
STATUTORY INSTRUMENTS

1995 No. 2034

The Church of England (Legal Aid) Rules 1995

PART IV

AMENDMENT, DISCHARGE AND REVOCATION OF CERTIFICATES

Power to amend certificates

14.—(1) The Commission may, either upon the application of the assisted person or of its own motion, amend any certificate issued by it where in its opinion—

- (a) there is some mistake in the certificate; or
- (b) it has become desirable for the certificate to extend to additional proceedings; or
- (c) it has become desirable for the certificate to extend to additional stages of, or not to extend to certain stages of, the proceedings in respect of which it was issued; or
- (d) there has been a material change in the financial circumstances of the assisted person;

or where the assisted person desires to change his solicitor or his solicitor withdraws from the conduct of the assisted person's case.

(2) An application for the amendment of a certificate shall contain such information and be accompanied by such documents as the secretary considers necessary or desirable to enable the Commission to determine the application, and rules 8(1), 9 and 11(1), (4), (5) and (6) shall apply in relation to an application for the amendment of a certificate as they apply in relation to an application for legal aid.

(3) Before amending a certificate in the circumstances specified in paragraph (1)(c) or (d) so as to reduce or restrict the assisted person's entitlement to legal aid, the Commission shall—

- (a) notify the assisted person that it is considering making the amendment; and
- (b) afford him an opportunity of making representations, whether in writing or orally and whether in person or by his solicitor or counsel, with respect to the proposed amendment.

(4) An amendment to a certificate shall take effect from such date as the Commission may specify, and (subject to rule 16) shall have effect in respect of costs incurred on or after that date.

(5) Where a certificate has been amended the secretary shall send notice of the amendment, specifying the date from which it takes effect, together with a copy of the notice, to the assisted person's solicitor, and shall send a further copy of the notice to the assisted person.

Power to discharge or revoke certificates

15.—(1) The Commission may terminate a certificate by discharging or revoking it in accordance with this rule.

(2) Subject to rule 16—

- (a) where a certificate which has been issued in respect of any person is discharged, that certificate shall cease to be in force on the date from which the discharge takes effect; and

- (b) where a certificate which has been issued in respect of any person is revoked, that certificate shall be deemed never to have been in force.
- (3) The Commission may discharge a certificate in the following circumstances—
 - (a) where the assisted person has requested or consented to the discharge;
 - (b) where the Commission is satisfied, by the report of the assisted person’s solicitor or otherwise, that—
 - (i) the assisted person has died or has had a bankruptcy order made against him; or
 - (ii) the proceedings or the part of the proceedings to which the certificate relates have or has been disposed of or completed;
 - (c) where as a result of information which has come to the Commission it is satisfied that—
 - (i) the assisted person no longer has reasonable grounds for taking, defending or being a party to the proceedings or for continuing to do so;
 - (ii) the assisted person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the proceedings be continued;
 - (iii) the financial circumstances of the assisted person are such that he could afford to proceed without legal aid; or
 - (iv) it is unreasonable in the particular circumstances that the assisted person should continue to receive legal aid.
- (4) Where a result of information which has come to the Commission—
 - (a) the Commission is satisfied that an assisted person has wilfully failed to comply with these Rules; or
 - (b) it is satisfied that an assisted person has knowingly made a false statement or false representation in connection with an application for legal aid or for an amendment of a certificate; or
 - (c) it is satisfied that an assisted person has failed to disclose a material fact in connection with an application for legal aid or an application for an amendment of a certificate, and he cannot show that he used due care and diligence to avoid that failure,the Commission may discharge the certificate issued in respect of the assisted person or, if the act or omission or the first of the acts or omissions by the assisted person specified in sub-paragraph (a), (b) or (c) occurred before the date on which the certificate was issued, may revoke the certificate.
- (5) Before discharging a certificate in the circumstances specified in paragraph (3)(c) or discharging or revoking a certificate in the circumstances specified in paragraph (4), the Commission shall—
 - (a) notify the assisted person that it is considering the discharge or revocation of the certificate; and
 - (b) afford him an opportunity of making representations, whether in writing or orally and whether in person or by his solicitor or counsel, with respect to the proposed discharge or revocation.
- (6) The discharge of a certificate under the foregoing provisions of this rule shall take effect from such date as the Commission may consider appropriate.
- (7) Where a certificate is discharged or revoked—
 - (a) the secretary shall send notice of the discharge or revocation (specifying in the case of a discharge the date from which it takes effect), together with a copy of the notice, to the solicitor of the person in relation to whom the certificate was issued and shall (except

where the certificate has been discharged because of the death of that person) send a further copy of the notice to that person; but

- (b) neither that person nor his solicitor shall be entitled to any information as to the grounds for the discharge or revocation.

Effect of amendment, discharge or revocation on costs already incurred

16.—(1) Where a certificate is amended so as to reduce or restrict the amount of legal aid payable under it or is discharged or revoked, that amendment, discharge or revocation shall not affect the payment, or the amount of the payment, out of the Fund to the solicitor of the person in relation to whom the certificate was issued in respect of costs incurred before the date on which notice of the amendment, discharge or revocation is received by that solicitor.

(2) Where a certificate has been amended or discharged with effect from a date earlier than the date on which notice of the amendment or discharge is received by the solicitor of the person to whom the certificate was issued, that person shall pay into the Fund the amount of any legal aid paid or payable to his solicitor by virtue of paragraph (1) in respect of costs incurred between those dates.

(3) Where a certificate has been revoked, the person to whom it was issued shall pay into the Fund the amount of any legal aid paid or payable to his solicitor by virtue of paragraph (1) in respect of costs incurred before the date on which notice of the revocation is received by that solicitor.