



Criminal Justice Act 1967

1967 CHAPTER 80

PART IV

LEGAL AID IN CRIMINAL PROCEEDINGS

73 Power to order legal aid to be given.

- (1) The following provisions of this section shall have effect with respect to the giving of legal aid in connection with criminal proceedings, but any power conferred by those provisions to give such aid shall be exercisable only in the circumstances mentioned in section 75(1), and subject to the provisions of section 75(2) to (4), of this Act.
- (2) Where a person is charged with an offence before a magistrates' court or appears or is brought before a magistrates' court to be dealt with, the court may order that he shall be given legal aid for the purpose of the proceedings before the court.
- (3) Where a person convicted or sentenced by a magistrates' court desires to appeal to a court of quarter sessions, either of those courts may order that he shall be given legal aid for the purpose of the appeal and where any such person gives notice of appeal, either of those courts may order that the other party to the appeal shall be given legal aid for the purpose of resisting the appeal.
- (4) Where a person is committed to or appears before a court of assize or quarter sessions for trial or sentence, or appears or is brought before a court of assize or quarter sessions to be dealt with, the court which commits him or to which he is committed, or before which he appears or is brought, may order that he shall be given legal aid for the purpose of the trial or other proceedings before the court of assize or quarter sessions.
- (5) Where a person is convicted or sentenced by a court of assize or quarter sessions and desires to appeal to the Court of Appeal against his conviction or sentence, the criminal division of the Court of Appeal may order that he shall be given legal aid for the purpose of the appeal and any proceedings preliminary or incidental thereto.
- (6) Where a person is convicted by a court-martial and desires to appeal to the Courts-Martial Appeal Court, the latter court may order that he shall be given legal aid for the purpose of the appeal and any proceedings preliminary or incidental thereto.

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- (7) Where either party to an appeal to the criminal division of the Court of Appeal or the Courts-Martial Appeal Court desires to appeal to the House of Lords from a decision of one of those Courts, the court which gave the decision may order that the person to whose conviction or sentence the appeal relates shall be given legal aid for the purpose of the appeal and any proceedings preliminary or incidental thereto.
- (8) Where the criminal division of the Court of Appeal or the House of Lords orders a person to be retried by a court of assize or quarter sessions under section 1 of the Criminal Appeal Act 1964 (new trials in cases of fresh evidence), the former court or the House of Lords, as the case may be, or the latter court may order that he shall be given legal aid for the purpose of the retrial.
- (9) In the following provisions of this Part of this Act " legal aid order " means an order made under any provision of this section and " legally assisted person " means a person to whom legal aid is ordered to be given by such an order.

74 Supplementary provisions as to legal aid orders.

- (1) For the purposes of this Part of this Act legal aid, in relation to any proceedings to which a person is a party, shall be taken, subject to the following provisions of this section, as consisting of representation by a solicitor and counsel assigned by the court, including advice on the preparation of that person's case for those proceedings.
- (2) Notwithstanding anything in the last foregoing subsection legal aid ordered to be given for the purposes of any proceedings before a magistrates' court shall not include representation by counsel except in the case of any indictable offence where the court is of opinion that, because of circumstances which make the case unusually grave or difficult, representation by both counsel and solicitor would be desirable.
- (3) Where a court of assize or quarter sessions makes a legal aid order under subsection (3) or (4) of the last foregoing section, the court may, in cases of urgency where it appears to the court that there is no time to instruct a solicitor, order that the legal aid to be given shall consist of representation by counsel only, and where a magistrates' court or court of quarter sessions makes a legal aid order under either of those subsections for the purpose of proceedings before a court of quarter sessions before which solicitors have a right of audience, the court may order that the legal aid to be given shall consist of representation by a solicitor only.
- (4) Where a court makes a legal aid order under subsection (5) or (6) of the last foregoing section, the court may order that the legal aid to be given shall consist of representation by counsel only.
- (5) A legal aid order under subsection (2) of the last foregoing section for the purpose of proceedings before a magistrates' court shall be authority for the solicitor assigned by the court to give advice on the question whether there appear to be reasonable grounds of appeal from any determination in those proceedings and assistance by him in the giving of a notice of appeal or making of an application for a case to be stated, being a notice given or application made within the ordinary time for doing so.
- (6) Legal aid which may be ordered to be given to any person convicted or sentenced by a magistrates' court for the purpose of an appeal to a court of quarter sessions by a legal aid order under subsection (3) of the last foregoing section shall be authority for counsel or the solicitor assigned to him to give advice, in the event of the court confirming or varying his conviction or sentence, on the question whether there appear

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to be reasonable grounds of appeal from the decision of the court and, if such grounds appear to exist, assistance in the making of an application for a case to be stated.

- (7) Legal aid which may be ordered to be given to any person for the purpose of any proceedings by a legal aid order under subsection (4) of the last foregoing section shall, in the event of his being convicted or sentenced in those proceedings, include advice on the question whether there appear to be reasonable grounds of appeal and—
- (a) if such grounds appear to exist, assistance in the preparation of an application for leave to appeal or in the giving of a notice of appeal;
 - (b) while that question is being considered, assistance in the making of a provisional application or the giving of a provisional notice.
- (8) Legal aid which may be ordered to be given to any person for the purpose of any appeal by a legal aid order under subsection (5) or (6) of the last foregoing section may, without prejudice to subsection (1) of this section, consist in the first instance of advice, by counsel or a solicitor assigned by the court, on the question whether there appear to be reasonable grounds of appeal and assistance by that solicitor in the preparation of an application for leave to appeal or in the giving of a notice of appeal.
- (9) A legal aid order under the said subsection (5) or (6) may, if the court thinks fit, include provision that the legal aid ordered to be given shall be deemed to include the like advice and assistance previously given by counsel or a solicitor not then assigned by the court.
- (10) The reference in subsection (2) of the last foregoing section to a person charged with an offence before a magistrates' court includes a reference to a person summoned or arrested for an offence and under a duty to appear or a liability to be brought before a magistrates' court in respect of that offence; and the power to make a legal aid order under that subsection shall, in the case of a person arrested for an offence who has not appeared or been brought before a magistrates' court, be exercisable by the magistrates' court to which an application for legal aid is made in pursuance of regulations under this Part of this Act.
- (11) Any reference in the said subsection (2) to a person charged with an offence includes a reference to a person against whom proceedings are instituted under section 91 of the Magistrates' Courts Act 1952 (binding over) in respect of an actual or apprehended breach of the peace or other misbehaviour, and any such reference to a person brought before a magistrates' court to be dealt with includes a reference to a person brought before a metropolitan stipendiary magistrate to be dealt with under section 9 of the Extradition Act 1870 or section 5 of the Fugitive Offenders Act 1881 (hearing of extradition and similar proceedings).
- (12) In the last foregoing section—
- " dealt with " means dealt with under section 6 or 8 of the Criminal Justice Act 1948 or under section 40 of this Act, or dealt with for a failure to comply with a condition of a recognizance to keep the peace or be of good behaviour;
 - " sentence " includes an order of a court in respect of which an appeal lies (with or without leave) to another court, and " sentenced " shall be construed accordingly.

75 Circumstances in which legal aid may be given.

- (1) Subject to the following provisions of this section, the power to make a legal aid order shall be exercisable by a court having power under section 73 of this Act to do so

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where it appears to the court desirable to do so in the interests of justice, and a court having power to do so shall make such an order—

- (a) where a person is committed for trial on a charge of murder; or
 - (b) where the prosecutor appeals or applies for leave to appeal from the criminal division of the Court of Appeal or the Courts-Martial Appeal Court to the House of Lords.
- (2) A court shall not make a legal aid order for the giving of aid to any person for the purpose of any criminal proceedings or any other purpose unless it appears to the court that his means are such that he requires assistance in meeting the costs which he may incur for that purpose.
- (3) A court may refuse to make a legal aid order for the giving of aid to any person unless he first makes a payment on account of any contribution towards costs which he may be liable to make under the next following section, but shall only refuse to do so if it appears to the court from a statement furnished by him under the next following subsection or otherwise that it is likely that he will be required to make such a contribution and that he has the means to make an immediate payment.
- (4) Without prejudice to subsection (2) of this section, before a court makes a legal aid order for the giving of aid to any person, the court shall require him to furnish a written statement of his means in a prescribed form.
- (5) Where a doubt arises whether a legal aid order should be made for the giving of aid to any person, the doubt shall be resolved in that person's favour.

76 Liability for contributions.

- (1) A person to whom legal aid has been ordered to be given for any purpose by a legal aid order may be ordered by a court having power to do so to make such contribution to the appropriate authority in respect of the costs incurred on his behalf for that purpose as appears to the court reasonable having regard to his resources and commitments or, if it so appears, to pay the whole amount of those costs to that authority.
- (2) In this Part of this Act any reference to a contribution towards costs shall be construed as including a reference to a payment of the whole amount thereof.
- (3) A person may be ordered under this section to make a contribution towards costs in one sum or by instalments.
- (4) An order under this section may be made—
 - (a) where the legal aid was ordered to be given for the purpose of proceedings before a magistrates' court and the legally assisted person is not committed to a court of assize or quarter sessions for trial or sentence, by that magistrates' court after disposing of the case;
 - (b) where the legal aid was ordered to be given for the purpose of proceedings before a magistrates' court and the legally assisted person is committed to a court of assize or quarter sessions as aforesaid, by the latter court, or any other court to which the legally assisted person was committed under section 16 of the Criminal Justice Administration Act 1962, after disposing of the case;
 - (c) where the legal aid was ordered to be given for the purpose of an appeal to, or a trial or other proceedings before, a court of assize or quarter sessions, by that court, or any other court to which the legally assisted person was committed

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under the said section 16, after disposing of the appeal or hearing as the case may be ;

- (d) where the legal aid was ordered to be given for the purpose of an appeal to the Court of Appeal, the Courts-Martial Appeal Court or the House of Lords, by the Court in question or that House, as the case may be, after disposing of the appeal.

77 Means inquiry by the Supplementary Benefits Commission.

- (1) At any time after a person has applied for legal aid a court having power to make a legal aid order under section 73 of this Act or an order under the last foregoing section may, and shall on an application made by a legally assisted person in the prescribed circumstances and within the prescribed time, request the Supplementary Benefits Commission to inquire into his means and the Commission shall comply with the request and report on his means to the court.
- (2) Where the court receives a report under the foregoing subsection before making an order under the last foregoing section, the court shall in determining whether or not to make such an order and in determining the terms of the order have regard to the report.
- (3) Where the court receives any such report after making an order under the last foregoing section, it shall reconsider the order and may vary its terms in the light of the report.

78 Computation of resources.

- (1) Regulations made by the Secretary of State with the consent of the Treasury may make provision as to the manner in which a person's resources and commitments are to be taken into account for the purpose of determining whether his means are such that he should be given legal aid under this Part of this Act and for the purpose of determining the amount of the contribution which he may be required to make towards the costs of the legal aid.
- (2) Except in so far as regulations under the foregoing subsection otherwise provide, any resources and commitments of a person's wife or husband shall be treated for the purposes aforesaid as that person's resources and commitments, and the regulations may also—
 - (a) make provision, in relation to infants, for taking into account the resources and commitments of other persons; and
 - (b) make provision as to the manner in which the resources and commitments of other persons are to be taken into account for those purposes.

79 Supplementary provisions as to payment of contributions.

- (1) Where a legally assisted person is given legal aid for the purposes of any proceedings, any sums due under an order for costs made in his favour with respect to those proceedings shall be paid into the fund out of which the costs of legal aid fall to be paid under section 81(1) of this Act or, in the case of appeals to or from the Courts-Martial Appeal Court, to the Secretary of State.
- (2) If the total contribution made by a legally assisted person in respect of any costs is more than the difference between the costs incurred on his behalf and the sums due in respect of costs under such an order, the excess shall be repaid to him.

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- (3) Any sum due by way of contribution towards costs from a legally assisted person may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court but section 74 of the Magistrates' Courts Act 1952 (arrears under affiliation orders) and sections 17 and 18 of the Maintenance Orders Act 1958 (not more than one committal for same arrears, and power to review committals) shall apply in relation to any such sum as they apply in relation to a sum ordered to be paid by an affiliation order.
- (4) Without prejudice to the last foregoing subsection, payment of any sum so due may, subject to the provisions of the next following subsection, be enforced by the High Court or a county court as if it were due in pursuance of a judgment or order of the High Court or county court, as the case may be.
- (5) The last foregoing subsection shall not be construed as authorising the enforcement by a county court of payment of a sum exceeding the limit for the time being in force under section 40 of the County Courts Act 1959 on the amount of any penalty recoverable by statute in a county court.
- (6) If on the application of the appropriate authority it appears to a magistrates' court that at the time of the application payment of a contribution towards costs by a legally assisted person or any instalment thereof has been due for not less than four weeks, and that he is a person to whom earnings fall to be paid, the court may make one or more attachment of earnings orders within the meaning of the Maintenance Orders Act 1958 to secure the payment of the whole of the unpaid amount of the contribution.
- (7) The provisions of Schedule 1 to this Act shall have effect for the purpose of applying, with modifications, provisions of the said Act of 1958 to attachment of earnings orders under this section and for the purpose of making a consequential amendment of that Act.
- (8) Any sum paid by way of contribution towards costs to a clerk of a magistrates' court shall be paid by him to the Secretary of State, and section 27(1) of the Justices of the Peace Act 1949 (application of fines, fees, etc.) shall not apply to any such sum, but section 27(9) of that Act (regulations as to accounts) shall apply to any such sum as it applies to a sum payable under the said subsection (1).

80 Amendment and revocation of legal aid orders.

- (1) A court having power to make a legal aid order may on the application of the legally assisted person or otherwise amend any such order by substituting for any legal representative or representatives previously assigned to him any legal representative or representatives whom the court could have assigned to him if it had then been making the legal aid order.
- (2) A court having power to make a legal aid order may revoke any such order—
 - (a) on the application of the legally assisted person; or
 - (b) if the only legal representative or all the legal representatives for the time being assigned to him withdraws or withdraw from the case and it appears to the court that, because of his conduct, it is not desirable to amend the order under the foregoing subsection.
- (3) The amendment or revocation of a legal aid order under this section shall not affect the right of any legal representative previously assigned to the legally assisted person to remuneration for work done before the date of the amendment or revocation as the

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case may be, but where a court revokes such an order, the court may make an order under section 76 of this Act as if it had disposed of the case.

81 Payment of costs of legal aid.

- (1) Where a legal aid order has been made for the giving of aid to a legally assisted person, the costs of the legal aid given to him shall be paid by whichever of the following methods is appropriate, that is to say—
 - (a) in the case of proceedings in a magistrates' court, they shall be paid out of the legal aid fund;
 - (b) in the case of appeals to quarter sessions, they shall be paid out of the general rate fund of the borough where the court appealed from was acting for a county borough, the general fund of the Greater London Council where it was acting for a London Commission area and in any other case the county fund;
 - (c) in the case of appeals to or from the Courts-Martial Appeal Court, they shall be paid by the Secretary of State; and
 - (d) in the case of any proceedings not falling within any of the foregoing paragraphs, they shall be paid out of the local funds out of which the costs of those proceedings are payable under the Costs in Criminal Cases Act 1952.
- (2) Subject to regulations under section 83 of this Act, the costs of legal aid ordered to be given to a legally assisted person for the purpose of any proceedings shall include sums on account of the fees payable to any counsel or solicitor assigned to him and disbursements reasonably incurred by any such solicitor for or in connection with those proceedings.
- (3) Costs required by this section to be paid in respect of any proceedings shall not include any sum in respect of allowances to witnesses attending to give evidence in those proceedings in any case where such allowances are payable under the provisions of any other enactment.
- (4) Costs required by this section to be paid out of the legal aid fund shall be paid in like manner as costs which fall to be so paid under Part I of the Legal Aid and Advice Act 1949 and—
 - (a) the functions of the Law Society under that Part of that Act shall include securing the payment of costs so required and the recovery of sums due to the legal aid fund under this Part of this Act; and
 - (b) references to that Part of that Act in sections 8(3) to (5), 9(2) to (9) and 11 of that Act (administration and financing of the legal aid scheme under that Part of that Act) shall be construed as including references to this Part of this Act, so far as it relates to the payment of costs and the recovery of sums as aforesaid.
- (5) The costs of any proceedings before a court, or any matters preliminary or incidental to any such proceedings, which are required by this section to be paid out of any fund mentioned in subsection (1)(b) or (d) of this section shall be treated for the purpose of the Costs in Criminal Cases Act 1952 as if they had been ordered by that court to be paid out of local funds.
- (6) Costs required by this section to be paid out of any fund mentioned in the said subsection (1)(b) or (d) shall be repaid by the Secretary of State, in accordance with arrangements made by him with the approval of the Treasury, to the local authority by which the fund is maintained.

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- (7) A local authority shall not be entitled to any payment under this section on account of sums included in an order for payment of costs which is enforceable by the authority, except in so far as the Secretary of State is satisfied that those sums cannot be recovered by virtue of that order.

82 Solicitors and counsel.

- (1) Any practising barrister or solicitor may be assigned to act for a legally assisted person unless he is for the time being excluded by virtue of the next following subsection as being unfit so to act by reason of his conduct when acting for legally assisted persons or his professional conduct generally.
- (2) The Lord Chancellor may make rules—
- (a) empowering a tribunal established under the rules—
 - (i) to hear and determine complaints against a barrister or solicitor;
 - (ii) to exclude from acting for legally assisted persons (whether permanently or temporarily) any barrister or solicitor against whom a complaint is proved and, in the case of a member of a firm of solicitors, any other person who is for the time being a member of the same firm ;
 - (iii) to reduce or cancel the remuneration otherwise payable to any such barrister or solicitor or to his firm under a legal aid order;
 - (iv) to order any such barrister or solicitor to pay all or any of the costs of the proceedings on any such complaint;
 - (b) regulating the making of complaints to that tribunal and the disposal by the tribunal of complaints so made; and
 - (c) providing for the notification of the decisions of that tribunal to all courts which have power under section 73 of this Act to make a legal aid order.
- (3) Where a barrister or solicitor is aggrieved by any decision of the tribunal excluding him (whether permanently or temporarily) from acting for legally assisted persons, he may appeal against the decision to the High Court, and the High Court (whose decision shall be final) may confirm or quash the decision appealed against or may substitute such other decision as the court thinks fit.
- (4) Provision shall be made by rules of court for regulating appeals to the High Court under the last foregoing subsection, and those rules shall provide for limiting the time within which appeals may be brought.
- (5) The expenses of any tribunal established by virtue of this section shall be defrayed out of the legal aid fund and—
- (a) the functions of the Law Society under Part I of the Legal Aid and Advice Act 1949 shall include securing the payment of such expenses ; and
 - (b) references to that Part of that Act in sections 8(3) to (5), 9(2) to (9) and 11 of that Act (administration and financing of the legal aid scheme under that Part of that Act) shall be construed as including references to this subsection.

83 Regulations.

- (1) Without prejudice to any other provision of this Part of this Act authorising the making of regulations or rules, the Secretary of State may make such regulations as appear to

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him necessary or desirable for giving effect to this Part of this Act or for preventing abuses thereof and, in particular, any such regulations may—

- (a) make provision as to the manner of making applications for legal aid under this Part of this Act and the time when such applications may be made and disposed of;
 - (b) provide for the exercise of the powers of any court under this Part of this Act by a person entitled to sit as a member of the court or any officer of the court;
 - (c) confer on any person aggrieved by a decision of any such officer exercising those powers a right to have the matter determined by the court or, if it is so prescribed, by a person entitled to sit as a member of the court;
 - (d) require any officer of a prescribed court to report to the court or any person entitled to sit as a member of the court any case in which it appears to him that, although no application has been made for the purpose, a legal aid order ought to be made under section 73 of this Act;
 - (e) make provision with respect to the manner in which counsel and solicitors are to be assigned to legally assisted persons in pursuance of legal aid orders;
 - (f) prescribe the rates or scales of payment of any costs payable in accordance with section 81(1) of this Act and the conditions under which such costs may be allowed;
 - (g) provide for the assessment and taxation of such costs and for the review of any assessment made or taxation carried out under the regulations;
 - (h) provide for the giving of information, by courts by which, or officers by whom, legal aid orders or orders for the payment of costs under the Costs in Criminal Cases Act 1952 are made, to persons responsible for the administration of funds mentioned in section 81(1) of this Act, and for the giving of information as aforesaid, where an order is made under section 76(1) of this Act, to the appropriate authority; and
 - (i) prescribe the forms to be used for the purposes of this Part of this Act.
- (2) The Secretary of State in making regulations under this section as to the amounts payable to counsel or a solicitor assigned to give legal aid under this Part of this Act, and any person by whom any such amount falls to be assessed, taxed or reviewed under the regulations, shall have regard to the principle of allowing fair remuneration according to the work actually and reasonably done.
- (3) Regulations under this section may make different provision for different cases.

84 Interpretation of Part IV.

In this Part of this Act, except so far as the context otherwise requires—

" appropriate authority " means—

- (a) in relation to legal aid ordered to be given for the purpose of or in connection with an appeal to or from the Courts-Martial Appeal Court, the Secretary of State;
- (b) in any other case, the clerk of the magistrates' court (if any) by which the legally assisted person was tried or dealt with or from which an appeal was brought, or by which he was committed to a court of assize or quarter sessions for trial or sentence, or, where he was tried or dealt with otherwise than after being committed by a magistrates' court, the clerk of the magistrates' court nominated for the purposes of this paragraph by the court by which he was tried or dealt with;

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" committed for sentence " means committed under the Vagrancy Act 1824, section 6 or 8 of the Criminal Justice Act 1948, section 28 or 29 of the Magistrates' Courts Act 1952, section 67 of the Mental Health Act 1959 or section 41 or 62(6) of this Act;

" legal aid fund " means the legal aid fund established under the Legal Aid and Advice Act 1949;

" prescribed " means prescribed by regulations made under this Part of this Act.