



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

### PART VI

#### MISCELLANEOUS

##### *F<sup>1</sup>Power of entry*

#### **<sup>F1</sup>35B Power of Board to enter premises and investigate.**

- (1) Where a sheriff is satisfied, by evidence on oath given on behalf of the Board by a person authorised by the Board for that purpose, that there are reasonable grounds for believing that—
- (a) a solicitor or any employee of him or 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 may not be complying with the code; [<sup>F2</sup>or
  - (ca) a solicitor whose name appears on the register maintained under section 28M(1) may not be complying with the code of practice under section 28N for the time being in force; or]
  - (d) there are on any premises documents the production of which has been required under section 35A of this Act and which have not been produced in accordance with that requirement,

he may issue a warrant under this section to a person authorised for that purpose by the Board.

- (2) A person holding a warrant under this section may—
- (a) search the premises named in the warrant;
  - (b) [<sup>F3</sup>in the case mentioned in subsection (2A),] take possession of any documents which appear to him to relate, wholly or partly, to any criminal legal assistance provided in or from those premises;

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**Changes to legislation:** *Legal Aid (Scotland) Act 1986, Section 35B is up to date with all changes known to be in force on or before 27 July 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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- [<sup>F4</sup>(ba) in the case mentioned in subsection (2B), take possession of any documents which appear to him to relate, wholly or partly, to any children's legal assistance provided in or from those premises;]
- (c) take copies of any such documents;
- (d) take any other steps which appear to him to be necessary for preserving those documents or preventing their destruction or interference with them; and
- (e) require any person named in the warrant to provide an explanation of the documents or to state where they may be found.
- [<sup>F5</sup>(2A) The case mentioned in subsection (2)(b) is where the warrant is issued in pursuance of—
- (a) paragraph (a), (b) or (c) of subsection (1), or
- (b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1) of section 35A.
- (2B) The case mentioned in subsection (2)(ba) is where the warrant is issued in pursuance of—
- (a) paragraph (ca) of subsection (1), or
- (b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1A) of section 35A.]
- (3) The duty to produce documents and to provide explanations applies notwithstanding any duty of confidentiality, but where any person claims a lien over any documents the production is without prejudice to that lien.
- (4) A warrant under this section shall continue in force for the period of one month from the date when it is issued.
- (5) The Board may retain any documents which it has obtained under this section for—
- (a) a period of not more than 12 months; or
- (b) where, within that period, proceedings to which the documents are relevant are commenced by the Board, the Law Society or a prosecutor, until the conclusion of those proceedings.
- (6) Any person who intentionally obstructs the execution of a warrant issued under this section or who fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(e) above 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.

#### Textual Amendments

- F1** Ss. 35A-35C inserted (1.10.1997) by 1997 c. 48, s.53; S.I. 1997/2323, art. 6, Sch.3
- F2** S. 35B(1)(ca) and preceding word inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 5 para. 1(6)(a) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F3** Words in s. 35B(2)(b) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 5 para. 1(6)(b)(i) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F4** S. 35B(2)(ba) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 5 para. 1(6)(b)(ii) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F5** S. 35B(2A)(2B) inserted (24.6.2013) by Children's Hearings (Scotland) Act 2011 (asp 1), s. 206(2), sch. 5 para. 1(6)(c) (with s. 186); S.S.I. 2013/195, arts. 2, 3

**Changes to legislation:**

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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](#)