



# Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988

1988 No. 1

## <sup>F1</sup>PART I

### LEGAL AID

#### Textual Amendments

**F1** Pt. I (ss. 1-4) modified (1.9.1994) by [1994 No. 3, s. 5\(1\)](#); Instrument dated 25.7.1994 made by Archbishops of Canterbury and York

## 1 Legal Aid Fund and Legal Aid Commission

- (1) The General Synod shall continue to maintain the Legal Aid Fund to which the General Synod and the Church Commissioners may contribute such sums as each shall from time to time decide.
- (2) After every ordinary election to the General Synod the Standing Committee of the General Synod shall appoint a commission, to be known as the Legal Aid Commission, which shall be charged with the duty of administering the Legal Aid Fund.
- (3) The Legal Aid Fund shall be held by the Central Board of Finance on behalf of the General Synod, and the Board may, subject to and in accordance with the provisions of this Part of this Measure, make such payments out of the Fund as may be authorised by a certificate in writing issued by the Legal Aid Commission under section 2 of this Measure.
- (4) The members of the Legal Aid Commission shall be entitled to hold office until their successors, who may be the same persons, come into office; and if a member of the Commission dies, resigns or otherwise vacates his office, the Standing Committee shall appoint another person to hold office for the unexpired portion of the term of office of the person in whose place he is appointed.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988, Part I. (See end of Document for details)*

- (5) Until a commission is appointed under subsection (2) above, the committee appointed under section 59 of the <sup>M1</sup>Ecclesiastical Jurisdiction Measure 1963 shall exercise the functions of the Legal Aid Commission under this Measure.

#### Marginal Citations

M1 1963 No. 2.

## 2 Applications for legal aid.

- (1) Where any proceedings mentioned in the first column of Schedule 1 to this Measure are taken or are proposed to be taken in the province of Canterbury or the province of York, any person mentioned in the second column of that Schedule in relation to those proceedings may apply to the Legal Aid Commission for financial assistance in respect of costs incurred in connection with those proceedings.
- (2) On an application under subsection (1) above, the Commission may, subject to and in accordance with the provisions of this Part of this Measure, issue a certificate authorising the payment out of the Legal Aid Fund of the whole or part of the costs incurred by the applicant, after the date of the issue of the certificate, in or in relation to or directly or indirectly arising out of the proceedings concerned; and any payment made or authorised under this subsection is in this Part of this Measure referred to as “legal aid”.
- (3) Where on an application under subsection (1) above the Commission considers that legal aid should be granted in respect of some but not all of the costs incurred by the applicant, in or in relation to or directly or indirectly arising out of the proceedings concerned, the Commission may issue a certificate for—
- (a) the payment of a contribution towards those costs of an amount specified in the certificate, or
  - (b) the payment of those costs subject to a contribution from the applicant of an amount so specified, or
  - (c) the payment of such proportion of those costs as may be so specified, or
  - (d) the payment of the costs of, or a specified proportion of the costs of, such part of the proceedings as may be so specified, whether by reference to issues in or stages of those proceedings.
- (4) Before deciding whether to grant any legal aid under this section and, if so, to what extent, the Commission shall consider the financial resources of the applicant (including the financial resources of the wife or husband of the applicant), and legal aid shall not be granted if it appears to the Commission that the applicant could afford to proceed without legal aid.
- (5) Except as expressly provided by rules made under this Part of this Measure, the Commission shall not grant legal aid to any person in connection with any proceedings unless that person shows that he has reasonable grounds for taking or defending the proceedings or being a party thereto.

#### Modifications etc. (not altering text)

C1 S. 2(5) excluded by S.I. 1988/1175, rule 11(2)

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### **3 Supplementary provisions as to legal aid.**

- (1) Subject to the provisions of this Part of this Measure, where a certificate is issued under section 2 of this Measure for the payment out of the Legal Aid Fund of the costs or part of the costs of any person, that payment shall be made to the solicitor who has acted for that person.
- (2) Where a certificate is issued under section 2 of this Measure for the payment of the costs, or part of the costs, incurred by any person, the solicitor who has acted for that person shall not be entitled to receive from, or on behalf of, that person more than the amount (if any) by which the total amount of those costs, as taxed or assessed in accordance with rules made under section 4 of this Measure, exceeds the amount payable to that solicitor out of the Legal Aid Fund under that certificate.
- (3) Except as expressly provided by rules made under this Part of this Measure—
  - (a) the fact that legal aid is granted in respect of the services of counsel or a solicitor shall not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of that relationship; and
  - (b) the fact that any person is granted legal aid 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.

### **4 Rules.**

- (1) The Standing Committee of the General Synod may make such rules as it considers necessary or desirable for giving effect to, or for preventing abuses of, this Part of this Measure, and rules made under this subsection may in particular—
  - (a) make provision as to the procedure to be observed in relation to an application for legal aid;
  - (b) make provision as to the information to be furnished by any person applying for or receiving legal aid and as to the provision of information by any solicitor or counsel acting for any such person;
  - (c) make provision for the circumstances in which the Legal Aid Commission may amend, revoke or discharge a certificate issued by the Commission and as to the effect of such amendment, revocation or discharge;
  - (d) make provision for regulating the procedure in proceedings in respect of which legal aid is granted and in particular make provision—
    - (i) as to the taxation of costs in respect of which legal aid is granted, including any such costs incurred in connection with proceedings not actually begun;
    - (ii) as to the assessment of those costs, without taxation, by such person as may be specified in the rules, but with a view to allowing as nearly as may be the same amount as on taxation;
    - (iii) as to the cases in which and the extent to which a person to whom legal aid is granted may be required to give security for costs, and the manner in which it may be given;
  - (e) make provision for the enforcement for the benefit of the Legal Aid Fund of any order or agreement for costs made in favour of a person to whom legal aid is granted.
- (2) The Standing Committee of the General Synod may by rules vary the provisions of Schedule I to this Measure so as to add to or exclude from the proceedings therein

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mentioned any proceedings specified in the rules (being proceedings under a provision of a Measure of the General Synod or of rules or regulations made under such a Measure), and any such rules may make any consequential changes in the second column of that Schedule; except that the provisions of that Schedule shall not be varied so as to enable legal aid to be granted in connection with proceedings before any court or tribunal before which persons have no right, and are not normally allowed, to be heard by counsel or solicitor.

- (3) Any rules made under subsection (1) above may make different provision in relation to different proceedings.
- (4) Any rules made under this section shall be laid before the General Synod and shall not come into force until they have been approved by the General Synod, whether with or without amendment.
- (5) Where the Standing Committee determines that rules made under this section do not need to be debated by the General Synod then, unless—
  - (a) notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the rules to be debated, or
  - (b) notice is so given by any such member that he wishes to move an amendment to the rules and at least twenty-five other members of the Synod indicate when the amendment is called that they wish the amendment to be moved,the rules shall for the purposes of subsection (4) above be deemed to have been approved by the General Synod without amendment.
- (6) <sup>M2</sup>The Statutory Instruments Act 1946 shall apply to any rules approved by the General Synod under this section as if they were a statutory instrument and as if this Measure were an Act providing that any such rules shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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**Marginal Citations**

**M2** 1946 c. 36.

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