



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

[^{F1} PART IVA

CRIMINAL LEGAL ASSISTANCE]

Textual Amendments

- F1** 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](#)

^{F2}Registration

Textual Amendments

- F2** 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](#)

^{F3}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.

Changes to legislation: Legal Aid (Scotland) Act 1986, Part IVA is up to date with all changes known to be in force on or before 22 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

- [^{F4}(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
 - (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.

Changes to legislation: *Legal Aid (Scotland) Act 1986, Part IVA is up to date with all changes known to be in force on or before 22 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*

- (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

- F3** 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
- F4** S. 25A(3A) inserted (6.7.2001) by 2001 asp 7, ss. 9(4), 15(3)

^{F5}*Code of practice*

Textual Amendments

- F5** 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

^{F6}**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;

Changes to legislation: *Legal Aid (Scotland) Act 1986, Part IVA is up to date with all changes known to be in force on or before 22 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*

- (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.
- (2) The code may make different provision in relation to firms and solicitors including [^{F7}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.

Changes to legislation: Legal Aid (Scotland) Act 1986, Part IVA is up to date with all changes known to be in force on or before 22 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

- (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

- F6** 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
- F7** Words in s. 25B(2) inserted (6.7.2001) by 2001 asp 7, ss. 9(5), 15(3)

^{F8}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.
- (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

- F8** 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

^{F9}Removal of name from Register

Textual Amendments

- F9** 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

^{F10}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 [^{F11}, 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—

Changes to legislation: Legal Aid (Scotland) Act 1986, Part IVA is up to date with all changes known to be in force on or before 22 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

- (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.
- [^{F12}(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) [^{F13}or (4A)(a)] above is also connected with another registered firm, the Board shall not remove his name from 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) [^{F14}within such period of time as the Board shall direct (in the case concerned) and] in accordance with arrangements approved by the Board, ^{F15}. . . 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) [^{F16}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

F10 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

F11 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)

Changes to legislation: *Legal Aid (Scotland) Act 1986, Part IVA is up to date with all changes known to be in force on or before 22 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*

- F12** 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)**
- F13** 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)**
- F14** 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)**
- F15** 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)**
- F16** 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)**

F17 **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,
- 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

- F17** 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**

F18 **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

- F18** 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**

Changes to legislation:

Legal Aid (Scotland) Act 1986, Part IVA is up to date with all changes known to be in force on or before 22 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.

[View outstanding changes](#)

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](#)