



Legal Aid Act 1988

1988 CHAPTER 34

PART VII

GENERAL AND SUPPLEMENTARY

40 Adaptation of rights of indemnity in cases of advice, assistance or representation in civil proceedings

- (1) This section shall have effect for the purpose of adapting in relation to Parts III and IV 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 Part III or Part IV shall be disregarded.
- (3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives in connection with those proceedings advice, assistance or representation then (without prejudice to the effect of the indemnity in relation to his contribution, if any, under section 9 or 16) the right shall enure also for the benefit of the Board as if any expenses incurred by the Board on his account in connection with the advice, assistance or representation had been incurred by him.
- (4) Where a person's right to be indemnified enures for the benefit of the Board under subsection (3) above in a case where he has been represented in pursuance of a contract made with the Board on terms which do not differentiate between the remuneration for his and other cases, the reference in that subsection to any expenses incurred by the Board on his account shall be construed as a reference to such part of the remuneration payable under the contract as may be specified in writing by the Board.
- (5) 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

Status: This is the original version (as it was originally enacted).

express condition conferring on those liable under it 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 the opportunity,

the right to be indemnified shall be treated for the purpose of subsection (3) above as not being subject to that condition.

- (6) Nothing in subsections (3) and (5) above shall be taken as depriving any person or body of persons of the protection of any enactment or, except as provided in subsection (5), as conferring any larger right to recover money in respect of any expenses than the person receiving advice, assistance or representation would have had if the expenses had been incurred by him.