CHAPTER 51

Legal Aid and Advice Act, 1949

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An Act to make legal aid and advice in England and Wales, and in the case of members of the forces legal advice elsewhere, more readily available for persons of small or moderate means, to enable the cost of legal aid or advice for such persons to be defrayed wholly or partly out of moneys provided by Parliament, and for purposes connected therewith. [30th July 1949.]

BE it enacted by the King'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 :—

PART I

NEW ARRANGEMENTS FOR LEGAL AID AND LEGAL ADVICE

Legal aid

Scope and general conditions of legal aid in connection with proceedings.

1.—(1) This and the three next following sections provide for, and (save as hereinafter mentioned) relate only to, legal aid in connection with proceedings before courts and tribunals in England and Wales, not being proceedings in which free legal aid may be given under the enactments amended by Part II of this Act.

(2) Unless and until regulations otherwise provide, the proceedings in connection with which legal aid may be given are any proceedings of a description mentioned in Part I of the First Schedule to this Act, except proceedings mentioned in Part II of that Schedule.

PART I —*cont.*

(3) Subject to the provisions of this section, the proceedings in connection with which legal aid may be given may be varied by regulations, and the regulations may describe the proceedings to be included or excluded by reference to the court or tribunal, to the issues involved, to the capacity in which the person requiring legal aid is concerned, or otherwise.

(4) Regulations made for the purpose of the last foregoing subsection—

(*a*) shall not provide for giving legal aid in connection with proceedings before any court or tribunal before which persons have no right and are not normally allowed to be heard by counsel or a solicitor; and

(*b*) shall not come into force unless or until approved by resolution of each House of Parliament.

(5) Legal aid shall consist of representation, on the terms provided for by this Part of this Act, by a solicitor and so far as necessary by counsel (including all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings).

(6) A person shall not be given legal aid in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending or being a party thereto, and may also be refused legal aid if it appears unreasonable that he should receive it in the particular circumstances of the case.

(7) Save as expressly provided by this Part of this Act or by regulations made thereunder,—

(*a*) the fact that the services of counsel or a solicitor are given by way of legal aid shall not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of such relationship; and

(*b*) the rights conferred by this Part of this Act on a person receiving legal aid shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.

Financial conditions of legal aid.

2.—(1) Subject to this Part of this Act, legal aid shall be available for any person whose disposable income does not exceed four hundred and twenty pounds a year :

Provided that a person may be refused legal aid if he has a disposable capital of more than five hundred pounds and it appears that he can afford to proceed without legal aid.

PART I —*cont.*

(2) Where a person receives legal aid in connection with any proceedings—

(*a*) the expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the solicitor acting for him, shall be so paid except in the case of those paid direct from the legal aid fund as provided by this Part of this Act;

(*b*) his solicitor and counsel shall not take any payment in respect of the legal aid except such payment as is directed by this Part of this Act to be made out of the legal aid fund;

(*c*) he may be required to make a contribution to the legal aid fund in respect of the sums payable thereout on his account;

(*d*) any sums recovered by virtue of an order or agreement for costs made in his favour with respect to the proceedings shall be paid to the legal aid fund;

(*e*) his liability by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute.

(3) Regulations shall make provision as to the court, tribunal or person by whom the amount referred to in paragraph (*e*) of the last foregoing subsection is to be determined and the extent to which any determination thereof is to be final.

(4) For the purpose of any inquiry under this section as to the means of a person against whom an order for costs has been made, his dwelling house and household furniture and the tools and implements of his trade shall be left out of account except in such cases and to such extent as may be prescribed, and except as aforesaid they shall, in all parts of the United Kingdom, be protected from seizure in execution to enforce the order.

Contributions from assisted person and charge on property recovered.

3.—(1) A person's contribution to the legal aid fund in respect of any proceedings may include—

(*a*) a contribution in respect of income not greater than half the amount (if any) by which his disposable income exceeds one hundred and fifty-six pounds a year; and

(*b*) a contribution in respect of capital not greater than the amount (if any) by which his disposable capital exceeds seventy-five pounds.

(2) A person may be required to make any contribution to the legal aid fund in one sum or by instalments.

PART I —*cont.*

(3) If the total contribution to the legal aid fund made by a person in respect of any proceedings is more than the net liability of that fund on his account, the excess shall be repaid to him.

(4) Except so far as regulations otherwise provide, any sums remaining unpaid on account of a person's contribution to the legal aid fund in respect of any proceedings and, if the total contribution is less than the net liability of that fund on his account, a sum equal to the deficiency shall be a first charge for the benefit of the legal aid fund on any property (wherever situate) which is recovered or preserved for him in the proceedings.

(5) The reference in the last foregoing subsection to property recovered or preserved for any person shall include his rights under any compromise arrived at to avoid or bring to an end the proceedings and any sums recovered by virtue of an order for costs made in his favour in the proceedings (not being sums payable into the legal aid fund under the last foregoing section).

(6) The charge created by subsection (4) of this section on any damages or costs shall not prevent a court allowing them to be set off against other damages or costs in any case where a solicitor's lien for costs would not prevent it.

(7) References in this section to the net liability of the legal aid fund on any person's account in relation to any proceedings refer to the aggregate amount of the sums paid or payable out of that fund on his account in respect of those proceedings to any solicitor or counsel and not recouped to that fund by sums which are recovered by virtue of an order or agreement for costs made in his favour with respect to those proceedings.

Assessment of disposable capital and income and of maximum contribution.

4.—(1) References in this Act to a person's disposable income or disposable capital shall be taken as referring to the rate of his income or amount of his capital after making—

(*a*) such deductions as may be prescribed in respect of the maintenance of dependants, interest on loans, income tax, rates, rent and other matters for which the person in question must or reasonably may provide; and

(*b*) such further allowances as may be prescribed to take account of the nature of his resources.

(2) Regulations may make provision as to the manner in which the rate of a person's income and the amount of his capital are to be computed for the purposes of the foregoing subsection, and in particular for determining whether any resources are to be treated as income or capital and for taking into account fluctuations of income.

(3) The regulations shall include provision for securing that the resources of a person seeking or receiving legal aid shall be treated as not including the subject matter of the dispute.

PART I —*cont.*

(4) Except in so far as the regulations otherwise provide, any resources of a person's wife or husband shall be treated for the purposes of this section as that person's resources, and the regulations may also make provision, in relation to infants and other special cases, for taking into account the resources of other persons.

(5) The regulations shall also include provision for securing that in computing resources there shall be observed the rules set out in paragraphs 1, 4, 5 and (so far as relevant) 6 of the Second Schedule to the National Assistance Act, 1948, and again set out, with the necessary adaptations of the said paragraph 6, in the Second Schedule to this Act:

Provided that the regulations may provide that the reference in the said paragraph 1 to borrowing money shall not apply in any prescribed circumstances.

(6) Subject to the provisions of this section, a person's disposable income and disposable capital, and the maximum amount of his contribution to the legal aid fund in respect of any proceedings, shall be determined by the National Assistance Board, and the Board may call attention to any special circumstances affecting the maximum amount of the lump sum and periodical payments which he could reasonably make on account of any contribution.

(7) Any increase attributable to the last foregoing subsection in the expenses of the National Assistance Board shall be defrayed out of moneys provided by Parliament.

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

Legal aid in matters not involving litigation.

5.—(1) This section provides for, and (except for subsection (6)) relates only to, legal aid in taking steps to assert or dispute a claim where—

(*a*) the question of taking, defending or being a party to proceedings before a court or tribunal does not arise or has not yet arisen; but

(*b*) if it did arise, the proceedings would, or might properly, be such that legal aid could be given in connection therewith under section one of this Act.

(2) Legal aid under this section shall consist of the assistance of a solicitor on the terms provided for by this section, and (save as expressly provided by this Part of this Act or by regulations made thereunder) the fact that the assistance is given by way of legal aid shall not affect the relationship between or rights of solicitor and client or any privilege arising out of such relationship.

PART I —*cont.*

(3) A person shall not be given legal aid under this section unless he shows that he has reasonable grounds for taking steps to assert or dispute the claim, and may also be refused such aid if it appears unreasonable that he should receive it in the particular circumstances of the case.

(4) Subject to the provisions of this section, sections two, three and four of this Act shall apply for the purposes of this section with the necessary modifications of references to proceedings or to the subject matter of the dispute and with the following omissions, that is to say—

(*a*) so much of sections two and three as relates to orders for costs; and

(*b*) subsections (5), (6) and (7) of section four.

(5) Unless and until regulations otherwise provide, legal aid shall not be available under this section for any person whose disposable income exceeds one hundred and fifty-six pounds a year or whose disposable capital exceeds seventy-five pounds; and provision may be made by regulations for restricting the nature and extent of the assistance which may be given by way of legal aid under this section.

(6) Where a person receives legal aid under this section in any matter and, on that matter giving rise or appearing likely to give rise to proceedings, he is given legal aid also in connection with those proceedings, then, except in so far as regulations otherwise provide, section three of this Act shall apply as if all the legal aid had been received in connection with the proceedings.

Solicitors and counsel.

6.—(1) Panels of solicitors and barristers willing to act for persons receiving legal aid shall be prepared and maintained, and there may be separate panels for different purposes, for different courts and for different districts.

(2) Any practising solicitor or barrister shall be entitled to have his name on the appropriate panels or any of them, unless there is good reason for excluding him arising out of his conduct when acting or selected to act for persons receiving legal aid or his professional conduct generally, or, in the case of a member of a firm of solicitors, out of that of any person who is for the time being a member of the firm.

(3) Where a barrister or solicitor is aggrieved by any decision excluding him (whether permanently or temporarily) from the panels or any of them, he may appeal against the decision to the High Court, and the High Court (whose decision shall be final) may confirm or quash the decision appealed against or may substitute such decision as the court thinks fit.

Provision shall be made by rules of court for regulating appeals to the High Court under this subsection, and those rules shall provide for limiting the time within which appeals may be brought.

PART I —*cont.*

(4) Where a person is entitled to receive legal aid, the solicitor to act for him and, if the case requires counsel, his counsel shall be selected from the appropriate panel, and he shall be entitled to make the selection himself:

Provided that—

(*a*) this subsection shall not prejudice the rights of solicitor or counsel where he has good reason to refuse or give up a case or entrust it to another; and

(*b*) the solicitor selected, if shown on the panel as a member of a firm, shall act in the name of the firm.

(5) Subject to this Part of this Act, a solicitor who has acted for a person receiving legal aid shall be paid for so acting out of the legal aid fund, and any fees paid to counsel for so acting shall also be paid out of that fund.

(6) The sums payable under the last foregoing subsection to a solicitor or counsel shall not exceed those allowed under the Third Schedule to this Act.

(7) Notwithstanding anything in subsection (4) of this section, where the maximum contribution payable to the legal aid fund by a person receiving legal aid in connection with a matrimonial cause is not more than ten pounds, then, unless regulations otherwise provide, the solicitor to act for him shall not be a solicitor selected from the panel but a solicitor employed whole-time for a salary to deal with cases to which this subsection applies ; and where the solicitor who acts for a person receiving legal aid is one employed as aforesaid—

(*a*) he shall not be entitled to any further payment under subsection (5) of this section except for his disbursements; and

(*b*) no sum paid or payable to him otherwise than under the said subsection (5) shall be treated for the purposes of subsection (7) of section three of this Act as paid or payable on account of the person for whom he acts.

(8) In the foregoing provisions of this section, references to acting for a person receiving legal aid shall, in relation to a solicitor, include acting indirectly for such a person, as agent for his solicitor, so, however, that any selection from the panel of a solicitor to act as agent shall be made by the solicitor for whom he is to act.

(9) Nothing in this section shall prejudice paragraph (*b*) of subsection (7) of section one of this Act, and in particular—

(*a*) subsections (6) and (7) of this section shall not affect the sums recoverable by virtue of an order for costs made in favour of a person who has received legal aid or of an agreement for costs so made which provides for taxation; and

(*b*) for the purpose of any such order or agreement, the solicitor who acted for the person in whose favour it is made shall be treated as having paid any counsel's fees.

Legal advice

Right to and nature of legal advice.

7.—(1) Subject to this Part of this Act, legal advice shall be available in England and Wales for any person, and outside Great Britain for any member of the forces.

(2) Legal advice shall consist of oral advice on legal questions given by a solicitor employed whole time or part time for the purpose and shall include help in preparing an application for legal aid and in supplying information required in connection therewith for determining disposable income and capital, but (subject to the following provisions of this section) shall not include advice on any law other than English law.

(3) In the case of a member of the forces, legal advice shall include advice on the law—

(*a*) of any part of the United Kingdom; and

(*b*) except where regulations otherwise provide, of any country or territory in which he is serving; and

(*c*) where regulations so provide, of any other country or territory in which he has been resident, whether in the course of his service or not,

and regulations may provide that persons employed to give legal advice outside Great Britain to members of the forces shall act for those members in obtaining information needed to enable advice to be given.

(4) In the case of a person who has been a member of the forces at any time after the passing of this Act, the last foregoing subsection (except paragraph (*b*) thereof) shall apply so as to authorise the giving of advice on matters arising in the course of his service outside England and Wales, as it applies in the case of a person who is a member of the forces.

(5) If provision corresponding to this Part of this Act is made for Scotland, legal advice shall, in the case of any person, include—

(*a*) help for the purposes of that provision corresponding to the help mentioned in subsection (2) of this section; and

(*b*) where regulations so provide, advice on the law of Scotland.

(6) If provision corresponding to this Part of this Act is made for Northern Ireland—

(*a*) the last foregoing subsection shall apply in relation to Northern Ireland as it applies in relation to Scotland; and

(*b*) regulations may direct that legal advice shall not be available for members of the forces in Northern Ireland.

PART I —*cont.*

(7) Provision may be made by regulations for further defining or restricting the questions (whether of English or any other law) on which legal advice may be given.

(8) A person seeking legal advice may be required—

(*a*) to satisfy the person employed to give it that he cannot afford to obtain it in the ordinary way;

(*b*) to pay a fee of half a crown or such other fee as may be prescribed for each interview.

(9) Any fees paid under this section shall be paid into the legal aid fund.

(10) A person seeking legal advice shall have the same privilege for communications made for that purpose to the person giving it, and the same remedies against that person for any negligence, as if he had been consulting him as his solicitor in the ordinary way.

(11) The limitation of legal advice to oral advice shall not prevent the person giving it, where he thinks the person seeking it will need a written note of the advice given or any part of it, from giving him such a note.

(12) In this section, the expression " member of the forces " means a person serving on full pay as a member of any of the naval, military or air forces of the Crown raised in the United Kingdom (including any women's force administered by the Admiralty, Army Council or Air Council).

Administration and finance

Functions of Law Society.

8.—(1) Subject to this Part of this Act, it shall be the responsibility of the Law Society to make arrangements, in accordance with a scheme made by them with the approval of the Lord Chancellor and with the concurrence of the Treasury, for securing that legal aid and legal advice are available as required by this Part of this Act and generally to administer this Part of this Act.

(2) Any scheme made as aforesaid may be varied or revoked by a subsequent scheme so made.

(3) The functions of the Law Society under this Part of this Act may be performed by the Council of the Law Society in general consultation with the General Council of the Bar on matters of policy or by any committee of the Council of the Law Society or by any committee set up by a scheme under this section.

(4) Any committee set up as aforesaid may include persons who are not members of the Law Society but who are barristers or solicitors, and there may be paid to members of a committee so set up such fees and allowances (if any) as may be provided by the scheme.

PART I —*cont.*

(5) The constitution, quorum and procedure of any committee set up as aforesaid, and the tenure of office of its members, may be regulated by the scheme, but any such committee shall have power to determine its own procedure so far as not regulated as aforesaid.

(6) The functions of the Law Society in making or varying any scheme under this section shall be performed by a committee of the Council of the Law Society whose members shall (except during any vacancy) include not less than three persons nominated by the General Council of the Bar and a person nominated by the Lord Chancellor.

(7) Where a scheme under this section is submitted to the Lord Chancellor for his approval, any member of the committee who was present when the scheme or any provision thereof was considered by the committee, and who then objected to the scheme or to that provision, may inform the Lord Chancellor of his objection; and the Lord Chancellor shall not approve a scheme where he has been informed of an objection under this subsection without first giving the members of the committee an opportunity to make representations about the matter in dispute.

(8) Subject to this Part of this Act, a scheme under this section may include provisions as to the persons by whom and manner in which questions arising in the administration of this Part of this Act are to be determined and as to any other matters incidental to the administration thereof.

(9) The Law Society shall exercise their functions under this Part of this Act under the general guidance of the Lord Chancellor, and as soon as possible after the end of any financial year shall make an annual report to him on the operation and finance of this Part of this Act during that year.

(10) The Law Society shall have power to hold land without licence in mortmain for the purposes of this Part of this Act.

Legal aid fund.

9.—(1) The functions of the Law Society under this Part of this Act shall include the establishment and administration of the legal aid fund.

(2) All receipts and expenses of the Law Society attributable to this Part of this Act shall be paid into and out of the legal aid fund, and the general funds of the Law Society shall be indemnified thereout against any liability in respect of those expenses.

(3) The said expenses shall include—

(*a*) any fees and allowances payable to members of a committee by virtue of the last foregoing section;

(*b*) a proper proportion of any expenses incurred partly in connection with functions under this Part of this Act and partly for other purposes;

PART I —*cont.*

(*c*) such sums as may be proper for the use wholly or partly in connection with those functions of property acquired for other purposes.

(4) The said receipts shall include such sums as may be proper for the use by the Law Society otherwise than in connection with their functions under this Part of this Act of property acquired at the expense of the legal aid fund.

(5) The proper proportion of any expenses, or the proper sum, for the purpose of any question arising under subsection (3) or (4) of this section shall be determined by the Lord Chancellor.

(6) The sums required to meet payments out of the legal aid fund, after allowing for sums received apart from this provision, shall be paid to that fund by the Lord Chancellor at such times and in such manner as he may with the approval of the Treasury determine, and shall be so paid out of moneys provided by Parliament.

(7) Estimates of the sums required as aforesaid shall from time to time be submitted to the Lord Chancellor by the Law Society.

(8) An estimate shall be submitted under the last foregoing subsection at least once in every financial year at such time as the Lord Chancellor may with the approval of the Treasury direct.

(9) Any estimate under that subsection shall be in such form and shall give such particulars as may be so directed.

Accounts and audit.

10.—(1) The Law Society shall keep such accounts with respect to the legal aid fund as the Lord Chancellor may with the approval of the Treasury direct, and shall prepare in respect of each financial year a statement of accounts in such form as may be so directed.

(2) The accounts shall be audited by persons to be appointed in respect of each financial year by the Lord Chancellor and in accordance with a scheme of audit approved by him, and the auditors shall be furnished by the Law Society with copies of the said statement and shall report to the Lord Chancellor on the accounts and the said statement.

(3) No person shall be qualified to be so appointed auditor unless he is a member of one or more of the following bodies:—

The Institute of Chartered Accountants in England and Wales;

The Society of Incorporated Accountants and Auditors;

The Society of Accountants in Edinburgh;

The Institute of Accountants and Actuaries in Glasgow;

The Society of Accountants in Aberdeen;

The Association of Certified and Corporate Accountants;

The Institute of Chartered Accountants in Ireland.

PART I —*cont.*

(4) So soon as the accounts have been audited, the auditors shall send the Lord Chancellor copies of the statement of accounts and of their report, and the Lord Chancellor shall send a copy of the statement and of the report to the Comptroller and Auditor General.

(5) The Comptroller and Auditor General shall examine every statement and report sent to him under the last foregoing subsection, and may inspect the accounts kept with respect to the legal aid fund and any records relating thereto, and shall certify every such statement and lay a copy of it together with his report thereon before Parliament.

Pension rights of employees.

11.—(1) Arrangements shall be made, in accordance with regulations, for providing pensions to or in respect of persons employed by the Law Society whole-time for the purpose of their functions under this Part of this Act.

(2) The regulations may require the arrangements to extend, with any necessary adjustments, to persons employed by the Law Society part-time for that purpose or (whether whole-time or part-time) for that and other purposes.

(3) The arrangements may include the establishment and administration, by the Law Society or otherwise, of a pension scheme with or without a pension fund.

(4) The regulations may direct that receipts and expenses of the Law Society attributable to their establishment and administration of a pension scheme under this section shall, notwithstanding anything in section nine of this Act, be dealt with under the scheme instead of being paid into and out of the legal aid fund.

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

Supplementary

Regulations.

12.—(1) The Lord Chancellor may make such regulations as appear to him necessary or desirable for giving effect to this Part of this Act or for preventing abuses thereof.

(2) Without prejudice to the foregoing subsection or any other provision of this Act authorising the making of regulations, regulations may—

(*a*) make provision as to the proceedings which are or are not to be treated as distinct proceedings for the purposes of legal aid, and as to the apportionment of sums recoverable or recovered by virtue of any order for costs made generally with respect to proceedings treated as distinct;

PART I —*cont.*

(*b*) regulate the procedure of any court or tribunal in relation to legal aid, and in particular make provision—

(i) as to the taxation of costs incurred in connection with proceedings not actually begun; and

(ii) as to the cases in which and extent to which a person receiving legal aid may be required to give security for costs, and the manner in which it may be given;

(*c*) make provision as to the information to be furnished by a person seeking or receiving legal aid or advice;

(*d*) make provision as to the cases in which a person may be refused legal aid or advice by reason of his conduct when seeking or receiving legal aid or advice (whether in the same or in a different matter);

(*e*) make provision for the recovery of sums due to the legal aid fund and for making effective the charge created by this Act on property recovered or preserved for a person receiving legal aid, including provision—

(i) for the enforcement for the benefit of that fund of any order or agreement for costs made in favour of a person who has received legal aid; and

(ii) for making a solicitor's right to payment out of the legal aid fund wholly or partly dependent on his performance of any duties imposed on him by regulations made for the purposes of this paragraph.

(3) Regulations may also modify any provision of this Part of this Act so far as appears to the Lord Chancellor necessary to meet the special circumstances where—

(*a*) a person seeking or receiving legal aid or advice—

(i) is not resident in England or Wales; or

(ii) is concerned in a representative, fiduciary or official capacity; or

(iii) is concerned jointly with or has the same interest as other persons, whether receiving legal aid or advice or not; or

(iv) has available to him rights or facilities making it unnecessary for him to take advantage of this Part of this Act or has a reasonable expectation of receiving financial or other help from a body of which he is a member;

(*b*) a person seeks legal aid in a matter of special urgency;

(*c*) a person begins to receive legal aid after having consulted a solicitor in the ordinary way with respect to the same matter, or ceases to receive legal aid before the matter in question is finally settled;

(*d*) there is any relevant change of circumstances while a person is receiving legal aid.

PART I —*cont.*

(4) The power of the Lord Chancellor to make regulations shall be exercisable by statutory instrument.

(5) Any statutory instrument by which that power is exercised, except one making regulations for the purposes of subsection (3) of section one of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Before making regulations as to the procedure of any court or tribunal, the Lord Chancellor shall so far as practicable consult any rule committee or similar body by whom or on whose advice rules of procedure for the court or tribunal may be made apart from this Act or whose consent or concurrence is required to any such rules so made.

Advisory committee.

13.—(1) The Lord Chancellor shall constitute an advisory committee to advise him on such questions relating to this Part of this Act as he may from time to time refer to them and shall appoint the members of the committee with regard to their knowledge of the work of the courts and social conditions.

(2) The Lord Chancellor may pay to the members of the advisory committee such travelling and other allowances as he may with the consent of the Treasury determine, and any expenses of the Lord Chancellor under this subsection shall be defrayed out of moneys provided by Parliament.

(3) The Lord Chancellor shall refer the Law Society's annual report on the operation and finance of this Part of this Act to the advisory committee for their consideration and advice and when the committee have considered it shall lay before each House of Parliament a copy of it and of any comments or recommendations made by the committee.

Secrecy.

14.—(1) Subject to the next following subsection, no information furnished for the purposes of this Part of this Act to the Law Society, or to any committee or person on their behalf, in connection with the case of a person seeking or receiving legal aid or advice shall be disclosed otherwise than—

(*a*) for the purpose of facilitating the proper performance by any person or body of persons of functions under this Part of this Act; or

(*b*) for the purpose of any criminal proceedings for an offence thereunder or of any report of such proceedings.

(2) The foregoing subsection shall not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case it was furnished and, where he did not furnish it himself, with that of the person or body of persons who did.

PART I —*cont.*

(3) A person who, in contravention of this section, discloses any information obtained by him when employed by or acting on behalf of the Law Society shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(4) Proceedings for an offence under this section shall not be brought without the written consent of the Attorney General.

(5) For the avoidance of doubt it is hereby declared that information furnished to counsel or a solicitor as such by or on behalf of a person seeking or receiving legal aid or advice is not information furnished to the Law Society or a person on their behalf.

Proceedings for misrepresentation, etc.

15.—(1) If any person seeking or receiving legal aid or advice—

(*a*) wilfully fails to comply with any regulations as to the information to be furnished by him; or

(*b*) in furnishing any information required by the regulations knowingly makes any false statement or false representation,

he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding four months or to both.

(2) Notwithstanding anything in the Summary Jurisdiction Acts, proceedings in respect of an offence under subsection (1) of this section may be brought at any time within two years next after the commission of the offence or within six months next after the first discovery thereof by the prosecutor, whichever is the shorter.

(3) A county court shall have jurisdiction to hear and determine any action brought to recover the loss sustained by the legal aid fund by reason of the failure of a person seeking or receiving legal aid or advice to comply with any such regulations as aforesaid, or by reason of a false statement or false representation made by such a person in furnishing information for the purposes of this Part of this Act, notwithstanding that the claim in the action is for a greater amount than that allowed under section forty of the County Courts Act, 1934.

Adaptation of rights to indemnity.

16.—(1) This section shall have effect for the purpose of adapting in relation to this Part of this Act any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of this Part of this Act shall be disregarded.

PART I —*cont.*

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives legal aid in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contribution, if any, to the legal aid fund) the right shall inure also for the benefit of that fund as if the expenses incurred by that fund on behalf of the said person in connection with the proceedings had been incurred by him.

(4) Where—

(*a*) a person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of an agreement and is subject to any express condition conferring on those liable thereunder any right with respect to the bringing or conduct of the proceedings; and

(*b*) those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity,

the right to be indemnified shall be treated for the purposes of the last foregoing subsection as not being subject to that condition.

(5) Nothing in subsections (3) and (4) of this section shall be taken as depriving any person or body of persons of the protection of any enactment or, save as provided in the said subsection (4), as conferring any larger right to recover money for the benefit of the legal aid fund in respect of any expenses than the person receiving legal aid would have had if the expenses had been incurred by him.

(6) Where under subsection (3) of this section a person's right to be indemnified against expenses incurred in connection with any proceedings inures for the benefit of the legal aid fund, then for the purposes of section three of this Act the net liability of the fund on his account shall be treated as reduced by the amount of any sums recovered for the benefit of the fund by virtue of the said right.

(7) The four last foregoing subsections shall apply in relation to legal aid under section five of this Act with the necessary modifications of references to proceedings:

Provided that, where by virtue of subsection (6) of that section the legal aid is treated for the purposes of section three of this Act as given in connection with any proceedings, it shall also be so treated for the purposes of this section.

Interpretation, commencement and transitional provisions.

17.—(1) In this Part of this Act, unless the context otherwise requires—

the expression "Law Society" means the society incorporated and regulated by Royal Charter dated the twenty-sixth day of February, eighteen hundred and forty-five, and Royal Charters supplemental thereto

PART I —*cont.*

dated respectively the twenty-sixth day of November, eighteen hundred and seventy-two, the fourth day of June, nineteen hundred and three, and the second day of June, nineteen hundred and nine, and any reference to the Council of the Law Society shall be taken as a reference to the council elected in accordance with the provisions of the said charters;

the expressions "legal aid" and "legal advice" mean respectively legal aid and legal advice under this Part of this Act;

the expression "matrimonial cause" means proceedings in the House of Lords or the Supreme Court in or in connection with a matrimonial cause or matter within the meaning of the Supreme Court of Judicature (Consolidation) Act, 1925;

the expression "order for costs" includes any judgment, order, decree, award or direction for the payment of the costs of one party to any proceedings by another party, whether given or made in those proceedings or not;

the expression "person" does not include a body of persons corporate or unincorporate so as to authorise legal aid or advice to be given to such a body;

the expression "prescribed" means prescribed by regulations;

the expression "regulations" means regulations made by the Lord Chancellor under this Part of this Act;

the expression "solicitor" means solicitor of the Supreme Court;

the expression "tribunal" includes an arbitrator or umpire, however appointed, and whether the arbitration takes place under a reference by consent or otherwise.

(2) This Part of this Act shall come into force on such day as the Lord Chancellor may by statutory instrument appoint, and different days may be appointed for different purposes.

(3) No person shall after the coming into force of this subsection be admitted in any court in England or Wales to take, defend or be a party to any proceedings in forma pauperis or as a poor person, and accordingly the following enactments (so far as unrepealed) shall cease to have effect and are hereby repealed, namely—

(*a*) the Act of the eleventh year of King Henry the Seventh chapter twelve entitled "An Act to admit such persons as are poor to sue in forma pauperis";

(*b*) the Appeal (Forma Pauperis) Act, 1893;

(*c*) rules 22 to 31H of Order XVI of the Rules of the Supreme Court, 1883.

PART I —*cont.*

(4) Without prejudice to the powers conferred by the foregoing provisions of this Act, regulations may make such provision (including provision modifying this Part of this Act) as appears to the Lord Chancellor, with the concurrence of the Treasury, to be expedient as to the application of this Part of this Act in relation to persons who have been admitted to take, defend, or be a party to any proceedings in forma pauperis or as poor persons, and to other persons concerned in proceedings commenced before or shortly after legal aid is made available.

(5) All sums paid to the Law Society by persons admitted as aforesaid, so far as those sums have not been applied or repaid before the coming into force of this subsection, shall be transferred to the legal aid fund, but those sums shall remain applicable for the same purposes as if not so transferred and claims for their repayment shall be payable out of that fund and not otherwise.

(6) The last foregoing subsection shall apply to sums paid to provincial law societies as it applies to sums paid to the Law Society, and a provincial law society transferring any sums under this subsection shall furnish the Law Society with such information with respect to those sums as may be prescribed.

PART II

LEGAL AID UNDER EXISTING ACTS

Right to free legal aid.

18.—(1) If, on a question of granting a person free legal aid under—

(*a*) section ten of the Criminal Appeal Act, 1907; or

(*b*) section one or two of the Poor Prisoners' Defence Act, 1930; or

(*c*) section two of the Summary Jurisdiction (Appeals) Act, 1933,

there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.

(2) So much of section two of each of the two last-mentioned Acts as limits the matters to be taken into account in determining whether it is desirable in the interests of justice that a person should have free legal aid shall cease to have effect; and accordingly—

(*a*) the words " by reason of the gravity of the charge or of exceptional circumstances " in section two of the said Act of 1930; and

(*b*) the words " by reason of the nature of the offence of which the appellant was convicted, or by reason of the sentence, or of exceptional circumstances," in subsection (2) of section two of the said Act of 1933,

are hereby repealed.

PART II —*cont.*

(3) Before a person is granted free legal aid under any of the Acts mentioned in subsection (1) of this section, he may be required to furnish a written statement in the prescribed form about matters relevant for determining whether his means are insufficient to enable him to obtain legal aid, and if a person in furnishing such a written statement as aforesaid (whether required so to do or not) knowingly makes any false statement or false representation he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding four months or to both.

The form for the purpose of this subsection shall be prescribed by the Secretary of State by regulations to be made by statutory instrument.

(4) The Poor Prisoners' Defence Act, 1930, shall apply in the case of a person committed as an incorrigible rogue under the Vagrancy Act, 1824, or committed for sentence under any other enactment, whenever passed, as if that person were committed for trial for an indictable offence, subject to the modifications that in subsection (2) of section one the words "after reading the depositions" and in subsection (2) of section three the words "and the costs of a copy of the depositions" shall be omitted.

(5) For the purposes of the last foregoing subsection, and all other purposes of the Poor Prisoners' Defence Act, 1930, and the provisions of this Part of this Act amending it, the expressions "defence," "try" and "trial" shall be taken as relating not only to proceedings on the issue of the defendant's guilt, but also to proceedings on the question of the sentence to be passed or order to be made; and any power to grant a person committed for trial or charged with an offence before a court of summary jurisdiction a defence certificate or legal aid certificate shall be exercisable after as well as before he has pleaded or been found guilty.

(6) In the Criminal Justice Act, 1948, paragraph (*b*) of subsection (5) of section twenty and paragraph (*b*) of subsection (3) of section twenty-nine (which paragraphs relate to legal aid on committal for sentence under those sections) are hereby repealed.

Procedural amendments: legal aid certificates.

19.—(1) An application for free legal aid under section two of the Poor Prisoners' Defence Act, 1930, may be made by letter, and may be so made by any person arrested or summoned for an offence, as well as by a person charged with an offence before a court of summary jurisdiction or examining justices.

(2) A letter applying for free legal aid by virtue of this section shall be addressed to the clerk to the justices for the relevant petty sessional division or place and shall give particulars of the offence charged and set out the grounds of the application.

PART II —*cont.*

(3) Where an application is made by virtue of this section, any justice acting for the relevant petty sessional division or place shall have the like power, exercisable on the like grounds, of granting a legal aid certificate as a court of summary jurisdiction or examining justices would have if the applicant had been charged with the offence before them.

(4) The refusal of a legal aid certificate on an application made by letter shall not prevent the applicant being granted a legal aid certificate at the hearing.

(5) In this section the expression "relevant petty sessional division or place" means, in relation to a person charged or to be charged before a court of summary jurisdiction or examining justices, the petty sessional division or place for which the court or justices act.

Procedural amendments: appeal aid certificates.

20.—(1) An application for free legal aid may be made under subsection (1) of section two of the Summary Jurisdiction (Appeals) Act, 1933, by letter addressed to the clerk to the justices for the relevant petty sessional division or place, instead of in person to a court of summary jurisdiction for that division or place.

(2) A letter applying for free legal aid by virtue of the foregoing subsection shall set out the facts of the case and the grounds of the application.

(3) Where an application is made by virtue of subsection (1) of this section—

(*a*) any justice acting for the relevant petty sessional division or place shall have the like power, exercisable on the like grounds, of granting an appeal aid certificate as a court of summary jurisdiction for that division or place would have if the application had been made in person to them; and

(*b*) if the application is refused, subsection (3) of the said section two (which enables a person refused an appeal aid certificate by such a court to make a further application to quarter sessions) shall apply as if the application had been made to and refused by such a court.

(4) Without prejudice to subsection (3) of the said section two, an application for free legal aid under that section may be made in person to the court before whom the appeal is heard by an applicant who has not made the previous application to a court of summary jurisdiction or justices' clerk which is required under that subsection; and if the court before whom the appeal is heard are satisfied that there were adequate reasons for the applicant not making a previous application as aforesaid they shall deal with his application to them as if duly made under the said subsection (3).

PART II —*cont.*

(5) In this section the expression " relevant petty sessional division or place " means the petty sessional division or place for which the court appealed from was acting.

Remuneration of solicitors and counsel.

21. The Secretary of State in exercising any power to make rules or regulations—

(*a*) as to the amounts payable under or by virtue of the Criminal Appeal Act, 1907, the Poor Prisoners' Defence Act, 1930, or the Summary Jurisdiction (Appeals) Act, 1933, to counsel or a solicitor assigned to give legal aid thereunder; or

(*b*) as to the amounts payable under subsection (3) of section three of the said Act of 1930 to counsel who on a person's trial before a court of assize or quarter sessions undertakes his defence at the request of the judge or chairman of the court,

and any person by whom any amount so payable is determined in a particular case, shall have regard to the principle of allowing fair remuneration according to the work actually and reasonably done.

Cost of legal aid in magistrates' courts.

22.—(1) Where, after the commencement of this Part of this Act, a legal aid certificate is granted under section two of the Poor Prisoners' Defence Act, 1930, section three of that Act (which provides for the costs of the defence being paid out of local funds) shall not apply and, subject to the following provisions of this section, the costs of the defence as taxed or assessed by the Law Society shall be paid out of the legal aid fund set up under Part I of this Act.

(2) The Secretary of State shall have the like power to make regulations for the purposes of this section as he has for the purposes of the said section three, but subject to any regulations made in the exercise of that power the costs payable under this section shall include the fees of any solicitor or counsel assigned under the said Act of 1930 and any other expenses properly incurred in carrying on the defence, except expenses as respects which an order may be made under section one of the Costs in Criminal Cases Act, 1908, for their payment out of local funds.

(3) The fees payable to a solicitor under this section may include sums in respect of the employment by him of counsel to appear at the hearing (in a case where counsel is not assigned under the said Act of 1930):

Provided that regulations made as aforesaid may, notwithstanding anything in section twenty-one of this Act, include

PART II —*cont.*

provision for securing that the total costs payable under this section in any case are not increased by virtue of this subsection.

(4) The costs of a solicitor which are payable under this section in respect of proceedings before a court of summary jurisdiction may include sums for his fees and disbursements in respect of work reasonably undertaken by him in giving notice of appeal or applying for a case to be stated and in matters preliminary thereto, being work done within the ordinary time for giving the notice or making the application.

(5) Where a person receives free legal aid under the said section two in any proceedings, any sums recovered by virtue of an order for costs made in his favour with respect to those proceedings shall be paid to the legal aid fund.

(6) The following provisions of Part I of this Act, namely subsections (3) to (5) of section eight, subsections (2) to (9) of section nine and section eleven, shall have effect as if this section were contained in the said Part I, and any power conferred by the said Part I to make regulations or a scheme shall apply for the purposes of giving effect to this section so far as the power relates to matters ancillary to the said provisions or to paragraph (*d*) of subsection (2) of section two of this Act or other matters incidental to the administration of the said Part I.

(7) In section three of the Poor Prisoners' Defence Act, 1930, the following words are hereby repealed, namely,—

(*a*) in subsection (1) the words " or a legal aid certificate," the words " in the case of a defence certificate " and the words from " and in the case of a legal aid certificate " onwards;

(*b*) in subsection (2) the words " in the case of an order made in consequence of the granting of a defence certificate " and all the words in paragraph (*b*):

Provided that this subsection shall not apply where a legal aid certificate has been granted before the commencement of this Part of this Act.

Cost of legal aid in other courts.

23.—(1) Where, after the commencement of this Part of this Act,—

(*a*) a person is granted free legal aid under section ten of the Criminal Appeal Act, 1907, section one of the Poor Prisoners' Defence Act, 1930, or section two of the Summary Jurisdiction (Appeals) Act, 1933; or

(*b*) on the trial before a court of assize or quarter sessions of a person who has not been granted free legal aid under

PART II —*cont.*

section one of the said Act of 1930, his defence is undertaken by counsel at the request of the judge or chairman of the court,

the costs paid out of local funds by virtue thereof shall, subject to the next following subsection, be repaid to the council of the county or county borough concerned by the Secretary of State in accordance with arrangements to be made by him with the approval of the Treasury.

(2) A council shall not be entitled to any payment under this section on account of sums included in an order for payment of costs which is enforceable by the council, except in so far as the Secretary of State is satisfied that those sums cannot be recovered by virtue of that order.

(3) Where after the commencement of this Part of this Act free legal aid is granted under the Poor Prisoners' Defence Act, 1930, in respect of proceedings for an indictable offence within the meaning of the Costs in Criminal Cases Act, 1908, the costs directed to be paid out of local funds by virtue of the said Act of 1930 shall not include allowances to witnesses, but this provision shall not be taken as prejudicing the power to make an order for the payment of such allowances under the said Act of 1908 apart from the said Act of 1930.

(4) Where after the commencement of this Part of this Act free legal aid is granted under section one of the Poor Prisoners' Defence Act, 1930, or under section two of the Summary Jurisdiction (Appeals) Act, 1933, the costs which are directed to be paid out of local funds shall be treated as including sums for any fees and disbursements of the solicitor assigned in respect of work reasonably undertaken by him in giving notice of appeal or of an application for leave to appeal, or applying for a case to be stated, and in matters preliminary thereto, being work done within the ordinary time for giving the notice or making the application for the case to be stated; and where counsel is also assigned the said sums may include the solicitor's costs in obtaining the counsel's opinion as to the appeal or application or matters connected therewith.

(5) The expenses of the Secretary of State under this section shall be defrayed out of moneys provided by Parliament.

Commencement of Part II.

24.—(1) This Part of this Act shall come into force on such day as the Secretary of State may by statutory instrument appoint and different days may be appointed for different purposes.

(2) A reference in any provision of this Part of this Act to the commencement of this Part of this Act shall be taken as a reference to the time at which that provision comes into force.

PART III

MISCELLANEOUS

Application to Crown.

25. This Act shall bind the Crown.

Extension of powers of Northern Ireland Parliament.

26. No limitation on the powers of the Parliament of Northern Ireland imposed by the Government of Ireland Act, 1920, shall apply in relation to legislation for purposes similar to the purposes of this Act so as to preclude that Parliament from enacting a provision corresponding to some provision of this Act.

Short title and construction.

27.—(1) This Act may be cited as the Legal Aid and Advice Act, 1949.

(2) A reference in this Act to any enactment shall, unless the context otherwise requires, be taken to include a reference to that enactment as amended, extended or applied by any other enactment including this Act.

SCHEDULES

FIRST SCHEDULE

Section 1.

PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN UNDER SECTION ONE

PART I

DESCRIPTION OF PROCEEDINGS

1. Proceedings in any of the following courts—
   (*a*) the House of Lords in the exercise of its jurisdiction in relation to appeals from courts in England or Northern Ireland;
   (*b*) the Judicial Committee of the Privy Council;
   (*c*) the Supreme Court of Judicature;
   (*d*) any county court;
   (*e*) the Chancery Court of the County Palatine of Lancaster;
   (*f*) the Chancery Court of the County Palatine of Durham;
   (*g*) the Mayor's and City of London Court;
   (*h*) the Liverpool Court of Passage;
   (*i*) the Court of Record for the Hundred of Salford in the county of Lancaster;
   (*j*) the Tolzey Court of Bristol;
   (*k*) the Norwich Guildhall Court.

2. Proceedings before any person to whom a case is referred in whole or in part by any of the said courts.

1ST SCH. —*cont.*

3. The following proceedings in a court of summary jurisdiction or a court of quarter sessions, namely—

(*a*) proceedings for or relating to an affiliation order within the meaning of the Affiliation Orders Act, 1914, or an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925;

(*b*) proceedings under the Guardianship of Infants Acts, 1886 and 1925;

(*c*) proceedings under the Small Tenements Recovery Act, 1838.

4. Proceedings before a coroner.

5. Proceedings before a sheriff under a writ of elegit or writ of inquiry.

PART II

EXCEPTED PROCEEDINGS

1. Proceedings wholly or partly in respect of—

(*a*) defamation;

(*b*) breach of promise of marriage;

(*c*) the loss of the services of a woman or girl in consequence of her rape or seduction;

(*d*) the inducement of one spouse to leave or remain apart from the other.

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 Parliamentary Elections Act, 1868, or the Municipal Corporations Act, 1882.

5. In the 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.

6. Proceedings incidental to any proceedings mentioned in this Part of this Schedule.

Section 4.

SECOND SCHEDULE

RESOURCES TO BE DISREGARDED ON APPLICATION FOR LEGAL AID UNDER SECTION ONE

1. In taking into account the value to any person of an interest in the dwelling-house in which he resides, any sum which might be obtained by him by selling that interest or borrowing money upon the security thereof shall be disregarded.

2ND SCH. —*cont.*

2. There shall be wholly disregarded—

(*a*) any death grant paid to a person under the provisions of section twenty-two of the National Insurance Act, 1946;

(*b*) any maternity grant to which a woman is entitled under section fourteen of the National Insurance Act, 1946.

3.—(1) Any such payment or part of a payment as is specified in the following provisions of this paragraph shall be disregarded up to the amount of one pound a week or, if the person in question is in receipt of more than one payment so specified, up to the said amount in the aggregate.

(2) The payments and parts of payments hereinbefore referred to are :—

(*a*) the first ten shillings and sixpence a week of any payment of sick pay received from a friendly society or trade union;

(*b*) the first ten shillings and sixpence a week of any superannuation payment or superannuation payments in respect of previous service or employment from which the recipient has retired or resigned (whether payable by a former employer or not), not being a payment or payments—

(i) on account of a pension under the Old Age Pensions Act, 1936 or under or by virtue of the Widows', Orphans' and Old Age Contributory Pensions Acts, 1936 to 1941, or under any enactment repealed by any of those Acts, or

(ii) on account of a retirement pension under the National Insurance Act, 1946;

(*c*) any payment by way of attendance allowance under section fourteen of the National Insurance Act, 1946, and any payment by way of maternity allowance under section fifteen of that Act;

(*d*) any of the following payments, that is to say—

(i) any payment in respect of retired pay or pension to which section sixteen of the Finance Act, 1919, applies, including any payment in respect of a dependants' allowance attached to such a pension,

(ii) any payment in respect of a disablement pension awarded under the Personal Injuries (Emergency Provisions) Act, 1939, including an increase in such a pension in respect of dependants,

(iii) any weekly payment by way of compensation under any enactment relating to workmen's compensation,

(iv) any payment by way of disablement benefit under section twelve of the National Insurance (Industrial Injuries) Act, 1946.

4. Where under subsection (4) of section four of this Act the resources of two or more persons are to be aggregated, the last foregoing paragraph shall apply to the aggregate of the resources of both or all the said persons.

Section 6.

THIRD SCHEDULE

REMUNERATION OF PERSONS GIVING LEGAL AID UNDER PART I

1.—(1) The sums allowed to counsel in connection with proceedings in the House of Lords or the Supreme Court shall be eighty-five per cent. of the amount allowed on taxation of the costs:

Provided that this sub-paragraph shall not apply in relation to proceedings in the High Court in a matrimonial cause, where the solicitor is one employed for a salary to act in connection with matrimonial causes.

(2) The sums allowed to counsel in connection with proceedings in the county court shall be the full amount allowed on taxation of the costs.

(3) The sums allowed to counsel in any other case shall be such as may be determined in the prescribed manner.

2.—(1) The sums allowed to a solicitor in connection with proceedings in the House of Lords or the Supreme Court shall be the full amount allowed on taxation of the costs on account of disbursements and eighty-five per cent. of the amount so allowed on account of profit costs:

Provided that so much of this sub-paragraph as relates to profit costs shall not apply to a solicitor employed for a salary to act in connection with matrimonial causes.

(2) The sums allowed to a solicitor in connection with proceedings in the county court shall be the full amount allowed on taxation of the costs whether on account of disbursements or of profit costs.

(3) Where a solicitor has acted as agent for another, the sums allowed under the foregoing provisions of this paragraph shall be the aggregate amount allowed them, but may be divided between them as they may agree.

(4) The sums allowed to a solicitor in any other case shall be such as may be determined in the prescribed manner.

3. For the purpose of sub-paragraph (1) or (2) of paragraph 1 of this Schedule, counsel's fees shall be taxed as if they had been paid by the solicitor, but shall not by reason thereof be treated as disbursements for the purpose of the last foregoing paragraph.

4.—(1) Subject to the last foregoing paragraph, costs shall be taxed for the purposes of this Schedule according to the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested:

Provided that no question shall be raised as to the propriety of any act for which prior approval was obtained as required by regulations.

(2) The reference in the foregoing sub-paragraph to the rules applicable on such a taxation as there mentioned, in relation to proceedings in a county court, includes in particular paragraph (*e*) of section one hundred and eighty-four of the County Courts Act, 1934

3RD SCH. —*cont.*

(which limits the amount allowable for any item to that allowable as between party and party), but notwithstanding anything in that sub-paragraph or the said paragraph (*e*) the amount allowed on such a taxation for the purposes of this Schedule may include such additions (if any) as may be prescribed in respect of matters preliminary to any proceedings in a county court.

5. Regulations may provide that for the purposes of this Schedule, instead of costs being taxed in the ordinary way,—

(*a*) they shall be taxed by the prescribed person (whether an officer of a court or not); or

(*b*) the amount of the costs shall be fixed (whether by an officer of a court or not) by an assessment made without a taxation but with a view to allowing as nearly as may be the same amount as on a taxation.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Vagrancy Act, 1824	5 Geo. 4. c. 83.
Small Tenements Recovery Act, 1838	1 & 2 Vict. c. 74.
Parliamentary Elections Act, 1868	31 & 32 Vict. c. 125.
Municipal Corporations Act, 1882	45 & 46 Vict. c. 50.
Appeal (Forma Pauperis) Act, 1893	56 & 57 Vict. c. 22.
Criminal Appeal Act, 1907	7 Edw. 7. c. 23.
Costs in Criminal Cases Act, 1908	8 Edw. 7. c. 15.
Affiliation Orders Act, 1914	4 & 5 Geo. 5. c. 6.
Finance Act, 1919	9 & 10 Geo. 5. c. 32.
Government of Ireland Act, 1920	10 & 11 Geo. 5. c. 67.
Supreme Court of Judicature (Consolidation) Act, 1925	15 & 16 Geo. 5. c. 49.
Poor Prisoners' Defence Act, 1930	20 & 21 Geo. 5. c. 32.
Summary Jurisdiction (Appeals) Act, 1933	23 & 24 Geo. 5. c. 38.
County Courts Act, 1934	24 & 25 Geo. 5. c. 53.
Old Age Pensions Act, 1936	26 Geo. 5 & 1 Edw. 8. c. 31.
Personal Injuries (Emergency Provisions) Act, 1939	2 & 3 Geo. 6. c. 82.
National Insurance (Industrial Injuries) Act, 1946	9 & 10 Geo. 6. c. 62.
National Insurance Act, 1946	9 & 10 Geo. 6. c. 67.
National Assistance Act, 1948	11 & 12 Geo. 6. c. 29.
Criminal Justice Act, 1948	11 & 12 Geo. 6. c. 58.