—
  - (a) advice or assistance under Part III is given to a person in respect of any matter which is or becomes the subject of criminal proceedings against him; and
  - (b) he is subsequently granted representation under this Part for the purposes of those proceedings.
- (2) If the solicitor acting for the person under the grant of representation is the same as the solicitor who gave him the advice or assistance, any charge or fee in respect of the advice or assistance which, apart from this section, would fall to be secured, recovered or paid as provided by section 11 shall instead be paid under section 25 as if it were part of the costs of the representation.
- (3) If a contribution order is made in connection with the grant of representation under this Part to him—
  - (a) any sum which he is required by virtue of section 9(6) or (7) to pay in respect of the advice or assistance (whether or not already paid) shall be credited against the contribution to be made by him under the contribution order; and
  - (b) section 25 shall have effect in a case to which subsection (2) above applies as if the charges and fees properly chargeable in respect of the advice or assistance were part of the costs of the representation under this Part and as if any such sum as is mentioned in paragraph (a) above which he has paid were part of the contribution made under the contribution order.

**PART VI**

LEGAL AID IN SPECIAL CASES

*Care proceedings*

**27 Representation in care proceedings: scope and competent authorities**

- (1) This section and section 28 apply, subject to subsection (2) below, to the following proceedings (referred to as “care proceedings”), that is to say—
  - (a) proceedings under section 1 of the 1969 Act or under section 21A of the 1980 Act (care proceedings);
  - (b) proceedings under section 15 or 21 of the 1969 Act (variation and discharge of supervision or care orders);
  - (c) proceedings under section 2(12), 3(8), 16(8) or 21(4) of the 1969 Act or section 21A of the 1980 Act (appeals in such proceedings);
  - (d) proceedings under section 3 of the Children and Young Persons Act 1963 (application by parent or guardian for an order directing a local authority to take proceedings under section 1 of the 1969 Act);

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- (e) proceedings under section 3, 5 or 67(2) of the 1980 Act (proceedings in connection with resolutions by local authorities with respect to the assumption of parental rights and duties); and
  - (f) proceedings under Part 1A of the 1980 Act (access orders);
- and representation for the purposes of care proceedings to which this section applies shall be available to any person subject to and in accordance with section 28.
- (2) Subsection (1) above may be varied by regulations so as to restrict the categories of proceedings for the purposes of which representation is available under this section and section 28.
  - (3) Representation for the purposes of care proceedings before a juvenile court extends to the proceedings before any juvenile court to which the case is remitted.
  - (4) Subject to any provision made by virtue of subsection (6) below, the authorities competent, on an application made for the purpose, to grant representation for the purposes of care proceedings are—
    - (a) as respects proceedings before a juvenile court, the court;
    - (b) as respects appeals from decisions of juvenile courts to the Crown Court, the Crown Court or the juvenile court from which the appeal is brought;
    - (c) as respects appeals from decisions of juvenile courts to the High Court, the Board;
    - (d) as respects proceedings before a justice of the peace under section 12E of the 1980 Act (applications for emergency orders), the justice of the peace.
  - (5) In the event of the Lord Chancellor making an order under section 3(4) as respects the function of granting representation for the purposes of any care proceedings, the Board shall be competent as respects those proceedings, on an application made for the purpose.
  - (6) An order under section 3(4) may make provision restricting or excluding the competence of any authority mentioned in subsection (4) above and may contain such transitional provisions as appear to the Lord Chancellor necessary or expedient.
  - (7) In this section and section 28—
    - “the 1969 Act” means the Children and Young Persons Act 1969;
    - “the 1980 Act” means the Child Care Act 1980; and
    - “remitted” in relation to a juvenile court, means remitted under section 2(11) of the 1969 Act.

## **28 Care proceedings: availability**

- (1) Representation for the purposes of care proceedings to which this section applies shall be available to any person, other than a local authority, who is a party to the proceedings.
- (2) Subject to subsection (4) below, representation may be granted where it appears to the competent authority to be desirable to do so in the interests of justice.
- (3) Subject to subsection (4) below, representation must be granted where a child—
  - (a) is brought before a juvenile court under section 21A of the 1980 Act, and
  - (b) is not legally represented before the court but wishes to be.

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- (4) Representation shall not be granted to any person unless it appears to the competent authority that his financial resources are such as, under regulations, make him eligible for representation.
- (5) Where a doubt arises whether representation should be granted to any person, the doubt shall be resolved in that person's favour.
- (6) Representation granted by a competent authority may be amended or withdrawn, whether by that or another authority competent to grant representation.
- (7) Regulations may provide for an appeal to lie to a specified court or body against any refusal by a juvenile court to grant representation for the purposes of care proceedings and for that other court or body to make any grant of representation that could have been made by the juvenile court.

### *Contempt proceedings*

## **29 Representation in contempt proceedings**

- (1) This section applies to any proceedings where a person is liable to be committed or fined—
  - (a) by a magistrates' court under section 12 of the Contempt of Court Act 1981;
  - (b) by a county court under section 14, 92 or 118 of the County Courts Act 1984;
  - (c) by any superior court for contempt in the face of that or any other court;
 and in this Act “proceedings for contempt” means so much of any proceedings as relates to dealing with a person as mentioned in paragraph (a), (b) or (c) above.
- (2) In any proceedings for contempt against a person the court may order that he be granted representation under this section for the purposes of the proceedings if it appears to the court to be desirable to do so in the interests of justice.
- (3) In this section, “superior court” means the Court of Appeal, the High Court, the Crown Court, the Courts-Martial Appeal Court, the Restrictive Practices Court, the Employment Appeal Tribunal and any other court exercising in relation to its proceedings powers equivalent to those of the High Court, and includes the House of Lords in the exercise of its jurisdiction in relation to appeals from courts in England and Wales.

### *Supplementary*

## **30 Supplementary**

- (1) In Part V, the following provisions—
  - (a) sections 23 and 24 together with Schedule 3, and
  - (b) section 25,
 shall apply for the purposes of representation in care proceedings to which sections 27 and 28 apply as they apply for the purposes of representation under that Part in criminal proceedings with the modification mentioned below.
- (2) The modification referred to above is the substitution for paragraphs 9(b) and 10(2)(b) of Schedule 3 of the following sub-paragraph—

- “(b) references to the proceedings for the purposes of which a grant of representation has been made include, where the proceedings result in the giving of a direction under section 2(11) of the Children and Young Persons Act 1969 (duty in care proceedings to direct that the infant be brought before a juvenile court acting for the area in which he resides), the proceedings before the court before which the legally assisted person is brought in pursuance of the direction.”
- (3) In Part V, section 25 shall apply for the purposes of representation in proceedings for contempt as it applies for the purposes of representation under that Part in criminal proceedings.

## 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.

#### **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.

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- (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—



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- (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
  - (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—

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- (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.
- (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).

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*Status: This is the original version (as it was originally enacted).*

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### **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 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.

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- (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;

“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;

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“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.

## PART VIII

### MISCELLANEOUS

#### *Scottish provisions*

#### **44 Scottish provisions**

The Legal Aid (Scotland) Act 1986 shall have effect subject to the amendments specified in Schedule 4 to this Act.

#### *Supplementary*

#### **45 Amendments, repeals and transitional provisions**

- (1) The enactments specified in Schedule 5 to this Act shall have effect subject to the amendments there specified.
- (2) Subject to subsection (4) below, the enactments specified in Schedule 6 to this Act are repealed to the extent specified in the third column of that Schedule.
- (3) Where any enactment amended or repealed by subsection (1) or (2) above extends to the United Kingdom or any part of it, the amendment or repeal has a corresponding extent.
- (4) Schedule 7 to this Act shall have effect for the purpose of making the transitional and saving provisions set out there.

#### **46 Amendments of Legal Aid Act 1974 pending repeal**

The Legal Aid Act 1974 shall have effect subject to the amendments specified in Schedule 8 to this Act.

#### **47 Short title, commencement and extent**

- (1) This Act may be cited as the Legal Aid Act 1988.
- (2) Subject to subsections (3) and (4) below, this Act shall come into force on such day as the Lord Chancellor appoints by order and different days may be appointed for different provisions.
- (3) Section 44 and Schedule 4 shall come into force on such day as the Secretary of State appoints by order and different days may be appointed for different provisions.
- (4) Sections 35 (together with the repeal of section 21 of the Legal Aid Act 1974) and 46 shall come into force on the date on which this Act is passed.



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*Status: This is the original version (as it was originally enacted).*

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- (5) An order under subsection (2) or (3) above may contain such transitional and saving provisions as appear to the Lord Chancellor or, as the case may be, the Secretary of State necessary or expedient.
- (6) This Act, with the exception of sections 12(3) and 17(3), section 44 and Schedule 4 and the amendments or repeals of the enactments referred to in section 45(3), extends to England and Wales only and section 44 and Schedule 4 extend to Scotland only.

*Legal Aid [h.l.]*