



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

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;
 - (ii) the sheriff;
 - (iii) the district court; and
 - (b) any reference in connection with such proceedings under Article 177 of the EEC Treaty,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 [^{F1}(so far as is necessary)] [^{F1}, where appropriate,]by counsel;
 - (b) by a solicitor at any identification parade held, by or on behalf of the prosecutor (within the meaning of section 462 of the ^{M1}Criminal Procedure (Scotland) Act 1975), in connection with or in contemplation of criminal proceedings against the person so represented,

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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

- F1** Words in s. 21(4) ",where appropriate," substituted (*prosp.*) for "(so far as is necessary)" by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74(1), 75(2), **Sch. 8 para. 36(10)**

Marginal Citations

- M1** 1975 c. 21.

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 23(1)(a) 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
 - (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.
- (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.

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23 Power of the court to grant legal aid.

- (1) Criminal legal aid shall be available on an application made to the court—
- (a) where a person is being prosecuted under solemn procedure; or
 - (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) in relation to solemn proceedings—
 - (i) the sheriff before whom the person is brought for examination; or
 - (ii) where criminal legal aid has not been made available at any earlier stage of the proceedings in a case before it, the High Court of Justiciary;
 - (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 section 41(2)(b) of the ^{M3}Criminal Justice (Scotland) Act 1980.

Marginal Citations

- M2** 1975 c. 21.
M3 1980 c. 62.

VALID FROM 25/11/2010

[^{F2}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.

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- (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.]

Textual Amendments

- F2** 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 subsection (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.
- (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 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.
- (6) Where a person who is being prosecuted under summary procedure is not represented by a solicitor or counsel and has either—

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- (a) not applied for criminal legal aid in connection with proceedings; or
- (b) applied for criminal legal aid but been refused it on the grounds that it is not in the interests of justice,

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.

25 Legal aid in appeals.

- (1) This section shall apply to criminal legal aid in connection with an appeal against conviction, sentence or acquittal in criminal proceedings.
- (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, 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; and
 - (b) where the applicant is the appellant, that he has substantial grounds for making the appeal and that it is reasonable, in the particular circumstances of the case, that legal aid should be made available to him.
- (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.
- (4) Subsection (2)(a) above does not apply where criminal legal aid was made available under section 23 or 24 of this Act in connection with the proceedings in respect of which the appeal is being made.
- (5) Subsections (2) to (4) above shall apply in relation to an application for criminal legal aid in connection with—
 - (a) a petition to the *nobile officium* of the High Court of Justiciary (whether arising in the course of any proceedings or otherwise); or
 - (b) a reference by the Secretary of State under section 263 of the ^{M4}Criminal Procedure (Scotland) Act 1975,as they apply for the purposes of subsection (1) above.

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Marginal Citations

M4 1975 c. 21.

VALID FROM 01/08/1997

[^{F3}25AA Legal aid in respect of appeals under section 303A of the 1995 Act.

- (1) Subject to the provisions of this section, section 25 of this Act applies 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, 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, 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 section 25(2)(a) 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

F3 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.

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VALID FROM 06/05/1999

[25AB ^{F4}Legal aid in references, appeals or applications for special leave to appeal to the Judicial Committee of the Privy Council

- (1) This section shall apply to criminal legal aid in connection with any reference, appeal or application for special leave to appeal to the Judicial Committee of the Privy Council under paragraph 11 or 13(a) of Schedule 6 to the Scotland Act 1998.
- (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 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 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.
- (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.
- (4) Criminal legal aid shall not be available under this section in connection with a reference under paragraph 11 of Schedule 6 to the Scotland Act 1998 where criminal legal aid was made available under section 23, 24 or 25 of this Act in connection with the proceedings in which the reference is made.]

Textual Amendments

F4 S. 25AB inserted (6.5.1999) by [S.I. 1999/1042](#), art. 3, [Sch. 1 Pt. I para. 11\(4\)](#)

Status:

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