
Changes to legislation: *Legal Aid (Scotland) Act 1986, SCHEDULE 4 is up to date with all changes known to be in force on or before 08 October 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*

SCHEDULES

SCHEDULE 4

Section 45.

TRANSITIONAL PROVISIONS AND SAVINGS

The Legal Aid (Scotland) fund

- 1 (1) On the appointed day the Legal Aid (Scotland) Fund (“the Old Fund”) established under section 9 of the Legal Aid (Scotland) Act 1967 (“the 1967 Act”) shall be wound up.
- (2) If, as at the appointed day, after taking account of all receipts and expenses of the Law Society attributable to the 1967 Act or to their functions under the Legal Advice and Assistance Act 1972 (“the 1972 Act”), there is in relation to the Old Fund any surplus or deficit—
- (a) such surplus shall be paid by the Law Society to the Secretary of State; and
 - (b) such deficit shall be made up by payment to the Law Society by the Secretary of State of the amount of the deficit.
- (3) Notwithstanding their repeal by this Act—
- (a) sections 8(10) and (11) and 11 of the 1967 Act shall continue to have effect for the purposes of requiring the Law Society to account for the Old Fund and to report on its discharge of its functions under that Act up to the appointed day; and
 - (b) section 9(5) of that Act shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society,
- and, if the appointed day falls on a day which is not the last day of the financial year (for the purposes of the said section 11), references in those sections to the financial year shall be construed as references to the period commencing on the day immediately following the end of the last complete financial year and ending with the appointed day.

Rights, obligations and property

- 2 Subject to paragraph 1 above, on the appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1967 Act or under the 1972 Act shall become rights, obligations and property of the Board.

Legal aid and advice and assistance

- 3 (1) Nothing in this Act shall affect any legal aid under the 1967 Act or advice and assistance under the 1972 Act in respect of which an application has been determined before the appointed day; and, notwithstanding the repeal by this Act of these Acts, they and any schemes, regulations, orders or rules of court made under them shall continue to have effect for the purposes of such legal aid or advice and assistance.

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- (2) For the purposes of sub-paragraph (1) above, where the 1967 Act or the 1972 Act or any such scheme, regulation, order or rule of court—
- (a) requires or enables anything to be done by the Law Society or any of its committees or by any person on its behalf; or
 - (b) requires or enables the person in receipt of such legal aid or advice and assistance to do anything in relation to the Law Society,
- that thing shall, on and after the appointed day, be required or, as the case may be, enabled to be done by or in relation to the Board.
- (3) Any payments which are required to be made into or out of the Old Fund in connection with such legal aid or advice and assistance shall, on and after the appointed day, be made into or out of the Fund; and for the purposes of this sub-paragraph, any reference in the 1967 Act or the 1972 Act to the Old Fund shall be construed as a reference to the Fund.
- 4 (1) Any application for legal aid duly made under the 1967 Act or for advice and assistance duly made under the 1972 Act which has been made, but not determined, before the appointed day shall be treated as an application duly made under this Act.
- (2) For the purposes of this paragraph and paragraph 3 above an application for legal aid is determined—
- (a) in the case of legal aid in connection with—
 - (i) civil proceedings (including an appeal in such proceedings);
 - (ii) an appeal in criminal proceedings; or
 - (iii) an appeal against the decision of the sheriff under Part III of the ^{M1}Social Work (Scotland) Act 1968,
 when a legal aid certificate is issued or refused;
 - (b) in the case of legal aid in connection with—
 - (i) criminal proceedings; or
 - (ii) proceedings before the sheriff under Part III of the Social Work (Scotland) Act 1968,
 when the court grants or refuses legal aid.
- (3) For the purposes of this paragraph and paragraph 3 above an application for advice and assistance is determined when the solicitor to whom the application is made agrees or, as the case may be, refuses to accept the application and to provide advice and assistance.

Marginal Citations

M1 1968 c. 49.

Pensions

- 5 Any arrangements made by the Law Society under section 12 of the 1967 Act in respect of any person shall be treated on and after the appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 8(3) of Schedule 1 to this Act, and any pension scheme administered by the Law Society immediately before the appointed day shall be deemed to be a pension scheme

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established and administered by the Board under that paragraph and shall continue to be administered accordingly.

General

- 6 (1) In this Schedule “the appointed day” means the day appointed by the Secretary of State under section 46(2) of this Act for the coming into force of section 4 thereof.
- (2) Subject to sub-paragraph (1) above, expressions used in this Schedule and in the 1967 Act or, as the case may be, in the 1972 Act shall have the same meaning in this Schedule as they do in that Act.

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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](#)