



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART VI

MISCELLANEOUS

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;
 - [^{F1}(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 [^{F2}conduct complaint, remitted by the Scottish Legal Complaints Commission under section [^{F3}6(2)(a) or 15(5)(a) of the 2007 Act]—

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- (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;
 - [^{F4}(d) for the purposes of any investigation by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002 (asp 11)];
 - [^{F5}(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)] [^{F6};
 - (f) for the purposes of, or required by virtue of, section 50 of the Freedom of Information (Scotland) Act 2002 (asp 13)];
 - [^{F7}(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.

Textual Amendments

- F1** 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)**
- F2** 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)**
- F3** 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)
- F4** 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**
- F5** 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**
- F6** 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)**
- F7** 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)

- C1** S. 34(2): disclosure powers extended (14.12.2001) by 2001 c. 24, ss. 17, 127(2)(a), **Sch. 4 Pt. 1 para. 26**
- C2** 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,

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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 [^{F8}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

F8 Words in s. 35(2) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 63(10)

[^{F9}35A Power of Board to require information.

- (1) The Board may, for the purpose of determining whether—
- (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—
- ^{F10}(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) [^{F11}or (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—

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- (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—
- (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

- F9** Ss. 35A-35C inserted (1.10.1997) by 1997 c. 48, s.53; S.I. 1997/2323, art. 6, **Sch.3**
- F10** 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
- F11** 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

[^{F12}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

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- (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.]

Textual Amendments

F12 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.

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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](#)