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SCHEDULES

SCHEDULE 1

Section 3.

THE LEGAL AID BOARD

Incorporation and Status

- 1 The Board shall be a body corporate.
- 2 The Board shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Board's property shall not be regarded as property of, or held on behalf of, the Crown.

Tenure of Members

- 3 Subject to paragraphs 4 and 5 any member of the Board shall hold and vacate office in accordance with the terms of his appointment, but a person shall not be appointed a member of the Board for a period of more than 5 years.
- 4
 - (1) The chairman or a member may resign office by giving notice in writing to the Lord Chancellor, and if the chairman ceases to be a member he shall cease to be the chairman.
 - (2) A person who ceases to be the chairman or a member shall be eligible for reappointment.
- 5 The Lord Chancellor may terminate the appointment of a member of the Board if satisfied that—
 - (a) he has become bankrupt or made an arrangement with his creditors;
 - (b) he is unable to carry out his duties as a Board member by reason of physical or mental illness;
 - (c) he has been absent from meetings of the Board for a period longer than six consecutive months without the permission of the Board; or
 - (d) he is otherwise unable or unfit to discharge the functions of a member of the Board.

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Members' interests

- 6 (1) Before appointing a person to be a member of the Board, the Lord Chancellor shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the exercise or performance by him of his functions as a member of the Board.
- (2) The Lord Chancellor shall from time to time satisfy himself with respect to every member of the Board that he has no such interest as is referred to in sub-paragraph (1) above.
- (3) Any person whom the Lord Chancellor proposes to appoint as, and who has consented to be, a member of the Board, and any member of the Board, shall, whenever requested by the Lord Chancellor to do so, supply him with such information as the Lord Chancellor considers necessary for the performance by the Lord Chancellor of his duties under this paragraph.
- 7 (1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board shall disclose the nature of his interest at a meeting of the Board; and the disclosure shall be recorded in the minutes of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that contract.
- (2) For the purposes of sub-paragraph (1) above, a general notice given at a meeting of the Board by a member of the Board to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with the company or firm shall be regarded as a sufficient disclosure of his interest in relation to any contract so made.
- (3) A member of the Board need not attend in person at a meeting of the Board in order to make any disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read out at the meeting.

Remuneration of members

- 8 (1) The Board may—
- (a) pay to its members such remuneration; and
 - (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,
- as the Lord Chancellor may, with the approval of the Treasury, determine.
- (2) Where a person ceases to be a member of the Board otherwise than on the expiry of his term of office, and it appears to the Lord Chancellor that there are special circumstances which make it right for that person to receive compensation, the Lord Chancellor may, with the consent of the Treasury, direct the Board to make that person a payment of such amount as the Lord Chancellor may, with the consent of the Treasury, determine.

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Staff

- 9 (1) The Board shall appoint a person to be the chief executive of the Board who shall be responsible to the Board for the exercise of its functions.
- (2) The Board may appoint such other employees as it thinks fit.
- (3) The Board may only appoint a person to be its chief executive or the holder of any other employment of a specified description after consultation with, and subject to the approval of, the Lord Chancellor.
- (4) The reference in sub-paragraph (3) above to employment of a specified description is a reference to any employment for the time being specified by the Lord Chancellor in a direction given for the purposes of that sub-paragraph.
- (5) An appointment under this paragraph may be made on such terms and conditions as the Board, with the approval of the Lord Chancellor and consent of the Treasury, may determine.
- 10 (1) The Board shall make, in respect of such of its employees as, with the approval of the Lord Chancellor and the consent of the Treasury, it may determine such arrangements for providing pensions, allowances or gratuities, including pensions, allowances or gratuities by way of compensation for loss of employment, as it may determine.
- (2) Arrangements under sub-paragraph (1) above may include the establishment and administration, by the Board or otherwise, of one or more pension schemes.
- (3) If an employee of the Board—
- (a) becomes a member of the Board; and
- (b) was by reference to his employment by the Board a participant in a pension scheme established and administered by it for the benefit of its employees, the Board may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Board whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 8.
- (4) Where the Board exercises the power conferred by sub-paragraph (3) above, any discretion as to the benefits payable to or in respect of the member concerned which the scheme confers on the Board shall be exercised only with the approval of the Lord Chancellor and consent of the Treasury.

Proceedings

- 11 (1) Subject to anything in regulations, the Board may regulate its own proceedings.
- (2) The Board may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of specified functions and shall make such arrangements for the delegation of functions to committees and persons as may be prescribed.
- (3) Subject to anything in regulations, committees may be appointed and may be dissolved by the Board, and may include, or consist entirely of, persons who are not members of the Board.

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- (4) A committee shall act in accordance with such directions as the Board may from time to time give, and the Board may provide for anything done by a committee to have effect as if it had been done by the Board.
- (5) The validity of any proceedings of the Board or of any committee appointed by the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

Instruments

- 12 (1) The fixing of the seal of the Board shall be authenticated by the chairman or another member of the Board and by some other person authorised either generally or specially by the Board to act for that purpose.
- (2) A document purporting to be duly executed under the seal of the Board, or to be signed on the Board’s behalf, shall be received in evidence and, unless the contrary is proved, be deemed to be so executed or signed.

Allowances

- 13 The Board may pay to the members of any committee such fees and allowances as the Lord Chancellor may, with the consent of the Treasury, determine.

SCHEDULE 2

Section 14.

CIVIL PROCEEDINGS: SCOPE OF PART IV REPRESENTATION

PART I

DESCRIPTION OF PROCEEDINGS

- 1 Proceedings in, or before any person to whom a case is referred in whole or in part by, any of the following courts, namely—
 - (a) the House of Lords in the exercise of its jurisdiction in relation to appeals from courts in England and Wales;
 - (b) the Court of Appeal;
 - (c) the High Court;
 - (d) any county court.
- 2 The following proceedings in a magistrates’ court, namely— ^{F1}
 - (a)
 - (b) proceedings under section 43 of the ^{M1}National Assistance Act 1948, section 22 of the ^{M2}Maintenance Orders Act 1950, section 4 of the

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- ^{M3}Maintenance Orders Act 1958, or section 18 of the ^{M4}Supplementary Benefits Act 1976;
- (c) proceedings in relation to an application for leave of the court to remove a child from a person’s custody under section 27 or 28 of the ^{M5}Adoption Act 1976 or proceedings in which the making of an order under Part II or section 29 or 55 of the Adoption Act 1976 is opposed by any party to the proceedings;
- (d) proceedings under Part I of the ^{M6}Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to a maintenance order made by a court of a country outside the United Kingdom;
- ^{F1}(e)
- (f) proceedings for or in relation to an order under Part I of the ^{M7}Domestic Proceedings and Magistrates’ Courts Act 1978.
- [^{F2}(g) proceedings under the Children Act 1989.]

Textual Amendments

- F1** Sch. 2 Part I para. 2(a)(e) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(7), **Sch. 15**; S.I. 1991/828, **art. 3(2)**
- F2** Sch. 2 Part I para. 2(g) added (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(4), **Sch. 12 para.45**; S.I. 1991/828, **art. 3(2)**

Marginal Citations

- M1** 1948 c. 29.
M2 1950 c. 37.
M3 1958 c. 39.
M4 1976 c. 71.
M5 1976 c. 36.
M6 1972 c. 18.
M7 1978 c. 22.

- 3 Proceedings in the Employment Appeal Tribunal.
- 4 Proceedings in the Lands Tribunal.
- 5 Proceedings before a Commons Commissioner appointed under section 17(1) of the ^{M8}Commons Registration Act 1965.

Marginal Citations

- M8** 1965 c. 64.

- 6 Proceedings in the Restrictive Practices Court under Part III of the ^{M9}Fair Trading Act 1973, and any proceedings in that court in consequence of an order made, or undertaking given to the court, under that Part of that Act.

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Marginal Citations

M9 1973 c. 41.

PART II

EXCEPTED PROCEEDINGS

- 1 Proceedings wholly or partly in respect of defamation, but so that the making of a counterclaim for defamation in proceedings for which representation may be granted shall not of itself affect any right of the defendant to the counterclaim to representation for the purposes of the proceedings and so that representation may be granted to enable him to defend the counterclaim.
- 2 Relator actions.
- 3 Proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the person taking the proceedings.
- 4 Election petitions under the Representation of the ^{M10}People Act 1983.

Marginal Citations

M10 1983 c. 2.

- 5 In a county court, proceedings for or consequent on the issue of a judgment summons and, in the case of a defendant, proceedings where the only question to be brought before the court is as to the time and mode of payment by him of a debt (including liquidated damages) and costs.
- [^{F3}5A Proceedings for a decree of divorce or judicial separation unless the cause is defended, or the petition is directed to be heard in open court, or it is not practicable by reason of physical or mental incapacity for the applicant to proceed without representation; except that representation shall be available for the purpose of making or opposing an application—
 - (a) for an injunction;
 - (b) for ancillary relief, excluding representation for the purpose only of inserting a prayer for ancillary relief in the petition;
 - (c) for an order relating to the custody of (or access to) a child, or the education or care or supervision of a child, excluding representation for the purpose only of making

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- such an application where there is no reason to believe that the application will be opposed;
- (d) for an order declaring that the court is satisfied as to arrangements for the welfare of the children of the family, excluding representation for the purpose only of making such an application where there is no reason to believe that the application will be opposed; or
- (e) for the purpose of making or opposing any other application, or satisfying the court on any other matter which raises a substantial question for determination by the court.]

Textual Amendments

F3 Sch. 2 Part I para. 5A added by S.I. 1989/549, art. 2

VALID FROM 30/08/1993

[^{F4}5B Proceedings to the extent that they consist in, or arise out of, an application to the court under section 235A of the ^{M11}Trade Union and Labour Relations (Consolidation) Act 1992.]

Textual Amendments

F4 Sch. 2 Pt. II para. 5B inserted (30.8.1993) by 1993 c. 19, s. 4(2), Sch. 8 para.39; S.I. 1993/1908, art. 2(1), Sch.1

Marginal Citations

M11 1992 c. 52.

6 Proceedings incidental to any proceedings excepted by this Part of this Schedule.

SCHEDULE 3

Sections 24 and 30.

CRIMINAL PROCEEDINGS: ENFORCEMENT OF CONTRIBUTION ORDERS

Modifications etc. (not altering text)

C1 Sch. 3 modified (27.9.1999) by 1999 c.22, ss. 105, 108(3)(e), Sch. 14 Pt. V para. 37 (with Sch. 14 para. 7(2))

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PART I

ORDERS MADE BY A COURT

Collecting court

- 1 In this Part “collecting court”, in relation to a contribution order, means a magistrates’ court specified in the order; and the court so specified shall be—
- (a) in a case where the court making the order is itself a magistrates’ court, that court;
 - (b) in a case where the order is made on an appeal from a magistrates’ court, or in respect of a person who was committed (whether for trial or otherwise by a magistrates’ court) to the Crown Court, the court from which the appeal is brought or, as the case may be, which committed him; and
 - (c) in any other case, a magistrates’ court nominated by the court making the order.

Enforcement proceedings

- 2
- (1) Any sum required to be paid by a contribution order shall be recoverable as if it had been adjudged to be paid by an order of the collecting court, subject to and in accordance with the provisions of this paragraph.
 - (2) Sections 17 (not more than one committal for same arrears) and 18 (power to review committal) of the ^{M12}Maintenance Orders Act 1958 shall apply as if a contribution order were a maintenance order.
 - (3) The collecting court may exercise, in relation to a contribution order, the power conferred by section 75 of the ^{M13}Magistrates’ Courts Act 1980 (power to dispense with immediate payment); and for the purposes of that section any provisions made by the authority which made the order as to time for payment, or payment by instalments, shall be treated as made by the collecting court.
 - (4) The following provisions of the Magistrates’ Courts Act 1980 shall apply as if a contribution order were enforceable as an affiliation order—
 - section 80 (application of money found on defaulter to satisfy sum adjudged);
 - section 93 (complaint for arrears);
 - section 94 (effect of committal on arrears); and
 - section 95 (power to remit arrears).
 - (5) Any costs awarded under section 64 of the Magistrates’ Courts Act 1980 on the hearing of a complaint for the enforcement of a contribution order shall be enforceable as a sum required to be paid by that order.

Marginal Citations

M12 1958 c. 39.

M13 1980 c. 43.

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- 3 (1) Without prejudice to paragraph 2, any sum required to be paid by a contribution order shall be enforceable by the High Court or a county court as if the sum were due to the clerk of the collecting court in pursuance of a judgment or order of the High Court or county court, as the case may be.
- (2) The clerk of the collecting court shall not take proceedings by virtue of this paragraph unless authorised to do so by the court.
- (3) This paragraph shall not authorise—
- (a) the enforcement of a sum required to be paid by a contribution order by issue of a writ of fieri facias or other process against goods or by imprisonment or attachment of earnings; ^{F5}
- ^{F5}(b)

Textual Amendments

F5 Schedule 3, Pt. I, para. 3(3); para. 3(3)(b) and the word "or" preceding it omitted by virtue of S.I. 1991/724, art. 2(8), Schedule, Pt.I

Modifications etc. (not altering text)

C2 Schedule 3, Pt.I, para. 3(1) extended by S.I. 1991/724, art.2(1)(m)

- 4 (1) Any expenses incurred by the clerk of a magistrates' court in recovering any sum required to be paid by a contribution order shall be treated for the purposes of Part VI of the Justices of the ^{M14}Peace Act 1979 as expenses of the magistrates' courts committee.
- (2) Any sum paid to a clerk of a magistrates' court in or towards satisfaction of a liability imposed by a contribution order shall be paid by him to the Lord Chancellor and section 61(4) of the Justices of the Peace Act 1979 (regulations as to accounts of justices' clerks) shall apply in relation to sums payable to the Lord Chancellor under this sub-paragraph as it applies in relation to sums payable to the Secretary of State under that section.

Marginal Citations

M14 1979 c. 55.

Transfer of enforcement proceedings to different court

- 5 (1) Where in relation to any contribution order it appears to the collecting court that the person subject to it is residing in a petty sessions area other than that for which the court acts, the court may make an order under this paragraph ("a transfer order ") with respect to the contribution order specifying the other petty sessions area.
- (2) Where a court makes a transfer order in relation to any contribution order—
- (a) payment under the contribution order shall be enforceable in the petty sessions area specified in the transfer order; and

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- (b) as from the date of the transfer order, a magistrates' court for that petty sessions area shall be substituted for the court which made the transfer order as the collecting court in relation to the contribution order.

Limitations on enforcement by proceedings

- 6 Any sum due under a contribution order shall not be recoverable, and payment of any such sum shall not be enforced, under paragraph 2 or 3 until—
- (a) the conclusion of the proceedings for the purposes of which the relevant grant of representation was made; or
- (b) if earlier, the revocation or withdrawal of the relevant grant of representation.
- 7 Where a contribution order has been made in respect of a member of Her Majesty's armed forces and the Secretary of State notifies the collecting court that any sum payable under the order will be recovered by deductions from the person's pay, the collecting court shall not enforce payment of any sum unless and until the Secretary of State subsequently notifies it that the person is no longer a member of those forces and that sum has not been fully recovered.

Power to defer enforcement proceedings

- 8 The collecting court may defer recovering any sum due under a contribution order if—
- (a) an appeal is pending in respect of the proceedings for the purposes of which the relevant grant of representation was made; or
- (b) the person granted representation has been ordered to be retried.

Interpretation

- 9 In this Part—
- (a) "relevant grant of representation", in relation to a contribution order, means the grant of representation in connection with which the order was made; and
- (b) references to the proceedings for the purposes of which a grant of representation has been made include, where the proceedings are proceedings before a magistrates' court which result—
- (i) in the legally assisted person being committed to the Crown Court for trial or sentence, or
- (ii) in his case being remitted to a juvenile court in pursuance of section 56(1) of the ^{M15}Children and Young Persons Act 1933, the proceedings before the Crown Court or that juvenile court.

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Marginal Citations

M15 1933 c. 12.

PART II

ORDERS MADE BY THE BOARD

Limitations on enforcement by proceedings

- 10 (1) Any sum due under a contribution order shall not be recoverable, and payment of any such sum shall not be enforced until—
- (a) the conclusion of the proceedings for the purposes of which the relevant grant of representation was made; or
 - (b) if earlier, the revocation or withdrawal of the relevant grant of representation.
- (2) In this paragraph—
- (a) “relevant grant of representation”, in relation to a contribution order, means the grant of representation in connection with which the order was made; and
 - (b) the reference to the proceedings for the purposes of which the relevant grant of representation was made includes, where the proceedings are proceedings before a magistrates’ court which result—
 - (i) in the legally assisted person being committed to the Crown Court for trial or sentence, or
 - (ii) in his case being remitted to a juvenile court in pursuance of section 56(1) of the Children and Young Persons Act 1933,the proceedings before the Crown Court or that juvenile court.
- 11 Where a contribution order has been made in respect of a member of Her Majesty’s armed forces and the Secretary of State notifies the Board that any sum payable under the order will be recovered by deductions from the person’s pay, the Board shall not enforce payment of any sum unless and until the Secretary of State subsequently notifies it that the person is no longer a member of those forces and that sum has not been fully recovered.

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SCHEDULE 4

Section 44.

AMENDMENTS OF LEGAL AID (SCOTLAND) ACT 1986 (C. 47)

PART I

DIRECT PAYMENT OF FEES AND OUTLAYS BY LEGALLY ASSISTED PERSON

- 1 In section 4(2) (payments out of the Scottish Legal Aid Fund)—
 - (a) in paragraph (a), after the word “due ” there shall be inserted the words “out of the Fund ”.
 - (b) in paragraph (c), the words “for the purposes of this Act ” are repealed.

- 2 In section 16—
 - (a) subsection (1) is repealed;
 - (b) in subsection (2), the words “In this section and ” are repealed.

PROSPECTIVE

- 3 In section 17 (contributions, etc.)—
 - (a) in subsection (1), for the words from “by the Board ” to “the Fund ” there shall be substituted the words “to contribute to the fees and outlays incurred by them (or on their behalf) ”;
 - [^{F6}(b) subsections (3) to (8) are repealed;]
 - ^{F7}(c)

Textual Amendments

F6 Sch. 4 para. 3(b) repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76), ss. 74(2), 75(2), Sch. 9

F7 Sch. 4 para. 3(c) repealed (26.8.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76), ss. 74(2), Sch. 9; S.I. 1991/1903, art. 3, Sch.

- 4 In section 32 (a) (restriction on payment etc.), the words “, out of the Fund ” are repealed.

PROSPECTIVE

- 5 In section 33 (fees and outlays of solicitors and counsel) in subsection (1), for the words from “out ” to the end there shall be substituted the words—
 “in respect of any fees or outlays properly incurred by him in so acting—

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- (a) by the person concerned, to the extent to which a contribution has been determined for him under section 17 of this Act;
- (b) to the extent that such fees and outlays exceed any such contribution out of the Fund in accordance with section 4(2)(a) of this Act.”

6 In section 36(2) (regulations), in paragraph (b) at end add—

“and the power to substitute different amounts for the amount specified in section 10(2) of this Act includes power to substitute different amounts in relation to different cases or classes of case”.

PART II

LIABILITY OF LEGALLY ASSISTED PERSON FOR EXPENSES TO BE ASSESSED IN ALL CASES

7 In section 18 (expenses)—

- (a) subsection (1) is repealed;
- (b) in subsection (2), for the words “in proceedings to which this section applies”, there shall be substituted the words “in any proceedings”.

8 In section 19(1) (expenses out of the Fund), for the words “to which this section applies” there shall be substituted the words “to which a legally assisted person is party and which are finally decided in favour of an unassisted party”.

9 In section 20(1) (supplementary), for the words “sections 18 and ” there shall be substituted the word “section”.

PART III

BOARD’S PROPERTY TO BE RATEABLE

10 In Schedule 1, paragraph 2(4) is repealed.

SCHEDULE 5

Section 45.

MINOR AND CONSEQUENTIAL AMENDMENTS

Public Records Act 1958 (c. 51)

1 In Schedule 1 to the Public Records Act 1958 (definition of public records), there shall be inserted at the end of Part I of the Table at the end of paragraph 3 the following entry—

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“Lord Chancellor’s Department. Legal Aid Board.”

Parliamentary Commissioner Act 1967 (c. 13)

- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (which lists the bodies subject to the jurisdiction of the Parliamentary Commissioner), there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Legal Aid Board.”

Attachment of Earnings Act 1971 (c. 32)

- 3 In section 25(1) of the Attachment of Earnings Act 1971, for the words “section 7 or 8(2) of the Legal Aid Act 1982 ” there shall be substituted the words “section 23 of the Legal Aid Act 1988 ”.

House of Commons Disqualification Act 1975 (c. 24)

- 4 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), there shall be inserted (at the appropriate places in alphabetical order) the following entries—

“Chairman of the Legal Aid Board.”

“Member of the Legal Aid Board.”

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 5 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), there shall be inserted (at the appropriate places in alphabetical order) the following entries—

“Chairman of the Legal Aid Board.”

“Member of the Legal Aid Board.”

Sex Discrimination Act 1975 (c. 65)

- 6 In section 75(4) of the Sex Discrimination Act 1975—
- (a) for the words “Legal Aid Act 1974 ” there shall be substituted the words “Legal Aid Act 1988 ”; and
 - (b) for the words “any of those Acts for payment of any sum into the legal aid fund ” there shall be substituted the words “either of those Acts for payment of any sum to the Legal Aid Board or into the Scottish Legal Aid Fund ”.

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Race Relations Act 1976 (c. 74)

- 7 In section 66(6) of the Race Relations Act 1976—
- (a) for the words “Legal Aid Act 1974 ” there shall be substituted the words “Legal Aid Act 1988 ”; and
 - (b) for the words “any of those Acts for payment of any sum into the legal aid fund ” there shall be substituted the words “either of those Acts for payment of any sum to the Legal Aid Board or into the Scottish Legal Aid Fund ”.

Child Care Act 1980 (c. 5)

- 8 In section 21A of the Child Care Act 1980, after subsection (8), there shall be inserted the following subsection—
- “(9) In this section “legal aid ” means representation for the purposes of care proceedings under Part VI of the Legal Aid Act 1988.”

Magistrates’ Courts Act 1980 (c. 43)

- 9 In section 92(1)(b) of the Magistrates’ Courts Act 1980, for the words “section 7 or 8(2) of the Legal Aid Act 1982 ” there shall be substituted the words “section 23 of the Legal Aid Act 1988 ”.

Supreme Court Act 1981 (c. 54)

- 10 In section 47(7) of the Supreme Court Act 1981, for the words “legal aid contribution order made under section 7 or 8(2) of the Legal Aid Act 1982 ” there shall be substituted the words “contribution order made under section 23 of the Legal Aid Act 1988 ”.

Telecommunications Act 1984 (c. 12)

- 11 In section 52 of the Telecommunications Act 1984, the following subsection shall be substituted for subsection (5)—
- “(5) A charge conferred by subsection (4) above is subject to—
- (a) any charge under the Legal Aid Act 1988 and any provision of that Act for payment of any sum to the Legal Aid Board;
 - (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 and any provision of that Act for payment of any sum into the Scottish Legal Aid Fund; or
 - (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and any provision of that Order for payment of any sum into the legal aid fund.”

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

Changes to legislation: Legal Aid Act 1988 is up to date with all changes known to be in force on or before 22 May 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)

Prosecution of Offences Act 1985 (c. 23)

- 12 In section 19(2)(b) of the Prosecution of Offences Act 1985, the words “(including any legal aid order) ” shall be omitted and at the end of that paragraph there shall be inserted the words “or any grant of representation for the purposes of the proceedings which has been made under the Legal Aid Act 1988. ”
- 13 In section 20(2) of that Act, for the words “out of the legal aid fund or ” there shall be substituted the words “by the Legal Aid Board or out of”.
- 14 In section 21(1) of that Act, for the definition of “legally assisted person ” there shall be substituted the following—
- ““legally assisted person ”, in relation to any proceedings, means a person to whom representation under the Legal Aid Act 1988 has been granted for the purposes of the proceedings;”.
- 15 In section 21 of that Act, after subsection (4), there shall be inserted the following subsection—
- “(4A) Where one party to any proceedings is a legally assisted person then—
- (a) for the purposes of sections 16 and 17 of this Act, his costs shall be taken not to include either the expenses incurred on his behalf by the Legal Aid Board or the Lord Chancellor or, if he is liable to make a contribution under section 23 of the Legal Aid Act 1988, any sum paid or payable by way of contribution; and
- (b) for the purposes of sections 18 and 19 of this Act, his costs shall be taken to include the expenses incurred on his behalf by the Legal Aid Board or the Lord Chancellor (without any deduction on account of any contribution paid or payable under section 23 of the Legal Aid Act 1988) but, if he is liable to make such a contribution his costs shall be taken not to include any sum paid or payable by way of contribution.”

Child Abduction and Custody Act 1985 (c. 60)

- 16 In section 11 of the Child Abduction and Custody Act 1985, for the words “Part I of the Legal Aid Act 1974 ” there shall be substituted the words “Part III or IV of the Legal Aid Act 1988 ”.

Administration of Justice Act 1985 (c. 61)

- 17 In section 40 of the Administration of Justice Act 1985 (preliminary provisions concerning legal aid complaints), for the words from the beginning of paragraph (a) to the end there shall be substituted the words “the provision for any person of services under the Legal Aid Act 1988 including, in the case of a solicitor, provision for any person of such services in the capacity of agent for that person’s solicitor. ”
- 18 In section 43 of that Act (jurisdiction and powers of Solicitors Disciplinary Tribunal in relation to complaints against solicitors)—

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

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- (a) in subsection (3), for paragraphs (a), (b) and (c) there shall be substituted the following—
 - “(a) otherwise payable under or in accordance with the Legal Aid Act 1988, or
 - (b) otherwise chargeable in respect of advice or assistance made available under Part III of that Act;”and
- (b) in subsection (4), for paragraphs (a) and (b) there shall be substituted the words “any of sections 9, 11, 15(6) and (7) and 25(2) of, or any provision made under, the Legal Aid Act 1988 ”.

19 In section 44 of that Act—

- (a) in subsection (3), in the inserted subsection (2A), for the words from the beginning of paragraph (a) to the end there shall be substituted the words—
 - “(a) his conduct, including conduct in the capacity of agent for another solicitor, in connection with the provision for any person of services under the Legal Aid Act 1988; or
 - (b) his professional conduct generally.”; and
- (b) in subsection (4), in the inserted subsection (6), for the words from “each ” to the end there shall be substituted the words “those who may be selected or assigned for the purpose of providing for any person services under the Legal Aid Act 1988. ”

Housing Act 1985 (c. 68)

20 In section 170(5) of the Housing Act 1985—

- (a) for the words “Legal Aid Act 1974 ” there shall be substituted the words “Legal Aid Act 1988 ”; and
- (b) for the words “into the legal aid fund ” there shall be substituted the words “to the Legal Aid Board ”.

Family Law Act 1986 (c. 55)

21 Section 64 of the Family Law Act 1986 (family proceedings rules) shall cease to have effect.

Criminal Justice Act 1987 (c. 38)

22 In section 4(1) of the Criminal Justice Act 1987, for the words “section 28(7A) of the Legal Aid Act 1974 ” there shall be substituted the words “section 20(4) of the Legal Aid Act 1988 ”.

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

Changes to legislation: Legal Aid Act 1988 is up to date with all changes known to be in force on or before 22 May 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)

SCHEDULE 6

Section 45.

REPEALS

1967 c. 80.	The Criminal Justice Act 1967.	Section 90.
1974 c. 4.	The Legal Aid Act 1974.	The whole Act.
1974 c. 47.	The Solicitors Act 1974.	Section 75(d). In Schedule 3, paragraph 10.
1975 c. 72.	The Children Act 1975.	Section 65. In Schedule 3, paragraph 82.
1976 c. 36.	The Adoption Act 1976.	In Schedule 3, paragraph 18.
1976 c. 63.	The Bail Act 1976.	Section 11.
1976 c. 71.	The Supplementary Benefits Act 1976.	In Schedule 7, paragraphs 33 and 35.
1977 c. 38.	The Administration of Justice Act 1977.	In Schedule 1, Part I.
1977 c. 45.	The Criminal Law Act 1977.	In Schedule 12, the entry relating to the Legal Aid Act 1974.
1978 c. 22.	The Domestic Proceedings and Magistrates' Courts Act 1978.	In Schedule 2, paragraphs 45 and 52.
1979 c. 26.	The Legal Aid Act 1979.	The whole Act.
1979 c. 55.	The Justices of the Peace Act 1979.	In Schedule 2, paragraph 27.
1980 c. 5.	The Child Care Act 1980.	In Schedule 5, paragraph 36.
1980 c. 30.	The Social Security Act 1980.	In Schedule 4, paragraph 9.
1980 c. 43.	The Magistrates' Courts Act 1980.	In Schedule 7, paragraphs 126 to 129.
1981 c. 49.	The Contempt of Court Act 1981.	Section 13. In Schedule 2, Part I.
1982 c. 27.	The Civil Jurisdiction and Judgments Act 1982.	Section 40(1).
1982 c. 44.	The Legal Aid Act 1982.	The whole Act.
1982 c. 48.	The Criminal Justice Act 1982.	Section 25(2). Section 29(3). Section 60(4).

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

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1983 c. 41.	The Health and Social Services and Social Security Adjudications Act 1983.	In Schedule 1, paragraph 3.
1984 c. 42.	The Matrimonial and Family Proceedings Act 1984.	In Schedule 1, paragraph 18.
1984 c. 60.	The Police and Criminal Evidence Act 1984.	Section 59.
1985 c. 23.	The Prosecution of Offences Act 1985.	Section 16(8). In section 19(2)(b), the words “(including any legal aid order)”. In section 21(1), the definition of “legal aid order”.
1985 c. 61.	The Administration of Justice Act 1985.	Sections 45 and 46. In Schedule 7, paragraphs 1 to 3.
1986 c. 28.	The Children and Young Persons (Amendment) Act 1986.	Section 3(3).
1986 c. 47.	The Legal Aid (Scotland) Act 1986.	In section 4(2)(c), the words “for the purposes of this Act”. In section 16, subsection (1) and, in subsection (2), the words “in this section and”. In section 17, subsections (3) to (8). Section 18(1). In section 32(a), the words “, out of the Fund”. In Schedule 1, paragraph 2(4).
1986 c. 50.	The Social Security Act 1986.	In Schedule 10, paragraphs 46, 47 and 56.
1986 c. 55.	The Family Law Act 1986.	Section 64.
1987 c. 38.	The Criminal Justice Act 1987.	In Schedule 2, paragraphs 7 and 8.

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

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SCHEDULE 7

Section 45.

TRANSITION

Preliminary

- 1 In this Schedule— “the 1974 Act ” means the ^{M16}Legal Aid Act 1974; and
“the appointed day ” means the day appointed by the Lord Chancellor under section 47(2) of this Act for the coming into force of section 3(2) thereof.

Marginal Citations

M16 1974 c. 4.

The Legal Aid Fund

- 2 (1) On the appointed day the legal aid fund (“the Old Fund ”) maintained by the Law Society under section 17 of the 1974 Act shall be wound up.
- (2) If, as at the appointed day, after taking account of all receipts and expenses of the Law Society attributable to their functions under the 1974 Act and the ^{M17}Legal Aid Act 1982 (“the 1982 Act ”), there is in relation to the Old Fund any surplus or deficit—
- (a) such surplus shall be paid by the Law Society to the Lord Chancellor; and
 - (b) such deficit shall be made up by payment to the Law Society by the Lord Chancellor of the amount of the deficit.
- (3) Notwithstanding their repeal by this Act—
- (a) sections 15(9) and 18 of the 1974 Act shall continue to have effect for the purposes of requiring the Law Society to account for the Old Fund and to report on the discharge of its functions under that Act up to the appointed day; and
 - (b) section 17(5) of that Act shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society;
- and, if the appointed day falls on a day which is not the last day of the financial year (for the purposes of the said section 18), references in those sections to the financial year shall be construed as references to the period commencing on the day immediately following the end of the last complete financial year and ending with the appointed day.
- (4) The Lord Chancellor shall pay to the Law Society such expenses incurred after the appointed day in connection with their functions under sections 15(9) and 18 of the 1974 Act as appear to him to be reasonable.
- (5) Any payments received by the Lord Chancellor under sub-paragraph (2)(a) above shall be paid by him into the legal aid fund established by the Board under section 6.
- (6) Any amount required to be paid by the Lord Chancellor under sub-paragraph (2)(b) or (4) above shall be defrayed out of money provided by Parliament.

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

Changes to legislation: Legal Aid Act 1988 is up to date with all changes known to be in force on or before 22 May 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)

Marginal Citations

M17 1982 c. 44.

Rights, obligations and property

- 3
- (1) Subject to paragraph 2, on the appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1974 Act and the 1982 Act shall become rights, obligations and property of the Board.
 - (2) Any payments which are required to be made into or out of the Old Fund in connection with legal aid or advice or assistance under the 1974 Act shall, on and after the appointed day, be paid to or by the Board.

Transfer of functions

- 4
- (1) Any grant of legal aid under Part I of the 1974 Act which is in force immediately before the appointed day shall, on and after the appointed day, have effect as a grant by the Board of representation under Part IV of this Act.
 - (2) Any approval given in connection with the grant of legal aid or advice or assistance under Part I of the 1974 Act which is in force immediately before the appointed day shall, on and after the appointed day, have effect as an approval by the Board in connection with the corresponding advice, assistance or representation under Part III or IV of this Act.
 - (3) Anything which, immediately before the appointed day, is in the process of being done by or in relation to the Law Society in connection with any function which it has relating to legal aid or advice or assistance under Part I of the 1974 Act, may be continued, on and after the appointed day, by or in relation to the Board.

Legal aid contribution orders

- 5
- Notwithstanding their repeal by this Act, the provisions of the 1974 Act and the 1982 Act with respect to legal aid contribution orders shall continue to have effect in relation to any such order made in connection with a legal aid order made by virtue of section 28(11A) of the 1974 Act (legal aid for proceedings for contempt).

The Board: transfers of employment

- 6
- (1) The Board shall make, not later than such date as the Lord Chancellor may determine, an offer of employment by the Board to such of the persons employed immediately before that date by the Law Society for the purpose of their functions under the 1974 Act as fall within such descriptions as the Lord Chancellor designates for the purposes of this paragraph or are persons whom the Board wishes to employ.

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

Changes to legislation: Legal Aid Act 1988 is up to date with all changes known to be in force on or before 22 May 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)

- (2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (3) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.
- 7 (1) Where a person becomes an employee of the Board on acceptance of an offer made under paragraph 6, then, for the purposes of the ^{M18}Employment Protection (Consolidation) Act 1978, his period of employment with the Law Society shall count as a period of employment by the Board, and the change of employment shall not break the continuity of the period of employment.
- (2) Where an offer is made under paragraph 6 to any person, none of the agreed redundancy procedures applicable to employees of the Law Society shall apply to him.
- (3) Where a person employed by the Law Society ceases to be so employed—
- (a) on becoming a member of the staff of the Board on accepting an offer under paragraph 6, or
 - (b) having unreasonably refused such an offer,
- Part VI of the Employment Protection (Consolidation) Act 1978 shall not apply to him and he shall not be treated for the purposes of any scheme in force under section 19 of the 1974 Act as having been retired on redundancy.
- (4) Where a person to whom an offer under paragraph 6 has been made continues in employment in the Law Society after having not unreasonably refused that offer he shall be treated for all purposes as if no offer under paragraph 6 had been made to him.

Marginal Citations

M18 1978 c. 44.

- 8 (1) Any dispute as to whether an offer purporting to be made under paragraph 6 complies with that paragraph shall be referred to and be determined by an industrial tribunal.
- (2) An industrial tribunal shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.
- (3) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from the decision of, or in proceedings before, an industrial tribunal under this paragraph.
- (4) Except as mentioned in sub-paragraph (3) above, no appeal shall lie from the decision of an industrial tribunal under this paragraph.

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

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- 9 (1) In the event of the Board assuming under section 3(4) any of the functions specified in that subsection the Lord Chancellor shall by regulations make such provision corresponding to paragraphs 6, 7 and 8 in respect of employees to whom this paragraph applies as appears to him to be appropriate.
- (2) This paragraph applies to persons employed—
- (a) in the civil service of the State, or
 - (b) by a magistrates' courts committee,
- and so employed wholly or mainly in connection with the functions referred to in sub-paragraph (1) above.

Pensions

- 10 Any arrangements made by the Law Society under section 19 of the 1974 Act in respect of any pension shall be treated on and after the appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 10(2) of Schedule 1 to this Act, and any pension scheme administered by the Law Society immediately before the appointed day shall be deemed to be a pension scheme established and administered by the Board under that paragraph and shall continue to be administered accordingly.

Representation in affiliation proceedings: transitory provision

- 11 Until the repeal of the ^{M19}Affiliation Proceedings Act 1957 by the ^{M20}Family Law Reform Act 1987 takes effect, Schedule 2 to this Act shall be taken to include proceedings in the Crown Court or a magistrates' court for or in relation to an affiliation order within the meaning of the Affiliation Proceedings Act 1957.

Marginal Citations

M19 1957 c. 55.

M20 1987 c. 42.

SCHEDULE 8

Section 46.

TRANSITORY AMENDMENTS OF LEGAL AID ACT 1974

Preliminary

- 1 In this Schedule “the 1974 Act ” means the ^{M21}Legal Aid Act 1974.

Marginal Citations

M21 1974 c. 4.

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

Changes to legislation: Legal Aid Act 1988 is up to date with all changes known to be in force on or before 22 May 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)

Regulation of charges on property

- 2 In section 20(2)(e) of the 1974 Act (regulation of charge on property)—
- (a) after the words “receiving advice or assistance or legal aid ” there shall be inserted the words “and regulating the release or postponement of the enforcement of any charge (however created) for the benefit of the legal aid fund ”; and
 - (b) at the end there shall be inserted the words “; and
 - (iii) requiring interest to be charged at a prescribed rate in circumstances where enforcement of a charge for the benefit of the legal aid fund is postponed”.

Remuneration

- 3 In section 39 of the 1974 Act, for subsection (3) (fair remuneration in criminal and certain other legal aid cases) there shall be substituted the following—
- “(3) The Lord Chancellor, in making regulations under this section as to the amounts payable to counsel or solicitors undertaking any description of legal aid work under this Part of this Act, shall have regard, among the matters which are relevant, to—
- (a) the time and skill which it requires;
 - (b) the general level of fee income arising from it;
 - (c) the general level of expenses of barristers and solicitors which is attributable to it;
 - (d) the number and general level of competence of barristers and solicitors undertaking it;
 - (e) the effect of the regulations on the handling of the work; and
 - (f) the cost to public funds of any provision made by the regulations.”.
- 4 (1) In Schedule 2 to the 1974 Act (remuneration in civil legal aid cases)—
- (a) in paragraph 1(1), for the words “95 per cent. of the ” there shall be substituted the words “the full ”; and
 - (b) in paragraph 2(1), for the words “95 per cent. of the ” there shall be substituted the words “the full ”.
- (2) The amendments made by this paragraph have effect in relation to any case in which the order or direction for taxation is made on or after the date on which this Act is passed.

Status:

Point in time view as at 14/10/1991.

Changes to legislation:

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