



Judicial Review and Courts Act 2022

2022 CHAPTER 35

PART 2

COURTS, TRIBUNALS AND CORONERS

CHAPTER 5

OTHER PROVISIONS ABOUT COURTS AND TRIBUNALS

Pro bono representation in courts and tribunals

48 Payments in respect of pro bono representation

- (1) In section 194 of the Legal Services Act 2007 (payments in respect of pro bono representation in civil proceedings in England and Wales)—
 - (a) in the heading, at the end insert “: civil courts in England and Wales”;
 - (b) in subsection (8), for “by order made by the Lord Chancellor” substitute “under section 194C”;
 - (c) omit subsection (9);
 - (d) in subsection (10)—
 - (i) in the definition of “civil court”, omit paragraph (a);
 - (ii) omit the definition of “relevant civil appeal”.
- (2) After section 194 of the Legal Services Act 2007 insert—

“194A Payments in respect of pro bono representation: tribunals

- (1) This section applies to relevant tribunal proceedings in which—
 - (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and

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- (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
 - (3) The tribunal may make an order under this section against a person if the condition in subsection (5) is met in respect of that person (and if subsection (7) does not apply).
 - (4) An order under this section is an order for the person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).
 - (5) The condition is that, had R’s representation of P not been provided free of charge, the tribunal would have had the power to order the person to make a payment to P in respect of sums payable to R by P in respect of that representation.
 - (6) In considering whether to make an order under this section against a person, and the terms of such an order, the tribunal must have regard to—
 - (a) whether, had R’s representation of P not been provided free of charge, it would have made an order against that person as described in subsection (5), and
 - (b) if it would, what the terms of the order would have been.
 - (7) The tribunal may not make an order under this section against a person represented in the proceedings if the person’s representation was at all times within subsection (8).
 - (8) Representation is within this subsection if it is provided—
 - (a) by a legal representative acting free of charge, or
 - (b) by way of legal aid.
 - (9) For the purposes of subsection (8)(b), representation is provided by way of legal aid if it is—
 - (a) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,
 - (b) made available under Part 2 or 3 of the Legal Aid (Scotland) Act 1986, or
 - (c) funded under Part 2 of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)).
 - (10) Procedure rules may make further provision as to the making of orders under this section, and may in particular—
 - (a) provide that such orders may not be made in proceedings of a description specified in the rules;
 - (b) make provision about the procedure to be followed in relation to such orders;
 - (c) specify matters (in addition to those mentioned in subsection (6)) to which the tribunal must have regard in deciding whether to make such an order, and the terms of any order.
 - (11) In this section “relevant tribunal proceedings” means proceedings in—

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- (a) the First-tier Tribunal,
- (b) the Upper Tribunal,
- (c) an employment tribunal,
- (d) the Employment Appeal Tribunal, or
- (e) the Competition Appeal Tribunal,

but does not include proceedings within devolved competence.

(12) For the purposes of subsection (11), proceedings are within devolved competence if provision regulating the procedure to be followed in those proceedings could be made by—

- (a) an Act of the Scottish Parliament,
- (b) an Act of Senedd Cymru (including one passed with the consent of a Minister of the Crown within the meaning of section 158(1) of the Government of Wales Act 2006), or
- (c) an Act of the Northern Ireland Assembly the Bill for which would not require the consent of the Secretary of State.

(13) The Lord Chancellor may by regulations—

- (a) amend subsection (11) so as to add a tribunal to the list in that subsection, and
- (b) make consequential amendments of the definition of “procedure rules” in subsection (14).

(14) In this section—

“free of charge” means otherwise than for or in expectation of fee, gain or reward;

“legal representative” means a person who is—

- (a) entitled in accordance with section 13 to carry on the activity of exercising a right of audience or conducting litigation,
- (b) a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980,
- (c) a member of the Faculty of Advocates in Scotland,
- (d) a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
- (e) a member of the Bar of Northern Ireland, or
- (f) a solicitor of the Court of Judicature of Northern Ireland,

irrespective of the capacity in which the person is acting in the proceedings concerned;

“prescribed charity” means the charity prescribed under section 194C;

“procedure rules” means—

- (a) Tribunal Procedure Rules, in relation to proceedings in the First-tier Tribunal or the Upper Tribunal,
- (b) Employment Tribunal Procedure Rules, in relation to proceedings in an employment tribunal or the Employment Appeal Tribunal, or
- (c) rules under section 15 of the Enterprise Act 2002, in relation to proceedings in the Competition Appeal Tribunal;

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“tribunal” does not include an ordinary court of law.

- (15) An order under this section may not be made in respect of representation if (or to the extent that) it was provided before section 48 of the Judicial Review and Courts Act 2022 came into force.”
- (3) After section 194A of the Legal Services Act 2007 (as inserted by subsection (2)) insert—

“194B Payments in respect of pro bono representation: Supreme Court

- (1) This section applies to proceedings in a relevant civil appeal to the Supreme Court in which—
- (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
 - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
- (3) The Court may make an order under this section against a person if the condition in subsection (5) is met in respect of that person (and if subsection (7) does not apply).
- (4) An order under this section is an order for the person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).
- (5) The condition is that, had R’s representation of P not been provided free of charge, the Court would have had the power to order the person to make a payment to P in respect of sums payable to R by P in respect of that representation.
- (6) In considering whether to make an order under this section against a person, and the terms of such an order, the Court must have regard to—
- (a) whether, had R’s representation of P not been provided free of charge, it would have made an order against that person as described in subsection (5), and
 - (b) if it would, what the terms of the order would have been.
- (7) The Court may not make an order under this section against a person represented in the proceedings if the person’s representation was at all times within subsection (8).
- (8) Representation is within this subsection if it is—
- (a) provided by a legal representative acting free of charge, or
 - (b) provided by way of legal aid.
- (9) For the purposes of subsection (8)(b), representation is provided by way of legal aid if it is—
- (a) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or

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- (b) funded under Part 2 of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)).
- (10) Supreme Court Rules may make further provision as to the making of orders under this section, and may in particular—
- (a) provide that such orders may not be made in proceedings of a description specified in the Rules;
 - (b) make provision about the procedure to be followed in relation to such orders;
 - (c) specify matters (in addition to those mentioned in subsection (6)) to which the Court must have regard in deciding whether to make such an order, and the terms of any order.
- (11) In this section—
- “free of charge” means otherwise than for or in expectation of fee, gain or reward;
 - “legal representative”, in relation to a party to proceedings, means—
 - (a) a person exercising a right of audience, or conducting litigation, on the party’s behalf pursuant to an entitlement under section 13, or
 - (b) a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, practising or acting as such on the party’s behalf;
 - “prescribed charity” means the charity prescribed under section 194C;
 - “relevant civil appeal” means an appeal—
 - (a) from the High Court under Part 2 of the Administration of Justice Act 1969,
 - (b) from the Upper Tribunal under section 14B(4) of the Tribunals, Courts and Enforcement Act 2007,
 - (c) from the Court of Appeal under section 40(2) of the Constitutional Reform Act 2005 or section 42 of the Judicature (Northern Ireland) Act 1978, or
 - (d) under section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), other than an appeal from an order or decision made in the exercise of jurisdiction to punish for criminal contempt of court.
- (12) An order under this section may not be made in respect of representation in proceedings in a relevant civil appeal—
- (a) from a court in Northern Ireland, or
 - (b) from the Upper Tribunal under section 14B(4) of the Tribunals, Courts and Enforcement Act 2007,
- if (or to the extent that) the representation was provided before section 48 of the Judicial Review and Courts Act 2022 came into force.”
- (4) After section 194B of the Legal Services Act 2007 (as inserted by subsection (3)) insert—

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“194C Sections 194 to 194B: the prescribed charity

- (1) The Lord Chancellor may by order prescribe a registered charity for the purposes of sections 194 to 194B.
- (2) The charity must be one which provides financial support to persons who provide, or organise or facilitate the provision of, legal advice or assistance (by way of representation or otherwise) which is free of charge.
- (3) In this section—
 - “free of charge” means otherwise than for or in expectation of fee, gain or reward;
 - “registered charity” means a charity registered in accordance with—
 - (a) section 30 of the Charities Act 2011,
 - (b) section 3 of the [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\)](#), or
 - (c) section 16 of the [Charities Act \(Northern Ireland\) 2008 \(c. 12 \(N.I.\)\)](#).
- (4) An order under section 194(8) that was in force immediately before section 48 of the Judicial Review and Courts Act 2022 came into force—
 - (a) remains in force despite the amendment by that section of section 194(8),
 - (b) has effect as if its prescription of a charity for the purposes of section 194 were the prescription of that charity under this section for the purposes of sections 194 to 194B, and
 - (c) may be amended or revoked by an order under this section.”
- (5) For the purposes of sections 194A and 194C of the Legal Services Act 2007 (as inserted by subsections (2) and (4)), sections 204 and 206 of that Act extend to Scotland and Northern Ireland as well as England and Wales.
- (6) In paragraph 17(1) of Schedule 4 to the Enterprise Act 2002 (rules that may be made about procedure of Competition Appeal Tribunal), omit paragraph (ha).
- (7) In paragraph 32 of Schedule 8 to the Consumer Rights Act 2015 (amendments of paragraph 17 of Schedule 4 to the Enterprise Act 2002), omit sub-paragraph (a).