



# Legal Profession and Legal Aid (Scotland) Act 2007

## 2007 asp 5

### PART 4 **S**

#### LEGAL AID

#### 67 Register of advice organisations: advice and assistance **S**

- (1) The 1986 Act is amended as follows.
- (2) In section 4(2)(a) (Scottish Legal Aid Fund), after “counsel” insert “ or registered organisation ”.
- (3) In section 6 (definitions)—
  - (a) in subsection (1)—
    - (i) in the definition of “advice and assistance” after paragraph (a) insert—
      - “(aa) oral or written advice provided by an adviser—
        - (i) on the application of Scots law to any specified categories of circumstances which have arisen in relation to the person seeking advice;
        - (ii) as to any steps which that person might appropriately take having regard to the application of Scots law to those circumstances;”;
    - (ii) in that definition, after paragraph (b) insert—

“assistance provided to a person by an adviser in taking any steps mentioned in paragraph (aa)(ii) above, by taking such steps on his behalf or by assisting him in so taking them;”;
    - (iii) in the definition of “assistance by way of representation”, after the word “means” insert “ , subject to section 12B(3) of this Act, ”;
  - (b) in subsection (2), before the definition of “client” insert—

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““adviser” means a person who is approved by a registered organisation for the purposes of providing advice and assistance on behalf of the organisation and who is the person by whom advice and assistance is provided;”.

- (4) In section 10 (financial limit)—
- (a) in subsection (1)—
    - (i) after the word “solicitor” where it first occurs insert “ or, as the case may be, adviser ”;
    - (ii) in paragraph (a), after the word “solicitor” insert “ or adviser ”;
  - (b) in subsection (3)—
    - (i) after paragraph (a) insert—
      - “(aa) any outlays which may be incurred by the registered organisation (which approved the adviser) in, or in connection with, the providing of the advice and assistance;”;
    - (ii) after paragraph (b) insert—
      - “(ba) any fees (not being charges for outlays) which, apart from section 11 of this Act, would be properly chargeable by the registered organisation (which approved the adviser) in respect of the advice and assistance;”.
- (5) In section 12 (payments of fees or outlays otherwise than through clients' contributions)—
- (a) in subsection (3), after the word “solicitor” where it first occurs insert “ or, as the case may be, the registered organisation, ”;
  - (b) in paragraph (d) of that subsection, after “solicitor” insert “ or the registered organisation ”.
- (6) After section 12, insert—

*“Register of advice organisations*

### **12A Register of advice organisations**

- (1) The Board shall establish and maintain a register of advice organisations (“the register of advice organisations”) of organisations approved by the Board as registered organisations in relation to the provision of advice and assistance by persons approved by such organisations as advisers.
- (2) A person who—
  - (a) is a solicitor;
  - (b) is an advocate;
  - (c) is a conveyancing practitioner or an executry practitioner, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);
  - (d) has acquired any right to conduct litigation or right of audience by virtue of section 27 of that Act,
 may not be an adviser.

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- (3) Schedule 1A makes further provision about advisers and registered organisations, the register of advice organisations, code of practice for advisers etc.

### **12B Advice and assistance**

- (1) The Scottish Ministers may by regulations specify categories of circumstances for the purposes of paragraph (aa) of the definition of “advice and assistance” in section 6(1) of this Act.
- (2) The power under subsection (1) may specify different categories for different purposes.
- (3) In this Act—
- (a) “advice and assistance” as defined in section 6(1)(c) is limited to the extent to which it is competent for the adviser to perform any steps on behalf of the person or by assisting him in so taking them;
  - (b) “assistance by way of representation” as defined in section 6(1) includes advice and assistance provided by an adviser but only to the extent to which it is competent for the adviser to perform such steps referred to in that definition.”.
- (7) In section 33 (fees and outlays of solicitors and counsel)—
- (a) after subsection (1) insert—

“(1A) A registered organisation shall be paid out of the Fund in accordance with section 4(2)(a) of this Act in respect of any fees or outlays properly incurred by it in respect of the advisers it approves providing advice and assistance under this Act.”;
  - (b) in subsection (2), after “counsel” insert “ and, in respect of advice and assistance as mentioned in paragraph (b) of this subsection, advisers ”.
- (8) In section 41 (interpretation)—
- (a) after the definition of “advice and assistance” insert—

““adviser” has the meaning given to it in section 6(2) of this Act;

“adviser code” means the code of practice in relation to the register of advice organisations for the time being in force under Schedule 1A to this Act;”;
  - (b) after the definition of “the Register” insert—

““the register of advice organisations” means the register established and maintained under section 12A of this Act;”;
  - (c) after the definition of “registered firm” insert—

““registered organisation” means an organisation whose name appears on the register of advice organisations;”.
- (9) After Schedule 1 (Scottish Legal Aid Board) to the 1986 Act, insert—

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**“SCHEDULE 1A S**  
*(introduced by section 12A(3))*

FURTHER PROVISION IN RELATION TO THE REGISTER OF ADVICE ORGANISATIONS

*Register of advice organisations*

- 1 (1) An organisation which satisfies the Board that it complies with the relevant provisions of the adviser code shall be approved by the Board as an organisation that may approve a person to provide advice and assistance on behalf of the organisation; and the Board shall make an appropriate entry on the register of advice organisations.
- (2) An individual may apply for entry on the register of advice organisations as an organisation; and if the Board is satisfied that the individual complies with the relevant provisions of the adviser code in relation to an organisation, the Board shall approve the individual and treat the individual as an organisation for the purposes of this Schedule.
- (3) The Board must make the register of advice organisations available for public inspection, without charge, at all reasonable times.
- (4) In this Schedule an “organisation” includes—
  - (a) a firm of solicitors;
  - (b) an incorporated practice within the meaning of section 34(1A)(c) of the Solicitors (Scotland) Act 1980 (c. 46).

*Applications*

- 2 (1) An application for entry on the register of advice organisations shall be made in such form as the Board may determine, and shall be accompanied by such documents as the Board may specify.
- (2) On receipt of an application the Board shall make such enquiries as it thinks appropriate for the purposes of determining whether the applicant complies with the relevant provisions of the adviser code.
- (3) The Board may determine an application to be entered on the register of advice organisations by—
  - (a) granting the application; or
  - (b) refusing the application.
- (4) Where the Board decides to refuse an application it shall as soon as practicable thereafter send the applicant, by recorded delivery, a written note of its reasons.

*Further provision on applications*

- 3 (1) In determining any application for entry on the register of advice organisations, the Board may limit the grant of the application to any of the particular categories of circumstances as specified by virtue of section 12B(1).

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- (2) Where the Board limits the grant of an application as mentioned in sub-paragraph (1), the entry made on the register under paragraph 1(1) must state the categories in relation to which the organisation is registered; and any adviser approved by the organisation may provide advice and assistance under this Act only in relation to those categories.

#### *Adviser code*

- 4 (1) The Board shall prepare a code of practice (an “adviser code”) in relation to advisers and registered organisations.
- (2) The adviser code prepared under sub-paragraph (1) must include—
- (a) the conditions to be complied with in order to qualify for registration;
  - (b) the types of organisations eligible for registration;
  - (c) the conditions to be complied with in order for a person to be approved by a registered organisation as an adviser;
  - (d) the laying down of standards, conduct, practice and training expected in relation to—
    - (i) the provision of advice and assistance by advisers;
    - (ii) the supervision of such activity by registered organisations;
  - (e) arrangements for dealing with complaints about the activities of advisers and registered organisations;
  - (f) arrangements for monitoring the activities of advisers and registered organisations.
- (3) The adviser code prepared under sub-paragraph (1) has effect on such date as the Board may confirm.
- (4) But the adviser code may not have effect unless and until it has been—
- (a) approved by the Scottish Ministers; and
  - (b) the Board has laid a copy of the prepared code before the Scottish Parliament.
- (5) The Board is to publish the adviser code in such way as, in its opinion, is likely to bring it to the attention of those interested in it.
- (6) The Board is to—
- (a) keep the adviser code under review; and
  - (b) revise it where appropriate.
- (7) The provisions of this paragraph apply in relation to any revision of the adviser code as they apply in relation to the version originally prepared.
- (8) Registered organisations shall comply with the relevant requirements of the adviser code.

#### *Monitoring*

- 5 The Board is to monitor—
- (a) the provision of advice and assistance and related activities by advisers;
  - (b) compliance with the adviser code by registered organisations.

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### *Removal of name from the register of advice organisations*

- 6
- (1) Where it appears to the Board (whether or not following a complaint made to it) that a registered organisation may not be, or may not have been, complying with the adviser code, it shall investigate the matter in such manner as it thinks fit.
  - (2) Where the Board conducts an investigation under sub-paragraph (1) it must allow the registered organisation concerned the opportunity to make representations.
  - (3) Following an investigation under sub-paragraph (1), the Board may give the registered organisation concerned an opportunity, within such time as it may specify, to remedy any defect in the compliance with the adviser code.
  - (4) Where, after carrying out the procedures mentioned in sub-paragraph (1) and, where a time limit has been set under sub-paragraph (3), after the expiry of that time limit, the Board is satisfied that the registered organisation is not complying with the adviser code, it shall remove from the register of advice organisations the name of the organisation.
  - (5) Where, after carrying out the procedures mentioned in sub-paragraph (1) and, where a time limit has been set under sub-paragraph (3), after the expiry of that time limit, the Board is satisfied that, regardless of whether or not there is current compliance with the code, the registered organisation has not complied with the code in a material regard, it may remove the name of the organisation from the register of advice organisations.
  - (6) Where the Board decides to remove the name of an organisation from the register of advice organisations in accordance with sub-paragraph (4) it shall as soon as practicable thereafter send the organisation, by recorded delivery, a written note of its reasons.

### *Appeals*

- 7
- (1) A decision by the Board to refuse an application under paragraph 2(3)(b) may be appealed by the applicant to the Court of Session within 21 days of the receipt of the notification of the Board's reasons under paragraph 2(4).
  - (2) A decision by the Board under paragraph 6(4) or (5) to remove from the register of advice organisations the name of a registered organisation may be appealed to the Court of Session within 21 days of the receipt of the notification of the Board's reasons under paragraph 6(6); but the making of an appeal shall not have the effect of restoring the name to the register of advice organisations.
  - (3) An appeal under sub-paragraph (1) or (2) may be on questions of both fact and law and the court, after hearing such evidence and representations as it considers appropriate, may make such order as it thinks fit."

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 2(6)(ba) inserted by [2010 asp 16 s. 118\(4\)](#)