



# Legal Aid Act 1988

## 1988 CHAPTER 34

### PART IV

#### CIVIL LEGAL AID

#### 14 Scope of this Part.

- (1) This Part applies to such proceedings before courts or tribunals or at statutory inquiries in England and Wales as—
  - (a) are proceedings of a description for the time being specified in Part I of Schedule 2 to this Act, except proceedings for the time being specified in Part II of that Schedule, and
  - (b) are not proceedings for which representation may be granted under Part V, and representation under this Part shall be available to any person subject to and in accordance with sections 15 and 16.
- (2) Subject to subsection (3) below, Schedule 2 may be varied by regulations so as to extend or restrict the categories of proceedings for the purposes of which representation is available under this Part, by reference to the court, tribunal or statutory inquiry, to the issues involved, to the capacity in which the person seeking representation is concerned or otherwise.
- (3) Regulations under subsection (2) above may not have the effect of adding any proceedings before any court or tribunal or at any statutory inquiry before or at which persons have no right, and are not normally allowed, to be represented by [<sup>F1</sup>a legal representative].
- (4) Regulations under subsection (2) above which extend the categories of proceedings for the purposes of which representation is available under this Part shall not be made without the consent of the Treasury.

*Status: Point in time view as at 14/10/1991.*

*Changes to legislation: Legal Aid Act 1988, Part IV is up to date with all changes known to be in force on or before 15 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F1** Words in s. 14(3) substituted (*I. 4. 1991*) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 63(1)(a)**; S.I.1991/608, art. 2, **Sch.**

## 15 Availability of, and payment for, representation under this Part.

- (1) Subject to subsections (2) [<sup>F2</sup>to [<sup>F3</sup>(3D)]] below, representation under this Part for the purposes of proceedings to which this Part applies shall be available to any person whose financial resources are such as, under regulations, make him eligible for representation under this Part.
- (2) A person shall not be granted representation for the purposes of any proceedings unless he satisfies the Board that he has reasonable grounds for taking, defending or being a party to the proceedings.
- (3) A person may be refused representation for the purposes of any proceedings if, in the particular circumstances of the case it appears to the Board—
  - (a) unreasonable that he should be granted representation under this Part, or
  - (b) more appropriate that he should be given assistance by way of representation under Part III;

and regulations may prescribe the criteria for determining any questions arising under paragraph (b) above.

[<sup>F4</sup>(3A) Representation under this Part shall not be available—

- (a) to any local authority; or]
- (b) to any other body which falls within a prescribed description, [<sup>F5</sup>or]
- [<sup>F5</sup>(c) to a guardian *ad litem*,]

for the purposes of any proceedings under the Children Act 1989.

(3B) Regardless of subsection (2) or (3), representation under this Part must be granted where a child who is brought before a court under section 25 of the 1989 Act (use of accommodation for restricting liberty) is not, but wishes to be, legally represented before the court.

[<sup>F6</sup>(3C) Subject to subsection (3A) but regardless of subsections (2) or (3), representation under this Part must be granted to the child in respect of whom the application is made, to any parent of such a child and to any person with parental responsibility for him within the meaning of the 1989 Act to cover proceedings relating to an application for the following orders under that Act—

- (a) an order under section 31 (a care or supervision order);
- (b) an order under section 43 (a child assessment order);
- (c) an order under section 44 (an emergency protection order); or
- (d) an order under section 45 (extension or discharge of an emergency protection order).

(3D) Subject to subsections (2) and (3), representation must be granted to cover proceedings relating to an appeal against an order made under section 31 of the 1989 Act to a person who has been granted representation by virtue of subsection (3C).

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- (3E) Subject to subsections (1) and (3A) but regardless of subsections (2) or (3), representation under this Part must be granted where a person applies to be or has been joined as a party to any of the proceedings mentioned in subsection (3C).]
- (4) Representation under this Part may be granted by the Board with or without limitations and may be amended, withdrawn or revoked.
- (5) Where the case is one in which the Board has power to secure the provision of representation under this Part by means of contracts with other persons, the grant of representation under this Part may be limited under subsection (4) above as regards the persons who may represent the legally assisted person to representation only in pursuance of a contract made with the Board.
- (6) Except in so far as he is required under section 16 to make a contribution, a legally assisted person shall not be required to make any payment in respect of representation under this Part and it shall be for the Board to pay his [<sup>F7</sup>legal representative].
- (7) The Board's obligation under subsection (6) above is—
- (a) in the case of representation provided in pursuance of a contract between the Board and the legally assisted person's [<sup>F8</sup>legal representative], to make such payments as are due under the contract; and
  - (b) in the case of representation provided otherwise than in pursuance of such a contract, to make such payments as are authorised by regulations.
- (8) Nothing in subsection (6) above affects the duty of the [<sup>F8</sup>legal representative] to pay in the first instance expenses incurred in connection with the proceedings that would ordinarily be paid in the first instance by a person's [<sup>F8</sup>legal representative].

#### Textual Amendments

- F2** Words in s. 15(1) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\), s. 99\(2\)](#); S.I. 1991/828, [art. 3\(2\)](#)
- F3** Words in s. 15(1) substituted (14.10.1991) by S.I. 1991/1924, [art. 2\(a\)](#)
- F4** S. 15(3A)(3B) inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\), s. 99\(2\)](#); S.I. 1991/828, [art. 3\(2\)](#)
- F5** Word in s. 15(3A)(b) and (3A)(c) inserted (14.10.1991) by S.I. 1991/2036 art. 3
- F6** S. 15(3C)-(3E) inserted (14.10.1991) by S.I. 1991/1924, [art. 2\(b\)](#)
- F7** Words in s. 15(6) substituted (1.4.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\), s. 125\(3\), Sch. 18 para. 61\(4\)](#); S.I. 1991/608, art. 2, [Sch.](#)
- F8** Words in s. 15(7)(8) substituted (1.4.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 37\), s. 125\(3\), Sch. 18 para. 63\(4\)](#); S.I.1991/608, art. 2, [Sch.](#)

## 16 Reimbursement of Board by contributions and out of costs or property recovered.

- (1) A legally assisted person shall, if his financial resources are such as, under regulations, make him liable to make such a contribution, pay to the Board a contribution in respect of the costs of his being represented under this Part.
- (2) The contribution to be required of him by the Board shall be determined by the Board in accordance with the regulations and may take the form of periodical payments or one or more capital sums or both.

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- (3) The contribution required of a person may, in the case of periodical payments, be made payable by reference to the period during which he is represented under this Part or any shorter period and, in the case of a capital sum, be made payable by instalments.
- (4) If the total contribution made by a person in respect of any proceedings exceeds the net liability of the Board on his account, the excess shall be repaid to him.
- (5) Any sums recovered by virtue of an order or agreement for costs made in favour of a legally assisted person with respect to the proceedings shall be paid to the Board.
- (6) Except so far as regulations otherwise provide—
- (a) any sums remaining unpaid on account of a person's contribution in respect of the sums payable by the Board in respect of any proceedings, and
  - (b) a sum equal to any deficiency by reason of his total contribution being less than the net liability of the Board on his account,
- shall be a first charge for the benefit of the Board on any property which is recovered or preserved for him in the proceedings.
- (7) For the purposes of subsection (6) above it is immaterial what the nature of the property is and where it is situated and the property within the charge includes the rights of a person under any compromise or settlement arrived at to avoid the proceedings or bring them to an end and any sums recovered by virtue of an order for costs made in his favour in the proceedings (not being sums payable to the Board under subsection (5) above).
- (8) The charge created by subsection (6) above on any damages or costs shall not prevent a court allowing them to be set off against other damages or costs in any case where a [<sup>F9</sup>legal representative's]lien for costs would not prevent it.
- (9) In this section references to the net liability of the Board on a legally assisted person's account in relation to any proceedings are references to the aggregate amount of—
- (a) the sums paid or payable by the Board on his account in respect of those proceedings to any [<sup>F10</sup>legal representative], and
  - (b) any sums so paid or payable for any advice or assistance under Part III in connection with those proceedings or any matter to which those proceedings relate,
- being sums not recouped by the Board by sums which are recoverable by virtue of an order or agreement for costs made in his favour with respect to those proceedings or by virtue of any right of his to be indemnified against expenses incurred by him in connection with those proceedings.
- (10) Where a legally assisted person has been represented in any proceedings in pursuance of a contract made with the Board on terms which do not differentiate between the remuneration for his and other cases, the reference in subsection (9)(a) above to the sums paid or payable by the Board on his account in respect of the proceedings shall be construed as a reference to such part of the remuneration payable under the contract as may be specified in writing by the Board.

#### Textual Amendments

**F9** Words in s. 16(8) substituted (*I. 4. 1991*) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 63(2)**; S.I.1991/608, art. 2, **Sch.**

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**F10** Words in s. 16(9)(a) substituted (1. 4. 1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(3), **Sch. 18 para. 63(3)(a)**; S.I.1991/608, art. 2, **Sch.**

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

**C1** S. 16(6) restricted (14.10.1991) by S.I. 1991/2036, **reg. 21(2)**

**17 Limit on costs against assisted party.**

- (1) The liability of a legally assisted party under an order for costs made against him with respect to any 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.

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

**C2** S. 17(1) modified by S.I. 1989/338, **art. 15(2)**

**C3** S. 17(1) applied (with modifications) by S.I. 1989/339, **art. 131**

**C4** S. 17(1) modified by S.I. 1989/339, **art. 132**

**18 Costs of successful unassisted parties.**

- (1) This section applies to proceedings to which a legally assisted person is a party and which are finally decided in favour of an unassisted party.
- (2) In any proceedings to which this section applies the court by which the proceedings were 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

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- (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 representation after the proceedings have been instituted, or ceases to receive representation before they are finally decided or otherwise receives representation 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.

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

**C5** S. 18 restricted by S.I. 1989/339, arts. 138, 143

**C6** S. 18(4)(b) modified by S.I. 1989/339, art. 135

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