



# Legal Aid Act 1988

## 1988 CHAPTER 34

### 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.

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*Status: This is the original version (as it was originally enacted).*

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- (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- (4) Approval under subsection (3) above may be given with or without limitations and may be amended, withdrawn or revoked.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—
  - (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.

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- (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 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.