



# 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;
    - [<sup>F1</sup>(ia) the Sheriff Appeal Court;]
    - (ii) the sheriff;
    - (iii) the district court;
  - [<sup>F2</sup>(aa) any case the referral of which is required, under section 2(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, by a [<sup>F3</sup>designated] life prisoner;]
- and,
- (b) any reference in connection with such proceedings under [<sup>F4</sup>Article 267 of the Treaty on the Functioning of the European Union],
  - [<sup>F5</sup>(c) any reference, appeal or application for special leave to appeal to the [<sup>F6</sup>Supreme Court] under paragraph 11 or 13(a) of Schedule 6 to the Scotland Act 1998]
  - [<sup>F7</sup>(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.

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- (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 [F<sup>8</sup>, where appropriate,] by counsel;
  - (b) by a solicitor at any identification parade held, by or on behalf of the prosecutor (within the meaning of [F<sup>9</sup>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

- F1** 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.
- F2** 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)**.
- F3** 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**
- F4** 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))
- F5** S. 21(1)(c) inserted (6.5.1999) by S.I. 1999/1042, art. 3, **Sch. 1 Pt. 1 para. 11(2)**
- F6** 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)}
- F7** 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)**
- F8** 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.
- F9** 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 [F<sup>10</sup>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)

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- (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
  - [<sup>F11</sup>(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 [<sup>F12</sup>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;
  - (dc) in relation to any appeal under section 62 or 63 (appeal by, respectively, accused or prosecutor [<sup>F13</sup>where accused found not criminally responsible or unfit for trial]) of that Act of 1995;]
  - [<sup>F14</sup>(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 [<sup>F15</sup>certain offences] and thereby prohibited from conducting defence in person) [<sup>F16</sup>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;]
  - [<sup>F17</sup>(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,
  - [<sup>F18</sup> 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

- F10** 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**
- F11** S. 22(1)(da)-(dc) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(3)**
- F12** 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.

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- F13** 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.
- F14** 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))
- F15** 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)
- F16** 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)
- F17** 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)
- F18** 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) <sup>F19</sup> . . . . .
- (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 <sup>M1</sup>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) <sup>F20</sup> . . . . .
- (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 [<sup>F21</sup>section 204(4)(b) of the Criminal Procedure (Scotland) Act 1995].

### Textual Amendments

- F19** 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**
- F20** 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**
- F21** Words in s. 23(2) substituted (1.4.1996) by 1995 c. 40, **ss. 5**, 7(2), **Sch. 4 para. 63(4)**

### Marginal Citations

- M1** 1975 c. 21.

## [<sup>F22</sup>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

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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.]

#### Textual Amendments

- F22** 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 [F<sup>23</sup>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.

[F<sup>24</sup>(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
  - [F<sup>25</sup>(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;

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- (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.
- [<sup>F26</sup>(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 <sup>F27</sup>... —
- (a) [<sup>F28</sup>has] not applied for criminal legal aid in connection with proceedings;  
<sup>F29</sup>...
  - (b) [<sup>F30</sup>has] applied for criminal legal aid but been refused it on the grounds that it is not in the interests of justice [<sup>F31</sup>; 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

**F23** 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](#)



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- F24** 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**
- F25** 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**
- F26** 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**
- F27** 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**
- F28** 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**
- F29** 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**
- F30** 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**
- F31** 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**

## 25 Legal aid in appeals.

- (1) This section shall apply to criminal legal aid in connection with an appeal against conviction, sentence [<sup>F32</sup>, other disposal] or acquittal in criminal proceedings [<sup>F33</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>F34</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>F35</sup>(b) in the case of an appeal under section 106(1) [<sup>F36</sup>, 175(2) or 194ZB(1)] of the Criminal Procedure (Scotland) Act 1995, leave [<sup>F37</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>F38</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>F39</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>F40</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>F41</sup>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.

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- (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>F42</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>F43</sup>, 23A] or 24 of this Act in connection with the proceedings in respect of which the appeal is being made.
- [<sup>F44</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>F45</sup>, 187, 194ZD or 194ZE] of the Criminal Procedure (Scotland) Act 1995 whether to grant leave [<sup>F46</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>F46</sup> or permission] to appeal”; and
  - (b) in subsection (4), after the word “is” there were inserted the words “subject to leave [<sup>F46</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>F47</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

- F32** Words in s. 25(1) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(5)(a)**
- F33** Words in s. 25 inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(5)(b)**
- F34** Words in s. 25(2)(a) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(6)(a)**
- F35** 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)**
- F36** 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.
- F37** 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.
- F38** S. 25(2A) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 63(7)**
- F39** 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.



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- F40** 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](#)
- F41** 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.](#)
- F42** 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](#)
- F43** 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](#)
- F44** S. 25(5)-(7) substituted for s. 25(5) (1.4.1996) by [1995 c. 40, ss. 5, 7\(2\), Sch. 4 para. 63\(8\)](#)
- F45** 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.](#)
- F46** 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.](#)
- F47** Words in s. 25(7) substituted (27.9.1999) by [1999 c. 22, ss. 34, 108\(3\)\(a\) \(with Sch. 14 para. 7\(2\)\)](#)

#### **[<sup>F48</sup>25AA] Legal aid in respect of appeals under section 303A of the 1995 Act.**

- (1) Subject to the provisions of this section, [<sup>F49</sup>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, [<sup>F50</sup>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, [<sup>F50</sup>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 [<sup>F51</sup>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**

- F48** 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.](#)

*Changes to legislation: Legal Aid (Scotland) Act 1986, Part IV is up to date with all changes known to be in force on or before 23 January 2023. 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*

- F49** Words in s. 25AA(1) substituted (6.5.1999) by [S.I. 1999/1042, art. 3, Sch. 1 Pt. I para. 11\(3\)\(a\)](#)  
**F50** Words in s. 25AA(2)(3)(a) inserted (6.5.1999) by [S.I. 1999/1042, art. 3, Sch. 1 Pt. I para. 11\(3\)\(b\)\(c\)](#)  
**F51** Words in s. 25AA(4)(a) substituted (6.5.1999) by [S.I. 1999/1042, art. 3, Sch. 1 Pt. I para. 11\(3\)\(d\)](#)

**[<sup>F52</sup>25AB Legal aid in references, appeals or applications for special leave to appeal to the  
<sup>F53</sup>Supreme Court]**

- <sup>F54</sup>(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.]
- (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 [<sup>F55</sup>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 [<sup>F55</sup>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.
- [ Legal aid made available to a person under subsection (2) may be subject to such
- <sup>F56</sup>(2A) 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.
- [ The Board shall establish a procedure under which any person whose application for
- <sup>F57</sup>(3A) 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 [<sup>F58</sup>or 33] of Schedule 6 to the Scotland Act 1998 [<sup>F59</sup>or under section 288ZB of the Criminal Procedure (Scotland) Act 1995] where criminal legal aid was made available under section 23 [<sup>F60</sup>, 23A], 24 or 25 of this Act in connection with the proceedings in which the reference is made.]

**Textual Amendments**

- F52** S. 25AB inserted (6.5.1999) by [S.I. 1999/1042, art. 3, Sch. 1 Pt. I para. 11\(4\)](#)  
**F53** 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\(d\)](#)

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**Changes to legislation:** *Legal Aid (Scotland) Act 1986, Part IV is up to date with all changes known to be in force on or before 23 January 2023. 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*

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- F54** S. 25AB(1) substituted (22.4.2013) by [The Scotland Act 2012 \(Consequential Provisions\) Order 2013 \(S.I. 2013/728\)](#), arts. 1, **2(3)**
- F55** 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)**
- F56** 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**
- F57** 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**
- F58** 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)**
- F59** 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)**
- F60** 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, Part IV is up to date with all changes known to be in force on or before 23 January 2023. 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.

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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](#)