



Legal Aid Act 1988

1988 CHAPTER 34

PART V

CRIMINAL LEGAL AID

19 Scope of this Part

- (1) This Part applies to criminal proceedings before any of the following—
 - (a) a magistrates' court;
 - (b) the Crown Court;
 - (c) the criminal division of the Court of Appeal or the Courts-Martial Appeal Court; and
 - (d) the House of Lords in the exercise of its jurisdiction in relation to appeals from either of those courts;and representation under this Part shall be available to any person subject to and in accordance with sections 21, 22, 23, 24 and 25.
- (2) Representation under this Part for the purposes of the proceedings before any court extends to any proceedings preliminary or incidental to the proceedings, including bail proceedings, whether before that or another court.
- (3) Representation under this Part for the purposes of the proceedings before a magistrates' court extends to any proceedings before a juvenile court or other magistrates' court to which the case is remitted.
- (4) In subsection (2) above in its application to bail proceedings, “court” has the same meaning as in the Bail Act 1976, but that subsection does not extend representation to bail proceedings before a judge of the High Court exercising the jurisdiction of that Court.
- (5) In this Part—
 - “competent authority” is to be construed in accordance with section 20;
 - “Court of Appeal” means the criminal division of that Court;

Status: This is the original version (as it was originally enacted).

“criminal proceedings” includes proceedings for dealing with an offender for an offence or in respect of a sentence or as a fugitive offender and also includes proceedings instituted under section 115 of the Magistrates' Courts Act 1980 (binding over) in respect of an actual or apprehended breach of the peace or other misbehaviour and proceedings for dealing with a person for a failure to comply with a condition of a recognizance to keep the peace or be of good behaviour;

“proceedings for dealing with an offender as a fugitive offender” means proceedings before a metropolitan stipendiary magistrate under section 9 of the Extradition Act 1870, section 7 of the Fugitive Offenders Act 1967 or section 6 of the Criminal Justice Act 1988; and

“remitted”, in relation to a juvenile court, means remitted under section 56(1) of the Children and Young Persons Act 1933;

and any reference, in relation to representation for the purposes of any proceedings, to the proceedings before a court includes a reference to any proceedings to which representation under this Part extends by virtue of subsection (2) or (3) above.

20 Competent authorities to grant representation under this Part

- (1) Subject to any provision made by virtue of subsection (10) below, the following courts are competent to grant representation under this Part for the purposes of the following proceedings, on an application made for the purpose.
- (2) The court before which any proceedings take place, or are to take place, is always competent as respects those proceedings, except that this does not apply to the House of Lords; and, in the case of the Court of Appeal and the Courts-Martial Appeal Court, the reference to proceedings which are to take place includes proceedings which may take place if notice of appeal is given or an application for leave to appeal is made.
- (3) The Court of Appeal or, as the case may be, the Courts-Martial Appeal Court is also competent as respects proceedings on appeal from decisions of theirs to the House of Lords.
- (4) The magistrates' court—
 - (a) which commits a person for trial or sentence or to be dealt with in respect of a sentence,
 - (b) which has been given a notice of transfer under section 4 of the Criminal Justice Act 1987 (transfer of serious fraud cases), or
 - (c) from which a person appeals against his conviction or sentence,
 is also competent as respects the proceedings before the Crown Court.
- (5) The magistrates' court inquiring into an offence as examining justices is also competent, before it decides whether or not to commit the person for trial, as respects any proceedings before the Crown Court on his trial.
- (6) The Crown Court is also competent as respects applications for leave to appeal and proceedings on any appeal to the Court of Appeal under section 9(11) of the Criminal Justice Act 1987 (appeals against orders or rulings at preparatory hearings).
- (7) On ordering a retrial under section 7 of the Criminal Appeal Act 1968 (new trials ordered by Court of Appeal or House of Lords on fresh evidence) the court ordering the retrial is also competent as respects the proceedings before the Crown Court.

- (8) Any magistrates' court to which, in accordance with regulations, a person applies for representation when he has been arrested for an offence but has not appeared or been brought before a court is competent as respects the proceedings in relation to the offence in any magistrates' court.
- (9) In the event of the Lord Chancellor making an order under section 3(4) as respects the function of granting representation under this Part for the purposes of proceedings before any court, the Board shall be competent as respects those proceedings, on an application made for the purpose.
- (10) An order under section 3(4) may make provision restricting or excluding the competence of any court mentioned in any of subsections (2) to (8) above and may contain such transitional provisions as appear to the Lord Chancellor necessary or expedient.

21 Availability of representation under this Part

- (1) Representation under this Part for the purposes of any criminal proceedings shall be available in accordance with this section to the accused or convicted person but shall not be available to the prosecution except in the case of an appeal to the Crown Court against conviction or sentence, for the purpose of enabling an individual who is not acting in an official capacity to resist the appeal.
- (2) Subject to subsection (5) below, representation may be granted where it appears to the competent authority to be desirable to do so in the interests of justice; and section 22 applies for the interpretation of this subsection in relation to the proceedings to which that section applies.
- (3) Subject to subsection (5) below, representation must be granted—
 - (a) where a person is committed for trial on a charge of murder, for his trial;
 - (b) where the prosecutor appeals or applies for leave to appeal to the House of Lords, for the proceedings on the appeal;
 - (c) where a person charged with an offence before a magistrates' court—
 - (i) is brought before the court in pursuance of a remand in custody when he may be again remanded or committed in custody, and
 - (ii) is not, but wishes to be, legally represented before the court (not having been legally represented when he was so remanded),for so much of the proceedings as relates to the grant of bail; and
 - (d) where a person—
 - (i) is to be sentenced or otherwise dealt with for an offence by a magistrates' court or the Crown Court, and
 - (ii) is to be kept in custody to enable enquiries or a report to be made to assist the court,for the proceedings on sentencing or otherwise dealing with him.
- (4) Subject to any provision made under section 3(4) by virtue of section 20(10), in a case falling within subsection (3)(a) above, it shall be for the magistrates' court which commits the person for trial, and not for the Crown Court, to make the grant of representation for his trial.

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

- (5) Representation shall not be granted to any person unless it appears to the competent authority that his financial resources are such as, under regulations, make him eligible for representation under this Part.
- (6) Before making a determination for the purposes of subsection (5) above in the case of any person, the competent authority shall, except in prescribed cases, require a statement of his financial resources in the prescribed form to be furnished to the authority.
- (7) Where a doubt arises whether representation under this Part should be granted to any person, the doubt shall be resolved in that person's favour.
- (8) Where an application for representation for the purposes of an appeal to the Court of Appeal or the Courts-Martial Appeal Court is made to a competent authority before the giving of notice of appeal or the making of an application for leave to appeal, the authority may, in the first instance, exercise its power to grant representation by making a grant consisting of advice on the question whether there appear to be reasonable grounds of appeal and assistance in the preparation of an application for leave to appeal or in the giving of a notice of appeal.
- (9) Representation granted by a competent authority may be amended or withdrawn, whether by that or another authority competent to grant representation under this Part.
- (10) Regulations may provide for an appeal to lie to a specified court or body against any refusal by a magistrates' court to grant representation under this Part and for that other court or body to make any grant of representation that could have been made by the magistrates' court.
- (11) Subsection (3) above shall have effect in its application to a person who has not attained the age of eighteen as if the references in paragraphs (c) and (d) to remand in custody and to being remanded or kept in custody included references to being committed under section 23 of the Children and Young Persons Act 1969 to the care of a local authority or a remand centre.

22 Criteria for grant of representation for trial proceedings

- (1) This section applies to proceedings by way of a trial by or before a magistrates' court or the Crown Court or on an appeal to the Crown Court against a person's conviction.
- (2) The factors to be taken into account by a competent authority in determining whether it is in the interests of justice that representation be granted for the purposes of proceedings to which this section applies to an accused shall include the following—
 - (a) the offence is such that if proved it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of his livelihood or serious damage to his reputation;
 - (b) the determination of the case may involve consideration of a substantial question of law;
 - (c) the accused may be unable to understand the proceedings or to state his own case because of his inadequate knowledge of English, mental illness or other mental or physical disability;
 - (d) the nature of the defence is such as to involve the tracing and interviewing of witnesses or expert cross-examination of a witness for the prosecution;

- (e) it is in the interests of someone other than the accused that the accused be represented.
- (3) The Lord Chancellor may, by order, vary the factors listed in subsection (2) above by amending factors in the list or by adding new factors to the list.

23 Reimbursement of public funds by contributions

- (1) Where representation under this Part is granted to any person whose financial resources are such as, under regulations, make him liable to make a contribution, the competent authority shall order him to pay a contribution in respect of the costs of his being represented under this Part.
- (2) Where the legally assisted person has not attained the age of sixteen, the competent authority may, instead of or in addition to ordering him to make a contribution, order any person—
 - (a) who is an appropriate contributor in relation to him, and
 - (b) whose financial resources are such as, under regulations, make him liable to make a contribution,to pay a contribution in respect of the costs of the representation granted to the legally assisted person.
- (3) Regulations may authorise the making of a contribution order under subsection (1) or (2) above after the grant of representation in prescribed circumstances.
- (4) The amount of the contribution to be required under subsection (1) or (2) above by the competent authority shall be such as is determined in accordance with the regulations.
- (5) A legally assisted person or appropriate contributor may be required to make his contribution in one sum or by instalments as may be prescribed.
- (6) Regulations may provide that no contribution order shall be made in connection with a grant of representation under this Part for the purposes of proceedings in the Crown Court, the Court of Appeal or the House of Lords in a case where a contribution order was made in connection with a grant of such representation to the person in question in respect of proceedings in a lower court.
- (7) Subject to subsection (8) below, if the total contribution made in respect of the costs of representing any person under this Part exceeds those costs, the excess shall be repaid—
 - (a) where the contribution was made by one person only, to him; and
 - (b) where the contribution was made by two or more persons, to them in proportion to the amounts contributed by them.
- (8) Where a contribution has been made in respect of the costs of representing any person under this Part in any proceedings and an order for costs is made in favour of that person in respect of those proceedings, then, where sums due under the order for costs are paid to the Board or the Lord Chancellor under section 20(2) of the Prosecution of Offences Act 1985 (recovery regulations)—
 - (a) if the costs of the representation do not exceed the sums so paid, subsection (7) above shall not apply and the contribution shall be repaid;
 - (b) if the costs of the representation do exceed the sums so paid, subsection (7) above shall apply as if the costs of the representation were equal to the excess.

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(9) References in subsection (8) above to the costs of representation include any charge or fee treated as part of those costs by section 26(2).

(10) In this Part—

“appropriate contributor”, means a person of a description prescribed under section 34(2)(c); and

“contribution order” means an order under subsection (1) or (2) above.

24 Contribution orders: supplementary

(1) Where a competent authority grants representation under this Part and in connection with the grant makes a contribution order under which any sum is required to be paid on the making of the order, it may direct that the grant of representation shall not take effect until that sum is paid.

(2) Where a legally assisted person fails to pay any relevant contribution when it is due, the court in which the proceedings for the purposes of which he has been granted representation are being heard may, subject to subsection (3) below, revoke the grant.

(3) A court shall not exercise the power conferred by subsection (2) above unless, after affording the legally assisted person an opportunity of making representations in such manner as may be prescribed, it is satisfied—

- (a) that he was able to pay the relevant contribution when it was due; and
- (b) that he is able to pay the whole or part of it but has failed or refused to do so.

(4) In subsection (2) above “relevant contribution”, in relation to a legally assisted person, means any sum—

- (a) which he is required to pay by a contribution order made in connection with the grant to him of representation under this Part, and
- (b) which falls due after the making of the order and before the conclusion of the proceedings for the purposes of which he has been granted such representation.

(5) Regulations with respect to contribution orders may—

- (a) provide for their variation or revocation in prescribed circumstances;
- (b) provide for their making in default of the prescribed evidence of a person’s financial resources;
- (c) regulate their making after the grant of representation;
- (d) authorise the remission or authorise or require the repayment in prescribed circumstances of sums due or paid under such orders; and
- (e) prescribe the court or body by which any function under the regulations is to be exercisable.

(6) Schedule 3 to this Act shall have effect with respect to the enforcement of contribution orders.

25 Payment of costs of representation under this Part

(1) Where representation under this Part has been granted to any person the costs of representing him shall be paid—

- (a) by the Lord Chancellor, or
- (b) by the Board,

as the Lord Chancellor may direct.

- (2) Subject to regulations, the costs of representing any person under this Part shall include sums on account of the fees payable to his counsel or solicitor and disbursements reasonably incurred by his solicitor for or in connection with his representation.
- (3) The costs required by this section to be paid in respect of representing him shall not include any sum in respect of allowances to witnesses attending to give evidence in the proceedings for the purposes of which he is represented in any case where such allowances are payable under any other enactment.

26 Payment for advice or assistance where representation under this Part is subsequently granted

- (1) This section has effect where—
 - (a) advice or assistance under Part III is given to a person in respect of any matter which is or becomes the subject of criminal proceedings against him; and
 - (b) he is subsequently granted representation under this Part for the purposes of those proceedings.
- (2) If the solicitor acting for the person under the grant of representation is the same as the solicitor who gave him the advice or assistance, any charge or fee in respect of the advice or assistance which, apart from this section, would fall to be secured, recovered or paid as provided by section 11 shall instead be paid under section 25 as if it were part of the costs of the representation.
- (3) If a contribution order is made in connection with the grant of representation under this Part to him—
 - (a) any sum which he is required by virtue of section 9(6) or (7) to pay in respect of the advice or assistance (whether or not already paid) shall be credited against the contribution to be made by him under the contribution order; and
 - (b) section 25 shall have effect in a case to which subsection (2) above applies as if the charges and fees properly chargeable in respect of the advice or assistance were part of the costs of the representation under this Part and as if any such sum as is mentioned in paragraph (a) above which he has paid were part of the contribution made under the contribution order.