

GENERAL SYNOD

THE CHURCH OF ENGLAND (LEGAL AID) (AMENDMENT) RULES
2006

Explanatory Memorandum

1. The purpose of the Church of England (Legal Aid) (Amendment) Rules 2006 ('the Amending Rules') is to make a small number of technical changes to the procedures for the administration of the system of ecclesiastical legal aid under the Church of England (Legal Aid) Measure 1994 as amended ('the 1994 'Measure').
2. The 1994 Measure makes provision for the award of legal aid in respect of certain kinds of legal proceedings. Following amendments to the 1994 Measure made by the Clergy Discipline Measure 2003 ('the CDM'), they include proceedings in respect of misconduct under the CDM.
3. The 1994 Measure makes provision for the system of ecclesiastical legal aid to be administered by the Legal Aid Commission. The detailed arrangements for its administration are contained in rules made under the 1994 Measure, namely the Church of England (Legal Aid) Rules 1995 ('the 1995 Rules').
4. The Legal Aid Commission has been giving consideration to the implications for the way the system is administered of the fact that legal aid can now be given in relation to proceedings for misconduct under the CDM. They include the fact that the volume of applications for legal aid will almost certainly increase and that, because of the strict time limits under the CDM, those applications will often have to be dealt with very expeditiously.
5. There are consequential implications for one particular aspect of the procedures under the 1994 Measure, namely the process of granting 'interim certificates'. Section 4(1)(f) of the 1994 Measure allows rules to be made making provision "*enabling the chairman of the Commission or such officer of the Commission as may be specified in the rules ... to issue an interim certificate on behalf of the Commission for the payment of costs ... incurred by any person before the determination by the Commission of that person's*

application for the grant of legal aid". Provision to that effect is made by Rule 10(1) of the 1995 Rules, which permits the secretary to the Commission to issue an interim certificate in some circumstances after consulting the chairman or, if that is not practicable, two other members of the Commission (one of whom must be legally qualified). This power is more important than it may seem since in practice most of the certificates granted by the Commission have been interim rather than full certificates, the determination of applications by the whole Commission being relatively unusual. Furthermore, that position seems likely to be reinforced by the coming into force of the CDM, under which many of the complaints in respect of which applications are made will not continue beyond the initial stage of preliminary scrutiny.

6. The requirements of Rule 10(1) have been found to be somewhat restrictive in practice. In the interests of making the Commission's procedures more responsive to the increasing demands likely to be made upon it, and the need to be able to deal with them in a timely way, the Commission accordingly proposes that Rule 10(1) be amended so as to allow an interim certificate to be issued by the secretary or by his or her deputy, after undertaking the consultation referred to in paragraph 4 above. The Archbishops' Council has accepted this proposal and Rule 2 of the Amending Rules will accordingly give effect to it.

7. The other changes to be made by the Amending Rules relate to the procedure to be followed by the Commission in determining applications and discharging or revoking certificates. Rule 11(4) of the 1995 Rules provides that, where the Commission considers that legal aid should not be granted, the secretary is to notify the applicant and his or her solicitor of the Commission's decision "*but neither the applicant or his solicitor shall be entitled to any information as to the grounds for the decision*". Similarly, Rule 15(7) provides that where the Commission discharges or revokes a legal aid certificate, the secretary is to send notice of the discharge or revocation to the person in relation to whom the certificate was issued and his or her solicitor but "*neither that person nor his solicitor shall be entitled to any information as to the grounds for the discharge or revocation*".

8. In both these contexts the applicant is entitled to expect, and the Commission would wish to give, an explanation of the Commission's decision. The Commission therefore proposes that in both cases the 1994 Rules be amended so as to require the secretary not only to inform the applicant of the Commission's decision but also to provide a statement of the reasons for the decision.

9. The Commission also proposes that Rule 11(3) should be deleted. This Rule affords the complainant a right to make formal representations

10. The Archbishops' Council has again accepted these proposals, which will accordingly be given effect by Rules 3 and 4 respectively of the Amending Rules.

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