



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

### PART IV

#### CRIMINAL LEGAL AID

#### 25 Legal aid in appeals.

- (1) This section shall apply to criminal legal aid in connection with an appeal against conviction, sentence [<sup>F1</sup>, other disposal] or acquittal in criminal proceedings [<sup>F2</sup>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, [<sup>F3</sup>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;
  - [<sup>F4</sup>(b) in the case of an appeal under section 106(1) [<sup>F5</sup>, 175(2) or 194ZB(1)] of the Criminal Procedure (Scotland) Act 1995, leave [<sup>F6</sup>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.]

[<sup>F7</sup>(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 [<sup>F8</sup>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.]

[<sup>F9</sup>(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 [<sup>F10</sup>or, in the case of

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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.

[<sup>F11</sup>(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 [<sup>F12</sup>, 23A] or 24 of this Act in connection with the proceedings in respect of which the appeal is being made.

[<sup>F13</sup>(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 [<sup>F14</sup>, 187, 194ZD or 194ZE] of the Criminal Procedure (Scotland) Act 1995 whether to grant leave [<sup>F15</sup> 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 [<sup>F15</sup> or permission] to appeal”; and
- (b) in subsection (4), after the word “is” there were inserted the words “subject to leave [<sup>F15</sup> 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 [<sup>F16</sup>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

- F1** Words in s. 25(1) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(5)(a)**
- F2** Words in s. 25 inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(5)(b)**
- F3** Words in s. 25(2)(a) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(6)(a)**
- F4** 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)**
- F5** 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.

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- F6** 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.
- F7** S. 25(2A) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(7)**
- F8** 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.
- F9** 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**
- F10** 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.
- F11** 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**
- F12** 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**
- F13** 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)**
- F14** 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.
- F15** 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.
- F16** 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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**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](#)