

Legal Aid Act 1982

1982 CHAPTER 44

An Act to make further provision with respect to the giving of legal aid, and the provision of advice and representation, in criminal cases; and for connected purposes.

[28th October 1982]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Advice and representation by duty solicitors. 1974 c. 4.

1.—(1) A scheme under section 15 of the Legal Aid Act 1974 (in this Act referred to as " the principal Act ") may provide—

(*a*) for the making, by committees set up under the scheme, of arrangements whereby advice and representation to which this section applies is provided by solicitors in attendance at magistrates' courts ; and

(*b*) for the remuneration out of the legal aid fund or by the Lord Chancellor of solicitors providing advice and representation under the arrangements.

(2) This section applies to such advice and representation in connection with criminal proceedings before magistrates' courts as may be specified by the scheme, being advice and representation for persons, or any class of persons, in respect of whom no legal aid order is for the time being in force in relation to the proceedings in question and to whom advice and assistance in respect of those proceedings is not being given under section 1 of the principal Act.

(3) For the purpose of making in a scheme any such provision as is mentioned in subsection (1) above the committee of the Council of the Law Society referred to in subsection (6) of the said section 15 shall (except during a vacancy) include two additional members nominated by the Lord Chancellor, being respectively a justice of the peace and a justices' clerk and such number of other additional members nominated by him (not being persons practising as barristers or as solicitors) as he may direct.

(4) For the purpose of making arrangements pursuant to any such provision as is mentioned in subsection (1) above any committee set up under a scheme made under the said section 15 may include, in addition to the persons qualified to be members by virtue of subsection (4) of that section, a justice of the peace and a justices' clerk and such number of other additional members (not being persons practising as barristers or as solicitors) as the Lord Chancellor may direct.

(5) A magistrates' court shall comply with such directions given to it by the Lord Chancellor as he thinks requisite for securing that effect is given at that court to any such arrangements as are mentioned in subsection (1) above.

(6) The remuneration under any such provision as is mentioned in subsection (1) above shall be determined and paid in such manner as may be provided by regulations made for the purposes of this section with the concurrence of the Treasury.

(7) Sections 2(5), 15(1), 20(1) and (2)(*a*), (*c*) and (*d*), 22 and 23 of the principal Act (ancillary provisions relating to advice and assistance under section 1 of that Act) shall apply also in relation to advice and representation provided pursuant to this section.

Legal aid for committal proceedings and trial.

2.—(1) A magistrates' court inquiring into an offence as examining justices may make a legal aid order under section 28(2) of the principal Act which applies, or amend an order already made by the court under that provision so that it applies, both to the proceedings before the court and, in the event of the defendant being committed for trial, to his trial before the Crown Court.

(2) Legal aid ordered to be given to a person by virtue of this section shall, in the event of his being convicted by the Crown Court, include such advice and assistance as is mentioned in section 30(7) of the principal Act.

Legal aid for appeals in cases of contempt of court.
1968 c 19

3. In section 28(8) of the principal Act (legal aid for appeals to Court of Appeal under Part I of the Criminal Appeal Act 1968) for the words " the criminal division of that court " there shall be substituted the words " or to appeal to that court under

section 13 of the Administration of Justice Act 1960 against an order or decision of the Crown Court, the criminal division of the Court of Appeal ". 1960 c. 65.

Legal aid for proceedings following partly suspended sentence. 1977 c. 45.

4. In section 30(12) of the principal Act (meaning of " dealt with " in provisions describing proceedings for which legal aid may be given) after the words " the Powers of Criminal Courts Act 1973 " there shall be inserted the words " or section 47(3) of the Criminal Law Act 1977 ".

Functions of legal aid committees.

5.—(1) In this section " legal aid committee " means a committee set up by a scheme under section 15 of the principal Act.

(2) Provision may be made by regulations for enabling a legal aid committee to discharge, in such circumstances and subject to such restrictions as may be prescribed—

(*a*) the powers of a magistrates' court or the Crown Court under section 30(1) or (2) of the principal Act as respects representation by counsel in proceedings before a magistrates' court or by more than one counsel in proceedings before the Crown Court; and

(*b*) the powers of a magistrates' court or the Crown Court under section 31 of that Act (amendment and revocation of legal aid orders).

(3) Provision may be made by regulations for treating—

(*a*) as a proper subject of fees or disbursements payable under section 37(2) of the principal Act; or

(*b*) as a proper subject of such fees or disbursements up to a specified amount,

anything done with the approval of a legal aid committee given in accordance with the regulations.

(4) Regulations made for the purposes of this section may—

(*a*) make provision as to the manner of making applications or referring cases to a legal aid committee and the time when such applications or references may be made and disposed of;

(*b*) provide for the exercise of any specified powers of a legal aid committee by a member or officer of the committee.

(5) Regulations made for the purposes of this section may make different provision for different cases and may be made separately in relation to proceedings before different courts.

(6) Section 22 of the principal Act (obligation of secrecy on legal aid committees etc.) shall have effect as if references in that section to Part I of that Act, to such a committee as is there mentioned and to legal aid under that Part included references to this section, to a legal aid committee and to legal aid given by a legal aid order.

Refusal of legal aid by magistrates' courts.

6.—(1) Provision may be made by regulations—

(*a*) for enabling a person who has been refused legal aid under the principal Act by a magistrates' court to apply to such other court or body as may be specified in the regulations ; and

(*b*) for that other court or body to make any legal aid order that could have been made by the magistrates' court.

(2) Regulations made for the purposes of this section may make provision as to the manner in which, and the time when, applications may be made under the regulations and may make different provision for different cases.

(3) Regulations made for the purposes of this section shall be made with the concurrence of the Treasury.

(4) Where a legal aid order is made by virtue of regulations made for the purposes of this section, the provisions of this Act relating to legal aid contribution orders shall have effect with such modifications as may be specified in the regulations.

Legal aid contribution orders.

7.—(1) Where a court makes a legal aid order giving legal aid to a person whose disposable income or disposable capital exceeds the limits prescribed in relation to such income and capital respectively the court shall, subject to the provisions of this section, make an order (" a legal aid contribution order ") requiring him to make a payment (in this Act referred to as " a contribution ") in respect of the costs of the legal aid.

(2) The contribution which a legal aid contribution order requires a person to make shall be of such amount as is applicable in his case in accordance with regulations made for the purposes of this section ; and any such contribution shall be paid in one sum or by instalments as may be prescribed.

(3) In a case where the legally assisted person has not attained the age of sixteen, the court may, instead of or in addition to making a legal aid contribution order against him, make such an order against any person who is an appropriate contributor in relation to him and whose disposable income or disposable capital exceeds the limits referred to in subsection (1) above.

(4) Where a court makes a legal aid order for the giving of legal aid to a person who has attained the age of sixteen and does so without first requiring him to furnish a statement

of his means under section 29(4) of the principal Act because it appears to the court that he is by reason of his physical or mental condition incapable of doing so—

(*a*) no legal aid contribution order need be made at the time when the legal aid order is made; but

(*b*) if it subsequently appears to the court having power to make a legal aid contribution order under section 8(2) below that he has become capable of furnishing such a statement, that court may require him to do so.

(5) Where a person fails to furnish a statement which he is required to furnish under subsection (4) above or under section 29(5) of the principal Act (statements by appropriate contributors) he shall be treated, for the purposes of any legal aid contribution order made in connection with the legal aid order in relation to which the requirement was imposed, as if his disposable income and disposable capital exceeded the limits referred to in subsection (1) above and as if the amount of the contribution applicable in his case were such as the court may determine.

(6) Subject to section 13(5) below, where the costs of the legal aid in respect of which a legal aid contribution was made are less than the contribution made under the order, the difference between the contribution and those costs 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.

(7) Regulations may provide that no legal aid contribution order shall be made in connection with a legal aid order made in respect of proceedings in the Crown Court, the criminal division of the Court of Appeal or the House of Lords in a case where a legal aid contribution order was made in connection with a legal aid order giving legal aid to the person in question in respect of proceedings in a lower court.

(8) Regulations made for the purposes of subsection (1) or (2) above shall be made with the concurrence of the Treasury; and regulations made for the purposes of subsection (1) above shall secure that a person's disposable income and disposable capital are treated as not exceeding the prescribed limits at any time when he is in receipt of supplementary benefit under the Supplementary Benefits Act 1976 and that a person's disposable income is treated as not exceeding the prescribed limit at any time when he is in receipt of family income supplement under the Family Income Supplements Act 1970. 1976 c. 71. 1970 c. 55.

Variation and revocation of legal aid contribution orders.

8.—(1) A legal aid contribution order made against a person in connection with a legal aid order may be varied—

(*a*) in the light of any further information as to his disposable income or disposable capital at the time when the legal aid contribution order was made; or

(*b*) in the light of any change in his disposable income or disposable capital at any time within such period beginning with the date of the legal aid order as may be prescribed for the purposes of this section ("the prescribed period").

(2) Where no legal aid contribution order has been made against a person in connection with a legal aid order at the time when that order was made—

(*a*) because his disposable income or disposable capital did not then exceed (or was then believed not to exceed) the limits referred to in subsection (1) of section 7 above; or

(*b*) because of subsection (4)(*a*) of that section,

a legal aid contribution order may be made against that person at any subsequent time if it appears that his disposable income or disposable capital at any time within the prescribed period exceeds or exceeded the limits referred to in subsection (1) of that section.

(3) Where a legal aid contribution order has been made against a person and it subsequently appears that his disposable income or disposable capital at the time when the order was made was such that no legal aid contribution order should have been made in his case, the order shall be revoked; but if the order is revoked subsection (2) above shall apply as if the order had never been made.

(4) The powers conferred by the foregoing provisions of this section shall be exercisable by the court that made the legal aid order in question except that—

(*a*) where the relevant proceedings are being heard or have been concluded in a different court, those powers shall, subject to paragraph (*b*) below, be exercisable by that court; and

(*b*) where any sum in respect of a contribution under a legal aid contribution order falls due at a time after the conclusion of the relevant proceedings, the power conferred by subsection (1) above to vary the order so far as relates to any sum falling due as aforesaid shall be exercisable by the collecting court.

(5) At the conclusion of the relevant proceedings the court in which those proceedings are concluded may, if it thinks fit—

(*a*) remit any sum due under a legal aid contribution order from a legally assisted person which falls to be paid after the conclusion of those proceedings or, if that person has been acquitted, remit or order the repayment of any sum due from or paid by him under such an order;

(*b*) remit or order the repayment of any sum due from or paid by an appropriate contributor under such an order;

and where a legally assisted person successfully appeals against his conviction the court which allows his appeal may remit or order the repayment of any sum due from or paid by him or an appropriate contributor under such an order.

(6) Where the legal aid order in connection with which a legal aid contribution order was made is revoked, the foregoing provisions of this section shall have effect as if the relevant proceedings had then been concluded.

(7) Where a legal aid contribution order is revoked, or is varied to an amount less than what has already been paid, any sum paid or, as the case may be, overpaid under the order shall be repaid.

(8) For the purposes of this section the relevant proceedings, in relation to a legal aid contribution order, are the proceedings for the purposes of which legal aid was ordered to be given by the legal aid order in connection with which the legal aid contribution order was made except that where those proceedings are proceedings before a magistrates' court which result—

(*a*) in the legally assisted person being committed to the Crown Court for trial or sentence; or

(*b*) in his case being remitted to a juvenile court in pursuance of section 56(1) of the Children and Young Persons Act 1933 or section 2(11) of the Children and Young Persons Act 1969, 1933 c. 12. 1969 c. 54.

the relevant proceedings include the proceeedings before the Crown Court or that juvenile court.

Enforcement of legal aid contribution orders.

9.—(1) Any sum due under a legal aid contribution order shall not be recoverable, and payment of any such sum shall not be enforced, under section 35 of the principal Act until—

(*a*) the conclusion of the relevant proceedings; or

(*b*) if earlier, the revocation of the legal aid order in connection with which the legal aid contribution order was made.

(2) Where a sum in respect of a contribution under a legal aid contribution order made in connection with a legal aid order is required to be paid on the making of the legal aid contribution order, the court may direct that the legal aid order shall not take effect until that sum is paid.

(3) Where a sum in respect of a contribution under a legal aid contribution order made in connection with a legal aid order is required to be paid by the legally assisted person at any subsequent time before the conclusion of the relevant proceedings and is not paid at that time, the court in which those proceedings are being heard may revoke the legal aid order but shall not do so unless satisfied, after affording the legally assisted person an opportunity of making representations in such manner as may be prescribed—

(*a*) that he was at that time able to pay the sum in question; and

(*b*) that he is able to pay the whole or part of it but has failed or refused to do so.

(4) The revocation of a legal aid order under subsection (3) above shall not affect the right of any legal representative previously assigned to the legally assisted person to remuneration for work done before the date of the revocation.

(5) The collecting court may defer recovering any sum due under a legal aid contribution order if an appeal is pending in respect of the relevant proceedings or if the legally assisted person has been ordered to be retried.

(6) In this section "the relevant proceedings" has the same meaning as in section 8 above.

Disposable income and capital.

10.—(1) In section 29(2) of the principal Act (legal aid order not to be made in favour of a person unless the court is satisfied that his means are such that he requires assistance) for the words "his means" there shall be substituted the words "his disposable income and disposable capital".

(2) The provisions of section 11 of the principal Act (assessment of disposable income and capital), except subsections (3) and (5) and so much of subsection (7) as relates to contributions, shall apply as if references in those provisions to Part I of that Act included references to the said section 29(2) and sections 7 and 8 above and as if references to legal aid included references to legal aid given by a legal aid order.

(3) Section 33 of the principal Act (means enquiry by Secretary of State) and section 34 of that Act (regulations for determining means) shall cease to have effect.

Payment of costs of legal aid.

11.—(1) In subsection (1) of section 37 of the principal Act (payment of costs of legal aid) for the words from " shall be paid " onwards there shall be substituted the words " shall be paid—

(*a*) out of the legal aid fund ; or

(*b*) by the Lord Chancellor,

as the Lord Chancellor may direct."

(2) Provision may be made by regulations for prohibiting or restricting the receipt by counsel or a solicitor acting for a legally assisted person of payments otherwise than under the said section 37.

Payment for advice and assistance where legal aid order is subsequently made.

12.—(1) This section has effect where—

(*a*) advice or assistance under section 1 of the principal Act 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 given legal aid for the purposes of those proceedings.

(2) If the solicitor assigned to the person in question by the legal aid order is the same as the solicitor who gave 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 5 of the principal Act shall instead be paid under section 37(1) of that Act as if it were part of the costs of the legal aid given for the purposes of the proceedings.

(3) If a legal aid contribution order is made in connection with the legal aid order—

(*a*) any sum which the person in question is required by virtue of section 4 of the principal Act 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 legal aid contribution order ; and

(*b*) section 7(6) above 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 legal aid and as if any such sum as aforesaid which that person has paid were part of the contribution made under that order.

Award of costs to legally assisted persons. 1973 c. 14.

13.—(1) For the purposes of the Costs in Criminal Cases Act 1973 a legally assisted person shall be deemed to have incurred any costs that were incurred on his behalf pursuant to a legal aid order and any charge or fee treated as part of those costs by virtue of section 12(2) above.

(2) Nothing in the said Act of 1973 shall be construed as enabling a legally assisted person to be indemnified in respect of any sum payable by him under a legal aid contribution order; and the costs referred to in subsection (1) above are the costs incurred on behalf of a legally assisted person without any deduction on account of any such sum.

(3) Except so far as otherwise provided by directions given by the Lord Chancellor, any sums due under an order for costs made in favour of a person in respect of proceedings for the purposes of which he has been given legal aid shall be paid—

(*a*) into the legal aid fund; or

(*b*) to the Lord Chancellor,

as the Lord Chancellor may direct.

(4) If in the case of any such order as is mentioned in subsection (3) above the sums paid as provided in that subsection exceed the costs of the legal aid given to the legally assisted person for the purposes of the proceedings in question, the excess shall be paid out of the legal aid fund or by the Lord Chancellor, as the Lord Chancellor may direct, either to that person or to his solicitor or partly to one and partly to the other.

(5) Where a contribution has been made in respect of the costs of the legal aid given to a person for the purposes of any proceedings and an order for costs is made in favour of that person in respect of those proceedings, then—

(*a*) if those costs do not exceed the sums paid under the order, section 7(6) above shall not apply and the contribution shall be repaid;

(*b*) if those costs exceed those sums, section 7(6) above shall apply as if the costs of the legal aid were equal to the excess.

(6) References in subsections (4) and (5) above to the costs of the legal aid include any charge or fee treated as part of those costs by section 12(2) above.

Consequential amendments and repeals.

14.—(1) In section 40(1) of the principal Act (interpretation of Part II) after the definition of "committed for sentence" there shall be inserted—

"'legal aid contribution order' means an order under section 7 or 8(2) of the Legal Aid Act 1982;".

(2) In paragraph 1 of Schedule 3 to the principal Act (enforcement of legal aid contribution orders) for the words "have the same meanings as in section 32 above" there shall be substituted the words "have the same meanings as in Part II of this Act".

(3) In the definition of "legal aid contribution order" in section 25(1) of the Attachment of Earnings Act 1971, in section 92(1)(*b*) of the Magistrates' Courts Act 1980 and in section 47(7) of the Supreme Court Act 1981 for the words "section 32 of the Legal Aid Act 1974" there shall be substituted the words "section 7 or 8(2) of the Legal Aid Act 1982". 1971 c. 32. 1980 c. 43. 1981 c. 54.

(4) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

15. There shall be paid out of moneys provided by Parliament— Expenses.

(*a*) any sums required by the Lord Chancellor for making payments pursuant to section 1 above; and

(*b*) any increase attributable to this Act in the sums payable out of such moneys under the principal Act.

16.—(1) This Act may be cited as the Legal Aid Act 1982. Short title, interpretation, commencement and extent.

(2) In this Act—

"legal aid fund" means the legal aid fund established under Part I of the principal Act;

"legal aid order" means an order under any provision of section 28 of the principal Act;

"legally assisted person" means a person to whom aid is ordered to be given by a legal aid order;

"the principal Act" means the Legal Aid Act 1974. 1974 c. 4.

(3) Section 1 above and Part I of the principal Act shall have effect as if that section were contained in that Part but except as provided in subsection (7) of that section references in that Part to advice and assistance shall not include references to advice and representation provided pursuant to that section.

(4) Sections 2 to 13 above and Part II of the principal Act shall have effect as if those sections were contained in that Part and in those sections "regulations" means regulations made by the Lord Chancellor under that Part.

(5) This Act shall come into force on such day as may be appointed by the Lord Chancellor by an order made by statutory instrument, and different days may be appointed for different provisions.

(6) This Act does not extend to Scotland or Northern Ireland.

Section 14(4).

SCHEDULE

REPEALS

Chapter	Short title	Extent of repeal
1974 c.4.	The Legal Aid Act 1974.	In section 29, subsection (3) and the subsection (5A) inserted by Schedule 12 to the Criminal Law Act 1977. In section 31(3), the words from " but " onwards. Section 32(1) to (4). Sections 33 and 34. Section 36. In Schedule 4, paragraph 4.
1977 c. 45.	The Criminal Law Act 1977.	In Schedule 12, paragraphs 1(4) and 2 in the entry relating to the Legal Aid Act 1974.
1980 c. 30.	The Social Security Act 1980.	In Schedule 4, paragraph 9(3).