



# Legal Aid Act 1988

## 1988 CHAPTER 34

### 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;
  - [<sup>F1</sup>(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.

*Status: Point in time view as at 01/02/1991.*

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- (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.

#### Textual Amendments

**F1** S. 3(4)(c) repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108(2)(7), **Sch. 15**

#### 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;
  - (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.

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- (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.

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## **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.
- (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 <sup>M1</sup>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

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- (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.

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**Marginal Citations**

**M1** 1985 c. 6.

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