Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

An Act to establish the Scottish Legal Aid Board and the Scottish Legal Aid Fund; to make new provision in connection with the availability of criminal legal aid in Scotland; to repeal and re-enact with modifications certain enactments relating to legal aid and to advice and assistance in Scotland; and for connected purposes. [25th July 1986]

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:—

Extent Information

E1 Act (except s. 18(3)) extends only to Scotland, see s. 46(4)

Modifications etc. (not altering text)

C1 Act applied by Extradition Act 1989 (c. 33, SIF 48), 9(3)

C2 Act applied by Valuation and Rating (Scotland) Act 1956 (c. 60), **s. 22** (3) (as substituted (1.4.1992) by Local Government Finance Act 1992 (c.14), ss. 99(1), 117(1), **Sch. 13 para. 10**; S.I. 1992/818, **art. 2(a)**)
Act applied (1.4.1993) by Local Government Finance Act 1992 (c. 14), **ss. 111** (9); S.I. 1993/575, **art. 2(a)**
Act applied (with modifications) (S.) (15.3.1996) by S.I. 1996/716, **art. 24(2)**
Act applied (1.9.2001) by 2001 c. 17, **s. 6(3)(b)** (with ss. 16(5), 78); S.I. 2001/2161, **art. 2**

C3 Act modified (7.10.1996) by S.I. 1996/2447, reg. 7(1), **Sch.2**

C4 Act applied (1.1.2004) by Extradition Act 2003 (c. 41), **ss. 183**, 221; S.I. 2003/3103, **art. 2** (with arts. 3, 4 (as amended by S.I. 2003/3312))

C5 Act amended by S.I. 1978/1910, art. 10, Sch. Pt. 1 (as amended (17.5.2004) by The European Communities (Services of Lawyers) Amendment (Scotland) Order 2004 (S.S.I. 2004/186), **art. 7(a)**)

C6 Act applied (with modifications) (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), **reg. 16**, Sch. 2 (as amended by S.I. 2010/2430, regs. 15, 17)
[Editorial note: these Regulations revoke and supersede S.I. 2010/875]

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C7 Act applied (8.3.2018) by The United Nations (International Residual Mechanism for Criminal Tribunals) Order 2018 (S.I. 2018/187), **art. 29(2)** (with art. 3)

PART I

SCOTTISH LEGAL AID BOARD

The Board

1 The Scottish Legal Aid Board.

(1) There shall be established a body to be known as the Scottish Legal Aid Board (in this Act referred to as "the Board").

(2) The Board shall have the general functions—

(a) of securing that legal aid and advice and assistance are available in accordance with this Act; and

(b) of administering the Fund.

[[F1](2A) The Board also has the general function of monitoring the availability and accessibility of legal services in Scotland (including by reference to any relevant factor relating particularly to rural or urban areas).**]**

(3) The Board shall consist of not less than 11 and not more than 15 members appointed by the Secretary of State; and the Secretary of State shall appoint one of the members to be chairman.

(4) The Secretary of State shall appoint to membership of the Board—

(a) at least two members of the Faculty of Advocates;

(b) at least two members of the Law Society; and

(c) at least one other person having experience of the procedure and practice of the courts.

(5) Before appointing persons to be members of the Board in pursuance of either paragraph (a) or paragraph (b) of subsection (4) above, the Secretary of State shall consult with the professional body mentioned in that paragraph.

(6) Schedule 1 to this Act shall have effect with respect to the Board.

Textual Amendments

F1 S. 1(2A) inserted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 141(a)**, 150(2); S.S.I. 2011/180, art. 3, sch.

2 Powers of the Board.

(1) Subject to the provisions of this Act, the Board may do anything—

(a) which it considers necessary or expedient for securing the provision of legal aid and of advice and assistance in accordance with this Act; or

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(b) which is calculated to facilitate or is incidental to or conducive to the discharge of its functions.

(2) Without prejudice to the generality of subsection (1) above, the Board shall have power—

(a) to enter into any contract or agreement, including, subject to subsection (3) below, any contract or agreement to acquire or dispose of land;

(b) to invest money;

(c) to promote or assist in the promotion of publicity relating to the functions of the Board;

(d) to undertake any inquiry or investigation which the Board considers necessary or expedient in relation to the discharge of its functions; and

[[F2](da) to give the Scottish Ministers such advice as it may consider appropriate in relation to the availability and accessibility of legal services in Scotland;**]**

(e) to give to the Secretary of State such advice as it may consider appropriate in relation to the provision of legal aid and advice and assistance in accordance with this Act.

(3) The power under subsection (2)(a) above to enter into any contract or agreement to acquire or dispose of land shall not be exercised without the approval in writing of the Secretary of State.

Textual Amendments

F2 S. 2(2)(da) inserted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 141(b)**, 150(2); S.S.I. 2011/180, art. 3, sch.

3 Duties of the Board.

(1) The Board shall, from time to time, publish information as to the discharge of its functions in relation to legal aid and advice and assistance including the forms and procedures and other matters connected therewith.

(2) The Board shall, from time to time, furnish to the Secretary of State such information as he may require relating to its property and to the discharge and proposed discharge of its functions.

[[F3](2A) The Board is, from time to time, to give the Scottish Ministers such information as they may require relating to the availability and accessibility of legal services in Scotland.**]**

(3) It shall be the duty of the Board to provide to the Secretary of State, as soon as possible after 31st March in each year, a report on the exercise of its functions during the preceding 12 months.

(4) The Board shall have regard, in the exercise of its functions, to such guidance as may from time to time be given by the Secretary of State.

(5) Guidance under subsection (4) above shall not relate to the consideration or disposal (whether in general or in respect of individual applications) of—

(a) applications for legal aid or advice and assistance;

(b) supplementary or incidental applications or requests to the Board in connection with any case where legal aid or advice and assistance has been made available.

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(6) For the purposes of subsection (2) above, without prejudice to the requirements of section 5 of this Act, the Board shall permit any person authorised in that behalf by the Secretary of State to inspect and make copies of any accounts or documents of the Board and shall furnish such explanation of them as that person or the Secretary of State may require.

Textual Amendments

F3 S. 3(2A) inserted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 141(c)**, 150(2); S.S.I. 2011/180, art. 3, sch.

The Fund

4 Scottish Legal Aid Fund.

(1) The Board shall establish and maintain a fund to be known as the Scottish Legal Aid Fund (in this Act referred to as "the Fund").

(2) There shall be paid out of the Fund—

(a) **[**[F4]subject to **[**[F5]sections 4A(13) and 33(6)**],]** such sums as are, by virtue of this Act or any regulations made thereunder, due **[**[F6]out of the Fund**]** to any solicitor or counsel **[**[F7]or registered organisation**]** in respect of fees and outlays properly incurred **[**[F8]or in respect of payments made in accordance with regulations made under section 33(3A) of this Act**]**, in connection with the provision, in accordance with this Act, of legal aid or advice and assistance;

[[F9](aza) any expenses incurred by the Board in connection with the provision by solicitors employed by it by virtue of section 27(1) of this Act of—

(i) advice and assistance in relation to civil matters;

(ii) civil legal aid;

[F10](iia) **[** children's legal assistance;**]**

(iii) any services as are mentioned in section 26(2) of this Act;**]**

[[F11](azb) any sums payable by the Board under contracts made by virtue of section 33B;**]**

[[F12](aa) any expenses incurred by the Board in connection with the provision of criminal legal assistance by solicitors employed by it by virtue of section 28A of this Act;

(ab) any sums payable by the Board under contracts made by virtue of section 33A of this Act;**]**

[[F13]**[**[F14](abc)**]** any sums payable by the Board under section 17(2D) of this Act;**]**

[[F15](ac) such sums as are, by virtue of section 4A, due out of the Fund to any person;**]**

[[F16](ad) such sums as are, by virtue of section 33ZB of this Act, due out of the Fund to a solicitor or counsel in connection with the provision of legal aid or advice and assistance;**]**

(b) expenses awarded to any person under section 19 of this Act; and

(c) such other payments [F17]. . . as the Secretary of State may [F18]. . . determine.

(3) There shall be paid into the Fund—

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(a) any contribution payable to the Fund by any person in pursuance of section 17 of this Act;

[[F19](aa) any contribution payable to the Board by any person in pursuance of section 11 **[**[F20], 11A, 25AA or 25AC**]** of this Act;

[[F21](aaa) any award of expenses made by a criminal court to a person to whom criminal legal assistance has been provided by a solicitor employed by the Board under sections 26 and 27 of this Act;**]**

(ab) any award of expenses made by a criminal court to a person to whom criminal legal assistance has been provided by a solicitor employed by the Board by virtue of section 28A of this Act;**]**

[[F22](ac) any sums recovered from a person who is receiving or has been in receipt of advice and assistance, civil legal aid or criminal legal aid under section 24, but who has available to him rights and facilities making it unnecessary for him to take advantage of the provisions of this Act.**]**

[[F23](ad) any sums recovered from a person in connection with a grant made by the Board in accordance with section 4A;**]**

[[F24](ae) any sums payable to the Board by a solicitor or counsel by virtue of section 33ZC of this Act;**]**

(b) any sum recovered under an award of a court or an agreement as to expenses in any proceedings in favour of any party who is in receipt of civil legal aid;

(c) any sum which is to be paid in accordance with section 17 of this Act out of property recovered or preserved for any party to any proceedings who is in receipt of civil legal aid;

[[F25](cc) any contribution payable to the Board by any person in pursuance of section 28K of this Act;**]**

(d) the sums to be paid by the Secretary of State in pursuance of section 40(1)(a) of this Act; and

(e) such other receipts of the Board as the Secretary of State may, [F18]. . . determine.

Textual Amendments

F4 Words in s. 4(2)(a) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 68(2)(a)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(b)**

F5 Words in s. 4(2)(a) substituted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(2)(a)(i)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))

F6 Words inserted by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 44, **Sch. 4 Pt. I para. 1(a)**

F7 Words in s. 4(2)(a) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(2)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F8 Words in s. 4(2)(a) substituted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(2)(a)(i)**; S.I. 1997/2323, **art. 6(2)**

F9 S. 4(2)(aza) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 74(1)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(c)**

F10 S. 4(2)(aza)(iia) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(2)(a)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F11 S. 4(2)(azb) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(2)(a)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F12 S. 4(2)(aa)(ab) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(2)(a)(ii)**; S.I. 1997/2323, **art. 6(2)**

F13 S. 4(2)(ac) inserted (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 93(1), **Sch. 3 para. 39(2)** (with s. 92); S.I. 2007/2603, **art. 2(d)**

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F14 S. 4(2)(ac) renumbered as s. 4(2)(abc) (23.3.2011) by The Legal Profession and Legal Aid (Scotland) Act 2007 (Modification and Consequential Provisions) Order 2011 (S.S.I. 2011/235), arts. 2(1), **4**

F15 S. 4(2)(ac) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 68(2)(b)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(b)**

F16 S. 4(2)(ad) inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(2)(a)(ii)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))

F17 Words repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. I para. 1(b), **Sch. 6**

F18 Words in s. 4(2)(c)(3)(e) repealed (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt I para. 86(2), Pt. IV

F19 S. 4(3)(aa)(ab) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(2)(b)**; S.I. 1997/2323, **art. 6(2)**

F20 Words in s. 4(3)(aa) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(2)**, 25(2); S.S.I. 2013/262, art. 2

F21 S. 4(3)(aaa) inserted (6.7.2001) by 2001 asp 7, **ss. 9(1)**, 15(3)

F22 S. 4(3)(ac) inserted (4.12.2004) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2004 (S.S.I. 2004/493), **reg. 2**

F23 S. 4(3)(ad) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 68(2)(c)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(b)**

F24 S. 4(3)(ae) inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(2)(b)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))

F25 S. 4(3)(cc) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(2)(b)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

[F26 4A Power of Board to make grants for certain purposes

(1) The Board may, on an application made to it by any person, make grants of such amount and subject to such conditions (including conditions as to repayment) as it may determine to the person in respect of—

(a) any of the matters mentioned in subsection (2);

(b) any of the purposes mentioned in subsection (3).

(2) The matters are—

(a) any civil legal [F27 aid, advice and assistance in relation to civil matters or children's legal assistance] provided, or to be provided, by any solicitor or counsel;

(b) any advice and assistance in relation to civil matters [F28 or children's matters] provided, or to be provided, by any adviser;

(c) any advice, assistance or representation (not falling within paragraphs (a) or (b)) provided, or to be provided, by any person, which is connected to civil matters [F29 or children's matters].

(3) The purposes are facilitating, supporting and developing the provision of any of the matters referred to in subsection (2).

(4) The Scottish Ministers must specify a limit to the total amount that may be paid out of the Fund by virtue of subsection (1).

(5) In specifying any limit under subsection (4) the Scottish Ministers must specify the period in relation to which that limit applies.

(6) Any grant made under subsection (1) must be made in accordance with an approved plan.

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(7) The Board must prepare and publish a plan as to the criteria which the Board will apply in considering whether or not to make such a grant; and the Board must submit the plan to the Scottish Ministers for approval.

(8) The Scottish Ministers may approve a plan submitted to them under subsection (7) with or without modification.

(9) The Scottish Ministers may at any time—

(a) approve a modification of an approved plan proposed by the Board or withdraw approval of such a plan or modification;

(b) require the Board to prepare and publish a plan under subsection (7).

(10) An application under subsection (1) must include such information as the Board may reasonably require.

(11) In preparing and publishing the plan under subsection (7) the Board must do so in accordance with such directions as the Scottish Ministers may give.

(12) Any money due to a person by virtue of this section shall be paid to the person by the Board out of the Fund.

(13) Any money paid to a person under subsection (1) as provided in subsection (12), in respect of—

(a) any civil legal **[**[F30]aid, advice and assistance or children's legal aid**]** provided by any solicitor or counsel;

(b) any advice and assistance provided by an adviser,

shall be taken to be a payment in accordance with this Act; and no other payment may be made out of the Fund in respect of that civil legal aid or, as the case may be, advice and assistance **[**[F31]or children's legal aid**]**.

(14) In this section, "approved plan" means a plan approved, for the time being, by the Scottish Ministers under subsection (8); and includes any part or modification of the plan so approved **[**[F32]and "children's matters" means matters relating to children's hearings, pre-hearing panels (as defined in section 79(2)(a) of the 2011 Act) or proceedings under Part 10 or 15 of the 2011 Act**]**.

(15) For the purposes of this section, "person" includes a body corporate or unincorporate.**]**

Textual Amendments

F26 S. 4A inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 68(3)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(b)**

F27 Words in s. 4A(2)(a) substituted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(3)(a)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F28 Words in s. 4A(2)(b) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(3)(a)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F29 Words in s. 4A(2)(c) added (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(3)(a)(iii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F30 Words in s. 4A(13) substituted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(3)(b)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F31 Words in s. 4A(13) added (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(3)(b)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

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F32 Words in s. 4A(14) added (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(3)(c)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

5 Accounts and audit.

(1) The Board shall keep separate accounts with respect to—

(a) the Fund; and

(b) the receipts and expenditure of the Board which do not relate to the Fund,

and shall prepare in respect of each financial year a statement of accounts.

(2) The accounts shall be kept and the statement of accounts shall be prepared in such form as the Secretary of State may, [F33]. . . direct.

[[F34](2A) The Board shall send the accounts and the statement of accounts to the Scottish Ministers by such time as they may direct.

(2B) The Scottish Ministers shall send the accounts and the statement of accounts to the Auditor General for Scotland for auditing.**]**

[F35](3) . . . . . .

[F35](4) . . . . . .

[F35](5) . . . . . .

[F35](6) . . . . . .

(7) The Secretary of State shall lay before each House of Parliament a copy of every—

(a) annual report of the Board under section 3(3) of this Act;

[F35](b) . . . . . .

[F35](c) . . . . . .

(8) In this section "financial year" means the period beginning with the commencement of this section and ending with 31st March next following and each subsequent period of 12 months ending with 31st March in each year.

Textual Amendments

F33 Words in s. 5 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2)(3), 4, **Sch. 2 Pt I para. 86(3)**.

F34 S. 5(2A)(2B) inserted (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 6(2)**; S.S.I. 2000/10, **art. 2(3)**

F35 S. 5(3)-(6) repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 6(3)**; S.S.I. 2000/10, **art. 2(3)**

PART II

ADVICE AND ASSISTANCE

Modifications etc. (not altering text)

C8 Pt. II (ss. 6-12) applied (1.1.1998) by S.I. 1997/3070, **regs. 3**, 4, 5

C9 Pt. II applied (24.3.2003) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 (S.S.I. 2003/179), **regs. 3-5** (as amended (18.3.2011) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2011

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(S.S.I. 2011/216), regs. 1(1), 2(2); (26.1.2015) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2015 (S.S.I. 2015/13) regs. 1, 2(2); (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 8(2)**; (8.11.2021) by The Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 (S.S.I. 2021/368), regs. 1(1), **6(3)**)

6 Definitions.

(1) In this Act—

"advice and assistance" means any of the following—

(a) oral or written advice provided to a person by a solicitor (or, **[**[F36]where appropriate**]**, by counsel)—

(i) on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking the advice;

(ii) as to any steps which that person might appropriately take (whether by way of settling any claim, instituting, conducting or defending proceedings, making an agreement or other transaction, making a will or other instrument, obtaining further legal or other advice and assistance, or otherwise) having regard to the application of Scots law to those circumstances;

(aa) **[**[F37]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;**]**

(b) assistance provided to a person by a solicitor (or, **[**[F36]where appropriate**]**, by counsel) in taking any steps mentioned in paragraph (a)(ii) above, by taking such steps on his behalf or by assisting him in so taking them; and

(c) **[**[F38]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;**]**

"assistance by way of representation" means **[**[F39], subject to section 12B(3) of this Act,**]** advice and assistance provided to a person by taking on his behalf any step in instituting, conducting or defending any proceedings—

(a) before a court or tribunal; or

(b) in connection with a statutory inquiry,

whether by representing him in those proceedings or by otherwise taking any step on his behalf (as distinct from assisting him in taking such a step on his own behalf).

(2) In this Part of this Act—

[[F40]"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;**]**

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"client" means a person who seeks or receives advice and assistance in accordance with this Part of this Act;

"statutory inquiry" has the meaning assigned to it by **[**[F41]section 16(1) of the [M1] Tribunals and Inquiries Act 1992**]**;

"the solicitor" means the solicitor by whom any advice and assistance is provided or, where it is provided by counsel, the solicitor on whose instruction counsel provides it;

"tribunal" includes an arbiter or oversman, however appointed,

[[F42]and references to a court, tribunal or statutory inquiry include references to any court, tribunal or statutory inquiry which is established by law for purposes which are or include those of determining persons' civil rights and obligations and to any person who or group of persons or body or procedure which (however described) is appointed or established by law for such purposes.**]**

Textual Amendments

F36 Words in s. 6(1) substituted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 para. 36(2); S.I. 1991/2151, art. 3, **Sch.**

F37 S. 6(1) definition of "advice and assistance": para (aa) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(3)(a)(i)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F38 S. 6(1) definition of "advice and assistance": para (c) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(3)(a)(ii)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F39 S. 6(1) definition of "assistance by way of representation": words inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(3)(a)(iii)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F40 S. 6(2): definition of "adviser" inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(3)(b)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F41 Words in s. 6(2) substituted (01.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(1), 19(2), **Sch. 3 para. 20**.

F42 Words in s. 6(2) added (6.7.2001) by 2001 asp 7, **ss. 6(1)**, 15(3)

Modifications etc. (not altering text)

C10 Pt. II (ss. 6–12) applied by S.I. 1988/2290, **reg. 3**

Marginal Citations

M1 1992 c. 53.

7 Application of Part II.

(1) Subject to subsections (2) to (4) below, and to any exceptions and conditions prescribed by regulations made under this section or under section 9 of this Act, this Part of this Act applies to any advice and assistance.

(2) This Part of this Act does not apply to advice and assistance provided to a person in connection with proceedings before a court or tribunal at a time when he is receiving legal aid in connection with those proceedings.

(3) Subject to subsection (4) below and to section 9 of this Act, this Part of this Act does not apply to assistance by way of representation.

(4) Except where subsection (2) above applies, this Part of this Act does apply, in the case of civil proceedings before a court or tribunal, to any step which consists only

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of negotiating on behalf of a person with a view to the settlement of a claim to which the proceedings relate.

Modifications etc. (not altering text)

C11 Pt. II (ss. 6–12) applied by S.I. 1988/2290, **reg. 3**

8 Availability of advice & assistance.

Subject to **[**[F43]any provision made in regulations under section 8A(1) **[**[F44]or 9(1)**]** and**]** section 11(2) of this Act, advice and assistance to which this Part applies shall be available in Scotland for any client if—

(a) his disposable income does not exceed **[**[F45]£245**]** a week; or

(b) he is (directly or indirectly) in receipt of **[**[F46]universal credit under Part 1 of the Welfare Reform Act 2012,**][**[F47]income support **[**[F48], an income-based jobseeker's allowance (payable under the Jobseekers Act 1995) or an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance),**]]**,

and his disposable capital does not exceed **[**[F49]£1,716**]**.

Textual Amendments

F43 Words in s. 8 inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 2(2)**, 9

F44 Words in s. 8 inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(3)**, 25(2); S.S.I. 2013/262, art. 2

F45 Word in s. 8(a) substituted (11.4.2011) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (S.S.I. 2011/217), regs. 1, **4(2)** (with reg. 3)

F46 Words in s. 8(b) inserted (29.4.2013) by The Welfare Reform (Consequential Amendments) (Scotland) (No. 2) Regulations 2013 (S.S.I. 2013/137), regs. 1, **3(2)**

F47 Words in s. 8(b) substituted (8.4.2003) by Tax Credits Act 2002 (c. 21), ss. 47, 61, **Sch. 3 para. 11**; S.I. 2003/962, **art. 2(4)(d)**

F48 Words in s. 8(b) substituted (27.10.2008) by Welfare Reform Act 2007 (c. 5), ss. 28(1), 70(2), **Sch. 3 para. 4(3)**; S.I. 2008/787, **art. 2(4)(f)**

F49 Word in s. 8 substituted (11.4.2011) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (S.S.I. 2011/217), regs. 1, **4(3)** (with reg. 3)

Modifications etc. (not altering text)

C12 Pt. II (ss. 6–12) applied by S.I. 1988/2290, **reg. 3**

C13 S. 8 modified (7.10.1996) by S.I. 1996/2447, **reg. 5(1)(a)**

[[F50]8A Criminal advice and assistance: automatic availability in certain circumstances

(1) The Scottish Ministers may by regulations provide that, in such circumstances as may be prescribed in the regulations, advice and assistance in relation to criminal matters is to be available for any relevant client without reference to

[[F51](a)**]** the financial limits in section 8 **[**[F52]; or—**]**

[the criteria mentioned in section 9A(2)**]**.

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[F52](b)

[F53](1A) **[** Regulations under subsection (1) may also provide that, in such circumstances as may be prescribed in the regulations, section 11(2) is not to apply in respect of advice and assistance made available to a relevant client.**]**

(2) In **[**[F54] subsections (1) and (1A)**]**, "relevant client" means a client who is

[F55](a)**[** a person to whom **[**[F56]section 32 (right to have solicitor present) of the Criminal Justice (Scotland) Act 2016**]** applies

[F57](b) . . . . . .

[F57](c) . . . . . .

[F58](d)**[** a person who is detained under section 41 of, or Schedule 7 to, the Terrorism Act 2000, or

(e) a person who is detained under Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019.**]]**

Textual Amendments

F50 S. 8A inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 2(3)**, 9

F51 Words in s. 8A(1) renumbered as s. 8A(1)(a) (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(4)(a)**, 25(2); S.S.I. 2013/262, art. 2

F52 S. 8A(1)(b) and word inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(4)(b)**, 25(2); S.S.I. 2013/262, art. 2

F53 S. 8A(1A) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 17(a)**, 25(2); S.S.I. 2013/262, art. 2

F54 Words in s. 8A(2) substituted (11.10.2013) by virtue of Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 17(b)**, 25(2); S.S.I. 2013/262, art. 2

F55 Words in s. 8A(2) renumbered as s. 8A(2)(a) (15.7.2011) by The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), arts. 1(2), **3(a)**

F56 Words in s. 8A(2)(a) substituted (25.1.2018) by Criminal Justice (Scotland) Act 2016 (asp 1), s. 117(2), **sch. 2 para. 35**; S.S.I. 2017/345, art. 3, sch. (with art. 4)

F57 S. 8A(2)(b)(c) repealed (25.1.2018) by The Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2018 (S.I. 2018/46), arts. 2(2)(b), **13(1)** (with art. 13(2)(3))

F58 S. 8A(2)(d)(e) inserted (12.2.2019) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(1)(f), **Sch. 4 para. 19**

9 Regulations may apply Part II to representation.

(1) Regulations made under this section may provide for this Part of this Act to apply to assistance by way of representation; and regulations so made may make different provision for different cases or classes of case.

(2) Such regulations may—

(a) describe the proceedings (or stages of proceedings) in relation to which this Part of this Act shall so apply by reference to the court, tribunal or statutory inquiry, to the issues involved, to the capacity in which the person requiring the assistance is concerned, or in any other way;

(b) specify, in relation to any proceedings so described, the assistance by way of representation which may be provided;

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(c) prescribe the criteria to be applied in determining whether assistance by way of representation should be provided;

(d) require that the approval of the Board or of such other appropriate authority as may be prescribed shall be obtained, in certain classes of case, as a pre-condition of the provision of assistance by way of representation; and

[F59][(dd) provide that assistance by way of representation shall be available in relation to such proceedings as may be prescribed, without reference to the financial limits under section 8 of this Act;

[F60(dda) provide that, in relation to assistance by way of representation which relates to such criminal proceedings as may be prescribed, sections 9A and 11A are to apply instead of sections 8 and 11;]

(de) provide that section 11(2) [F61or 11A] of this Act shall not apply as respects assistance by way of representation received in relation to such proceedings as may be prescribed;]

(e) modify the financial limits under sections 8 and 10(2) of this Act in their application to assistance by way of representation by substituting for the sums specified therein such other sums as may be prescribed, and such modification of the financial limit under the said section 10(2) may substitute different sums in relation to different proceedings or stages of proceedings.

(3) Such regulations may also make provision, for the purposes of paragraph (d) of subsection (2) above, as to—

(a) the procedure to be followed in applying for approval and the criteria for determining whether approval should be given;

(b) the conditions which should or may be imposed; and

(c) the circumstances in which approval may be withdrawn and the effect of its withdrawal.

Textual Amendments

F59 S. 9(2)(dd)(de) inserted (27.9.1999) by 1999 c. 22, **ss. 32**, 108(3)(a) (with Sch. 14 para. 7(2))

F60 S. 9(2)(dda) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 18(1)**, 25(2); S.S.I. 2013/262, art. 2

F61 Words in s. 9(2)(de) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(5)**, 25(2); S.S.I. 2013/262, art. 2

Modifications etc. (not altering text)

C14 Pt. II (ss. 6–12) applied by S.I. 1988/2290, **reg. 3**

10 Financial limit.

(1) Where at any time (whether before or after advice and assistance has begun to be provided to a client) it appears to the solicitor [F62or, as the case may be, adviser] that the cost of giving it is likely to exceed the limit applicable under this section—

(a) the solicitor [F63or adviser] shall determine to what extent that advice and assistance can be provided without exceeding that limit; and

(b) shall not give it (or, as the case may be, not instruct counsel to provide it) so as to exceed that limit except [F64, subject to subsection (4),] with the approval of the Board.

(2) The limit applicable under this section is [F65£60].

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(3) For the purposes of this section, the cost of providing advice and assistance shall be taken to consist of such of the following as are applicable in the circumstances—

(a) any outlays (including the fees and outlays of counsel) which may be incurred by the solicitor or his firm or incorporated practice in, or in connection with, the providing of the advice and assistance;

[[F66](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;**]**

(b) any fees (not being charges for outlays) which, apart from section 11 of this Act, would be properly chargeable by the solicitor or his firm or incorporated practice in respect of the advice and assistance; and

[[F67](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;**]**

(c) in the case of advice and assistance given by a solicitor employed by the Board, any fees (not being charges for outlays) which, if the solicitor had been employed by a firm of solicitors or by an incorporated practice, would, apart from section 11 of this Act, have been properly chargeable by that firm or practice in respect of the advice and assistance.

[[F68](4) In the circumstances set out in subsection (5), no application may be made for the Board's approval for the cost of giving the advice and assistance—

(a) to exceed the limit applicable under this section; or

(b) to that limit having been exceeded.

(5) The circumstances are that the matter with which the advice and assistance is concerned is not—

(a) specified as a distinct matter for the purposes of advice and assistance by virtue of regulations made under this Act; or

(b) being treated as if it were a distinct matter by virtue of such regulations.**]**

Textual Amendments

F62 Words in s. 10(1) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(4)(a)(i)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F63 Words in s. 10(1)(a) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(4)(a)(ii)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F64 Words in s. 10(1)(b) inserted (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp. 5), **ss. 69(2)(a)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(a)**

F65 Sum in s. 10(2) substituted (1.8.1988) by S.I. 1988/1389, **reg. 2**, and different sums substituted for different cases: (17.12.1988) by S.I. 1988/2288, reg. 2; (10.1.1994) by S.I. 1993/3187, regs. 3, 4 (as amended (1.5.2007) by S.I. 2007/248, reg. 4)

F66 S. 10(3)(aa) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(4)(b)(i)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F67 S. 10(3)(ba) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(4)(b)(ii)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F68 S. 10(4)(5) inserted (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 69(4)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(a)**

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Modifications etc. (not altering text)

C15 Pt. II (ss. 6–12) applied by S.I. 1988/2290, **reg. 3**

11 [F69Clients' contributions: general]

(1) A client shall not be required to pay any fees or outlays in respect of advice and assistance received by him in pursuance of this Part of this Act except in accordance with subsection (2) **[**F70or**][**F71, (2A)**]**F72... below **[**F73or, where applicable, section 11A**]**.

(2) Where—

(a) a client's disposable income exceeds **[**F74£105**]** a week; and

(b) he is not (directly or indirectly) in receipt of **[**F75universal credit under Part 1 of the Welfare Reform Act 2012,**][**F76income support or **[**F77, an income-based jobseeker's allowance (payable under the Jobseekers Act 1995) or an income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance),**]]**

he shall be liable to pay, in respect of the advice and assistance, fees or outlays up to, but not in aggregate exceeding, such amount as may be prescribed by regulations made under this section, and such regulations may prescribe different maximum payments for different amounts of disposable income and for different cases or classes of case.

[F78(2A) A client to whom paragraphs (a) and (b) of subsection (2) above apply and to whom **[**F79advice and assistance (other than assistance by way of representation to which section 9A applies)**]** has been provided by a solicitor employed by the Board under sections 26 and 27 **[**F80or section 28A**]** of this Act shall pay to the Board such contribution in that respect as the Board may, subject to subsection (3A) below, determine.**]**

F81(3) . . . . . .

[F78(3A) The amount determined by the Board under subsection (2A) above shall not exceed the amount which would be charged by a solicitor who is not employed by the Board under sections 26 and 27 **[**F82or section 28A**]** of this Act.**]**

F81(4) . . . . . .

Textual Amendments

F69 S. 11 title substituted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 19(2)**, 25(2); S.S.I. 2013/262, art. 2

F70 Word in s. 11(1) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(6)(a)(i)**, 25(2); S.S.I. 2013/262, art. 2

F71 Words in s. 11(1) inserted (6.7.2001) by 2001 asp 7, **ss. 9(2)(a)**, 15(3)

F72 Words in s. 11(1) repealed (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(6)(a)(ii)**, 25(2); S.S.I. 2013/262, art. 2

F73 Words in s. 11(1) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 19(1)**, 25(2); S.S.I. 2013/262, art. 2

F74 Word in s. 11(2)(a) substituted (11.4.2011) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (S.S.I. 2011/217), regs. 1, **4(4)** (with reg. 3)

F75 Words in s. 11(2)(b) inserted (29.4.2013) by The Welfare Reform (Consequential Amendments) (Scotland) (No. 2) Regulations 2013 (S.S.I. 2013/137), regs. 1, **3(3)**

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F76 Words in s. 11(2)(b) substituted (8.4.2003) by Tax Credits Act 2002 (c. 21), ss. 47, 61, **Sch. 3 para. 12**; S.I. 2003/962, **art. 2(4)(d)**

F77 Words in s. 11(2)(b) substituted (27.10.2008) by Welfare Reform Act 2007 (c. 5), ss. 28(1), 70(2), **Sch. 3 para. 4(3)**; S.I. 2008/787, **art. 2(4)(f)**

F78 S. 11(2A)(3A) inserted (6.7.2001) by 2001 asp 7, **ss. 9(2)(b)**, 15(3)

F79 Words in s. 11(2A) substituted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(6)(b)(i)**, 25(2); S.S.I. 2013/262, art. 2

F80 Words in s. 11(2A) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(6)(b)(ii)**, 25(2); S.S.I. 2013/262, art. 2

F81 S. 11(3)(4) repealed (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(6)(d)**, 25(2); S.S.I. 2013/262, art. 2

F82 Words in s. 11(3A) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(6)(c)**, 25(2); S.S.I. 2013/262, art. 2

Modifications etc. (not altering text)

C16 Pt. II (ss. 6-12) applied by S.I. 1988/2290, **reg. 3**

C17 S. 11 modified (7.10.1996) by S.I. 1996/2447, **reg. 5(1)(b)**

C18 S. 11(2) excluded (24.3.2003) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 (S.S.I. 2003/1789), **reg. 9**

C19 S. 11(2) excluded by S.S.I. 2011/217, reg. 8A (as inserted (with application in accordance with reg. 2 of the amending S.S.I.) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016 (S.S.I. 2016/136), regs. 1, **3**)

[F83 11A Clients' contributions: specified criminal assistance by way of representation

(1) This section applies where—

(a) assistance by way of representation has been made available to a client under section 9A(1) ("the assistance"), and

(b) the client—

(i) has disposable income of, or exceeding, £82 per week and is not (directly or indirectly) in receipt of any of the benefits mentioned in section 11(2)(b), or

(ii) has disposable capital of, or exceeding, £750.

(2) The client is liable to pay a contribution in respect of the assistance provided of up to, but not in aggregate exceeding, such amount as may be prescribed by regulations made under section 33ZA(1).

(3) Except where regulations made under section 33ZA(1) otherwise provide—

(a) in a case where the assistance is being provided—

(i) by a solicitor employed by the Board by virtue of sections 26 and 27 or, as the case may be, section 28A, or

(ii) by counsel instructed by such a solicitor,

it is for the Board to determine the amount of and collect any contribution payable by the client under subsection (2), and

(b) in any other case, it is for the solicitor to determine the amount of and collect any contribution payable by the client under subsection (2).

(4) A contribution collected by the solicitor is to be treated as payment of a fee or outlay properly chargeable (in accordance with section 33).]

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Textual Amendments

F83 S. 11A inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 19(3)**, 25(2); S.S.I. 2013/262, art. 2

12 Payment of fees or outlays otherwise than through clients' contributions.

(1) [F84] . . . . . .

(2) This section applies to any fees or outlays properly chargeable (in accordance with section 33 of this Act), in respect of advice and assistance given to a client in pursuance of this Part of this Act **[**[F85]; but does not apply to the salary payable to a solicitor employed by the Board **[**[F86]under sections 26 and 27 of this Act or to the salary payable to a solicitor employed by the Board**]]** by virtue of section 28A of this Act.

(3) Except in so far as regulations made under this section otherwise provide, fees or outlays to which this section applies shall be paid to the solicitor **[**[F87]or, as the case may be, the registered organisation,**]** as follows—

(a) first, out of any **[**[F88]amount**]** payable by the client in accordance with section 11(2) **[**[F89]or, as the case may be, section 11A(2)**]** of this Act;

(b) secondly, in priority to all other debts, out of any expenses which (by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the client by any other person in respect of the matter in connection with which the advice and assistance is provided;

(c) thirdly, in priority to all other debts, out of any property (of whatever nature and wherever situated) which is recovered or preserved for the client in connection with that matter, including his rights under any settlement arrived at in connection with that matter in order to avoid or bring to an end any proceedings;

(d) fourthly, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor **[**[F90]or the registered organisation**]**.

[[F91](4) In subsection (3), the reference to an amount payable by the client does not include an amount which it is for the Board to collect (whether under section 11A(3) or any regulations made under section 33ZA(1)).**]**

Textual Amendments

F84 S. 12(1) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82(2), **Sch. 5 para. 2(2)** (with s. 77); S.S.I. 2008/311, **art. 2(i)**

F85 Words in s. 12(2) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(4)(a)**; S.I. 1997/2323, **art. 6(2)**

F86 Words in s. 12(2) inserted (6.7.2001) by 2001 asp 7, **ss. 9(3)**, 15(3)

F87 Words in s. 12(3) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(5)(a)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F88 Word in s. 12(3)(a) substituted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(4)(b)**; S.I. 1997/2323, **art. 6(2)**

F89 Words in s. 12(3)(a) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(7)(a)**, 25(2); S.S.I. 2013/262, art. 2

F90 Words in s. 12(3)(d) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(5)(b)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

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F91 S. 12(4) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(7)(b)**, 25(2); S.S.I. 2013/262, art. 2

Modifications etc. (not altering text)

C20 Pt. II (ss. 6–12) applied by S.I. 1988/2290, **reg. 3**

C21 S. 12(3) modified (7.10.1996) by S.I. 1996/2447, **reg. 5(1)(c)**

C22 S. 12(3)(*c*) restricted by S.I. 1987/382, **reg. 15(1)**
S. 12(3)(c) excluded (7.10.1996) by S.I. 1996/2447, **reg. 16(2)**
S. 12(3)(c): power to exclude conferred (7.10.1996) by S.I. 1996/2447, **reg. 16(3)**

C23 S. 12(3)(c): power to disapply conferred by S.I. 1996/2447, **reg. 16A** (as inserted (5.8.2020) by The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 (S.S.I. 2020/191), regs. 1(3), **4**)

[F92 Register of advice organisations

Textual Amendments

F92 Ss. 12A, 12B and cross-heading inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(6)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

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.

(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—

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(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.**]**

PART III

CIVIL LEGAL AID

13 Meaning of "civil legal aid".

(1) This Part of this Act applies to civil legal aid.

(2) In this Act, "civil legal aid" means representation by a solicitor and **[**[F93],where appropriate,**]** by counsel in any proceedings mentioned in Part I of Schedule 2 to this Act, on the terms provided for in this Act, and includes all such assistance as is usually given by solicitor or counsel in the steps preliminary to or incidental to proceedings, or in arriving at or giving effect to a settlement to prevent them or bring them to an end.

(3) Subject to sections 14 and 15 of this Act and to regulations made under this section, civil legal aid shall be available in connection with any proceedings mentioned in subsection (2) above, except insofar as Part II of Schedule 2 to this Act otherwise provides.

(4) Schedule 2 to this Act may be varied by regulations made under this section, so as to extend or restrict the categories of proceedings in which civil legal aid is available, by reference to the court or tribunal, to the issues involved, to the capacity in which the person seeking civil legal aid is concerned, or otherwise.

[F94](5) . . . . . .

[[F95](6) In subsection (4) above, the reference to a court or tribunal includes a reference to a court or tribunal which is established by law for purposes which are or include those of determining persons' civil rights and obligations and to any person who or group of persons, body, statutory inquiry or other procedure which (however described) is appointed or established by law for such purposes.**]**

Textual Amendments

F93 Words in s. 13(2) substituted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1)(2), Sch. 8 para. 36(3), Sch. 9; S.I. 1991/2151, **art. 3 Sch.**

F94 S. 13(5) repealed (6.7.2001) by 2001 asp 7, **ss. 6(2)(a)**, 15(3)

F95 S. 13(6) inserted (6.7.2001) by 2001 asp 7, **ss. 6(2)(b)**, 15(3)

14 Availability of civil legal aid.

(1) Subject to section 15 of this Act and to **[**[F96]subsections (1F) and**]** (2) below, civil legal aid shall be available to a person if, on an application made to the Board—

(a) the Board is satisfied that he has a *probabilis causa litigandi*; and

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(b) it appears to the Board that it is reasonable in the particular circumstances of the case that he should receive legal aid.

[[F97](1A) In the case of proceedings in such courts or tribunals as may be specified in regulations under this Act, civil legal aid shall be available to a person only if, in addition to the requirements which have to be met under subsection (1) above and section 15 of this Act, such criteria as may be prescribed in those regulations are met.

(1B) In subsection (1A) above, the reference to courts or tribunals shall be construed in accordance with section 13(6) of this Act.**]**

[[F98](1C) In the case of proceedings described in paragraph 1 of Part II of Schedule 2 to this Act, civil legal aid shall be available to a person only if, in addition to the requirements which have to be met under subsection (1) and section 15 of this Act and subject to paragraph 2 of Part II of Schedule 2, such criteria as may be set out by the Scottish Ministers in directions given to the Board are met.

(1D) A direction given under subsection (1C) may—

(a) include criteria in respect of which the Board may require to satisfy itself;

(b) make different provision for different purposes;

(c) be varied or revoked at any time.

(1E) Where the Scottish Ministers give a direction under subsection (1C)—

(a) the Board must comply with it;

(b) the Scottish Ministers must arrange for the direction to be published in such manner as they consider appropriate.**]**

[[F99](1F) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.

(1G) The Board shall establish a procedure under which any person receiving civil legal aid under this section which is subject to conditions by virtue of subsection (1F) may apply to the Board for a review of any such condition.**]**

(2) The Board may require a person receiving civil legal aid to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive civil legal aid.

(3) **[**[F100]Subject to subsections (4) to (6) below,**]** the Board shall establish a procedure under which any person whose application for legal aid under this section has been refused may apply to the Board for a review of his application.

[[F101](4) Where—

(a) the Board has refused an application for civil legal aid by a person who has applied for such aid for the purpose of raising an action against the Board; and

(b) the applicant has applied to the Board for a review of his application,

the Board shall, unless they decide to grant the application forthwith, refer the application, together with all relevant precognitions, statements and other papers, including any observations they wish to make on the application, to the sheriff for Lothian and Borders at Edinburgh.

(5) Subject to section 15 of this Act, and to subsection (2) above, where the sheriff decides—

(a) that the applicant has a *probabilis causa litigandi* ; and

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(b) that it is reasonable in the particular circumstances of the case that he should receive legal aid,

he shall so inform the Board, and the Board shall make civil legal aid available to the applicant.

(6) A decision made by the sheriff under subsection (5) above shall be final.**]**

Textual Amendments

F96 Words in s. 14(1) substituted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 72(2)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F97 S. 14(1A)(1B) inserted (6.7.2001) by 2001 asp 7, **ss. 6(3)**, 15(3)

F98 S. 14(1C)-(1E) inserted (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 71(2)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(b)**

F99 S. 14(1F)(1G) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 72(3)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F100 Words in s. 14(3) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 36(4)**: S.I. 1991/2151, art. 3, **Sch**

F101 S. 14(4)–(6) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 36(5)**; S.I. 1991/2151, art. 3, **Sch.**

Modifications etc. (not altering text)

C24 S. 14 modified (1.12.2002) by The Civil Legal Aid (Scotland) Regulations 2002 (S.S.I 2002/494), {reg. 45}

C25 S. 14 excluded by S.I. 1987/381, **reg. 46(2)(b)**

15 Financial conditions.

(1) A person shall be eligible for civil legal aid if his disposable income does not exceed **[**[F102]£26,239**]** a year.

(2) A person may be refused civil legal aid if—

(a) his disposable capital exceeds **[**[F103]£13,017**]**; and

(b) it appears to the Board that he can afford to proceed without legal aid.

(3) For the purposes of this section, a person's disposable income and disposable capital shall be determined by the Board.

[F104](4) . . . . . .

Textual Amendments

F102 Word in s. 15(1) substituted (11.4.2011) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (S.S.I. 2011/217), regs. 1, **4(5)** (with reg. 3)

F103 Word in s. 15(2)(a) substituted (11.4.2011) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (S.S.I. 2011/217), regs. 1, **4(6)** (with reg. 3)

F104 S. 15(4) omitted (31.12.2020) by virtue of The Civil and Family Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/441), regs. 1(2)(b), **8** (with regs. 12, 13)

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Modifications etc. (not altering text)

C26 S. 15 modified (7.10.1996) by S.I. 1996/2444, **reg. 47(2)(a)**
S. 15 modified (1.12.2002) by The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2002 (S.S.I. 2002/494), **reg. 45**
S. 15 modified (1.12.2002) by The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2002 (S.S.I. 2002/494), **reg. 46(2)(a)**

C27 S. 15 excluded by S.I. 1987/381, **regs. 46(2)(a)**, 47(2)(a)

Expenses

16 Expenses in favour of certain assisted persons.

(1) . . . . . [F105]

(2) [F106]. . .in sections 17 to 20 of this Act—

"court" includes tribunal **[**[F107]and references to either shall be construed in accordance with section 13(6) of this Act**]**;

"legally assisted person" means a person in receipt of civil legal aid in the proceedings in question or a person in receipt of assistance by way of representation in any proceedings to which this Part applies.

Textual Amendments

F105 S. 16(1) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. I para. 2(a), **Sch. 6**

F106 Words repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. I para. 2(b), **Sch. 6**

F107 Words in s. 16(2) added (6.7.2001) by 2001 asp 7, **ss. 6(4)**, 15(3)

17 Contributions, and payments out of property recovered.

(1) Legally assisted persons may be required by the board to contribute to the Fund in accordance with this section in respect of any proceedings in connection with which they are granted civil legal aid.

(2) A legally assisted person's contribution under this section shall be determined by the Board, and may include—

(a) if his disposable income exceeds **[**[F108]£3,521**]** a year, a contribution in respect of income which shall not be more than **[**[F109]67.1%**]** of the excess (or such other proportion of the excess, or such amount, as may be prescribed by regulations made under this section); and

(b) if his disposable capital exceeds **[**[F110]£7,853**]**, a contribution in respect of capital which shall not be more than the excess (or such proportion of the excess or such lesser amount as may be prescribed by regulations made under this section).

[F111]**[**(2A) Except in so far as regulations made under this section otherwise provide, any sum of money recovered under an award of or an agreement as to expenses in favour of any party in any proceedings in respect of which he is or has been in receipt of civil legal aid shall be paid to the Board.

(2B) Except in so far as regulations made under this section otherwise provide, where, in any proceedings, there is a net liability of the Fund on the account of any party, the

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amount of that liability shall be paid to the Board by that party, in priority to any other debts, out of any property (wherever situate) which is recovered or preserved for him—

(a) in the proceedings; or

(b) under any settlement to avoid them to bring them to an end.**]**

[[F112](2C) Subsection (2D) below applies where, after applying sums paid to the Board under subsection (2A) above in respect of the expenses of any party in any proceedings—

(a) there is a surplus in the Fund on the account of the party; and

(b) the party received, in respect of the same proceedings, assistance from the Commission for Equality and Human Rights under section 28 of the Equality Act 2006 (power of the Commission to provide legal assistance).

(2D) The Board shall apply the surplus to pay to the Commission any sums due to it under section 29(2) of that Act (Commission's entitlement to recover expenses incurred in providing assistance) in respect of the assistance provided by it to the party.**]**

[F113](3) . . . . . .

Textual Amendments

F108 Word in s. 17(2)(a) substituted (11.4.2011) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (S.S.I. 2011/217), regs. 1, **4(7)** (with reg. 3)

F109 Words in s. 17(2)(a) substituted (12.4.2010 with application as mentioned in reg. 3(2) of the amending S.S.I.) by virtue of The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 (S.S.I. 2010/139), **reg. 5** (with reg. 8)

F110 Word in s. 17(2)(b) substituted (11.4.2011) by The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 (S.S.I. 2011/217), regs. 1, **4(8)** (with reg. 3)

F111 S. 17(2A)(2B) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 36(6)**; S.I. 1991/1903, art. 3, **Sch.**

F112 S. 17(2C)(2D) inserted (1.10.2007) by Equality Act 2006 (c. 3), ss. 40, 93(1), **Sch. 3 para. 39(3)** (with s. 92); S.I. 2007/2603, **art. 2(d)**

F113 S. 17(3)-(8) repealed (1.4.1989) by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 para. 3(b), **Sch. 6**; S.I. 1989/288, **art. 2**

Modifications etc. (not altering text)

C28 S. 17 excluded by S.I. 1987/381, **regs. 46(2)(a)**, 47(2)(a)

C29 S. 17 modified (19.9.1996) by S.I. 1996/2444, **reg. 47(2)(b)**
S. 17 modified (1.12.2002) by The Civil Legal Aid (Scotland) Regulations 2002 (S.S.I. 2002/494), **reg. 45(2)**
S. 17 modified (1.12.2002) by The Civil Legal Aid (Scotland) Regulations 2002 (S.S.I. 2002/494), **reg. 46(2)(a)**

C30 S. 17(2B) excluded (7.10.1996) by S.I. 1996/2444, **reg. 33**

18 Expenses of unassisted party.

[F114](1) . . . . . .

(2) The liability of a legally assisted person under an award of expenses **[**[F115]in any proceedings**]** shall not exceed the amount (if any) which in the opinion of the court or

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tribunal making the award 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) None of the following, namely a legally assisted person's house, wearing apparel, household furniture and the tools and implements of his trade or profession shall—

(a) be taken into account in assessing his means for the purposes of subsection (2) above; or

(b) be subject to diligence or any corresponding process in any part of the United Kingdom in connection with any award of expenses in proceedings to which this section applies,

except insofar as regulations made under this section may prescribe.

Textual Amendments

F114 S. 18(1) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. II para. 7(a), **Sch. 6**

F115 Words substituted by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), **Sch. 4 Pt. II para. 7(b)**

Modifications etc. (not altering text)

C31 S. 18(2) applied by S.I. 1987/381, **regs. 33**, 35 and modified by S.I. 1987/381, **reg. 36**
S. 18(2) applied (S.) (7.10.1996) by S.I. 1996/2444, **reg.34**
S. 18(2) applied (S.) (1.12.2002) by S.S.I. 2002/494, **reg.34**

19 Expenses out of the Fund.

(1) In any proceedings **[**[F116]to which a legally assisted person is party and which are finally decided in favour of an unassisted party**]**, subject to subsections (2) and (3) below, the court may make an award out of the Fund to an unassisted party of the whole or any part of any expenses incurred by him (so far as attributable to any part of the proceedings in connection with which another party was a legally assisted person).

(2) Before making an order under this section, the court shall consider making an award of expenses against the legally assisted person.

(3) An order under this section may be made only if—

(a) an order for expenses might be made in the proceedings, apart from this Act; and

(b) in the case of expenses of proceedings in a court of first instance, those proceedings were instituted by the legally assisted person, and the court is satisfied that the unassisted party will suffer [F117]. . . financial hardship unless the order is made; and

(c) in any case, the court is satisfied that it is just and equitable in all the circumstances that the award should be paid out of public funds.

(4) The provisions of subsection (3)(b) above regarding financial hardship may be modified, in their application to persons who are concerned in proceedings only in a fiduciary, representative or official capacity, by regulations made under this section.

(5) No appeal may be made against an order made under this section, or against a refusal to make such an order, except on a point of law.

(6) In this section, "expenses" means expenses as between party and party, and includes the expenses of applying for an order under this section.

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Textual Amendments

F116 Words substituted by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 44, **Sch. 4 Pt. II para. 8**

F117 Word in s. 19(3)(b) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82(2), **Sch. 5 para. 2(3)** (with s. 77); S.S.I. 2008/311, **art. 2(i)**

Modifications etc. (not altering text)

C32 S. 19(3)(*b*) modified by S.I. 1987/381, **reg. 37**

20 Provisions supplementary to sections 18 and 19.

(1) For the purposes of **[**[F118]section**]**19 of this Act, civil proceedings are finally decided in favour of an unassisted party—

(a) if no appeal may be made against the decision in his favour;

(b) if an appeal may be made against the decision with leave, and the time limit for applications for leave expires and either no application has been made, or leave has been refused;

(c) if leave to appeal against the decision is granted or is not required and no appeal is made within the time limit for appeals; or

(d) if an appeal is made but is abandoned before it is determined.

(2) Where an appeal is allowed to be made late, the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the unassisted party to the Fund of the whole or any part of any sum previously paid to him under section 19 of this Act in respect of those proceedings.

(3) Where a court decides any proceedings in favour of the unassisted party and an appeal may be made (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under section 19 of this Act, but any order so made shall not take effect unless—

(a) where leave to appeal is required, the time limit for applications for leave to appeal expires and no application has been made or leave is refused;

(b) where leave to appeal is granted or is not required, the time limit for appeals expires without an appeal being made; or

(c) an appeal is made but is abandoned before it is determined.

(4) It shall be competent, at any time within such period after the making of an award of expenses to which section 18(2) of this Act applies as may be prescribed by regulations made under this section, for any party concerned with the award to apply to the court or tribunal which made the award for re-assessment of its amount, on the ground that since the award was made there has been a relevant change of circumstances, and on such application the court or tribunal may make such re-assessment of the amount of the award as seems to them proper.

Textual Amendments

F118 Word substituted by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 44, **Sch. 4 Pt. II para. 9**

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PART IV

CRIMINAL LEGAL AID

21 Scope and nature of criminal legal aid.

(1) This Part of this Act applies to legal aid in connection with—

(a) criminal proceedings before any of the following—

(i) the High Court of Justiciary;

[[F119](ia) the Sheriff Appeal Court;**]**

(ii) the sheriff;

(iii) the district court;

[[F120](aa) any case the referral of which is required, under section 2(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, by a **[**[F121]designated**]** life prisoner;**]**

and,

(b) any reference in connection with such proceedings under **[**[F122]Article 267 of the Treaty on the Functioning of the European Union**]**,

[F123]**[**(c) any reference, appeal or application for special leave to appeal to the **[**[F124]Supreme Court**]** under paragraph 11 or 13(a) of Schedule 6 to the Scotland Act 1998**]**

[[F125](d) any reference, appeal or application for permission to appeal to the Supreme Court under section 288ZB or 288AA of the Criminal Procedure (Scotland) Act 1995**]**

and such legal aid is referred to in this Act as "criminal legal aid".

(2) The Secretary of State may, by regulations made under this section, prescribe by reference to such considerations as appear to him to be appropriate any class or stage of proceedings in connection with which criminal legal aid shall or, as the case may be, shall not be available.

(3) Subject to regulations made under this section, and to sections 22 and 23 of this Act, criminal legal aid shall not be available in connection with summary criminal proceedings until the conclusion of the first diet at which the accused has tendered a plea of not guilty.

(4) Criminal legal aid shall consist of representation, on terms provided for by this Act—

(a) by a solicitor and **[**[F126], where appropriate,**]** by counsel;

(b) by a solicitor at any identification parade held, by or on behalf of the prosecutor (within the meaning of **[**[F127]section 307 of the Criminal Procedure (Scotland) Act 1995**]**), in connection with or in contemplation of criminal proceedings against the person so represented,

and shall include all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to criminal proceedings.

Textual Amendments

F119 S. 21(1)(a)(ia) inserted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 14(2)**; S.S.I. 2015/247, art. 2, sch.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F120 S. 21(1)(aa) inserted (1.10.1993) by 1993 c. 9, s. 47(1), **Sch. 5 para. 4** (with Sch. 6 paras. 1, 2); S.I. 1993/2050, **art. 3(4)**.

F121 Word in s. 21(1)(aa) substituted (20.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(5)**; S.I. 1997/2323, art. 3, **Sch. 1**

F122 Words in s. 21(1)(b) substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

F123 S. 21(1)(c) inserted (6.5.1999) by S.I. 1999/1042, art. 3, **Sch. 1 Pt. I para. 11(2)**

F124 Words in s. 21(1)(c) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 85(2)**; S.I. 2009/1604 {art. 2(d)}

F125 S. 21(1)(d) inserted (22.4.2013) by The Scotland Act 2012 (Consequential Provisions) Order 2013 (S.I. 2013/728), arts. 1, **2(2)**

F126 Words in s. 21(4) substituted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1)(2), Sch. 8 para. 36(10); S.I. 1991/2151, **art. 3**,Sch.

F127 Words in s. 21(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(2)**

22 Automatic availability of criminal legal aid.

(1) Subject to regulations made under section 21(2) of this Act, criminal legal aid shall be available to every accused person—

(a) where he is given representation as mentioned in paragraph (b) of section 21(4) of this Act;

(b) where his case is being prosecuted under solemn procedure until either—

(i) an application for legal aid under section **[**[F128]23A(1)**]** of this Act has been determined; or

(ii) he is admitted to bail or he is committed until liberated in due course of law,

whichever first occurs;

(c) where he is being prosecuted under summary procedure, and either is in custody or has been liberated under section 295(1)(a) of the Criminal Procedure (Scotland) Act 1975 (liberation by police on undertaking to appear) —

(i) until the conclusion of the first diet at which he tenders a plea of guilty or not guilty; or

(ii) where he has tendered a plea of guilty at that diet, until his case is finally disposed of;

(d) where he is in custody and he is being prosecuted under summary procedure and he has—

(i) tendered a plea of not guilty; and

(ii) made an application to the Board for legal aid in connection with the proceedings,

until his application has been determined by the Board; and

[[F129](da) in relation to any proceedings under solemn or summary procedure whereby the court determines (whether or not on a plea by the accused person) whether **[**[F130]the accused is unfit for trial under section 53F of the Criminal Procedure (Scotland) Act 1995;**]**

(db) in relation to an examination of facts held under section 55 of the Criminal Procedure (Scotland) Act 1995 and the disposal of the case following such examination of facts;

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(dc) in relation to any appeal under section 62 or 63 (appeal by, respectively, accused or prosecutor **[**[F131]where accused found not criminally responsible or unfit for trial**]**) of that Act of 1995;**]**

[[F132](dd) where a solicitor has been appointed under section 288D of the Criminal Procedure (Scotland) Act 1995 (c.46) (appointment by court of solicitor for person accused of **[**[F133]certain offences**]** and thereby prohibited from conducting defence in person) **[**[F134]or section 92(2), (2B)(b) or (2E) of that Act (appointment of solicitor for accused where the trial is to proceed in his absence)**]** to act on his instructions or in his interests;**]**

[[F135](de) where a solicitor has been appointed under subsection (4)(b) or (7) of section 150A (proceedings in absence of accused) of the Criminal Procedure (Scotland) Act 1995 to represent the accused's interests;**]**

(e) where he is being prosecuted under section 255 or 452B of the Criminal Procedure (Scotland) Act 1975 (new prosecution for the same or similar offence), until his case is finally disposed of,

[[F136] and, in relation to paragraph (dc) above, "accused person" includes a person authorised to institute or continue an appeal under section 303A(4) of the Criminal Procedure (Scotland) Act 1995 (transfer of rights of appeal of deceased person).**]**

(2) Criminal legal aid made available in the circumstances referred to in paragraph (c)(i) of subsection (1) above shall also be available in connection with any steps taken in the making of and representation in connection with any application for liberation following upon the diet referred to in that paragraph.

Textual Amendments

F128 Words in s. 22(1)(b)(i) substituted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 64(2)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F129 S. 22(1)(da)-(dc) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(3)**

F130 Words in s. 22(1)(da) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 16(a)**; S.S.I. 2012/160, art. 3, sch.

F131 Words in s. 22(1)(dc) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **sch. 7 para. 16(b)**; S.S.I. 2012/160, art. 3, sch.

F132 S. 22(1)(dd) inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 2(2)**; S.S.I. 2002/443, **art. 3** (with transitional provisions in art. 4(1)(2))

F133 Words in s. 22(1)(dd) substituted (1.4.2019) by Domestic Abuse (Scotland) Act 2018 (asp 5), s. 15(2), **sch. para. 3(2)**; S.S.I. 2018/387, reg. 2 (with reg. 7)

F134 Words in s. 22(1)(dd) inserted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 10(7)**, 27(1); S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with arts. 3-5)

F135 S. 22(1)(de) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84(1), **Sch. para. 5(a)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F136 Words in s. 22(1) inserted (20.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(6)**; S.I. 1997/2323, art. 3, **Sch.1**

23 Power of the court to grant legal aid.

(1) Criminal legal aid shall be available on an application made to the court—

(a) [F137] . . . . . .

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) where a person who has not previously been sentenced to imprisonment or detention has been convicted in summary proceedings, and the court is considering a sentence of imprisonment or detention or the imposition of imprisonment under section 396(2) of the [M2]Criminal Procedure (Scotland) Act 1975 (failure to pay a fine when no time for payment is allowed),

if the court is satisfied after consideration of the person's financial circumstances that the expenses of the case cannot be met without undue hardship to him or his dependants.

(2) In subsection (1) above, "the court" means—

(a) [F138]. . . . . .

(b) in relation to summary proceedings, the court before which the proceedings are being taken,

and references in that subsection to detention shall be construed in accordance with **[**[F139]section 204(4)(b) of the Criminal Procedure (Scotland) Act 1995**]**.

Textual Amendments

F137 S. 23(1)(a) repealed (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 64(3)(a)**, 82(2) (with s. 77); S.S.I. 2010/376, **art 2**

F138 S. 23(2)(a) repealed (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 64(3)(b)**, 82(2), (with s. 77); S.S.I. 2010/376, **art 2**

F139 Words in s. 23(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(4)**

Marginal Citations

M2 1975 c. 21.

[[F140]**23A Legal aid in solemn proceedings**

(1) Criminal legal aid shall be available on an application made to the Board, where a person is being prosecuted under solemn procedure, if the Board is satisfied after consideration of the person's financial circumstances that the expenses of the case cannot be met without undue hardship to the person or the person's dependants.

(2) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.

(3) The Board may require a person receiving legal aid under subsection (1) to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive criminal legal aid.

(4) The Board shall establish a procedure under which any person whose application for legal aid under subsection (1) has been refused may apply to the Board for a review of the application.

(5) The Board shall establish a procedure under which any person receiving criminal legal aid under subsection (1) which is subject to conditions by virtue of subsection (2) may apply to the Board for a review of any such condition.**]**

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F140 S. 23A inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 64(4)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

24 Legal aid in summary proceedings.

(1) Subject to regulations made under section 21(2) of this Act, to section 21(3) of this Act and to **[**[F141]subsections (1A), (2) and**]** (3) below, criminal legal aid shall be available to an accused person in summary proceedings on an application made to the Board if the Board is satisfied—

(a) after consideration of the financial circumstances of the accused person, that the expenses of the case cannot be met without undue hardship to him or his dependants; and

(b) that in all the circumstances of the case it is in the interests of justice that legal aid should be made available to him.

[[F142](1A) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.**]**

(2) The Board may require a person receiving criminal legal aid under this section to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that

[[F143](a) after consideration of the financial circumstances of the person, the expenses of the case cannot be met without undue hardship to him or his dependants;

(b)**]** it is in the interests of justice for him to continue to receive criminal legal aid.

(3) The factors to be taken into account by the Board in determining whether it is in the interests of justice that criminal legal aid be made available in any case shall include—

(a) the offence is such that if proved it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of his livelihood;

(b) the determination of the case may involve consideration of a substantial question of law, or of evidence of a complex or difficult nature;

(c) the accused may be unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise;

(d) it is in the interests of someone other than the accused that the accused be legally represented;

(e) the defence to be advanced by the accused does not appear to be frivolous;

(f) the accused has been remanded in custody pending trial.

(4) The Secretary of State may, by regulations made under this section, vary the factors listed in subsection (3) above by amending factors in the list or by adding new factors to the list.

(5) The Board shall establish a procedure under which any person whose application for criminal legal aid in summary proceedings has been refused may apply to the Board for a review of his application.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[[F144](5A) The Board shall establish a procedure under which any person receiving criminal legal aid under this section which is subject to conditions by virtue of subsection (1A) may apply to the Board for a review of any such condition.**]**

(6) Where a person who is being prosecuted under summary procedure is not represented by a solicitor or counsel and [F145]. . . —

(a) **[**[F146]has**]** not applied for criminal legal aid in connection with proceedings; [F147]. . .

(b) **[**[F148]has**]** applied for criminal legal aid but been refused it on the grounds that it is not in the interests of justice **[**[F149]; or

(c) is no longer receiving criminal legal aid in connection with proceedings because the Board is no longer satisfied as to the matters mentioned in paragraphs (a) and (b) of subsection (1)**]**,

the court at the trial diet may, if it considers that owing to the exceptional circumstances of the case it would be inequitable to proceed with the trial without such representation and without legal aid being made available to him, adjourn the diet to enable an application for legal aid to be made to the Board, which shall consider the application expeditiously.

(7) Where the trial of an accused person is adjourned as is mentioned in subsection (6) above, and he has made an application to the Board, criminal legal aid shall be available to him until his application is determined by the Board.

(8) Where any person to whom criminal legal aid has been made available in pursuance of subsection (7) above has his application for criminal legal aid under subsection (6) above refused by the Board on the ground that it is satisfied that subsection (1)(a) above does not apply in his case, the Board may require him to pay to the Fund the whole or part of the amount of any sums paid out of the Fund under section 4(2)(a) of this Act in respect of the criminal legal aid so made available.

Textual Amendments

F141 Words in s. 24(1) substituted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(2)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F142 S. 24(1A) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(3)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F143 Words in s. 24(2) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(4)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F144 S. 24(5A) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(5)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F145 Words in s. 24(6) repealed (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(a)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F146 Word in s. 24(6)(a) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(b)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F147 Word in s. 24(6)(a) repealed (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(c)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F148 Word in s. 24(6)(b) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(d)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F149 S. 24(6)(c) and preceding word inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(e)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

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25 Legal aid in appeals.

(1) This section shall apply to criminal legal aid in connection with an appeal against conviction, sentence **[**[F150], other disposal**]** or acquittal in criminal proceedings **[**[F151]other than an appeal in relation to which section 22(1)(dc) of this Act applies**]**.

(2) Subject to regulations made under section 21(2) of this Act criminal legal aid to which this section applies shall be available on an application made to the Board if the Board is satisfied—

(a) subject to subsection (4) below, **[**[F152]the Board is satisfied**]** after consideration of the financial circumstances of the applicant, that the expenses of the appeal cannot be met without undue hardship to the applicant or his dependants;

[[F153](b) in the case of an appeal under section 106(1) **[**[F154], 175(2) or 194ZB(1)**]** of the Criminal Procedure (Scotland) Act 1995, leave **[**[F155]or permission**]** to appeal is granted; and

(c) in the case of an appeal under any other provision of that Act, where the applicant is the appellant, the Board is satisfied that in all the circumstances of the case it is in the interests of justice that the applicant should receive criminal legal aid.**]**

[[F156](2A) Where the Board has refused an application for criminal legal aid on the ground that it is not satisfied as mentioned in subsection (2)(c) above the High Court **[**[F157]or, in the case of an appeal to the Sheriff Appeal Court, that Court**]** may, at any time prior to the disposal of an appeal, whether or not on application made to it, notwithstanding such refusal determine that it is in the interests of justice that the applicant should receive criminal legal aid in connection with the appeal, and the Board shall forthwith make such legal aid available to him.**]**

[[F158](2B) Where a person is no longer receiving criminal legal aid because the Board is no longer satisfied as mentioned in subsection (2)(c) above the High Court **[**[F159]or, in the case of an appeal to the Sheriff Appeal Court, that Court**]** may, at any time prior to the disposal of the appeal, whether or not on application made to it, notwithstanding the Board no longer being so satisfied, determine that it is in the interests of justice that the person should receive criminal legal aid in connection with the appeal, and the Board shall forthwith make such legal aid available to him.

(2C) Legal aid made available to a person under subsection (2) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.**]**

(3) The Board may require a person receiving criminal legal aid under this section to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive criminal legal aid.

[[F160](3A) The Board shall establish a procedure under which any person whose application for criminal legal aid under subsection (2) has been refused may apply to the Board for a review of his application.

(3B) The Board shall establish a procedure under which any person receiving criminal legal aid under subsection (2) which is subject to conditions by virtue of subsection (2C) may apply to the Board for a review of any such condition.**]**

(4) Subsection (2)(a) above does not apply where criminal legal aid was made available under section 23 **[**[F161], 23A**]** or 24 of this Act in connection with the proceedings in respect of which the appeal is being made.

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[[F162](5) Subsections (2)(a), (3) and (4) above shall apply to an application for criminal legal aid in connection with consideration under section 107, 180 **[**[F163], 187, 194ZD or 194ZE**]** of the Criminal Procedure (Scotland) Act 1995 whether to grant leave **[**[F164]or permission**]** to appeal as if—

(a) in subsection (2)(a), for the words "of the appeal" there were substituted the words "in connection with consideration whether to grant leave **[**[F164]or permission**]** to appeal"; and

(b) in subsection (4), after the word "is" there were inserted the words "subject to leave **[**[F164]or permission**]** being granted,".

(6) Subsections (2)(a) and (c) and (2A) to (4) above shall apply to an application for criminal legal aid in connection with a petition to the *nobile officium* of the High Court of Justiciary (whether arising in the course of any proceedings or otherwise) as they apply for the purposes of subsection (1) above.

(7) Subsections (2)(a), (3) and (4) above shall apply to an application for criminal legal aid in connection with a reference by the **[**[F165]Scottish Criminal Cases Review Commission under section 194B**]** of the Criminal Procedure (Scotland) Act 1995 as they apply for the purposes of subsection (1) above.**]**

Textual Amendments

F150 Words in s. 25(1) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(5)(a)**

F151 Words in s. 25 inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(5)(b)**

F152 Words in s. 25(2)(a) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(6)(a)**

F153 S. 25(2)(b)(c) substituted for s. 25(2)(b) and the preceding "and" (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(6)(b)**

F154 Words in s. 25(2)(b) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 14(3)(a)(i)**; S.S.I. 2015/247, art. 2, sch.

F155 Words in s. 25(2)(b) inserted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 14(3)(a)(ii)**; S.S.I. 2015/247, art. 2, sch.

F156 S. 25(2A) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(7)**

F157 Words in s. 25(2A) inserted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 14(3)(b)**; S.S.I. 2015/247, art. 2, sch.

F158 S. 25(2B)(2C) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(8)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F159 Words in s. 25(2B) inserted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 14(3)(c)**; S.S.I. 2015/247, art. 2, sch.

F160 S. 25(3A)(3B) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(9)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F161 Words in s. 25(4) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 64(5)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F162 S. 25(5)-(7) substituted for s. 25(5) (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(8)**

F163 Words in s. 25(5) substituted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 14(3)(d)(i)**; S.S.I. 2015/247, art. 2, sch.

F164 Words in s. 25(5) inserted (22.9.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 14(3)(d)(ii)**; S.S.I. 2015/247, art. 2, sch.

F165 Words in s. 25(7) substituted (27.9.1999) by 1999 c. 22, **ss. 34**, 108(3)(a) (with Sch. 14 para. 7(2))

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[F166 25AA Legal aid in respect of appeals under section 303A of the 1995 Act.

(1) Subject to the provisions of this section, [F167 sections 25 and 25AB of this Act apply] to any appeal, within the meaning of section 303A of the Criminal Procedure (Scotland) Act 1995 (transfer of rights of appeal of deceased person), instituted or continued by a person (an "authorised person") authorised under subsection (4) of the said section 303A.

(2) Where an authorised person is continuing an appeal which has been instituted by the deceased person, and criminal legal aid, within the meaning of section 25, [F168 or section 25AB] has been awarded to the deceased person in connection with any proceedings, such legal aid shall continue to be made available to the authorised person in respect of those proceedings.

(3) Where—

(a) the deceased person had applied for criminal legal aid within the meaning of section 25, [F168 or section 25AB] but the application had not been determined prior to his death; or

(b) the deceased person had not applied for such legal aid,

the authorised person shall be regarded as the applicant and, in a case to which paragraph (b) applies, may apply for such legal aid.

(4) Notwithstanding subsection (3) above—

(a) in [F169 sections 25(2)(a) and 25AB(2)] of this Act, where the authorised person is the executor of the deceased, any reference to—

(i) the financial circumstances of the applicant shall be construed as a reference to the value of the deceased person's estate; and

(ii) the applicant's dependants shall be construed as a reference to the beneficiaries of the deceased's estate; and

(b) any reference in section 25(2)(c) or (2A) of this Act to whether it is in the interests of justice that the applicant should receive legal aid shall be construed as a reference to whether it would have been in the interests of justice that the deceased should have received legal aid.]

Textual Amendments

F166 S 25AA inserted (1.8.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(7)**; S.I. 1997/1712, art. 3, **Sch.**

F167 Words in s. 25AA(1) substituted (6.5.1999) by S.I. 1999/1042, art. 3, **Sch. 1 Pt. I para. 11(3)(a)**

F168 Words in s. 25AA(2)(3)(a) inserted (6.5.1999) by S.I. 1999/1042, art. 3, **Sch. 1 Pt. I para. 11(3)(b)(c)**

F169 Words in s. 25AA(4)(a) substituted (6.5.1999) by S.I. 1999/1042, art. 3, **Sch. 1 Pt. I para. 11(3)(d)**

[F170 25AB Legal aid in references, appeals or applications for special leave to appeal to the [F171 Supreme Court]

[F172 (1) This section shall apply to criminal legal aid in connection with—

(a) any reference, appeal or application for special leave to appeal to the Supreme Court under paragraph 11, 13(a) or 33 of Schedule 6 to the Scotland Act 1998; or

(b) any reference, appeal or application for permission to appeal to the Supreme Court under section 288ZB or 288AA of the Criminal Procedure (Scotland) Act 1995.]

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(2) Subject to regulations made under section 21(2) of this Act criminal legal aid to which this section applies shall be available on an application made to the Board if–

(a) the Board is satisfied after consideration of the financial circumstances of the applicant that the expenses of the reference, appeal or application for special leave **[**[F173]or permission**]** to appeal cannot be met without undue hardship to the applicant or his dependants; and

(b) in the case of an application for special leave **[**[F173]or permission**]** to appeal, the Board is satisfied in all the circumstances of the case that it is in the interests of justice that the applicant should receive legal aid.

[F174]**[** (2A) Legal aid made available to a person under subsection (2) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.**]**

(3) The Board may require a person receiving criminal legal aid under this section to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive criminal legal aid.

[F175]**[** (3A) The Board shall establish a procedure under which any person whose application for criminal legal aid under subsection (2) has been refused may apply to the Board for a review of his application.

(3B) The Board shall establish a procedure under which any person receiving criminal legal aid under this section which is subject to conditions by virtue of subsection (2A) may apply to the Board for a review of any such condition.**]**

(4) Criminal legal aid shall not be available under this section in connection with a reference under paragraph 11 **[**[F176]or 33**]** of Schedule 6 to the Scotland Act 1998 **[**[F177]or under section 288ZB of the Criminal Procedure (Scotland) Act 1995**]** where criminal legal aid was made available under section 23 **[**[F178], 23A**]**, 24 or 25 of this Act in connection with the proceedings in which the reference is made.**]**

Textual Amendments

F170 S. 25AB inserted (6.5.1999) by S.I. 1999/1042, art. 3, **Sch. 1 Pt. I para. 11(4)**

F171 Words in s. 25AB sidenote and s. 25AB(1) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 85(3)**; S.I. 2009/1604, **art. 2(d)**

F172 S. 25AB(1) substituted (22.4.2013) by The Scotland Act 2012 (Consequential Provisions) Order 2013 (S.I. 2013/728), arts. 1, **2(3)**

F173 Words in s. 25AB(2) inserted (22.4.2013) by The Scotland Act 2012 (Consequential Provisions) Order 2013 (S.I. 2013/728), arts. 1, **2(4)**

F174 S. 25AB(2A) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(11)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F175 S. 25AB(3A)(3B) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(12)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F176 Words in s. 25AB(4) inserted (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 73(1)(b)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(c)**

F177 Words in s. 25AB(4) inserted (22.4.2013) by The Scotland Act 2012 (Consequential Provisions) Order 2013 (S.I. 2013/728), arts. 1, **2(5)**

F178 Words in s. 25AB(4) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 64(6)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F179 PART IVA

CRIMINAL LEGAL ASSISTANCE]

Textual Amendments

F179 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s.49**; S.I. 1997/2323, **art. 6 Sch.3**

F180Registration

Textual Amendments

F180 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s.49**; S.I. 1997/2323, **art. 6 Sch.3**

F181**25A Criminal Legal Assistance Register.**

(1) The Board shall, in accordance with the provisions of this section, establish and maintain a Criminal Legal Assistance Register ("the Register") of—

(a) solicitors who are eligible to provide criminal legal assistance; and

(b) subject to subsection (4) below, the firms with which the solicitors mentioned in paragraph (a) above are connected.

(2) A sole solicitor who wishes to provide criminal legal assistance shall require to be registered both as a solicitor and as a firm.

(3) Only those solicitors whose names appear on the Register may provide criminal legal assistance; and, subject to subsection (4) below, a solicitor may provide criminal legal assistance only when working in the course of a connection with a registered firm.

[F182(3A) A solicitor employed by the Board under sections 26 and 27 of this Act to provide criminal legal assistance shall require to be registered, and the entry relating to his name on the Register shall include a note that he is so employed; but the Board shall not be regarded as a firm for the purposes of this section, and shall not itself require to be registered.]

(4) A solicitor employed by the Board under section 28A of this Act shall require to be registered, and the entry relating to his name on the Register shall include a note that he is so employed; but the Board shall not be regarded as a firm for the purposes of this section, and shall not itself require to be registered.

(5) An application for entry on the Register shall be made in such form as the Board may determine, and shall be accompanied by such documents as the Board may specify, which shall include, in the case of a solicitor, a copy of his practising certificate.

(6) Before making any decisions as to the matters mentioned in subsection (5) above the Board shall—

(a) send to the Law Society and to such other persons and bodies as it considers appropriate a draft of its proposals in that regard, inviting their comments on those proposals within such period, being not less than 8 weeks from the date on which the draft is sent, as it may specify; and

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(b) consider any such comments timeously received by it,

but, where it amends those proposals in the light of any such comments, it shall not be required to re-intimate the amended proposals to any of those who were invited to comment.

(7) Subject to subsection (15) below, where a solicitor is connected with a firm the Board shall not consider his application unless the firm—

(a) is already registered; or

(b) has also applied for registration.

(8) On receipt of an application the Board shall make such enquiries as it thinks appropriate for the purpose of determining whether the applicant complies with the relevant provisions of the code; and it may for that purpose use the powers conferred on it by section 35A of this Act.

(9) Subject to subsection (10) below, where the Board is satisfied that an applicant complies with the code and, in the case of a solicitor, is not otherwise disqualified from providing criminal legal assistance, it shall make the appropriate entry on the Register.

(10) Subject to subsection (15) below, where a solicitor is connected with a firm, the Board shall not enter his name on the Register unless the firm's name is already entered on the Register.

(11) Where a solicitor is connected with a firm or firms, the name or names of which appear on the Register, the entry relating to that solicitor shall include the name of that firm or those firms.

(12) Where the Board decides to refuse an application it shall forthwith intimate that decision to the applicant, and shall as soon as practicable thereafter send him or them, by recorded delivery, a written note of its reasons.

(13) An applicant aggrieved by a decision of the Board to refuse registration may, within 21 days of the receipt of the notification of the Board's reasons under subsection (12) above, appeal to the Court of Session against that decision.

(14) An appeal under subsection (13) above 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.

(15) Where a solicitor who is seeking registration, or is registered, is connected with more than one firm the requirements of subsections (7) and (10) above shall be satisfied if one of those firms has applied for registration or, as the case may be, is registered.

Textual Amendments

F181 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s. 49**; S.I. 1997/2323, **art. 6 Sch. 3**

F182 S. 25A(3A) inserted (6.7.2001) by 2001 asp 7, **ss. 9(4)**, 15(3)

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F183] *Code of practice*

Textual Amendments

F183 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s.49**; S.I. 1997/2323, **art. 6 Sch.3**

[F184] 25B Code of practice in relation to criminal legal assistance.

(1) The Board shall prepare a draft code of practice in relation to the carrying out by solicitors of their functions with regard to the provision of criminal legal assistance and, without prejudice to the generality of the foregoing, the code may include provision as to—

(a) the conditions to be complied with in order to qualify for registration, including—

(i) the attendance by the solicitor at a sufficient number of specified courses relevant to the provision of criminal legal assistance, including courses in criminal law, evidence and pleading and professional ethics;

(ii) the keeping of records in a particular format;

(b) the standards of conduct expected of a solicitor providing or proposing to provide criminal legal assistance;

(c) the manner in which a solicitor should conduct a case and represent his client, including—

(i) the passage of timeous and accurate information to the client in relation to his case;

(ii) the frequency of meetings with the client;

(iii) the giving of advice to the client as to the consequences of any decision made by the client in relation to his defence;

(iv) the taking of such precognitions as may be necessary;

(v) the conduct of relations with the prosecution;

(d) the manner in which applications for criminal legal assistance are to be presented;

(e) the monitoring of a solicitor's performance with a view to a decision by the Board as to whether he should continue to be registered, including—

(i) periodic review of his handling of particular cases by other solicitors or by the Board;

(ii) the extent to which he attends courses relevant to the provision of criminal legal assistance, including courses in criminal law, evidence and pleading and professional ethics;

(f) the manner in which records are kept, including—

(i) maintaining books of account, and presentation of accounts to the Board, in a specified format;

(ii) office procedures;

(iii) time recording systems;

(iv) instructions given to the staff,

and any other matter relating to the organisation of or accounting for criminal legal assistance which appears to the Board to be relevant.

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(2) The code may make different provision in relation to firms and solicitors including **[**[F185]in relation to solicitors employed by the Board under sections 26 and 27 of this Act to provide criminal legal assistance, different provision to reflect the fact that they are so employed and including**]**, in relation to solicitors employed by the Board by virtue of section 28A of this Act, different provision to reflect the fact that they are so employed.

(3) The Board shall—

(a) send a copy of the draft code prepared by it under subsection (1) above to the Law Society and to such other persons and bodies as it considers appropriate, inviting their comments on the draft within such period, being not less than 8 weeks from the date on which the draft is sent, as it may specify; and

(b) consider any such comments timeously received by it,

but, where it amends the draft code in the light of any such comments, it shall not be required to re-intimate the amended code to any of those who were invited to comment.

(4) After carrying out the consultation mentioned in subsection (3) above the Board shall submit the draft code to the Secretary of State for his approval.

(5) The Secretary of State may approve the draft code, with or without modifications.

(6) When the Secretary of State has approved the draft code under subsection (5) above he shall—

(a) return the draft to the Board; and

(b) specify the date upon which it is to come into force and how the Board is to publish it.

(7) The Board—

(a) shall make and publish the code by the date and in the manner specified by the Secretary of State under subsection (6) above; and

(b) may make a copy of the code available to any person requesting one, on payment of such sum, if any, towards the cost of preparation, publication and, where relevant, postage, as it considers appropriate.

(8) The Board shall keep under review the code prepared under this section and may from time to time revise it, and the provisions of this section shall apply in relation to any revision of the code as they apply in relation to the version originally prepared.

Textual Amendments

F184 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s. 49**; S.I. 1997/2323, **art. 6 Sch. 3**

F185 Words in s. 25B(2) inserted (6.7.2001) by 2001 asp 7, **ss. 9(5)**, 15(3)

[F186]25C Supervision of registered solicitors and firms.

(1) Solicitors and firms whose names appear on the Register ("registered solicitors" and "registered firms") shall comply with the requirements of the code.

(2) The Board shall monitor the carrying out by registered solicitors and firms of their duty under subsection (1) above.

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(3) For the purpose of carrying out its duty under subsection (2) above the Board may use the powers conferred on it by sections 35A and 35B of this Act.

Textual Amendments

F186 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s.49**; S.I. 1997/2323, **art. 6 Sch.3**

[F187]*Removal of name from Register*

Textual Amendments

F187 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s.49**; S.I. 1997/2323, **art. 6 Sch.3**

[F188]25D Removal of name from Register following failure to comply with code.

(1) Where it appears to the Board (whether or not following a complaint made to it) that a registered firm or solicitor may not be **[**[F189], or may not have been,**]** complying with the code, it shall investigate the matter in such manner as it thinks fit, and shall give the firm or solicitor concerned an opportunity to make representations.

(2) For the purpose of carrying out its duty under subsection (1) above the Board may use the powers conferred on it by sections 35A and 35B of this Act.

(3) Following an investigation under subsection (1) above, the Board may give the firm or solicitor concerned an opportunity, within such time as it may specify, to remedy any defect in their or his compliance with the code.

(4) Where, after carrying out the procedures mentioned in subsection (1) above and, where a time limit has been set under subsection (3) above, after the expiry of that time limit, the Board is satisfied that—

(a) the firm are not complying with the code, it shall remove the names of the firm and, subject to subsection (5) below, of any registered solicitors connected with the firm from the Register;

(b) the solicitor is not complying with the code, it shall remove his name from the Register.

[[F190](4A) Where, after carrying out the procedures mentioned in subsection (1) above and, where a time limit has been set under subsection (3) above, after the expiry of that time limit, the Board is satisfied that, regardless of whether or not there is current compliance with the code—

(a) the firm have not complied with the code in a material regard, it may remove the names of the firm and, subject to subsection (5) below, of any registered solicitors connected with the firm from the Register;

(b) the solicitor has not complied with the code in a material regard, it may remove his name from the Register.**]**

(5) Where a registered solicitor mentioned in subsection (4)(a) **[**[F191]or (4A)(a)**]** above is also connected with another registered firm, the Board shall not remove his name from

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the Register, but shall alter the entry against his name in the Register so as to remove therefrom the name of the firm whose name has been removed from the Register.

(6) Where the Board removes the name of a solicitor from the Register the solicitor shall—

(a) **[**[F192]within such period of time as the Board shall direct (in the case concerned) and**]** in accordance with arrangements approved by the Board, [F193]. . . and without waiting for the resolution of any appeal, transfer—

(i) any work currently being undertaken by him for any client by way of criminal legal assistance; and

(ii) notwithstanding any lien to which he might otherwise be entitled, any documents connected with any such work,

to a registered solicitor; and

(b) in accordance with section 25A(3) of this Act, stop providing criminal legal assistance.

(7) Where the Board removes the name of a firm or solicitor from the Register it shall forthwith intimate that removal to the firm or solicitor concerned, and shall as soon as practicable thereafter send them or him, by recorded delivery, a written note of its reasons for its decision.

(8) A firm or solicitor aggrieved by a decision of the Board under subsection (4) **[**[F194]or (4A)**]** above may, within 21 days of the receipt of the notification under subsection (7) above, appeal to the Court of Session against that decision.

(9) An appeal under subsection (8) above 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; but the making of such an appeal shall not have the effect of restoring the firm's or solicitor's name to the Register.

Textual Amendments

F188 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s.49**; S.I. 1997/2323, **art. 6 Sch.3**

F189 Words in s. 25D(1) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp. 5), **ss. 66(2)**, 82(2) (with s. 77); S.S.I. 2008/311, **art. 2(d)**

F190 S. 25D(4A) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp. 5), **ss. 66(3)**, 82(2) (with s. 77); S.S.I. 2008/311, **art. 2(d)**

F191 Words in s. 25D(5) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp. 5), **ss. 66(4)**, 82(2) (with s. 77); S.S.I. 2008/311, **art. 2(d)**

F192 Words in s. 25D(6)(a) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82(2), **Sch. 5 para. 2(4)(a)** (with s. 77); S.S.I. 2008/311, **art. 2(i)**

F193 Word in s. 25D(6)(a) repealed (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82(2), **Sch. 5 para. 2(4)(b)** (with s. 77); S.S.I. 2008/311, **art. 2(i)**

F194 Words in s. 25D(8) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp. 5), **ss. 66(5)**, 82(2) (with s. 77); S.S.I. 2008/311, **art. 2(d)**

[F195]25E Further provision as to removal of name from Register.

(1) Where the Board is satisfied, whether on being so informed by the solicitor concerned or not, that a registered solicitor—

(a) has become connected with an unregistered firm; and

(b) is no longer connected with a registered firm,

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it shall remove his name from the Register.

(2) Subsections (6) to (9) of section 25D of this Act apply in relation to a solicitor whose name is removed from the Register under subsection (1) above as they apply in relation to a solicitor whose name is removed from the Register under subsection (4) of that section.

Textual Amendments

F195 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s.49**; S.I. 1997/2323, **art. 6 Sch.3**

[F196]25F Publication of Register.

(1) The Board shall make available for inspection, without charge—

(a) the Register;

(b) any decision refusing an application for entry on the Register; and

(c) any decision removing the name of a firm or solicitor from the Register,

and the publication of a decision such as is mentioned in paragraphs (b) or (c) above shall be accompanied by a statement of the reasons for the decision.

(2) The Board shall, as soon as is practicable after 1st December in each year, send a copy of the current Register to the Secretary of the Law Society.

(3) When any change is made to the Register in the course of a year, the Board shall, as soon as is practicable, send written notice of that change to the Secretary of the Law Society.

Textual Amendments

F196 Pt. IVA (ss. 25A-25F) inserted (1.10.1997 for specified purposes, 1.4.1998 for further specified purposes and otherwise 1.10.1998) by 1997 c. 48, **s.49**; S.I. 1997/2323, **art. 6 Sch.3**

PART V

EMPLOYMENT OF SOLICITORS BY THE BOARD

26 Employment to which Part V applies.

(1) This Part of this Act applies to the employment of solicitors by the Board for any of the following purposes—

(a) giving advice and assistance to which Part II of this Act applies **[**[F197]either generally or in cases of any such description as may be prescribed by regulations made under this section**]**;

(b) acting for persons receiving legal aid, either generally or in cases of any such description as may be prescribed by regulations made under this section;

(c) providing any such services as are mentioned in subsection (2) below.

(2) The services referred to in subsection (1)(c) above are services provided by a solicitor for or in connection with any [F198]. . . organisation and consisting of—

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(a) assisting the organisation in **[**[F199]any function it has**]** of giving advice and guidance to applicants;

(b) promoting contacts between the organisation and solicitors practising in the locality for which the organisation is established, with a view to enabling applicants to obtain the professional services of those solicitors in cases where those services are required;

(c) giving oral advice to applicants, instead of referring them to other solicitors, in cases which can be readily disposed of by such advice.

(3) In subsection (2) above—

(a) **‘‘**[F200]. . . organisation” means an organisation concerned **[**[F201](whether wholly or partly)**]** in the giving of advice or guidance (whether generally or with respect to any particular classes of matters) to persons residing in the locality for which the organisation is established; and

(b) “applicants”, in relation to such an organisation, means persons who apply to the organisation for advice or guidance or are referred to it with a view to their receiving advice or guidance from it.

(4) In this section “organisation” includes a branch or section of an organisation; and, in relation to such a branch or section, any reference to the locality for which the organisation is established shall be construed as a reference to the locality for which the branch or section is established.

Textual Amendments

F197 Words in s. 26(1)(a) added (6.7.2001) by 2001 asp 7, **ss. 9(6)**, 15(3)

F198 Word in s. 26(2) repealed (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 74(2)(a)(i)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(c)**

F199 Words in s. 26(2)(a) substituted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 74(2)(a)(ii)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(c)**

F200 Word in s. 26(3)(a) repealed (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 74(2)(b)(i)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(c)**

F201 Words in s. 26(3)(a) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 74(2)(b)(ii)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(c)**

27 Arrangements for employment to which Part V applies.

(1) The Secretary of State may, by regulations made under this section, make provision as to the employment of solicitors under this Part of this Act and as to the circumstances in which solicitors may be so employed.

[[F202](1A) The provisions of paragraph 8 of Schedule 1 to this Act shall apply to solicitors employed by the Board by virtue of subsection (1) as they apply to employees appointed by the Board under that paragraph.**]**

(2) [F203]. . . . . .

(3) [F203]. . . . . .

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Textual Amendments

F202 S. 27(1A) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 74(3)(a)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(c)**

F203 S. 27(2)(3) repealed (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 74(3)(b)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(c)**

28 General provisions relating to employment to which Part V applies.

(1) In relation to any solicitor who is employed by the Board in employment to which this Part of this Act applies, and in relation to any work performed, or other thing done or omitted to be done, by any such solicitor in the course of that employment—

(a) the enactments relating to solicitors, and

(b) any rule of law which relates to solicitors, or is applicable to things done, or omitted to be done, by solicitors in their capacity as solicitors,

shall have effect as if the Board were a firm of solicitors.

(2) Nothing in subsection (1) above shall prohibit 2 or more solicitors employed by the Board in employment to which this Part of this Act applies from acting (including acting in any proceedings) for different parties having opposing or otherwise different interests in relation to the same matter.

[F204 28A Power of Board to employ solicitors to provide criminal assistance.

(1) The Secretary of State F205. . . may by regulations made under this section empower the Board to employ solicitors for the purpose of providing criminal legal assistance.

(2) F206. . . . . .

(3) F206. . . . . .

(4) The provisions of paragraph 8 of Schedule 1 to this Act shall apply to solicitors employed by the Board by virtue of this section as they apply to employees appointed by the Board under that paragraph.

(5) Regulations made by the Secretary of State under this section may make such provision as appears to him to be appropriate for the purposes of this section and, without prejudice to the generality of the foregoing, may—

(a) specify in which area or areas employed solicitors are to be used; and

(b) make different provision in relation to different areas.

(6) Regulations under this section may provide that where the Board has by virtue of this section employed solicitors to provide criminal legal assistance in any area, the Board may, subject to subsection (7) below, require as many of the persons seeking criminal legal assistance in that area as it considers appropriate to instruct the solicitors employed by it.

(7) In requiring persons seeking criminal legal assistance to instruct solicitors employed by the Board, the Board shall, where there is or may be a conflict of interest, make provision for any particular person to be re-allocated to another solicitor or, where registration is in force, to a registered solicitor in the area.

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(8) Regulations made under this section may make such transitional and consequential provisions and savings as appear to the Secretary of State to be necessary or expedient.

(9) Sections 26, 27 and 28 of this Act shall not apply in relation to solicitors employed by the Board by virtue of this section.

[F207(9A) [F208 . . . . . .]

(10) F209 . . . . . .

(11) F209 . . . . . .

(12) F209 . . . . . .

(13) F209 . . . . . .

(14) F209 . . . . . .]

[F210(15) F209 . . . . . .]

Textual Amendments

F204 S. 28A inserted (1.10.1997) by 1997 c. 48, **s. 50**; S.I. 1997/2323, art. 6, **Sch. 3**

F205 Words in s. 28A(1) repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 112(1)(a)**, 206(1); S.S.I. 2010/413, **art. 2(1)**, Sch.

F206 S. 28A(2)(3) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 73(a)**, 89(2); S.S.I. 2003/288, **art. 2**, Sch.

F207 S. 28A(9A) inserted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 73(b)**, 89(2); S.S.I. 2003/288, **art. 2**, Sch.

F208 S. 28A(9A) repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), **ss. 112(1)(b)**, 206(1); S.S.I. 2010/413, **art. 2(1)**, Sch.

F209 S. 28A(10)-(15) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 73(a)**, 89(2); S.S.I. 2003/288, **art. 2**, Sch.

F210 S. 28A(15) inserted (6.7.2001) by 2001 asp 7, **ss. 9(7)(b)**, 15(3)

F211[F211PART 5A

CHILDREN'S LEGAL AID

Textual Amendments

F211 Pts. 5A, 5B inserted (31.1.2012 for s. 28B(2), s. 28M(7) for specified purposes and s. 28N) by Children's Hearings (Scotland) Act 2011 (asp 1), **ss. 191**, 206(2) (with s. 186); S.S.I. 2012/1, art. 2(1), sch.

28B Children's legal aid

(1) This Part applies to children's legal aid.

(2) In this Act, "children's legal aid" means representation by a solicitor and, where appropriate, by counsel in proceedings mentioned in [F212subsections (3) and (3A)], on

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

the terms provided for in this Act, and includes all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to those proceedings.

(3) The proceedings are—

(a) proceedings before the sheriff in relation to an application under section 48 of the 2011 Act (application for variation or termination of child protection order),

(b) proceedings before a children's hearing arranged by virtue of section 45 or 46 of the 2011 Act (children's hearing following making of child protection order),

[[F213](c) proceedings before a children's hearing or a pre-hearing panel if the children's hearing or the panel considers that it might be necessary to make a compulsory supervision order in relation to the child to whom the proceedings relate that includes either (or both)—

(i) a secure accommodation authorisation,

(ii) a movement restriction condition,**]**

(d) proceedings before a children's hearing to which section 69(3) of the 2011 Act applies (children's hearing following arrest of child and detention in place of safety),

(e) proceedings under Part 10 or 15 of the 2011 Act.

[The proceedings are, where regulations under section 28LB are made, proceedings [F214](3A) before the sheriff and appeals from the sheriff under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019.**]**

(4) In this Part—

"compulsory supervision order" has the meaning given by section 83 of **[**[F215]the 2011 Act**]**,

[[F216]"movement restriction condition" has the meaning given by section 84 of that Act,**]**

"pre-hearing panel" has the meaning given by section 79 of that Act,

"secure accommodation authorisation" has the meaning given by section 85 of that Act.

Textual Amendments

F212 Words in s. 28B(2) substituted (31.3.2020) by Age of Criminal Responsibility (Scotland) Act 2019 (asp 7), **ss. 73(2)(a)**, 84(2); S.S.I. 2020/74, reg. 2, sch.

F213 S. 28B(3)(c) substituted (30.4.2024) by The Legal Aid (Miscellaneous Amendment) (Scotland) Regulations 2024 (S.S.I. 2024/119), regs. 1, **3(2)(a)**

F214 S. 28B(3A) inserted (31.3.2020) by Age of Criminal Responsibility (Scotland) Act 2019 (asp 7), **ss. 73(2)(b)**, 84(2); S.S.I. 2020/74, reg. 2, sch.

F215 Words in s. 28B(4) substituted (30.4.2024) by The Legal Aid (Miscellaneous Amendment) (Scotland) Regulations 2024 (S.S.I. 2024/119), regs. 1, **3(2)(b)(i)**

F216 Words in s. 28B(4) inserted (30.4.2024) by The Legal Aid (Miscellaneous Amendment) (Scotland) Regulations 2024 (S.S.I. 2024/119), regs. 1, **3(2)(b)(ii)**

28C Circumstances where children's legal aid automatically available

(1) Subsection (2) applies where—

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(a) an application is made under section 48 of the 2011 Act for variation or termination of a child protection order,

(b) a children's hearing is arranged in relation to a child by virtue of section 45 or 46 of the 2011 Act,

[[F217](c) a children's hearing or a pre-hearing panel considers that it might be necessary to make a compulsory supervision order in relation to a child that includes either (or both)—

(i) a secure accommodation authorisation,

(ii) a movement restriction condition,**]**

(d) a children's hearing to which section 69(3) of the 2011 Act applies is arranged in relation to a child,

[[F218](e) an application in relation to a child is made under section 34 (application for order authorising search in relation to child under 12), 42 (application for child interview order) or 61 (application for order authorising taking of prints and samples from child) of the 2019 Act, or

(f) an order is made in relation to a child under section 36 (search in relation to child under 12), 44 (child interview) or 63 (taking of prints and samples from child) of the 2019 Act**]**.

(2) If assistance by way of representation has not been made available to the child, children's legal aid is available to the child for the purposes of—

(a) proceedings before the sheriff in relation to the application mentioned in paragraph (a) of subsection (1),

(b) the children's hearing mentioned in paragraph (b) or, as the case may be, (c) or (d) of that subsection, [F219]...

(c) if that children's hearing is deferred, any subsequent children's hearing held under Part 11 of the 2011 Act,

[[F220](d) representations in respect of an application mentioned in subsection (1)(e), and

(e) proceedings before the sheriff under section 38 (appeal against decision under section 36), 46 (appeal against decision under section 44) or 67 (appeal against decision under section 63) of the 2019 Act in respect of permission to appeal a decision and, where such permission is given, proceedings before the Sheriff Appeal Court in respect of such an appeal**]**.

(3) The Scottish Ministers may by regulations—

(a) modify subsection (1),

(b) modify subsection (2) and section 28B(3) and (4) in consequence of modifications made under paragraph (a).

Textual Amendments

F217 S. 28C(1)(c) substituted (30.4.2024) by The Legal Aid (Miscellaneous Amendment) (Scotland) Regulations 2024 (S.S.I. 2024/119), regs. 1, **3(3)**

F218 S. 28C(1)(e)(f) inserted (8.11.2021) by The Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 (S.S.I. 2021/368), regs. 1(1), **2(2)(b)**

F219 Word in s. 28C(2)(b) omitted (8.11.2021) by virtue of The Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 (S.S.I. 2021/368), regs. 1(1), **2(2)(c)**

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F220 S. 28C(2)(d)(e) inserted (8.11.2021) by The Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 (S.S.I. 2021/368), regs. 1(1), **2(2)(d)**

28D Availability of children's legal aid: child

(1) Subsection (2) applies in relation to proceedings under Part 10 or 15 of the 2011 Act (other than an appeal to the **[**[F221]Sheriff Appeal Court**]** or the Court of Session).

(2) Children's legal aid is available to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that the conditions in subsection (3) are met.

(3) The conditions are—

(a) that it is in the best interests of the child that children's legal aid be made available,

(b) that it is reasonable in the particular circumstances of the case that the child should receive children's legal aid, and

(c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child.

(4) Subsection (5) applies in relation to an appeal to the **[**[F222]Sheriff Appeal Court**]** or the Court of Session under Part 15 of the 2011 Act.

(5) Children's legal aid is available to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that—

(a) the conditions in subsection (3) are met, and

(b) the child has substantial grounds for making or responding to the appeal.

Textual Amendments

F221 Words in s. 28D(1) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(2)(a)** (with art. 4(2))

F222 Words in s. 28D(4) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(2)(b)** (with art. 4(2))

28E Availability of children's legal aid: relevant person

(1) Subsection (2) applies in relation to—

(a) proceedings before the sheriff in relation to an application under section 48 of the 2011 Act (application for variation or termination of child protection order), and

(b) proceedings under Part 10 or 15 of the 2011 Act (other than an appeal to the **[**[F223]Sheriff Appeal Court**]** or the Court of Session).

(2) Children's legal aid is available to a relevant person in relation to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that the conditions in subsection (3) are met.

(3) The conditions are—

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(a) that it is reasonable in the particular circumstances of the case that the relevant person should receive children's legal aid, and

(b) that, after consideration of the disposable income and disposable capital of the relevant person, the expenses of the case cannot be met without undue hardship to the relevant person.

(4) Subsection (5) applies in relation to an appeal to the **[**[F224]Sheriff Appeal Court**]** or the Court of Session under Part 15 of the 2011 Act.

(5) Children's legal aid is available to a relevant person in relation to the child to whom the appeal relates if, on an application made to the Board, the Board is satisfied that—

(a) the conditions in subsection (3) are met, and

(b) the relevant person has substantial grounds for making or responding to the appeal.

(6) In this Part, "relevant person"—

(a) has the meaning given by section 200 of the 2011 Act, and

(b) includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act.

Textual Amendments

F223 Words in s. 28E(1)(b) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(3)(a)** (with art. 4(2))

F224 Words in s. 28E(4) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(3)(b)** (with art. 4(2))

28F Availability of children's legal aid: appeals relating to deemed relevant person

(1) Subsection (2) applies in relation to—

(a) an appeal under section 154 or 163(1)(a)(iii) or (2) of the 2011 Act arising from a determination of a children's hearing mentioned in section 142(1)(a) if by virtue of section 142(4)(b) an individual is no longer to be deemed to be a relevant person,

(b) an appeal to the sheriff under section 160(1)(a) of that Act against a determination of a pre-hearing panel or children's hearing that an individual is not to be deemed **[**[F225], or is no longer to be deemed,**]** a relevant person in relation to a child,

(c) an appeal to the sheriff under section 160(1)(b) of that Act against a direction under section 142(4)(a) that an individual is no longer to be deemed a relevant person in relation to a child,

(d) an appeal to the **[**[F226]Sheriff Appeal Court**]** or the Court of Session under section 164(1) of that Act against a decision of the sheriff in an appeal under section 160(1)—

(i) confirming a determination that an individual is not to be deemed **[**[F227], or is no longer to be deemed,**]** a relevant person in relation to a child, or

(ii) quashing a determination that an individual is to be deemed **[**[F228], or is to continue to be deemed,**]** a relevant person in relation to a child, and

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(e) an appeal to the Court of Session under section 164(2) of that Act against a determination of the **[**[F229]Sheriff Appeal Court**]** where the effect of the **[**[F230]Sheriff Appeal Court's**]** determination is that an individual is not to be deemed **[**[F231], or is no longer to be deemed,**]** a relevant person in relation to a child.

(2) Children's legal aid is available to the individual if, on an application made to the Board, the Board is satisfied—

(a) that it is reasonable in the particular circumstances of the case that the individual should receive children's legal aid,

(b) that, after consideration of the disposable income and disposable capital of the individual, the expenses of the case cannot be met without undue hardship to the individual, and

(c) that—

(i) in relation to an appeal mentioned in paragraph (a) of subsection (1), the individual has substantial grounds for making or, as the case may be, responding to the appeal,

(ii) in relation to an appeal mentioned in any other paragraph of that subsection, the individual has substantial grounds for making the appeal.

Textual Amendments

F225 Words in s. 28F(1)(b) inserted (26.1.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), **sch. 5 para. 3(2)**; S.S.I. 2014/353, art. 2(2)(3), sch.

F226 Words in s. 28F(1)(d) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(4)(a)** (with art. 4(2))

F227 Words in s. 28F(1)(d)(i) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 26(5)(a)**, 34(2); S.S.I. 2020/412, reg. 2(2)(d)

F228 Words in s. 28F(1)(d)(ii) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 26(5)(b)**, 34(2); S.S.I. 2020/412, reg. 2(2)(d)

F229 Words in s. 28F(1)(e) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(4)(b)(i)** (with art. 4(2))

F230 Words in s. 28F(1)(e) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(4)(b)(ii)** (with art. 4(2))

F231 Words in s. 28F(1)(e) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 26(5)(c)**, 34(2); S.S.I. 2020/412, reg. 2(2)(d)

28G Conditions

The Board may make the grant of children's legal aid subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.

28H Board to establish review procedures

(1) The Board must establish a procedure under which a person whose application for children's legal aid has been refused may apply to the Board for a review of the application.

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(2) The Board must establish a procedure under which any person receiving children's legal aid which is subject to conditions by virtue of section 28G may apply to the Board for a review of any such condition.

28J Board's power to require compliance with conditions

The Board may require a person receiving children's legal aid to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for the person to continue to receive children's legal aid.

28K Contributions to the Fund

(1) A person in receipt of children's legal aid (the "assisted person") may be required by the Board to contribute to the Fund in respect of any proceedings in connection with which the assisted person is granted children's legal aid.

(2) A contribution under subsection (1) is to be determined by the Board and may include—
   (a) if the assisted person's disposable income exceeds £3,355 a year, a contribution in respect of income which is not to be more than one-third of the excess (or such other proportion of the excess, or such amount, as may be prescribed by regulations made under this section), and
   (b) if the assisted person's disposable capital exceeds £7,504, a contribution in respect of capital which is not to be more than the excess (or such proportion of the excess or such lesser amount as may be prescribed by regulations made under this section).

(3) Regulations under this section may prescribe different proportions or amounts for different amounts of disposable income and for different cases or classes of case.

28L [F232Power of Scottish Ministers to extend or restrict types of proceedings before children's hearings in which children's legal aid to be available]

(1) The Scottish Ministers may by regulations modify this Part so as to—
   (a) extend or restrict the types of proceedings before a children's hearing in connection with which children's legal aid is to be available, and
   (b) specify the persons to whom children's legal aid is to be available.

(2) If regulations are made making children's legal aid available to a child, the regulations must include provision—
   (a) requiring the Board to be satisfied that—
      (i) one of the conditions in subsection (3) is met, and
      (ii) the conditions in section 28D(3) are met before children's legal aid is made available, and
   (b) requiring the Board, in determining for the purposes of subsection (3)(b)(ii) whether the child would be able to participate effectively in the proceedings, to take into account in particular the matters mentioned in subsection (4).

(3) The conditions are—
   (a) that it might be necessary for the children's hearing to decide whether a compulsory supervision order or, as the case may be, an interim compulsory

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supervision order should include or (where a compulsory supervision order is being reviewed) continue to include a secure accommodation authorisation, and

(b) that—

(i) the condition in paragraph (a) is not met, and

(ii) for the purpose of enabling the child to participate effectively in the proceedings before the children's hearing, it is necessary that the child be represented by a solicitor or counsel.

(4) The matters are—

(a) the nature and complexity of the case (including any points of law),

(b) the ability of the appropriate person, with the assistance of any accompanying person, to consider and challenge any document or information before the children's hearing,

(c) the ability of the appropriate person, with the assistance of any accompanying person, to give the appropriate person's views at the children's hearing in an effective manner.

(5) If regulations are made making children's legal aid available to a person other than the child to whom the proceedings relate, the regulations must include provision—

(a) requiring the Board to be satisfied that the conditions in subsection (6) are met before children's legal aid is made available, and

(b) requiring the Board, in determining for the purposes of the condition in subsection (6)(a) whether the person would be able to participate effectively in the proceedings, to take into account in particular the matters mentioned in subsection (4).

(6) The conditions are—

(a) that, for the purpose of enabling the person to participate effectively in the proceedings before the children's hearing, it is necessary that the person be represented by a solicitor or counsel,

(b) that it is reasonable in the particular circumstances of the case that the person should receive children's legal aid, and

(c) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person.

(7) In subsection (4)—

"accompanying person" means a person entitled to accompany the child or other person to the children's hearing by virtue of rules under section 177 of the 2011 Act,

"appropriate person" means—

(a) for the purposes of subsection (2)(b), the child,

(b) for the purposes of subsection (5)(b), the other person.

(8) The Scottish Ministers may by regulations modify—

(a) the matters for the time being set out in subsection (4),

(b) the definition of "accompanying person" for the time being set out in subsection (7).

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Textual Amendments

F232 S. 28L heading substituted (28.11.2016) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 92(2)**, 102(3); S.S.I. 2016/254, art. 3(2)(a)

[F233 28LA Power of Scottish Ministers to provide for children's legal aid to be available to other persons in relation to court proceedings

(1) The Scottish Ministers may by regulations modify this Part so as to—

(a) provide that children's legal aid is to be available, in relation to a type of court proceedings under the 2011 Act, to a person to whom it is not available by virtue of section 28D, 28E or 28F,

(b) vary any availability provided by virtue of paragraph (a), or

(c) remove any availability provided by virtue of paragraph (a).

(2) If regulations are made making children's legal aid available to a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (3) are met before children's legal aid is made available.

(3) The conditions are—

(a) that it is in the best interests of the child that children's legal aid be made available,

(b) that it is reasonable in the particular circumstances of the case that the child should receive children's legal aid,

(c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child, and

(d) if the proceedings are an appeal to the **[**F234 Sheriff Appeal Court**]** or the Court of Session under Part 15 of the 2011 Act, that the child has substantial grounds for making or responding to the appeal.

(4) If regulations are made making children's legal aid available to a person other than a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (5) are met before children's legal aid is made available.

(5) The conditions are—

(a) that it is reasonable in the particular circumstances of the case that the person should receive children's legal aid,

(b) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person, and

(c) if the proceedings are an appeal to the **[**F235 Sheriff Appeal Court**]** or the Court of Session under Part 15 of the 2011 Act, that the person has substantial grounds for making or responding to the appeal.**]**

Textual Amendments

F233 S. 28LA inserted (28.11.2016) by Children and Young People (Scotland) Act 2014 (asp 8), **ss. 92(3)**, 102(3); S.S.I. 2016/254, art. 3(2)(a)

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F234 Words in s. 28LA(3)(d) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(5)(a)** (with art. 4(2))

F235 Words in s. 28LA(5)(c) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(5)(b)** (with art. 4(2))

[F236 28LB Power of Scottish Ministers to provide for children's legal aid to be available in relation to proceedings under the Age of Criminal Responsibility (Scotland) Act 2019

(1) The Scottish Ministers may by regulations modify this Part so as to—

(a) provide for children's legal aid to be available to a child in connection with proceedings before the sheriff and appeals from the sheriff under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, and

(b) specify the other persons (if any) to whom children's legal aid is to be available in connection with such proceedings and appeals.

(2) Regulations under subsection (1) may in particular made provision about—

(a) the proceedings in relation to which and the circumstances in which children's legal aid is to be available automatically,

(b) the proceedings in relation to which and the circumstances in which children's legal aid is to be available on application to the Board.

(3) Where regulations under subsection (1) include provision as is mentioned in subsection (2)(b), the regulations—

(a) must make provision for the conditions as to which the Board is to be satisfied before children's legal aid is to be made available,

(b) may make provision for different conditions to be satisfied in relation to different persons.**]**

Textual Amendments

F236 S. 28LB inserted (31.3.2020) by Age of Criminal Responsibility (Scotland) Act 2019 (asp 7), **ss. 73(3)**, 84(2); S.S.I. 2020/74, reg. 2, sch.

F211 PART 5B

CHILDREN'S LEGAL ASSISTANCE

28M Register of solicitors and firms eligible to provide children's legal assistance

(1) The Board must establish and maintain a register of—

(a) solicitors who are eligible to provide children's legal assistance, and

(b) the firms with which such solicitors are connected.

(2) A sole solicitor who wishes to provide children's legal assistance must be included in the register maintained under this section both as a solicitor and as a firm.

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(3) Only those solicitors who are included in the register maintained under this section may provide children's legal assistance.

(4) Subject to subsection (5), a solicitor may provide children's legal assistance only when working in the course of a connection with a firm included in the register maintained under this section.

(5) Where the Board employs a solicitor under sections 26 and 27 to provide children's legal assistance—
   (a) the Board may only employ a solicitor who is included in the register maintained under this section,
   (b) the entry in the register relating to the solicitor's name must include a note that the solicitor is so employed,
   (c) the Board is not to be regarded as a firm for the purposes of this section and is not required to be included in the register.

(6) The Scottish Ministers may by regulations make provision about qualifications to be held by persons who may be included in the register maintained under this section.

(7) Subsections (5) to (15) of section 25A apply in relation to the register maintained under this section as they apply in relation to the Register subject to the modifications mentioned in subsection (8).

(8) Those modifications are—
   (a) subsections (8) and (9) are to be read as if references to the code were references to the code of practice under section 28N for the time being in force, and
   (b) subsection (9) is to be read as if the reference to criminal legal assistance were a reference to children's legal assistance.

28N Code of practice

(1) The Board must prepare a draft code of practice in relation to the carrying out by solicitors of their functions with regard to the provision of children's legal assistance.

(2) Different provision may be made for different cases or classes of case.

(3) Subsections (3) to (8) of section 25B apply in relation to a draft code prepared under subsection (1) above as they apply in relation to a draft code prepared under subsection (1) of that section.

28P Duty to comply with code of practice

(1) Solicitors and firms included in the register maintained under section 28M(1) must comply with the requirements of the code of practice under section 28N for the time being in force.

(2) The Board must monitor the carrying out by those solicitors and firms of their duty under subsection (1).

(3) For the purpose of carrying out its duty under subsection (2) the Board may use the powers conferred on it by sections 35A and 35B.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

28Q Non-compliance with code of practice

(1) Section 25D applies in relation to a solicitor or firm included in the register maintained under section 28M(1) and the code of practice under section 28N for the time being in force as it applies in relation to a registered solicitor or registered firm and the code subject to the modifications mentioned in subsection (2).

(2) Those modifications are—

(a) references to the Register are to be read as if they were references to the register maintained under section 28M(1),

(b) subsection (6) is to be read as if the references to criminal legal assistance were references to children's legal assistance.

28R Further provision as to removal of name from register

(1) Subsection (2) applies where the Board is satisfied (whether on being informed by the solicitor concerned or otherwise) that a solicitor who is included in the register maintained under section 28M(1)—

(a) has become connected with a firm whose name is not included in that register, and

(b) is no longer connected with a firm whose name is included in that register.

(2) The Board must remove the solicitor's name from the register.

(3) Subsections (6) to (9) of section 25D (as applied by section 28Q) apply in relation to a solicitor whose name is removed from the register under subsection (2) above as they apply in relation to a solicitor whose name is removed from the register under subsection (4) of that section (as applied by section 28Q).

28S Publication of register etc.

Section 25F applies in relation to the register maintained under section 28M(1) as it applies in relation to the Register.**]**

PART VI

MISCELLANEOUS

Proceedings in relation to children

[F237] 29 Legal aid in respect of certain proceedings relating to children.

. . . . . .

Textual Amendments

F237 S. 29 repealed (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 6** (with s. 186) (with savings and transitional provisions in S.S.I. 2013/150, art. 2(1)(2)(c)); S.S.I. 2013/195, arts. 2, 3

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Contempt of court

30 Legal aid in contempt proceedings.

(1) Where a person is liable to be dealt with for contempt of court during the course of or in connection with any proceedings, legal aid shall be available to him on an application being made to the court if it is satisfied—

(a) after consideration of the person's financial circumstances that the expenses of the proceedings for contempt of court cannot be met without undue hardship to him or his dependants; and

(b) that in all the circumstances of the case it is in the interests of justice that legal aid should be made available to him.

(2) In making legal aid available under subsection (1) above, the court may order in any case that the legal aid shall consist of representation by counsel only or, in a court where solicitors have a right of audience, by a solicitor only; and, notwithstanding section 31 of this Act, the court may assign for the purpose any counsel or solicitor who is within the precincts of the court at the time when the order is made.

(3) **[**[F238]Subsections (2)(a) and (c), (2A) to (4) and (6) of**]** section 25 of this Act shall apply in relation to legal aid in connection with an appeal against a decision of a court in proceedings for contempt of court as **[**[F239]they apply**]** in relation to legal aid in connection with an appeal against conviction, sentence **[**[F240], other disposal**]** or acquittal in criminal proceedings, and in such application—

[[F241](za) in subsection (2a) of that section, the reference to the High Court shall include a reference to the Court of Session;**]**

(a) for the reference in subsection (4) of that section to criminal legal aid having been made available under section 23 **[**[F242], 23A**]** or 24 of this Act there shall be substituted a reference to legal aid having been made available under subsection (1) above; and

(b) in subsection **[**[F243](6)**]** of that section the reference to the *nobile officium* of the High Court of Justiciary shall include a reference to the *nobile officium* of the Court of Session.

(4) Subject to subsection (2) above legal aid made available under this section shall consist of representation by a solicitor and **[**[F244], where appropriate,**]** by counsel and shall include all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to proceedings for contempt of court or, in the case of legal aid made available under subsection (3) above, any appeal in connection with such proceedings.

Textual Amendments

F238 Words in s. 30(3) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(9)(a)**

F239 Words in s. 30(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(9)(b)**

F240 Words in s. 30(3) expressed to be substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(9)(c)**

F241 S. 30(3)(za) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(9)(d)**

F242 Word in s. 30(3)(a) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 64(7)**, 82(2) (with s. 77); S.S.I. 2010/376, **art. 2**

F243 Word in s. 30(3)(b) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(9)(e)**

F244 Words in s. 30(4) substituted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), Sch. 8 para. 36(12); S.I. 1991/2151, **art. 3**,Sch.

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Commencement Information

I1 S. 30 wholly in force at 01.07.1992 see s. 46(2) and S.I. 1992/1226.

Solicitors and counsel

31 Solicitors and counsel.

(1) **[**[F245]Subject to subsection (1A) below,**]** a person to whom legal aid or advice and assistance is made available may select—

(a) the solicitor to advise or act for him; and

(b) if the case requires counsel, **[**[F246]or a solicitor holding rights of audience by virtue of section 25A (rights of audience) of the Solicitor (Scotland) Act 1980, his counsel or such a solicitor**]**,

and he shall be entitled to make the selection himself.

[[F247](1A) Subsection (1) above is subject to—

(a) section 25A(3) of this Act;

[[F248](aa) section 28M(3),**]**

(b) section 30(2) of this Act;

(c) regulations made under section 28A(6) of this Act;

(d) regulations made under section 33A(4) of this Act; [F249] . . .

[[F250](da) regulations made under section 33B(4),**]**

(e) regulations made under subsection (9) below **[**[F251]; and

(f) **[**[F252]sections 92(2), (2B)(b), (2D) and (2E) **[**[F253], 150A(4)(b), (6) and (7)**]** and**]** 288D of the Criminal Procedure (Scotland) Act 1995 (c.46)**]**

[[F254]and does not apply where the person is being provided with criminal legal assistance **[**[F255]or children's legal assistance**]** by a solicitor employed by the Board under section 26 and 27 of this Act**]]**

(2) Nothing in subsection (1) above shall prejudice any right of a solicitor or advocate to refuse or give up a case or to entrust it to another solicitor or advocate.

(3) The **[**[F256]Board**]** may decide to exclude any advocate or solicitor either from being selected under subsection (1) above, or from giving advice and assistance to or from acting for a person to whom legal aid is made available on the ground that there is good reason for excluding him arising out of—

(a) his conduct when acting or selected to act for persons to whom legal aid or advice and assistance is made available;

(b) his professional conduct generally;

(c) in the case of a member of a firm of solicitors or a director of an incorporated practice, such conduct on the part of any person who is for the time being a member of the firm or a director of the practice.

[[F257](d) in the case of a solicitor investor in a licensed legal services provider, such conduct on the part of any person who is for the time being a solicitor investor in it.**]**

(4) The **[**[F258]Board**]** may decide to exclude a solicitor or advocate under subsection (3) above in respect of any specified period or without limit of time.

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(5) A solicitor or advocate who is aggrieved by a decision of the **[**[F259]Board**]** under subsection (3) above may appeal against his exclusion or the period of such exclusion to the Court of Session; and the court in determining such an appeal may make such order as it thinks fit.

[F260](6) . . . . . .

(7) Except in so far as expressly provided under this Act, the fact that the services of counsel or a solicitor are given by way of legal aid or advice and assistance shall not affect the relationship between or the respective rights in that connection of counsel, solicitor and client.

(8) The Board may arrange that, in such circumstances as it may specify, a solicitor shall be available for the purposes of providing legal aid or advice and assistance.

(9) Where a solicitor is available as is mentioned in subsection (8) above, the Secretary of State may, by regulations made under this section, provide that—

(a) subsection (1) above shall not apply; and

(b) **[**[F261]Subject to subsection (11) below,**]** legal aid or, as the case may be, advice and assistance shall be provided only by the solicitor so made available.

[F262](10) . . . . . .

[[F263](11) Nothing in subsection (9)(b) above shall enable the Secretary of State to make regulations authorising the granting of legal aid only to solicitors holding rights of audience under section 25A (rights of audience) of the Solicitors (Scotland) Act 1980.**]**

Textual Amendments

F245 Words in s. 31(1) substituted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(8)(a)**; S.I. 1997/2323, **art. 6(2)**

F246 Words in s. 31(1) substituted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), Sch. 8 para. 36(13); S.I. 1991/2151, art. 3, **Sch.**

F247 S. 31(1A) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(8)(b)**; S.I. 1997/2323, **art. 6(2)**

F248 S. 31(1A)(aa) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(4)(a)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F249 Word preceding s.31(1A)(e) repealed (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 2(3)(a)**; S.S.I. 2002/443, **art. 3**

F250 S. 31(1A)(da) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(4)(b)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F251 S. 31(1A)(f) and preceding word inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), **s. 2(3)(b)**; S.S.I. 2002/443, **art. 3** (with transitional provisions in art. 4(1)(2))

F252 Words in s. 31(1A)(f) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 10(8)**, 27(1); S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with arts. 3-5)

F253 Words in s. 31(1A)(f) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), ss. 80, 84(1), **Sch. para. 5(b)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

F254 Words in s. 31(1A) added (6.7.2001) by 2001 asp 7, **ss. 9(8)**, 15(3)

F255 Words in s. 31(1A) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(4)(c)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F256 Word in s. 31(3) substituted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(a)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)

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F257 S. 31(3)(d) inserted (2.7.2012) by The Legal Services (Scotland) Act 2010 (Ancillary Provision) Regulations 2012 (S.S.I. 2012/212), regs. 1, **3(2)**

F258 Word in s. 31(4) substituted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(a)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)

F259 Word in s. 31(5) substituted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(a)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)

F260 S. 31(6) repealed (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(b)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)

F261 Words in s. 31(9)(b) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), Sch. 8 para. 36(14); S.I. 1991/2151, art. 3, **Sch.**

F262 S. 31(10) repealed (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(b)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)

F263 S. 31(11) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2) s. 74(1), Sch. 8 para. 36(15); S.I. 1991/2151, art. 3, **Sch.**

Modifications etc. (not altering text)

C33 S. 31(1) excluded (6.2.2002) by S.S.I. 2001/464, **reg. 2(a)**

C34 S. 31(1) excluded (6.6.2011) by The Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 (S.S.I. 2011/163), regs. 1(1), **7(7)(a)**

C35 S. 31(1) excluded (4.7.2011) by The Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 (S.S.I. 2011/163), **reg. 3(2)(a)**

C36 S. 31(1) excluded (24.6.2013) by The Childrens Legal Assistance (Scotland) Regulations 2013 (S.S.I. 2013/200), regs. 1, **35(a)**

32 Restriction on payment and employment of solicitor or counsel.

Where legal aid is available to a person in connection with any proceedings (whether legal aid is available in connection with all or only part of the proceedings)—

(a) the solicitor or counsel providing legal aid shall not take any payment in respect of any advice given or anything done in connection with such proceedings during any period when legal aid was so available except for such payment as may be made, in accordance with this Act . . . [F264]; and

(b) except as is mentioned in section 31(2) of this Act, no solicitor or counsel other than the solicitor or counsel referred to in paragraph (a) above shall advise or act for him in connection with the proceedings.

Textual Amendments

F264 Words repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. I para. 4, **Sch. 6**

33 Fees and outlays of solicitors and counsel.

(1) **[**[F265]Subject to subsections (3A) and (3B) below,**]** any solicitor or counsel who acts for any person by providing legal aid or advice and assistance under this Act 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 him in so acting.

[[F266](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.**]**

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(2) The Secretary of State may, by regulations made under this section, make such provision as seems to him appropriate in respect of the fees and outlays of solicitors and counsel **[**[F267]and, in respect of advice and assistance as mentioned in paragraph (b) of this subsection, advisers**]**—

(a) acting in any proceedings for a person to whom legal aid has been made available; or

(b) providing advice and assistance in accordance with Part II of this Act.

(3) Without prejudice to the generality of subsection (2) above, regulations made under this section may—

(a) prescribe the work in respect of which fees may be charged;

(b) prescribe rates or scales of payment of fees and outlays allowable and the conditions under which such fees and outlays may be allowed;

(c) provide for the assessment and taxation of fees and outlays, and for the review of any such assessmen or taxation, either by the Secretary of State or by any other person;

(d) prescribe general principles to be applied in connection with any such assessment, taxation or review;

(e) prescribe forms to be used for the purposes of any regulations made under this section; and

(f) make different provision for different cases.

[[F268](3A) The Secretary of State may by regulations under this section prescribe fixed payments to be made to a solicitor in respect of—

(a) his professional services in providing criminal legal assistance; and

(b) such outlays as may be so prescribed.

[[F269](3AA) Regulations amending or replacing regulations made under subsection (3A) above may, for the purpose specified in subsection (3AB) below, make provision as to fixed payments in relation to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of the making or coming into force of the amendment or replacement of the regulations.

(3AB) The purpose referred to in subsection (3AA) above is that of ensuring that persons to whom fixed payment criminal legal assistance is being provided are not, by reason of the amount of the fixed payments payable in respect of that criminal legal assistance under the regulations as they have effect immediately before the coming into force of the amendment or replacement of the regulations, deprived of the right to a fair trial.

(3AC) In subsection (3AB) above "fixed payment criminal legal assistance" and "fixed payments" have respectively the meanings given by subsection (3E) below;**]**

(3B) A solicitor who provides any criminal legal assistance in respect of which a fixed payment has been prescribed in regulations made under subsection (3A) above shall not be entitled to any other payment out of the Fund in respect of the professional services and outlays mentioned in that subsection, but shall be entitled to reimbursement of any other outlays which he has properly incurred.**]**

[[F270](3BA) But subsection (3B) does not preclude a solicitor from being paid out of the Fund under section 4(2)(ad) following a claim for interim payment made under section 33ZB in respect of the professional services and outlays mentioned in subsection (3A).**]**

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[[F271](3C) The Scottish Ministers may, [F272]... for the purpose of enabling the Board to ensure that a person to whom fixed payment criminal legal assistance is provided is not, for the reason specified in subsection (3D) below, deprived of the right to a fair trial, by regulations under this subsection, provide that—

(a) in such circumstances; and

(b) under such conditions,

as may be prescribed by the regulations, a solicitor who provides such criminal legal assistance shall, instead of receiving fixed payments, be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above.

(3D) The reason referred to in subsection (3C) above is the amount of the fixed payments payable for the criminal legal assistance provided.

(3E) In subsection (3C) above—

"fixed payment criminal legal assistance" means criminal legal assistance in respect of which fixed payments are prescribed under subsection (3A) above;

"fixed payments" means fixed payments so prescribed.

(3F) Regulations made under subsection (3C) above shall provide that it is for the Board to determine whether any prescribed circumstances exist and whether any prescribed conditions are met.

(3G) Circumstances may be prescribed under subsection (3C)(a) above by reference to such factors as the Scottish Ministers think fit.

(3H) The conditions which may be prescribed under subsection (3C)(b) above include those which stipulate that a solicitor providing criminal legal assistance—

(a) applies to the Board to exercise its power of determination under subsection (3F) above;

(b) does so in such manner and form as the Board may specify and at as early a stage in the provision of the criminal legal assistance as is reasonably practicable; and

(c) keeps proper records of all professional services provided by way of and outlays incurred in the provision of that criminal legal assistance, whether before or after the exercise of that power of determination.

(3J) Regulations may be made under subsection (3C) above so as to relate to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of coming into force of section 7 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), and regulations so relating may disapply any condition which would otherwise apply under subsection (3C)(b) above.

(3K) The Board shall establish a procedure under which any person—

(a) whose solicitor's application under subsection (3H) above has been refused; or

(b) on whose solicitor's application under that subsection the Board has made a determination which is such that the solicitor will not be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above,

may apply to the Board for review of that refusal or determination.**]**

(4) In subsection (1) above the reference to acting for a person includes, in relation to a solicitor, a reference to acting for such a person on the instructions of another solicitor.

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(5) Where a person is in receipt of legal aid in connection with any proceedings, any expenses incurred in connection with the proceedings which would, if he were not in receipt of legal aid, be paid, in the first instance, by or on behalf of the solicitor acting for him, shall be so paid.

[[F273](6) Where a sum is paid out of the Fund under section 4(2)(ad) in connection with the provision of legal aid or advice and assistance, that sum must be deducted from the sum payable to the solicitor or counsel under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.**]**

Textual Amendments

F265 Words in s. 33(1) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(9)**; S.I. 1997/2323, **art. 6(2)**

F266 S. 33(1A) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(7)(a)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F267 Words in s. 33(2) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(7)(b)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F268 S. 33(3A)(3B) inserted (1.10.1997) by 1997 c. 48, **s. 51**; S.I. 1997/2323, art. 6, **Sch. 3**

F269 S. 33(3AA)-(3AC) inserted (6.7.2001) by 2001 asp 7, **ss. 8**, 15(3)

F270 S. 33(3BA) inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(3)(a)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))

F271 S. 33(3C)-(3K) inserted (6.7.2001) by 2001 asp 7, **ss. 7**, 15(3)

F272 Word in s. 33(3C) repealed (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(3)(b)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))

F273 S. 33(6) inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(3)(c)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))

[[F274]**33ZA Regulations about contributions for criminal legal assistance**

(1) The Scottish Ministers may by regulations make provision in connection with the amount, determination and collection of any contribution payable under section 11 (in so far as relating to criminal matters) or section 11A, 25AA or 25AC.

(2) Regulations made under subsection (1) may, in particular—

(a) make provision permitting a lower contribution to be payable where otherwise the person liable to pay the contribution, or the dependants of such person, would suffer undue hardship,

(b) make provision for determining appropriate contributions where the person is in receipt of criminal legal assistance in respect of two or more distinct proceedings,

(c) except in relation to section 25AA, specify whether it is for the Board or the solicitor providing the assistance to determine the amount of, or collect, a contribution,

(d) specify how a person's contributions are to be transferred or accounted for in relation to proceedings which are—

(i) instituted by way of summary complaint but which are subsequently dealt with under solemn procedure, or

(ii) instituted by way of indictment but which are subsequently dealt under summary procedure,

(e) make provision about the payment of contributions by instalments,

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(f) make provision requiring the Board to make arrangements to provide to solicitors a service of collecting contributions payable to solicitors on their behalf.

(3) Regulations made under subsection (1) containing provision made in pursuance of subsection (2)(f) may include provision about the operation of the service, including provision—

(a) regulating the arrangements for remitting to a solicitor the amount of a contribution (or an instalment of a contribution) following its collection,

(b) enabling or requiring, or, where enabled or required, regulating, the imposition by the Board of charges for the recovery of any reasonable costs the Board incurs in connection with the provision of the service to a solicitor.

(4) Regulations made under subsection (1) may provide for different provision in relation to different cases or classes of case.

(5) In this section "the solicitor" means the solicitor by whom any criminal legal aid is being provided or, where it is provided by counsel, the solicitor on whose instruction counsel provides it.**]**

Textual Amendments

F274 S. 33ZA inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 22**, 25(2); S.S.I. 2013/262, art. 2

[F275 Interim payments to solicitors and counsel

Textual Amendments

F275 Ss. 33ZB, 33ZC and cross-heading inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(4)**, 59(1) (with s. 48(1)(c)(2)(c)(3)(b))

33ZB Claim for interim payment

(1) A claim for interim payment may be submitted to the Board by—

(a) a solicitor who is acting for a person by providing legal aid or advice and assistance under this Act,

(b) counsel who is acting for a person by providing legal aid under this Act.

(2) A claim for interim payment must—

(a) be submitted in the manner specified by the Board,

(b) include a declaration from the solicitor or (as the case may be) counsel that the sum claimed does not exceed the sum that the solicitor or counsel would expect to be paid under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.

(3) If a claim for interim payment is submitted to the Board, the sum claimed must be paid out of the Fund in accordance with section 4(2)(ad) to the solicitor or counsel who submitted the claim.

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(4) But the Board may reject the claim if it appears to it that the sum claimed is likely to exceed the sum it would expect to be payable to the solicitor or counsel under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.

(5) In forming an expectation about the sum payable under section 4(2)(a), for the purposes of subsections (2) and (4), no account is to be taken of the deduction that would be made under section 33(6) if the claim for interim payment were met.

33ZC Recovery where interim payment excessive

(1) This section applies where—

(a) a sum has been paid out of the Fund under section 4(2)(ad) to a solicitor or counsel while providing legal aid or advice and assistance, and

(b) the solicitor or counsel is no longer providing the legal aid or advice and assistance.

(2) Where the sum paid out of the Fund exceeds the sum that would, but for section 33(6), be payable under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance, the solicitor or (as the case may be) counsel is liable to the Board for the difference between the sums.

(3) A firm is jointly and severally liable for a sum owed by a solicitor to the Board by virtue of subsection (2) if the interim payment referred to in that subsection was made to the firm on the solicitor's instruction.

(4) Where—

(a) a firm is jointly and severally liable to the Board for a sum by virtue of subsection (3), and

(b) a separate sum is due to be paid out of the Fund to the firm, on the instruction of a solicitor,

the Board may deduct all or part of the sum mentioned in paragraph (a) from the sum mentioned in paragraph (b).

(5) This section is without prejudice to any other enactment or rule of law under which the difference between the sums mentioned in subsection (2) may be recovered.**]**

[F276[Contracts for the provision of criminal legal assistance

Textual Amendments

F276 S. 33A and crossheading inserted (1.10.1997) by 1997 c. 48, **s.52**; S.I. 1997/2323, art. 6, **Sch.3**

[F277] 33A Contracts for the provision of criminal legal assistance.

(1) The Secretary of State may by regulations made under this section empower the Board to enter into contracts with registered firms for the provision by registered solicitors connected with those firms of criminal legal assistance.

(2) Regulations under this section may prescribe—

(a) the procedures to be followed by the Board in awarding any such contract; and

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(b) subject to subsection (3) below, any terms and conditions which are to be included in any such contract.

(3) Regulations under this section shall provide that any contract entered into by virtue of this section shall include a provision that, in the event of the termination of the contract, or a breach of it by the registered firm concerned, the Board may—

(a) withhold payments under the contract; and

(b) require the firm to secure the transfer of—

(i) any work currently being undertaken by any solicitor connected with them for any client by way of criminal legal assistance; and

(ii) notwithstanding any lien to which any such solicitor might otherwise be entitled, any documents connected with any such work,

to a registered solicitor.

(4) Regulations under this section may provide that where the Board has by virtue of this section entered into contracts with any registered firms for the provision of criminal legal assistance in any area, then, unless it seems to the Board to be inappropriate in a particular case, any person seeking such assistance in that area shall be required to instruct a registered solicitor connected with one of those firms.

(5) Any money due to a firm under a contract made by virtue of this section shall be paid to the firm—

(a) firstly, out of any amount payable by the client in accordance with section 11(2) **[**[F278], 11A(2) or 25AC(3)**]** of this Act;

(b) secondly, in priority to all other debts, out of any expenses which by virtue of an order of a criminal court are payable to that client by any other person in respect of the matter in connection with which the criminal legal assistance was given; and

(c) thirdly, by the Board out of the Fund.

[F279]**[** (5A) In subsection (5), the reference to an amount payable by the client does not include an amount which it is for the Board to collect (whether under section 11A(3), section 25AC(4)(a), or any regulations made under section 33ZA(1)).**]**

(6) For the purposes of sections 32 and 33 of this Act, the money paid to a firm, as provided in subsection (5) above, in respect of a contract made by virtue of this section shall be taken to be a payment made in accordance with this Act, and no solicitor connected with such a firm shall be entitled to any other payment out of the Fund in respect of any work done by him by virtue of such a contract.**]**

Textual Amendments

F277 S. 33A and crossheading inserted (1.10.1997) by 1997 c. 48, **s.52**; S.I. 1997/2323, art. 6, **Sch.3**

F278 Words in s. 33A(5)(a) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(8)(a)**, 25(2); S.S.I. 2013/262, art. 2

F279 S. 33A(5A) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(8)(b)**, 25(2); S.S.I. 2013/262, art. 2

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[F280 Contracts for the provision of children's legal assistance

Textual Amendments

F280 S. 33B and crossheading inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), **ss. 192**, 206(2) (with s. 186); S.S.I. 2013/195, arts. 2, 3

33B Contracts for the provision of children's legal assistance

(1) The Scottish Ministers may by regulations made under this section empower the Board to enter into contracts with relevant firms for the provision by relevant solicitors connected with those firms of children's legal assistance.

(2) Regulations under this section may prescribe—
- (a) the procedures to be followed by the Board in awarding any such contract, and
- (b) subject to subsection (3), any terms and conditions which are to be included in any such contract.

(3) Regulations under this section must provide that any contract entered into by virtue of this section must include a provision that, in the event of the termination of the contract, or a breach of it by the relevant firm concerned, the Board may—
- (a) withhold payments under the contract, and
- (b) require the firm to secure the transfer to a relevant solicitor of—
  - (i) any work currently being undertaken by any solicitor connected with them for any client by way of children's legal assistance, and
  - (ii) notwithstanding any lien to which any such solicitor might otherwise be entitled, any documents connected with any such work.

(4) Regulations under this section may provide that where the Board has by virtue of this section entered into contracts with any relevant firms for the provision of children's legal assistance in any area, then, unless it seems to the Board to be inappropriate in a particular case, any person seeking such assistance in that area is to be required to instruct a relevant solicitor connected with one of those firms.

(5) Any money due to a firm under a contract made by virtue of this section is to be paid to the firm—
- (a) firstly, out of any amount payable by the client in accordance with section 11(2),
- (b) secondly, by the Board out of the Fund.

(6) For the purposes of sections 32 and 33, the money paid to a firm, as provided in subsection (5) above, in respect of a contract made by virtue of this section is to be taken to be a payment made in accordance with this Act, and no solicitor connected with such a firm is entitled to any other payment out of the Fund in respect of any work done by the solicitor by virtue of such a contract.

(7) In this section—

" relevant firm " means a firm included in the register maintained under section 28M(1),

"relevant solicitor" means a solicitor included in the register maintained under section 28M(1).**]**

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Information

34 Confidentiality of information.

(1) Subject to subsection (2) below, no information furnished for the purposes of this Act to the Board or to any person acting on its behalf shall be disclosed—

(a) in the case of such information furnished by, or by any person acting for, a person seeking or receiving legal aid or advice and assistance, without the consent of the person seeking or receiving legal aid or advice and assistance; or

(b) in the case of such information furnished otherwise than as mentioned in paragraph (a) above, without the consent of the person who furnished it,

and any person who, in contravention of this subsection, discloses any information obtained by him when employed by, or acting on behalf of, the Board shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) Subsection (1) above shall not apply to the disclosure of information—

(a) for the purpose of the proper performance or facilitating the proper performance by the Secretary of State, the Board, any court or tribunal or by any other person or body of duties or functions under this Act;

[[F281](aa) for the purpose of any determination or investigation by the Scottish Legal Complaints Commission under the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) ("the 2007 Act");**]**

(b) for the purpose of investigating, prosecuting or determining any **[**[F282]conduct complaint, remitted by the Scottish Legal Complaints Commission under section **[**[F283]6(2)(a)**]** or 15(5)(a) of the 2007 Act**]**—

(i) against a solicitor, by the Law Society or the Scottish Solicitors' Discipline Tribunal;

(ii) against an advocate, by the Faculty of Advocates;

(c) for the purpose of investigating or prosecuting any offence or for the report of any proceedings in relation to such an offence;

[[F284](d) for the purposes of any investigation by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002 (asp 11)**]**;

[[F285](e) for the purposes of an inquiry by the Scottish Commission for Human Rights under section 8 of the Scottish Commission for Human Rights Act 2006 (asp 16)**][**[F286];

(f) for the purposes of, or required by virtue of, section 50 of the Freedom of Information (Scotland) Act 2002 (asp 13)**]**;

[[F287](g) in pursuance of a requirement made under section 10(1) of the Adult Support and Protection (Scotland) Act 2007 (asp 10).**]**

(3) For the purposes of this section, information furnished to any person in his capacity as counsel or a solicitor by or on behalf of a person seeking or receiving legal aid or advice and assistance is not information furnished to the Board or to a person acting on its behalf.

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Textual Amendments

F281 S. 34(2)(aa) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82(2), **Sch. 5 para. 2(5)(a)** (with s. 77); S.S.I. 2008/311, **art. 2(i)**

F282 Words in s. 34(2)(b) substituted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82(2), **Sch. 5 para. 2(5)(b)** (with s. 77); S.S.I. 2008/311, **art. 2(i)**

F283 Word in s. 34(2)(b) substituted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **3(2)** (with reg. 4)

F284 S. 34(2)(d) inserted (23.10.2002) by Scottish Public Services Ombudsman Act 2002 (asp 11), s. 25(1), **Sch. 6 para. 9**; S.S.I. 2002/467, **art. 2**

F285 S. 34(2)(e) inserted (1.4.2008) by Scottish Commission for Human Rights Act 2006 (asp 16), **ss. 10(5)**, 22(3) (with s. 22(2)); S.S.I. 2008/112, **art. 2**

F286 S. 34(2)(f) inserted (1.10.2008) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 81, 82(2), **Sch. 5 para. 2(5)(c)** (with s. 77); S.S.I. 2008/311, **art. 2(i)**

F287 S. 34(2)(g) inserted (29.10.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 77(1), 79(3), **Sch. 1 para. 3(a)**; S.S.I. 2008/314, **art. 2**

Modifications etc. (not altering text)

C37 S. 34(2): disclosure powers extended (14.12.2001) by 2001 c. 24, ss. 17, 127(2)(a), **Sch. 4 Pt. 1 para. 26**

C38 S. 34(2)(b) modified (13.2.2009) by The Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional Provision) Order 2009 (S.S.I. 2009/17), **art. 2**

35 False information etc.

(1) If any person seeking or receiving legal aid or advice and assistance—

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

(b) for the purpose of obtaining legal aid or advice and assistance knowingly makes any false statement or false representation,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 60 days or to both.

(2) Notwithstanding **[**[F288]section 136 of the Criminal Procedure (Scotland) Act 1995**]**, proceedings for an offence under subsection (1) above may be commenced at any time within 2 years from the date of the commission of the offence or within 6 months from the date when evidence sufficient in the opinion of the Lord Advocate to justify proceedings comes to his knowledge, whichever period is the shorter; and for the purposes of this subsection a certificate by the Lord Advocate as to the date on which such evidence came to his knowledge shall be conclusive evidence of that fact.

Textual Amendments

F288 Words in s. 35(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(10)**

[[F289]35A Power of Board to require information.

(1) The Board may, for the purpose of determining whether—

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(a) a solicitor or any employee of him or of his firm may be committing a criminal offence in connection with criminal legal assistance; or

(b) a solicitor may be seeking, in relation to criminal legal assistance, to recover from the Fund money to which he is not entitled, as, for example, by performing unnecessary work; or

(c) a registered firm or solicitor is or may not be complying with the code,

require any solicitor or firm to produce such information and documents relating wholly or partly to the provision of criminal legal assistance as it may specify, at such time and place as it may specify.

[The Board may, for the purpose of determining whether—

F290(1A) (a) a solicitor, an employee of the solicitor or an employee of the solicitor's firm may be committing a criminal offence in connection with children's legal assistance,

(b) a solicitor may be seeking, in relation to children's legal assistance, to recover from the Fund money to which the solicitor is not entitled, as, for example, by performing unnecessary work, or

(c) a solicitor or firm whose name appears on the register maintained under section 28M(1) is or may not be complying with the code of practice under section 28N for the time being in force,

require the solicitor or firm to produce such information and documents relating wholly or partly to the provision of children's legal assistance as it may specify, at such time and place as it may specify.**]**

(2) If it appears to the Board that there is good reason to do so, it may authorise any of its officers to require any solicitor or firm to produce forthwith any such information or documents as are mentioned in subsection (1) **[**F291or (1A)**]** above.

(3) An officer of the Board acting under subsection (2) above shall, if requested to do so, produce evidence of his authorisation by the Board.

(4) The power under this section to require production of information and documents includes power—

(a) to require any person, who is a present or past partner or employee of any such solicitor or firm and who appears to the Board or one of its officers to have any information or documents, to produce them;

(b) if any documents are produced—

(i) to take copies of them or extracts from them; and

(ii) to require the person producing them, or any other person who is a present or past partner or employee of the solicitor or firm in question, to provide an explanation of them;

(c) if any document or information is held other than in legible form, to require the production of a copy of it in legible form; and

(d) if documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) Where any person claims a lien over any documents required to be produced under this section the production is without prejudice to the lien.

(6) Any person who is required under this section to produce information or documents shall, notwithstanding any duty of confidentiality, comply with that requirement; and if he fails to comply he shall be guilty of an offence and liable—

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(a) on conviction on indictment, to a fine; and
(b) on summary conviction, to a fine not exceeding the statutory maximum.

(7) Where a person is charged with an offence under subsection (6) above in respect of a requirement to produce documents, it shall be a defence for him to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) No information or documents obtained by the Board by virtue of this section or section 35B of this Act shall be used by it or by any of its employees for any purpose other than the purposes mentioned in subsection (1) above.

(9) Section 34 of this Act applies in relation to a contravention of subsection (8) above as it applies in relation to a contravention of subsection (1) of that section.**]**

Textual Amendments

F289 Ss. 35A-35C inserted (1.10.1997) by 1997 c. 48, **s.53**; S.I. 1997/2323, art. 6, **Sch.3**

F290 S. 35A(1A) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(5)(a)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F291 Words in s. 35A(2) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(5)(b)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

[F292 35AA Information about legal services

(1) For the purpose mentioned in subsection (4)(a), each of the bodies mentioned in subsection (3)(a), (b) and (c) must provide the Board with such information as the Board may reasonably require.

(2) For the purpose mentioned in subsection (4)(b)—
(a) each of the bodies mentioned in subsection (3)(a) and (b) must—
(i) inform the Board whenever it upholds a conduct complaint about a solicitor or (as the case may be) an advocate, and
(ii) give the Board a summary of the relevant facts,
(b) the body mentioned in subsection (3)(d) must—
(i) inform the Board whenever it upholds a services complaint about a solicitor or an advocate, and
(ii) give the Board a summary of the relevant facts.

(3) The bodies are—
(a) the Law Society,
(b) the Faculty of Advocates,
(c) the Scottish Court Service,
(d) the Scottish Legal Complaints Commission.

(4) The purposes are the Board's exercise of its functions under—
(a) section 1(2A),
(b) section 31(3).

(5) In subsection (2), a reference to a services or a conduct complaint is to be construed in accordance with Part 1 of the Legal Profession and Legal Aid (Scotland) Act 2007.**]**

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Textual Amendments

F292 S. 35AA inserted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 142**, 150(2); S.S.I. 2011/180, art. 3, sch.

[F293]*Power of entry*

Textual Amendments

F293 Ss. 35A-35C inserted (1.10.1997) by 1997 c. 48, **s.53**; S.I. 1997/2323, art. 6, **Sch.3**

[F294]35B Power of Board to enter premises and investigate.

(1) Where a sheriff is satisfied, by evidence on oath given on behalf of the Board by a person authorised by the Board for that purpose, that there are reasonable grounds for believing that—

(a) a solicitor or any employee of him or his firm may be committing a criminal offence in connection with criminal legal assistance; or

(b) a solicitor may be seeking, in relation to criminal legal assistance, to recover from the Fund money to which he is not entitled, as, for example, by performing unnecessary work; or

(c) a registered firm or solicitor may not be complying with the code; **[**[F295]or

(ca) a solicitor whose name appears on the register maintained under section 28M(1) may not be complying with the code of practice under section 28N for the time being in force; or**]**

(d) there are on any premises documents the production of which has been required under section 35A of this Act and which have not been produced in accordance with that requirement,

he may issue a warrant under this section to a person authorised for that purpose by the Board.

(2) A person holding a warrant under this section may—

(a) search the premises named in the warrant;

(b) **[**[F296]in the case mentioned in subsection (2A),**]** take possession of any documents which appear to him to relate, wholly or partly, to any criminal legal assistance provided in or from those premises;

[[F297](ba) in the case mentioned in subsection (2B), take possession of any documents which appear to him to relate, wholly or partly, to any children's legal assistance provided in or from those premises;**]**

(c) take copies of any such documents;

(d) take any other steps which appear to him to be necessary for preserving those documents or preventing their destruction or interference with them; and

(e) require any person named in the warrant to provide an explanation of the documents or to state where they may be found.

[[F298](2A) The case mentioned in subsection (2)(b) is where the warrant is issued in pursuance of—

(a) paragraph (a), (b) or (c) of subsection (1), or

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(b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1) of section 35A.

(2B) The case mentioned in subsection (2)(ba) is where the warrant is issued in pursuance of—

(a) paragraph (ca) of subsection (1), or

(b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1A) of section 35A.**]**

(3) The duty to produce documents and to provide explanations applies notwithstanding any duty of confidentiality, but where any person claims a lien over any documents the production is without prejudice to that lien.

(4) A warrant under this section shall continue in force for the period of one month from the date when it is issued.

(5) The Board may retain any documents which it has obtained under this section for—

(a) a period of not more than 12 months; or

(b) where, within that period, proceedings to which the documents are relevant are commenced by the Board, the Law Society or a prosecutor, until the conclusion of those proceedings.

(6) Any person who intentionally obstructs the execution of a warrant issued under this section or who fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(e) above shall be guilty of an offence, and liable—

(a) on conviction on indictment, to a fine; and

(b) on summary conviction, to a fine not exceeding the statutory maximum.

Textual Amendments

F294 Ss. 35A-35C inserted (1.10.1997) by 1997 c. 48, **s.53**; S.I. 1997/2323, art. 6, **Sch.3**

F295 S. 35B(1)(ca) and preceding word inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(6)(a)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F296 Words in s. 35B(2)(b) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(6)(b)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F297 S. 35B(2)(ba) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(6)(b)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F298 S. 35B(2A)(2B) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(6)(c)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

[F299]Suspension of payments to solicitor

Textual Amendments

F299 Ss. 35A-35C inserted (1.10.1997) by 1997 c. 48, **s.53**; S.I. 1997/2323, art. 6, **Sch.3**

[F300]35C Suspension of payments to solicitor.

(1) Where it appears to the Board that any solicitor has, in connection with the provision of criminal legal assistance, acted in such a way as to justify action being taken against

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him by the Law Society or the Scottish Solicitors' Discipline Tribunal it shall refer the matter to either of those bodies so that they can consider whether to take action under section 31(3) of this Act.

(2) Where it appears to the Board that any solicitor may have been guilty of a criminal offence it shall refer the matter to the police or the procurator fiscal, so that they can consider whether any criminal offence may have been committed.

(3) Where the Board refers a matter to any of the bodies mentioned in subsections (1) or (2) above, it may disclose to that body any information or documents which it has obtained from the solicitor concerned under this Act.

(4) Where the Board has referred a matter to any of the bodies mentioned in subsections (1) or (2) above it may—

(a) suspend the solicitor concerned from providing criminal legal assistance; and

(b) withhold payment of any fees due to him in respect of such work,

pending the outcome of the investigation by the body or bodies to which the matter has been referred.

(5) A solicitor who is suspended from providing criminal legal assistance under subsection (4)(a) above shall, in accordance with arrangements approved by the Board, transfer—

(a) any work currently being undertaken by him for any client by way of criminal legal assistance; and

(b) notwithstanding any lien to which he might otherwise be entitled, any documents connected with any such work,

to a solicitor (or, where registration is in force, a registered solicitor).

Textual Amendments

F300 Ss. 35A-35C inserted (1.10.1997) by 1997 c. 48, **s.53**; S.I. 1997/2323, art. 6, **Sch.3**

Regulations and rules of court

36 Regulations.

(1) The Secretary of State may make such regulations under this section as appear to him necessary or desirable for giving effect to, or for preventing abuses of, this Act; and regulations made under this section may make different provision—

(a) in relation to legal aid and to advice and assistance respectively; and

(b) for different cases or classes of case.

(2) Without prejudice to subsection (1) above or to any other provision of this Act authorising the making of regulations, regulations made under this section may—

(a) make provision as to the exercise by the Board of its functions under this Act;

(b) substitute different amounts for any of the amounts specified in section 8, 10(2), 11(2), **[**[F301]11A(1),**]** 15 **[**[F302], 17(2) and 25AC(2)**]** of this Act **[**[F303]and the power to substitute different amounts for the **[**[F304]amounts specified in sections 10(2), 11A(1) and 25AC(2) and, in so far as relating to criminal matters, sections 8 and 11(2)**]** of this Act includes power to substitute different amounts in relation to different cases or classes of case**]**;

***Changes to legislation:** Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(c) 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 matters which are or are not to be treated as distinct matters for the purposes of advice and assistance;

[[F305](ca) make provision allowing the Board to determine—

(i) the matters which, subject to subsection (2A), are or are not to be treated as distinct matters for the purposes of advice and assistance;

(ii) on a case by case basis, matters which may be treated as if they were distinct matters for the purposes of advice and assistance;**]**

(d) make provision as to the manner of making applications for legal aid or advice and assistance under this Act and the time when such applications may be made and disposed of;

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

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

(g) make provision in connection with the recovery of sums due to the Fund and making effective the priorities conferred by this Act on the payment of such sums out of awards of expenses or property recovered or preserved for a person receiving legal aid, including—

(i) provision in connection with the enforcement (by whatever means) for the benefit of the Fund of any award of expenses or any agreement as to expenses in favour of a person who has received legal aid; and

(ii) provision making a solicitor's right to payment out of the Fund dependent, in whole or in part, on his performing any duties imposed on him by regulations made for the purposes of this paragraph;

(h) modify any provision of this Act so far as appears to the Secretary of State necessary to meet any of the special circumstances mentioned in subsection (3) below.

[[F306](2A) Regulations made under this section which include provision as mentioned in subsection (2)(ca)(i) must include provision to the effect that—

(a) any determination by the Board as to the matters which are or are not to be so treated as distinct matters may only be made after consultation with the Law Society;

(b) where a matter has been determined by the Board to be so treated as a distinct matter, the Board may not determine that the matter is no longer to be so treated unless the Scottish Ministers consent.**]**

(3) The special circumstances referred to in subsection (2)(h) above are where a person seeking or receiving legal aid or advice and assistance—

(a) is not resident in Scotland;

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

[[F307](bb) is **[**[F308]applying for an order under section 53(1), 57(1), 60(1), 62(1) or 63(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (in relation to himself or any other adult) or is otherwise**]** concerned as claiming or having an interest in the property, financial affairs or personal welfare of an adult under **[**[F309]that Act**]**;**]**

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

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

(e) seeks legal aid or advice and assistance in a matter of special urgency;

(f) begins to receive legal aid or advice and assistance after having consulted a solicitor in the ordinary way with respect to the same proceedings, or ceases to receive legal aid or advice and assistance before the proceedings in question are finally settled;

(g) has, while receiving legal aid or advice and assistance, any change of circumstances such that, had the changed circumstances subsisted at the time the application for legal aid or advice and assistance was made, the original disposal of the application would have been likely to have been affected.

(4) Regulations made under this section may also modify this Act or any instrument having effect under this Act (including so much of any of those provisions as specifies a sum of money) for the purposes of its application—

(a) in cases where such modification appears to the Secretary of State necessary for the purpose of fulfilling any obligation imposed on the United Kingdom or Her Majesty's government therein by any international agreement; or

(b) in relation to proceedings for securing the recognition or enforcement in Scotland of judgments given outside the United Kingdom for whose recognition or enforcement in the United Kingdom provision is made by any international agreement.

Textual Amendments

F301 Word in s. 36(2)(b) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(9)(a)(i)**, 25(2); S.S.I. 2013/262, art. 2

F302 Words in s. 36(2)(b) substituted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(9)(a)(ii)**, 25(2); S.S.I. 2013/262, art. 2

F303 Words added by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 44, **Sch. 4 Pt. I para. 6**

F304 Words in s. 36(2)(b) substituted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(9)(a)(iii)**, 25(2); S.S.I. 2013/262, art. 2

F305 S. 36(2)(ca) inserted (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 76(2)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(d)**

F306 S. 36(2A) inserted (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 76(3)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(d)**

F307 S. 36(3)(bb) inserted (2.4.2001) by 2000 asp 4, ss. 88(2), **Sch. 5 para. 19**; S.S.I. 2001/81, art. 2, **Sch. 1**

F308 Words in s. 36(3)(bb) inserted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 77(1), 79(3). {Sch. 1 para. 3(b)(i)}; S.S.I. 2007/334, **art. 2(b)**, Sch. 2

F309 Words in s. 36(3)(bb) substituted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 77(1), 79(3). {Sch. 1 para. 3(b)(ii)}; S.S.I. 2007/334, **art. 2(b)**, Sch. 2

37 Parliamentary procedure.

(1) Regulations under this Act shall be made by the Secretary of State by statutory instrument and, except as provided in subsection (2) below, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(2) No regulations shall be made under section 7, **[**[F310]8A(1),**]** 9, 11(2), 13(4), 17(2), 21(2), 24(4)**[**[F311], 28C(3), 28K(2), 28L(1) or (8),**][**[F312]28LA(1),**][**[F313]28LB(1),**][**[F314], 33ZA(1)**]** or 36(2)(b) of this Act unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

[F315](3) . . ..

Textual Amendments

F310 Words in s. 37(2) inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 2(4)**, 9

F311 Words in s. 37(2) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(7)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F312 Word in s. 37(2) inserted (28.11.2016) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), **sch. 5 para. 3(3)**; S.S.I. 2016/254, art. 3(2)(b)

F313 Word in s. 37(2) inserted (31.3.2020) by Age of Criminal Responsibility (Scotland) Act 2019 (asp 7), **ss. 73(4)**, 84(2); S.S.I. 2020/74, reg. 2, sch.

F314 Word in s. 37(2) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(10)**, 25(2); S.S.I. 2013/262, art. 2

F315 S. 37(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 86(4)**

38 Rules of court.

(1) The court may by act of adjournal or, as the case may be, by act of sederunt—

(a) regulate the procedure of any court or tribunal in relation to legal aid, and in particular may make provision as to the cases in which and the extent to which a person receiving legal aid may be required to find caution, and the manner in which caution in such cases may be found;

(b) make provision as to the cases in which a person may be treated as having disentitled himself to a continuance of legal aid by his conduct in connection with his receipt of legal aid;

(c) make provision as to the apportionment of sums recovered or recoverable by virtue of any award of expenses made generally with respect to proceedings or matters which are to be treated as distinct by virtue of regulations made under section 36(2)(c) of this Act;

(d) make provision as to the proceedings which are or are not to be treated as having been instituted by the legally assisted person for the purposes of section 19(3)(b) of this Act;

(e) regulate the procedure to be followed in connection with an order under section 19 of this Act, in particular to enable the Board to be heard in connection with such an order.

[[F316](1A) In subsection (1)(a) above, the reference to any court or tribunal shall be construed, except in relation to criminal proceedings, in accordance with section 13(6) of this Act.**]**

(2) The court may by act of adjournal or, as the case may be, by act of sederunt restrict the fees to be paid to auditors of court, messengers-at-arms, sheriff officers and shorthand writers in any case where such fees are payable in the first instance by or on behalf of a person receiving legal aid to such proportion thereof as may be provided for the time being.

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(3) Before making rules of court regulating the procedure of any court or tribunal, the court shall, so far as practicable, consult **[**[F317]the Scottish Civil Justice Council,**]** any rules council or similar body by whom or on whose advice rules of procedure for the court or tribunal may, apart from this Act, be made or whose consent or concurrence is required to any such rules so made.

(4) In this section "the court" means in relation to criminal proceedings, the High Court of Justiciary, and in relation to civil proceedings, the Court of Session.

Textual Amendments

F316 S. 38(1A) inserted (6.7.2001) by 2001 asp 7, **ss. 6(5)**, 15(3)

F317 Words in s. 38(3) inserted (28.5.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 15(1)**, 25(2); S.S.I. 2013/124, art. 2 (with art. 3)

Rights of indemnity

39 Adaptation of rights to indemnity.

(1) This section shall have effect in relation to any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him in connection with any proceedings.

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

(3) Where a person, having any such right to be indemnified against expenses, receives legal aid in connection with the proceedings, then the right shall enure also for the benefit of the Fund as if the expenses incurred by the Fund on his behalf in connection with the proceedings had been incurred by him.

(4) Where—

(a) such a right to be indemnified against expenses arises by virtue of an agreement and is subject to any express provision conferring on those liable under the agreement 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 subsection (3) above, as not being subject to that provision.

General

40 Finance.

(1) The Secretary of State shall pay to the Board out of moneys provided by Parliament—

(a) such sums as are required (after allowing for payments into the Fund under paragraphs (a) to (c) and (e) of section 4(3) of this Act) to meet payments out of the Fund under this Act; and

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(b) such sums as he may, [F318]. . . determine are required for the other expenditure of the Board.

(2) The Secretary of State may, [F318]. . .

(a) determine the manner in which and times at which the sums referred to in subsection (1)(a) above shall be paid to the Board; and

(b) impose conditions on the payment of the sums referred to in subsection (1)(b) above.

(3) The Secretary of State shall pay to the Law Society in accordance with paragraph 1(2)(b) of Schedule 4 to this Act out of moneys provided by Parliament the amount required to make up any deficit in the Legal Aid (Scotland) Fund.

(4) Any payments received by the Secretary of State from the Law Society in accordance with paragraph 1(2)(a) of Schedule 4 to this Act shall be paid by him into the Consolidated Fund.

Textual Amendments

F318 Words in s. 40(1)(b)(2) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 86(5)**

41 Interpretation.

In this Act, unless the context otherwise requires—

[[F319] "the 2011 Act" means the Children's Hearings (Scotland) Act 2011 (asp 1);**]**

[[F320]"the 2019 Act" means the Age of Criminal Responsibility (Scotland) Act 2019 (asp 7),**]**

"advice and assistance" has the meaning given to it in section 6(1) of this Act;

[[F321] "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;**]**

"assistance by way of representation" has the meaning given to it in section 6(1) of this Act;

"the Board" has the meaning given to it in section 1(1) of this Act;

[[F322] "children's legal aid" has the meaning given to it in section 28B(2) of this Act;

"children's legal assistance" means—

(a) children's legal aid, and

(b) advice and assistance in relation to children's hearings, pre-hearing panels (as defined in section 79(2)(a) of the 2011 Act) or proceedings under Part 10 or 15 of the 2011 Act **[**[F323]or in relation to proceedings under Part 4 of the 2019 Act**]]**;

"civil legal aid" has the meaning given to it in section 13(2) of this Act;

[[F324] "the code" means the code of practice in relation to criminal legal assistance for the time being in force under section 25B of this Act;**]**

"criminal legal aid" has the meaning given to it in section 21(1) of this Act;

[[F325] "criminal legal assistance" means criminal legal aid and advice and assistance in relation to criminal matters;

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" document " includes information recorded in any form;

"firm" includes an incorporated practice, **[**[F326]a licensed legal services provider,**]** a sole solicitor and a law centre;**]**

"the Fund" has the meaning given to it in section 4(1) of this Act;

"incorporated practice" has the same meaning as in the [M3] Solicitors' (Scotland) Act 1980;

[[F327] "law centre" means a body—

(a) established for the purpose of providing legal services to the public generally as well as to individual members of the public; and

(b) which does not distribute any profits made either to its members or otherwise, but reinvests any such profits for the purposes of the law centre;**]**

"the Law Society" means the Law Society of Scotland;

"legal aid" means civil legal aid, criminal legal aid, **[**[F328]children's legal aid**]** or legal aid given in connection with proceedings for contempt of court [F329]...;

[[F330]"licensed legal services provider" and "solicitor investor" are to be construed in accordance with Part 2 of the Legal Services (Scotland) Act 2010;**]**

"person"

(a) [F331]**[** does not include a body corporate or unincorporate, except where such body is acting in a representative, fiduciary or official capacity, so as to authorise legal aid or adive and assistance to be provided to such a body**]****[**[F332]; and

(b) includes a person under the age of sixteen years.**]**

[[F333] "the Register" means the Register established and maintained under section 25A of this Act;

[[F334] "the register of advice organisations" means the register established and maintained under section 12A of this Act;**]**

" registered firm " means a firm whose name appears on the Register;

[[F335] "registered organisation" means an organisation whose name appears on the register of advice organisations;**]**

" registered solicitor " means a solicitor whose name appears on the Register;

" sole solicitor " means a solicitor practising under his own name or as a single solicitor under a firm name; and

"solicitor connected with a firm" includes a sole solicitor **[**[F336], a solicitor investor in a firm**]** and a solicitor who is a partner, director or employee of a firm, and cognate expressions shall be construed accordingly.**]**

Textual Amendments

F319 S. 41: definition of "the 2011 Act" inserted (31.1.2012) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(8)(a)** (with s. 186); S.S.I. 2012/1, art. 2(2)

F320 Words in s. 41 inserted (8.11.2021) by The Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 (S.S.I. 2021/368), regs. 1(1), **2(3)(a)**

F321 S. 41: definitions of "adviser" and "adviser code" inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(8)(a)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F322 S. 41: definitions "children's legal aid" and "children's legal assistance" inserted (31.1.2012) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(8)(b)** (with s. 186); S.S.I. 2012/1, art. 2(2)

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F323 Words in s. 41 inserted (8.11.2021) by The Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 (S.S.I. 2021/368), regs. 1(1), **2(3)(b)**

F324 Definition in s. 41 inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(10)(a)**; S.I. 1997/2323, **art. 6(2)**

F325 Definitions in s. 41 inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(10)(b)**; S.I. 1997/2323, **art. 6(2)**

F326 S. 41: words in definition "firm" inserted (2.7.2012) by The Legal Services (Scotland) Act 2010 (Ancillary Provision) Regulations 2012 (S.S.I. 2012/212), regs. 1, **3(3)(a)**

F327 Definition in s. 41 inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(10)(c)**; S.I. 1997/2323, **art. 6(2)**

F328 S. 41: words in definition "legal aid" inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(8)(c)(i)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F329 S. 41: words in definition "legal aid" repealed (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(8)(c)(ii)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

F330 S. 41: definition "licensed legal services provider" and "solicitor investor" inserted (2.7.2012) by The Legal Services (Scotland) Act 2010 (Ancillary Provision) Regulations 2012 (S.S.I. 2012/212), regs. 1, **3(3)(b)**

F331 S. 41: in the definition of "person" the existing words become para. (a) (1.11.1995) by virtue of 1995 c. 36, s. 105(4), **Sch. 4 para. 40(b)** (with s. 103(1)); S.I. 1995/2787, art. 3, **Sch.**

F332 S. 41: in the definition of "person", para. (b) and preceding word added (1.11.1995) by 1995 c. 36, s. 105(4), **Sch. 4 para. 40(b)** (with s. 103(1)); S.I. 1995/2787, art. 3, **Sch.**

F333 Definitions in s. 41 inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(10)(d)**; S.I. 1997/2323, **art. 6(2)**

F334 S. 41: definition of "the register of advice organisations" inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(8)(b)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F335 S. 41: definition of "registered organisation" inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(8)(c)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

F336 S. 41: words in definition "solicitor connected with a firm" inserted (2.7.2012) by The Legal Services (Scotland) Act 2010 (Ancillary Provision) Regulations 2012 (S.S.I. 2012/212), regs. 1, **3(3)(c)**

Marginal Citations

M3 1980 c. 46.

[[F337]41A Regulations in relation to criminal legal assistance.

(1) The Secretary of State may by regulations made under this section provide that any reference in, under or by virtue of this Act to " criminal legal assistance " shall relate, for any of the purposes of this Act, to such class or classes of criminal legal assistance as he thinks appropriate.

(2) Without prejudice to the generality of subsection (1) above, the power conferred by that subsection may be exercised by reference to—

(a) the class or classes of person who are to receive criminal legal assistance;

(b) the class or classes of case in respect of which such assistance is to be given;

(c) the nature of the work;

(d) the place or places where the assistance is to be provided;

(e) the period for which it is to be provided,

or to any combination of the foregoing; and different provision may be made under that subsection for different purposes, or in relation to different areas or different periods.**]**

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Textual Amendments

F337 S. 41A inserted (1.10.1997) by 1997 c. 48, **s.54**; S.I. 1997/2323, art. 6, **Sch.3**

42 Disposable income and capital.

(1) In this Act "disposable income" or "disposable capital" in relation to any person means his income or, as the case may be, the amount of his capital, after making such deductions and allowances as regulations made under this section may prescribe—

(a) in respect of maintenance of dependants, interest on loans, income tax, rates, rent and other matters for which that person must or reasonably may provide;

(b) to take account of the nature of his resources,

and does not include the subject matter of the dispute.

(2) Regulations made under this section may make provision as to the determination of a person's income and the amount of his capital and in particular for determining whether any resources are to be treated as income or capital and for taking into account fluctuations of income, and different provision may be made for legal aid and for advice and assistance.

(3) Except in so far as regulations made under this section otherwise provide, the resources of a person's spouse shall be treated for the purposes of this section as that person's own resources, and such regulations may also make provision, in relation to minors and pupils and other special cases, for taking into account the resources of other persons.

[[F338](4) Regulations under this section may make different provision for—

(a) children's legal aid and legal aid other than children's legal aid,

(b) advice and assistance in relation to children's matters and advice and assistance other than advice and assistance in relation to children's matters.

(5) In subsection (4)(b), " children's matters " has the meaning given by section 4A(14). **]**

Textual Amendments

F338 S. 42(4)(5) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(9)** (with s. 186); S.S.I. 2013/195, arts. 2, 3

Modifications etc. (not altering text)

C39 S. 42 extended (7.10.1996) by S.I. 1996/2447, **reg. 7(2)**

C40 S. 42 amended by S.S.I. 2002/494, reg. 11(2) (as substituted (7.4.2003 with effect as mentioned in reg. 2 of the substituting S.S.I.) by The Civil Legal Aid (Scotland) Amendment Regulations 2003 (S.S.I. 2003/49), **reg. 4**)

43 Act not to affect certain taxations etc.

Nothing in this Act shall affect the sum recoverable by virtue of—

(a) an award of expenses in favour of a person to whom legal aid has been made available; or

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(b) an agreement as to expenses in favour of such a person which provides for taxation,

and for the purpose of any such award 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.

[F339[43A Applications of Act to services provided under Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(1) Advice and assistance shall be available, in accordance with the provisions of this Act, in relation to the provision of executry services by executry practitioners [F340] . . . and conveyancing services by independent **[**[F341] conveyancing practitioners**]**, all within the meaning of section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 as they are so available in relation to the provision of the like services by solicitors.

(2) Subject to any act of sederunt or act of adjournal made under subsection (7) of section 26 of that Act (consideration of applications made under 25) advice and assistance, civil legal aid and criminal legal aid shall be available, in accordance with the provisions of this Act, in relation to the provision of services by persons who have acquired rights to conduct litigation or, as the case may be, rights of audience by virtue of that section as they are so available in relation to the provision of the like services by solicitors and, where appropriate, by advocates.

(3) Where advice and assistance, civil legal aid or criminal legal aid has been made available by virtue of this section, the provisions of this Act shall apply in relation to the person providing those services as they apply in relation to a solicitor or advocate providing like services.**]**

Textual Amendments

F339 S. 43A inserted (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), **s.38**; S.I. 1991/2151, **art. 3**,Sch.

F340 Words in s. 43A(1) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 9(a)**; S.S.I. 2003/384, **art. 2(d)**

F341 Words in s. 43A(1) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp. 4), ss. 17, 21(2), **Sch. 4 para. 9(b)**; S.S.I. 2003/384, **art. 2(d)**

44 Crown application.

This Act shall bind the Crown.

45 Amendments, transitional provisions, savings and repeals.

(1) The enactments mentioned in Schedule 3 to this Act shall have effect subject to the amendments there specified (being minor amendments and amendments consequential on this Act).

(2) Without prejudice to sections 16 and 17 of the [M4]Interpretation Act 1978 (effect of repeals) and section 46(3) of this Act, the transitional provisions and savings contained in Schedule 4 to this Act shall have effect.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) The enactments set out in columns 1 and 2 of Schedule 5 to this Act are repealed to the extent specified in the third column of that Schedule.

Marginal Citations

M4 1978 c. 30.

46 Short title, commencement and extent.

(1) This Act may be cited as the Legal Aid (Scotland) Act 1986.

(2) This Act, apart from this section, shall come into force on such day as the Secretary of State may, by order made by statutory instrument, appoint; and different days may be so appointed for different purposes and for different provisions.

(3) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient.

(4) This Act, except section 18(3), extends only to Scotland.

Subordinate Legislation Made

P1 S. 46(2) power partly exercised: different dates appointed for specified provisions by S.Is. 1986/1617, 1987/289, 1992/1226.
S. 46(2) power fully exercised: 2.11.2001 appointed for remaining provisions by S.S.I. 2001/393, **art. 2**

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULES

SCHEDULE 1

Section 1.

THE SCOTTISH LEGAL AID BOARD

Incorporation and Status

1 The Board shall be a body corporate with a common seal.

2 (1) The Board is not an emanation of the Crown and shall not act or be treated as the servant or agent of the Crown.

(2) Accordingly—

(a) neither the Board, nor any of its members, nor any member of its staff as such is entitled to any status, immunity, privilege or exemption enjoyed by the Crown;

(b) the members of the Board and the members of its staff are not, in such capacity, Crown servants; and

(c) the Board's property is not the property of or held on behalf of the Crown.

(3) Subject to sub-paragraph (4) below, the Board shall not be exempt from any tax, duty, rate, levy or other charge whatever (whether general or local).

(4) F342

Textual Amendments

F342 Sch. 1 para. 2(4) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. III para. 10, **Sch. 6**

Tenure of Members

3 Subject to paragraphs 4 and 5 below any member of the Board shall hold and vacate office in accordance with the terms of his appointment, but a person shall not be appointed a member of the Board for a period of more than 5 years.

4 (1) The chairman or a member may resign office by giving notice in writing to the Secretary of State, and if the chairman ceases to be a member he shall cease to be the chairman.

(2) A person who ceases to be the chairman or a member shall be eligible for reappointment.

5 The Secretary of State may terminate the appointment of a member of the Board if satisfied that—

(a) he has had his estate sequestrated, or has been adjudged bankrupt or has granted a trust deed for or entered into an arrangement with his creditors;

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(b) he is unable to carry out his duties as a Board member by reason of physical or mental illness;

(c) he has been absent from meetings of the Board for a period longer than six consecutive months without the permission of the Board; or

(d) he is otherwise unable or unfit to discharge the functions of a member of the Board, or is unsuitable to continue as a member.

Remuneration of members

6 (1) The Board may—

(a) pay to its members such remuneration; and

(b) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,

as the Secretary of State may, [F343]. . . determine.

(2) Where a person ceases to be a member of the Board otherwise than on the expiry of his term of office, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may, [F344]. . . direct the Board to make that person a payment of such amount as the Secretary of State may, [F344]. . . determine.

Textual Amendments

F343 Words in Sch. 1 para. 6(1) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 86(6)(a)**, Pt. IV

F344 Words in Sch. 1 para. 6(2) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 86(6)(b)**, Pt. IV

Staff

7 (1) The Board shall, after consultation with, and subject to the approval of, the Secretary of State, appoint on such terms and conditions as it may determine a person to be the principal officer of the Board.

(2) The principal officer shall be responsible to the Board for the exercise of its functions.

8 (1) Subject to paragraph 9 below, the Board may appoint, on such terms and conditions as it may determine, such other employees as it thinks fit.

(2) A determination as to terms and conditions under paragraph 7(1) or sub-paragraph (1) above shall be subject to the approval of the Secretary of State [F345]. . ..

(3) The Board shall, in respect of such of its employees as it may determine, with the approval of the Secretary of State [F346]. . . make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the Board or otherwise, of one or more pension schemes.

(4) The reference in sub-paragraph (3) above to pensions, allowances or gratuities in respect of employees of the Board includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment.

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(5) If an employee of the Board becomes a member of the Board and was by reference to his employment by the Board a participant in a pension scheme established and administered by it for the benefit of its employees—

(a) the Board may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Board whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 6 above; but

(b) if the Board determines as aforesaid, any discretion as to the benefits payable to or in respect of him which the scheme confers on the Board shall be exercised only with the consent of the Secretary of State [F347]. . ..

Textual Amendments

F345 Words in Sch. 1 para. 8(2) repealed (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 86(6)(c), Pt. IV

F346 Words in Sch. 1 para. 8(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 86(6)(d)**, Pt. IV

F347 Words in Sch. 1 para. 8(5)(b) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 86(6)(e)**, Pt. IV

9 (1) The Board shall, not later than such date as the Secretary of State may determine, make an offer of employment by the Board to each person employed immediately before that date—

(a) by the Law Society for the purpose of their functions under the [M5]Legal Aid (Scotland) Act 1967; and

(b) in the civil service of the State wholly or mainly in connection with the assessment of a person's means under section 4 of that Act.

(2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.

(3) For the purposes of sub-paragraph (2) above no account shall be taken of the fact that employment with the Board is not employment in the service of the Crown.

(4) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

Marginal Citations

M5 1967 c. 43.

10 (1) Where a person becomes an employee of the Board on acceptance of an offer made under paragraph 9 above, then, for the purposes of **[**[F348]the Employment Rights Act 1996**]**, his period of employment with the Law Society or, as the case may be, in the civil service of the State, shall count as a period of employment by the Board, and the change of employment shall not break the continuity of the period of employment.

(2) Where an offer is made in pursuance of paragraph 9(1) above to any person employed as is mentioned in that paragraph, none of the agreed redundancy procedures applicable to such a person shall apply to him and—

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(a) where a person employed as is mentioned in sub-paragraph (a) of that paragraph ceases to be so employed—

(i) on becoming a member of the staff of the Board in consequence of that paragraph; or

(ii) having unreasonably refused the offer,

[F349]. . . he shall not be treated for the purposes of any scheme under section 12 of the [M6]Legal Aid (Scotland) Act 1967 as having been retired on redundancy;

(b) where a person employed as is mentioned in sub-paragraph (b) of that paragraph ceases to be so employed on becoming a member of the staff of the Board in consequence of that paragraph, he shall not be treated for the purposes of any scheme under section 1 of the [M7]Superannuation Act 1972 as having been retired on redundancy.

(3) Without prejudice to sub-paragraph (2) above, where a person has unreasonably refused an offer made to him in pursuance of paragraph 9 above, the Law Society or, as the case may be, the Secretary of State shall not terminate that person's employment unless it or, as the case may be, he has first had regard to the feasibility of employing him in a suitable alternative position with the Law Society or, as the case may be, in the civil service of the State.

(4) Where a person continues in employment in the Law Society or, as the case may be, the civil service of the State either—

(a) not having unreasonably refused an offer made to him in pursuance of this paragraph, or

(b) having been placed in a suitable alternative position as mentioned in sub-paragraph (3) above,

he shall be treated for all purposes as if the offer mentioned in paragraph 9(1) above had not been made.

Textual Amendments

F348 Words in Sch. 1 para. 10(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para.30** (with ss. 191-195, 202)

F349 Words in Sch. 1 para. 10(2)(a) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt.I** (with ss. 191-195, 202)

Marginal Citations

M6 1967 c. 43.

M7 1972 c. 11.

11 (1) Any dispute as to whether an offer under sub-paragraph (1) of paragraph 9 above complies with sub-paragraph (2) of that paragraph shall be referred to and be determined by an **[**[F350]employment tribunal**]**.

(2) An **[**[F350]employment tribunal**]** shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Subject to sub-paragraph (4) below there shall be no appeal from the decision of an **[**[F350]employment tribunal**]** under this paragraph.

(4) An appeal to the Employment Appeal Tribunal may be made only on a question of law arising from the decision of, or in proceedings before, an **[**[F350]employment tribunal**]** under this paragraph.

Textual Amendments

F350 Words in Sch. 1 para. 11 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)** (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Proceedings

12 (1) Subject to anything in regulations made by the Secretary of State under this Act, the Board may regulate its own proceedings.

(2) The Board may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of specified functions.

(3) Committees may be appointed and may be dissolved by the Board, and may include, or consist entirely of, persons who are not members of the Board.

(4) A committee shall act in accordance with such directions as the Board may from time to time give, and the Board may provide for anything done by a committee to have effect as if it had been done by the Board.

(5) The validity of any proceedings of the Board or of any committee appointed by the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

Allowances

13 The Board may pay to each of its members and the members of any committee such reasonable allowances in respect of expenses or loss of remuneration as the Secretary of State may, [F351]. . ., determine.

Textual Amendments

F351 Words in para. 13 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 86(6)(f)**, Pt. IV

Instruments

[F352]14 . . . . . .

Textual Amendments

F352 Sch. 1 para. 14 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch.5** (with ss. 9(3)(5)(7), 13, 14(3))

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Board not dominus litis

15 Nothing done by the Board for the purpose of securing that legal aid or advice and assistance is available to any person in connection with any proceedings shall render it liable to be held to be*dominus litis* in relation to the proceedings.

[F353SCHEDULE 1A

(introduced by section 12A(3))

FURTHER PROVISION IN RELATION TO THE REGISTER OF ADVICE ORGANISATIONS

Textual Amendments

F353 Sch. 1A inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(9)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**

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).

[F354(c) **[** a licensed legal services provider.**]**

Textual Amendments

F354 Sch. 1A para. 1(4)(c) inserted (2.7.2012) by The Legal Services (Scotland) Act 2010 (Ancillary Provision) Regulations 2012 (S.S.I. 2012/212), regs. 1, **3(4)**

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.

***Changes to legislation:** Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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).

(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.

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(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.

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).

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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.**]**

SCHEDULE 2

PART I

COURTS IN WHICH CIVIL LEGAL AID IS AVAILABLE

1 Civil legal aid shall be available in relation to civil proceedings in—

[[F355]the **[**[F356]Supreme Court**]**, in references, appeals and applications for special leave to appeal under paragraphs 10, 12 **[**[F357], 13(b), 32 and 33**]** of Schedule 6 to the Scotland Act 1998;**]**

the **[**[F358]Supreme Court**]**, in appeals from the Court of Session;

the Court of Session;

the Lands Valuation Appeal Court;

the Scottish Land Court;

[[F359]the Sheriff Appeal Court;**]**

the sheriff court,

and in relation to proceedings—

before any person to whom a case is referred in whole or in part by a court mentioned above;

[F360] . . . . . .

in the Lands Tribunal for Scotland;

in the Employment Appeal Tribunal**[**[F361];

before the Proscribed Organisations Appeal Commission;**]**

[[F362]comprising an appeal to the Social Security Commissioners;

[F363] . . . . . .**]**;

[[F364]before the First-tier Tribunal for Scotland of the type described in paragraph 2A;**]**

[[F365]in or with respect to an appeal to the Upper Tribunal for Scotland a (including an application for permission to appeal);**]**

[[F366]before the Upper Tribunal of the type described in paragraph 3**]**.

Textual Amendments

F355 Sch. 2 Pt. 1 para. 1: entry inserted (6.5.1999) by The Scotland Act 1998 (Consequential Modifications) (No.1) Order 1999 (S.I. 1999/1042), art. 3, **Sch. 1 para. 11(5)**

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F356 Words in Sch. 2 Pt. 1 para. 1 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 5), ss. 40, 148(1), Sch. 9 {para. 85(4)}; S.I. 2009/1604, **art. 2(d)**

F357 Words in Sch. 2 Pt. 1 para. 1 substituted (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 73(2)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(c)**

F358 Words in Sch. 2 Pt. 1 para. 1 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 45**; S.I. 2009/1604, **art. 2(d)**

F359 Sch. 2 Pt. 1para. 1: entry inserted (1.1.2016) by The Courts Reform (Scotland) Act 2014 (asp 18), **sch. 5 para. 14(4)**; S.S.I. 2015/378, art. 2, **sch**

F360 Sch. 2 Pt. I para. 1: entry omitted (19.2.2001) by virtue of S.S.I. 2001/42, **regs. 2**, 3(a)

F361 Sch. 2 Pt. I para. 1: entry added (19.2.2001) by S.S.I. 2001/42, **regs. 2**, 3(b)

F362 Sch. 2 Pt. I para. 1: entries inserted (1.12.2002) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2002 (S.I. 2002/532), **reg. 2**

F363 Sch. 2 Pt. 1 para. 1: entry omitted (9.6.2010) by virtue of The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (S.S.I. 2010/239), **reg. 3(2)** (with reg. 2)

F364 Sch. 2 Pt. 1 para. 1: entry inserted (1.12.2017) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 (S.S.I. 2017/397), **regs. 1**, 3(2)

F365 Sch. 2 Pt. 1 para. 1: entry inserted (1.12.2016) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2016 (S.S.I. 2016/356), **reg. 2**

F366 Sch. 2 Pt. 1 para. 1: entry inserted (9.6.2010) by The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (S.S.I 2010/239), {reg. 3(3)}

2 For the purposes of section 13 of this Act, proceedings in the European Court of Justice on a reference, under **[**[F367]Article 267 of the Treaty on the Functioning of the European Union**]**, made by a court mentioned in paragraph 1 above are part of the proceedings in the court making the reference.

Textual Amendments

F367 Words in Sch 2. para. 2 substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), art. 2(1), **Sch. Pt. 1** (with art. 2(2))

Proceedings before the First-tier Tribunal for Scotland

[[F368]2A. The proceedings before the First-tier Tribunal for Scotland mentioned in paragraph 1 are—

(a) those transferred to it by section 16(1) of the Housing (Scotland) Act 2014, in relation to the following enactments—

(i) the Rent (Scotland) Act 1984;

(ii) the Housing (Scotland) Act 1988;

(iii) the Housing (Scotland) Act 2006;

(b) those in relation to the Private Housing (Tenancies) (Scotland) Act 2016.**]**

Textual Amendments

F368 Sch. 2 Pt. 1 para. 2A inserted (1.12.2017) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 (S.S.I. 2017/397), regs. 1, **3(3)**

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Proceedings for judicial review before the Upper Tribunal

[[F369]3 The proceedings before the Upper Tribunal mentioned in paragraph 1 are those arising from an application to the supervisory jurisdiction of the Court of Session that has been transferred under section 20 of the Tribunals, Courts and Enforcement Act 2007.**]**

Textual Amendments

F369 Sch. 2 Pt. 1 para. 3 inserted (9.6.2010) by The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (S.S.I. 2010/239), **reg. 3(4)**

PART II

EXCEPTED PROCEEDINGS

1 Subject to **[**[F370]section 14(1C) and**]** paragraph 2 below, civil legal aid shall not be available in proceedings which are wholly or partly concerned with defamation or verbal injury.

Textual Amendments

F370 Words in Sch. 2 Pt. II para. 1 inserted (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007, {arts. 71(3)(a)}, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(b)**

2 The making of a counterclaim for defamation or verbal injury in any proceedings shall not of itself affect the availability of legal aid to the other party [F371]. . . .

Textual Amendments

F371 Words in Sch. 2 Pt. II para. 2 repealed (8.2.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 71(3)(b)**, 82(2) (with s. 77); S.I. 2007/57, **art. 2(b)**

[[F372]3 Civil legal aid shall not be available in relation to —

(a) election petitions under the Representation of the People Act 1983 [M8];

(b) simplified divorce applications under the Rules of Procedure of the Court of Session or the sheriff court;

[F373](c) . . . . . .

(d) petitions by a debtor for the sequestration of his estate under section **[**[F374]2(1)(a) of the Bankruptcy (Scotland) Act 2016**]** .**]**

Textual Amendments

F372 Sch. 2 Pt. II para. 3 substituted (1.4.1993) by S.I. 1993/969, **reg. 2**

F373 Sch. 2 Pt. II para. 3(c) repealed (28.11.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 23(2)**; S.S.I. 2016/291, art. 2, 3(1)(3), **sch.**

F374 Sch. 2 Pt. II para. 3(d) words substituted (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s.237(2), sch. 8 para 10; S.S.I. 2016/294, reg. 2.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Marginal Citations

M8 1983 c. 2

[F375 3A Civil legal aid shall not be available in relation to the following categories of simple procedure case (within the meaning of section 72(9) of the Courts Reform (Scotland) Act 2014) at first instance, namely—

(a) proceedings for payment of a sum of money not exceeding £3,000 (exclusive of interest and expenses), other than—

(i) proceedings in respect of aliment or interim aliment, and

(ii) actions for personal injury,

(b) actions ad factum praestandum and proceedings for the recovery of possession of moveable property in which (in either case) there is included, as an alternative to the claim, a claim for payment of a sum of money not exceeding £3,000 (exclusive of interest and expenses).

Textual Amendments

F375 Sch. 2 Pt. II paras. 3A, 3B inserted (28.11.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 23(3)**; S.S.I. 2016/291, art. 2, sch. (with art. 3(1)(3))

3B In paragraph 3A—

(a) "actions for personal injury" means actions to which section 17 or 18 of the Prescription and Limitation (Scotland) Act 1973 applies, and

(b) "actions ad factum praestandum" includes actions for delivery and actions for implement but does not include actions for count, reckoning and payment.]

Textual Amendments

F375 Sch. 2 Pt. II paras. 3A, 3B inserted (28.11.2016) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **sch. 5 para. 23(3)**; S.S.I. 2016/291, art. 2, sch. (with art. 3(1)(3))

[F376 4 Subject to paragraph 5 below, civil legal aid shall not be available in relation to proceedings at first instance under the Debtors (Scotland) Act M9 1987, [F377 or Part 2 or 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)][F378 or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)] other than proceedings in connection with an application under section 1(1) or 3(1) of that Act [F379 of 1987] to a Lord Ordinary or to the sheriff in an ordinary cause.]

Textual Amendments

F376 Sch. 2 Pt. II paras. 4, 5 added by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 98, 108(2), **Sch. 1 para. 5**

F377 Words inserted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), **s. 44(a)(i)**

F378 Words in Sch. 2 Pt. 2 para. 4 inserted (23.11.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 5 para. 15(a)** (with s. 223); S.S.I. 2009/369, **art. 3(2)(3)**, Sch. 1 (with art. 4)

F379 Words inserted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), **s. 44(a)(ii)**

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Marginal Citations

M9 1987 c.18 (**45:2**).

F380[5 Nothing in paragraph 4 above shall preclude any third party to proceedings under the Debtors (Scotland) Act M10 1987 [F381 or Part 2 or 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)][F382 or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)] from obtaining legal aid in connection with those proceedings.]

Textual Amendments

F380 Sch. 2 Pt. II paras. 4, 5 added by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), ss. 98, 108(2), **Sch. 1 para. 5**

F381 Words inserted (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), **s. 44(b)**

F382 Words in Sch. 2 Pt. 2 para. 5 inserted (23.11.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226, 227(3), **Sch. 5 para. 15(b)** (with s. 223); S.S.I. 2009/369, **art. 3(2)(3)**, Sch. 1 (with art. 4)

Marginal Citations

M10 1987 c.18 (**45:2**).

SCHEDULE 3

Section 45.

MINOR AND CONSEQUENTIAL AMENDMENTS

The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c.18)

1 (1) In section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 for the words from "secretary" where it first occurs to "taking" there shall be substituted the words:—

> "Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the sheriff court within the jurisdiction of which that other person resides or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purposes of enabling the solicitor to take".

(2) In section 32 of that Act—

(a) after subsection (7) there shall be inserted the following subsections—

> "(7A) The Secretary of State on receiving notice under subsection (6) above shall send a copy of the registered order and of the related documents to the Secretary of the Law Society of Scotland who shall send the copy of the order and of the related documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate for the purpose of enabling the solicitor to take, on behalf of the person entitled to the payments for which the order provides, such steps as appear to the solicitor appropriate to enforce the order.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7B) Where an order is registered in the sheriff court by virtue of subsection (3) above, any provision of the order by virtue of which the payments for which the order provides are required to be made through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered.";

(b) subsection (9)(e) of that section shall be omitted.

(3) In section 34(5) of that Act, for paragraph (b) there shall be substituted the following paragraph—

"(b) for subsection (3) there shall be substituted the following subsection—

(3) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the variation of a registered order, he shall, if the registering court is a sheriff court, send the application, together with any documents accompanying it, to the Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purpose of enabling the solicitor to take on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.'.".

2 (1) Section 43A of that Act shall be amended as follows.

(2) In subsection (1) for the words "section 2(1) and (6)(c), 3 and 4 of the Legal Aid (Scotland) Act 1967" there shall be substituted the words "sections 15 and 17 of the Legal Aid (Scotland) Act 1986".

(3) In subsection (2) for the words "sections 2(1) and (6)(c), 3 and 4 of the said Act of 1967", there shall be substituted the words "sections 15 and 17 of the said Act of 1986".

(4) In subsection (3) for the words from "legal advice" to "said Act of 1972)", where they second occur, there shall be substituted the words "advice and assistance under the said Act of 1986, shall, notwithstanding any financial conditions or requirements to make contributions imposed by sections 8 and 11 of that Act,".

The House of Commons Disqualification Act 1975 (c.24)

3 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

"Chairman of the Scottish Legal Aid Board".

The Northern Ireland Assembly Disqualification Act 1975 (c.25)

4 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

"Chairman of the Scottish Legal Aid Board".

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

The Sex Discrimination Act 1975 (c.65)

5 F383 . . . . . .

Textual Amendments

F383 Sch. 3 para. 5 repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 91, 93(1), **Sch. 4** (with s. 92); S.I. 2007/2603, **art. 2(d)**

The Race Relations Act 1976 (c.74)

6 F384 . . . . . .

Textual Amendments

F384 Sch. 3 para. 6 repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 91, 93(1), **Sch. 4** (with s. 92); S.I. 2007/2603, **art. 2(d)**

The Solicitors (Scotland) Act 1980 (c.46)

7 In section 35(4) of the Solicitors (Scotland) Act 1980 for paragraph (b) there shall be substituted—

"(b) who is in employment to which Part V of the Legal Aid (Scotland) Act 1986 applies;".

8 (1) Section 51 of that Act shall be amended as follows.

(2) In subsection (2) after the word "client" there shall be inserted the words "or against the Scottish Legal Aid Fund".

(3) In subsection (3) after paragraph (d) there shall be inserted the following paragraph—

"(e) the Scottish Legal Aid Board.".

The Tenants' Rights, Etc. (Scotland) Act 1980 (c.52)

9 In section 9B(4) of the Tenants' Rights, Etc. (Scotland) Act 1980 for the words "Legal Aid and Advice (Scotland) Acts 1967 and 1972 and to any provision of those Acts for payment of any sum into the legal aid fund" there shall be substituted the words "Legal Aid (Scotland) Act 1986 and to any provision of that Act for payment of any sum into the Scottish Legal Aid Fund".

SCHEDULE 4

Section 45.

TRANSITIONAL PROVISIONS AND SAVINGS

The Legal Aid (Scotland) fund

1 (1) On the appointed day the Legal Aid (Scotland) Fund ("the Old Fund") established under section 9 of the Legal Aid (Scotland) Act 1967 ("the 1967 Act") shall be wound up.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) If, as at the appointed day, after taking account of all receipts and expenses of the Law Society attributable to the 1967 Act or to their functions under the Legal Advice and Assistance Act 1972 ("the 1972 Act"), there is in relation to the Old Fund any surplus or deficit—

(a) such surplus shall be paid by the Law Society to the Secretary of State; and

(b) such deficit shall be made up by payment to the Law Society by the Secretary of State of the amount of the deficit.

(3) Notwithstanding their repeal by this Act—

(a) sections 8(10) and (11) and 11 of the 1967 Act shall continue to have effect for the purposes of requiring the Law Society to account for the Old Fund and to report on its discharge of its functions under that Act up to the appointed day; and

(b) section 9(5) of that Act shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society,

and, if the appointed day falls on a day which is not the last day of the financial year (for the purposes of the said section 11), references in those sections to the financial year shall be construed as references to the period commencing on the day immediately following the end of the last complete financial year and ending with the appointed day.

Rights, obligations and property

2 Subject to paragraph 1 above, on the appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1967 Act or under the 1972 Act shall become rights, obligations and property of the Board.

Legal aid and advice and assistance

3 (1) Nothing in this Act shall affect any legal aid under the 1967 Act or advice and assistance under the 1972 Act in respect of which an application has been determined before the appointed day; and, notwithstanding the repeal by this Act of these Acts, they and any schemes, regulations, orders or rules of court made under them shall continue to have effect for the purposes of such legal aid or advice and assistance.

(2) For the purposes of sub-paragraph (1) above, where the 1967 Act or the 1972 Act or any such scheme, regulation, order or rule of court—

(a) requires or enables anything to be done by the Law Society or any of its committees or by any person on its behalf; or

(b) requires or enables the person in receipt of such legal aid or advice and assistance to do anything in relation to the Law Society,

that thing shall, on and after the appointed day, be required or, as the case may be, enabled to be done by or in relation to the Board.

(3) Any payments which are required to be made into or out of the Old Fund in connection with such legal aid or advice and assistance shall, on and after the appointed day, be made into or out of the Fund; and for the purposes of this sub-paragraph, any reference in the 1967 Act or the 1972 Act to the Old Fund shall be construed as a reference to the Fund.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

4 (1) Any application for legal aid duly made under the 1967 Act or for advice and assistance duly made under the 1972 Act which has been made, but not determined, before the appointed day shall be treated as an application duly made under this Act.

(2) For the purposes of this paragraph and paragraph 3 above an application for legal aid is determined—

(a) in the case of legal aid in connection with—

(i) civil proceedings (including an appeal in such proceedings);

(ii) an appeal in criminal proceedings; or

(iii) an appeal against the decision of the sheriff under Part III of the [M11]Social Work (Scotland) Act 1968,

when a legal aid certificate is issued or refused;

(b) in the case of legal aid in connection with—

(i) criminal proceedings; or

(ii) proceedings before the sheriff under Part III of the Social Work (Scotland) Act 1968,

when the court grants or refuses legal aid.

(3) For the purposes of this paragraph and paragraph 3 above an application for advice and assistance is determined when the solicitor to whom the application is made agrees or, as the case may be, refuses to accept the application and to provide advice and assistance.

Marginal Citations

M11 1968 c. 49.

Pensions

5 Any arrangements made by the Law Society under section 12 of the 1967 Act in respect of any person shall be treated on and after the appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 8(3) of Schedule 1 to this Act, and any pension scheme administered by the Law Society immediately before the appointed day shall be deemed to be a pension scheme established and administered by the Board under that paragraph and shall continue to be administered accordingly.

General

6 (1) In this Schedule "the appointed day" means the day appointed by the Secretary of State under section 46(2) of this Act for the coming into force of section 4 thereof.

(2) Subject to sub-paragraph (1) above, expressions used in this Schedule and in the 1967 Act or, as the case may be, in the 1972 Act shall have the same meaning in this Schedule as they do in that Act.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULE 5

REPEALS

Chapter	Short title	Extent of repeal
1967 c. 43.	The Legal Aid (Scotland) Act 1967.	The whole Act.
1968 c. 49.	The Social Work (Scotland) Act 1968.	Section 53.
		Schedule 4.
1972 c. 11.	The Superannuation Act 1972.	Section 18(2).
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 32(9)(e).
1972 c. 50.	The Legal Advice and Assistance Act 1972.	The whole Act.
1973 c. 41.	The Fair Trading Act 1973.	In section 43(1), paragraph (b).
		Section 43(2).
1975 c. 20.	The District Courts (Scotland) Act 1975.	Section 21.
1977 c. 38.	The Administration of Justice Act 1977.	Section 1(2).
		In Schedule 1, Part II.
1979 c. 26.	The Legal Aid Act 1979.	Part II.
		Section 12(2).
		In section 14(2), the words “and may be cited together with the Act of 1967 and the Act of 1972 as the Legal Aid and Advice (Scotland) Acts 1967 to 1979.”.
		Section 14(3)(b).
		In section 14(4), the words “, or as the case may be the Secretary of State”.
		Section 14(5)(b).
		In Schedule 1, paragraphs 1 to 8.
1980 c. 30.	The Social Security Act 1980.	In Schedule 4, paragraph 4.

Changes to legislation: *Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	Section 26.
1980 c. 62.	The Criminal Justice (Scotland) Act 1980.	Section 10(4).
1981 c. 49.	The Contempt of Court Act 1981.	Section 13(4).
		In Schedule 2, Part II.
1982 c. 27.	The Civil Jurisdiction and Judgments Act 1982.	Section 40(2).
1983 c. 12.	The Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.	Section 3.
		In the Schedule, paragraph 11 and paragraphs 14 to 17.

Changes to legislation:
Legal Aid (Scotland) Act 1986 is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

- s. 4(3)(a) repealed by 1990 c. 40 Sch. 8 para. 36(1)(a)Sch. 9
- s. 4(3)(b) words repealed by 1990 c. 40 Sch. 9
- s. 4(3)(c) words inserted by 1990 c. 40 Sch. 8 para. 36(1)(b)
- s. 8(b) words repealed by 2012 c. 5 Sch. 14 Pt. 1
- s. 10(1)(b) words inserted by 2007 asp 5 s. 69(2)(b)
- s. 11(2)(b) words repealed by 2012 c. 5 Sch. 14 Pt. 1
- s. 17(1) words substituted by 1988 c. 34 Sch. 4 para. 3(a)
- s. 17(2)(a) words substituted by S.S.I. 2011/217 reg. 5
- s. 17(3)-(5) repealed by 1990 c. 40 Sch. 8 para. 36(7)Sch. 9 (This amendment not applied to legislation.gov.uk. S. 17(3)-(8) repealed (1.4.1989) by 1988 c. 34, Sch. 6; S.I. 1989/288, art. 2)
- s. 17(6) words substituted by 1990 c. 40 Sch. 8 para. 36(8) (This amendment not applied to legislation.gov.uk. S. 17(3)-(8) repealed (1.4.1989) by 1988 c. 34, Sch. 6; S.I. 1989/288, art. 2)
- s. 17(8) words substituted by 1990 c. 40 Sch. 8 para. 36(9) (This amendment not applied to legislation.gov.uk. S. 17(3)-(8) repealed (1.4.1989) by 1988 c. 34, Sch. 6; S.I. 1989/288, art. 2)
- s. 17(9)-(12) added by 1988 c. 34 Sch. 4 para. 3(c) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 3(c) repealed (26.8.1991) without ever being in force by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76), ss. 74(2), Sch. 9; S.I. 1991/1903,art. 3, Sch.)
- s. 33(1) words substituted by 1988 c. 34 Sch. 4 para. 5
- s. 33(3)(c) words repealed by 1990 c. 40 Sch. 9
- s. 33(3)(d) words repealed by 1990 c. 40 Sch. 9
- s. 33(6) added by 1990 c. 40 s. 36(4)

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):

- s. 4(2)(aba)(abb) inserted by 2007 asp 5 s. 75(2)
- s. 4(2)(aba) word substituted by S.S.I. 2011/235 art. 5(2)(a) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)
- s. 4(2)(abb) word substituted by S.S.I. 2011/235 art. 5(2)(b) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)
- s. 4(2)(ba) inserted by 2007 asp 5 s. 70(1)
- s. 4(3)(ca)(cb) inserted by 2007 asp 5 s. 75(3)
- s. 9A9B inserted by 2013 asp 3 s. 18(2)
- s. 10(1A)(1B) inserted by 2007 asp 5 s. 69(3)
- s. 12C and cross-heading inserted by 2007 asp 5 s. 70(2)
- s. 17(2C)-(2I) inserted by 2007 asp 5 s. 75(4)
- s. 17(2DA)(2DB) s. 17(2C)(2D) renumbered as s. 17(2DA)(2DB) by S.S.I. 2011/235 art. 5(3) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)

- s. 25AA(5)-(9) inserted by 2013 asp 3 s. 21
- s. 25AC25AD inserted by 2013 asp 3 s. 20