



Legal Aid Act 1988

1988 CHAPTER 34

An Act to make new provision for the administration of, and to revise the law relating to, legal aid, advice and assistance. [29th July 1988]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Annotations:

Modifications etc. (not altering text)

- C1 Act amended (1.1.1992) by S.I. 1991/2684, arts. 4, 5, [Schedule 1](#)
- C2 By [Criminal Justice Act 1991](#) (c. 53, SIF 39:1), s. 101(1), [Sch. 12 para.23](#); S.I. 1991/2208, art. 2(1), [Sch.1](#) it is provided (14.10.1991) that in relation to any time before the commencement of s. 70 of that 1991 Act (which came into force on 1.10.1992 by S.I. 1992/333, art. 2(2), [Sch. 2](#)) references in any enactment amended by that 1991 Act, to youth courts shall be construed as references to juvenile courts.
- C3 Act modified (E.W.) (prosp.) by 1996 c. 27, [ss. 23\(8\)](#), 67(3) (with [Sch. 9 para. 5](#))
Act extended (22.5.2000) by S.I. 2000/1119, regs. 1, 14, [Sch. 3 Pt. 1](#)
Act applied (with modifications) (28.8.2000) by 2000 c. 25, s. 1(2), [Sch. 2 para. 8](#); S.I. 2000/2125, [art. 2](#)
Act applied (E.W.) (with modifications) (2.10.2000) by S.I. 2000/2227, [reg. 4](#)
- C4 Act: functions of the Lord Chancellor transferred to the Secretary of State (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003](#) (S.I. 2003/1887), [art. 4](#), [Sch. 1](#)
- C5 Act: functions of the Secretary of State transferred to the Lord Chancellor (12.1.2006) by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005](#) (S.I. 2005/3429), [art. 3\(1\)\(a\)](#) (with arts. 4, 5)

Status: This version of this Act contains provisions that are prospective.
Changes to legislation: Legal Aid Act 1988 is up to date with all changes known to be in force on or before 07 April 2018. 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)

PART I

PRELIMINARY

F1

Annotations:

Amendments (Textual)

F1 S. 1 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F2

Annotations:

Amendments (Textual)

F2 S. 2 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

PART II

LEGAL AID BOARD AND LEGAL AID

F3

Annotations:

Amendments (Textual)

F3 S. 3 repealed (1.4.2001 in relation to s. 3(5)-(10) and otherwise 2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, **art. 2(c)**, **Sch.** (with transitional provisions in arts. 3-5); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F4

Annotations:

Amendments (Textual)

F4 S. 4 repealed (1.4.2000 in relation to s. 4(5)(8) and otherwise 2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, **art. 2(c)**, **Sch.** (with transitional provisions in arts. 3-5); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F5

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Annotations:

Amendments (Textual)

F5 S. 5 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.**(with transitional provisions in arts. 3-5)

F6

Annotations:

Amendments (Textual)

F6 S. 6 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F7

Annotations:

Amendments (Textual)

F7 S. 7 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt.I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

PART III

ADVICE AND ASSISTANCE

F8

Annotations:

Amendments (Textual)

F8 S. 8 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F9

Annotations:

Amendments (Textual)

F9 S. 9 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

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^{F10}10

Annotations:

Amendments (Textual)

F10 S. 10 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F11}11

Annotations:

Amendments (Textual)

F11 S. 11 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F12}12

Annotations:

Amendments (Textual)

F12 S. 12 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F13}13

Annotations:

Amendments (Textual)

F13 S. 13 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

[^{F14}PART IIIA

MEDIATION]

Annotations:

Amendments (Textual)

F14 Pt. IIIA (s. 13A) inserted (21.3.1997) by 1996 c. 27, s. 26(1); S.I. 1997/1077, art.2

^{F15}13A

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Annotations:

Amendments (Textual)

F15 S. 13A repealed (1.4.2000) by 1999 s. 22, s. 106, Sch 15 Pt. I (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F16 **13B**

Annotations:

Amendments (Textual)

F16 S. 13B repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F17 **13C**

Annotations:

Amendments (Textual)

F17 S. 13C repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

PART IV

CIVIL LEGAL AID

F18 **14**

Annotations:

Amendments (Textual)

F18 S. 14 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F19 **15**

Annotations:

Amendments (Textual)

F19 S. 15 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

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F20 **16**

Annotations:

Amendments (Textual)

F20 S. 16 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F21 **17**

Annotations:

Amendments (Textual)

F21 S. 17 repealed (1.4.2000) by 1999 c. 22 s. 106, Sch. 15 Pt I (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F22 **18**

Annotations:

Amendments (Textual)

F22 S. 18 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

PART V

CRIMINAL LEGAL AID

Annotations:

Modifications etc. (not altering text)

C6 Pt. V (ss. 19-26) applied (with modifications) (15.3.1996) by S.I. 1996/716, **art. 24(1)(b)**
Pt. V (ss. 19-26) modified (30.9.1998 in the petty sessions areas and petty sessional divisions noted in S.I. 1998/2327, **Sch. 2** and otherwise 1.11.1999) by 1998 c. 37, s. 49(1)(j); S.I. 1998/2327, art. 3(2), **Sch.2**; S.I. 1999/2976, **art. 2**

F23 **19**

Annotations:

Amendments (Textual)

F23 S. 19 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

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F24 **20**

Annotations:

Amendments (Textual)

F24 S. 20 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F25 **21**

Annotations:

Amendments (Textual)

F25 S. 21 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F26 **22**

Annotations:

Amendments (Textual)

F26 S. 22 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F27 **23**

Annotations:

Amendments (Textual)

F27 S. 23 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F28 **24**

Annotations:

Amendments (Textual)

F28 S. 24 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 4 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F29 **25**

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Annotations:

Amendments (Textual)

F29 S. 25 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

^{F30} **26**

Annotations:

Amendments (Textual)

F30 S. 26 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

PART VI

LEGAL AID IN SPECIAL CASES

Care proceedings

Annotations:

Amendments (Textual)

F31 S. 27 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 99(4), 108(7), **Sch.15**; S.I. 1991/828, **art. 3(2)**

Annotations:

Amendments (Textual)

F32 S. 28 repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 99(4), 108(7), **Sch.15**; S.I. 1991/828, **art. 3(2)**

Contempt proceedings

^{F33} **29**

Annotations:

Amendments (Textual)

F33 S. 29 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

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Supplementary

F34 **30**

Annotations:

Amendments (Textual)

F34 S. 30 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with **Sch. 14** paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in **Sch. 2** paras. 2, 5)

PART VII

GENERAL AND SUPPLEMENTARY

F35 **31**

Annotations:

Amendments (Textual)

F35 S. 31 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with **Sch. 14** paras. 7(2), 36(9)); S.I. 2000/774, **art. 2(c)**, **Sch.** (with transitional provisions in arts. 3-5)

F36 **32**

Annotations:

Amendments (Textual)

F36 S. 32 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with **Sch. 14** paras. 7(2), 36(9)); S.I. 2000/774, **art. 2(c)**, **Sch.** (with transitional provisions in arts. 3-5) and subject to an amendment (28.8.2000) by S.I. 2000/2127, **art. 4**

33 Legal aid complaints against barristers and their exclusion from legal aid work.

The following sections shall be substituted for sections 41 and 42 of the ^{M1}Administration of Justice Act 1985—

“41 Application to legal aid complaints against barristers of disciplinary provisions.

- (1) The disciplinary provisions applicable to barristers shall apply to legal aid complaints relating to the conduct of barristers as they apply to other complaints about their conduct.
- (2) Subject to any exclusion or restriction made by those provisions, any disciplinary tribunal which hears a legal aid complaint relating to the conduct

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of a barrister may, if it thinks fit and whether or not it makes any other order, order that any fees—

- (a) otherwise payable in connection with his services under or in accordance with the Legal Aid Act 1988, or
- (b) otherwise chargeable in connection with his services in respect of advice or assistance made available under Part III of that Act,

shall be reduced or cancelled.

- (3) Accordingly, in so far as any of sections 9, 11, 15(6) and (7) and 25(2) of the Legal Aid Act 1988 (which relate to remuneration for legal aid work) has effect in relation to any fees reduced or cancelled by an order under subsection (2) above, it shall so have effect subject to the provisions of that order.
- (4) An appeal shall lie in the case of an order under subsection (2) above in the same manner as an appeal would lie in the case of any other order of such a tribunal.
- (5) The reference in subsection (2) above to a disciplinary tribunal is a reference to a tribunal acting under the disciplinary provisions applicable to barristers and it includes a reference to a member exercising any functions of the tribunal delegated to him.

42 Exclusion of barristers from legal aid work.

- (1) Subject to any exclusion or restriction made by the disciplinary provisions applicable to barristers, where a disciplinary tribunal hears a charge of professional misconduct or breach of professional standards against a barrister, it may order that he shall be excluded from legal aid work, either temporarily or for a specified period, if it determines that there is good reason for the exclusion arising out of—
 - (a) his conduct in connection with any such services as are mentioned in section 40(1), or
 - (b) his professional conduct generally.
- (2) Subsection (4) of section 41 shall apply to an order under subsection (1) as it applies to an order under subsection (2) of that section.
- (3) The disciplinary provisions applicable to barristers shall include provision enabling a barrister who has been excluded from legal aid work under this section to apply for an order terminating his exclusion from such work.
- (4) In this section—
 - (a) the reference to a disciplinary tribunal shall be construed in accordance with section 41(5); and
 - (b) references to a person being excluded from legal aid work are references to his being excluded from those who may be selected or assigned under section 32 of the Legal Aid Act 1988.”

Annotations:

Marginal Citations

M1 1985 c. 61.

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F37 **34**

Annotations:

Amendments (Textual)

F37 S. 34 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F38 **35**

Annotations:

Amendments (Textual)

F38 S. 35 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F39 **36**

Annotations:

Amendments (Textual)

F39 S. 36 repealed (1.4.2000) by 1999 c.22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F40 **37**

Annotations:

Amendments (Textual)

F40 S. 37 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F41 **38**

Annotations:

Amendments (Textual)

F41 S. 38 repealed (1.4.2000) by 1999 c.22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F42 **39**

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Annotations:

Amendments (Textual)

F42 S. 39 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F43} **40**

Annotations:

Amendments (Textual)

F43 S. 40 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F44} **41**

Annotations:

Amendments (Textual)

F44 S. 41 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b) (with transitional provisions and savings in Sch. 2 paras. 2, 5)

^{F45} **42**

Annotations:

Amendments (Textual)

F45 S. 42 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F46} **43**

Annotations:

Amendments (Textual)

F46 S. 43 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b) (with transitional provisions and savings in Sch. 2 paras. 2, 5)

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PART VIII

MISCELLANEOUS

Scottish provisions

44 **Scottish provisions.**

The ^{M2}Legal Aid (Scotland) Act 1986 shall have effect subject to the amendments specified in Schedule 4 to this Act.

Annotations:

Marginal Citations

M2 1986 c. 47.

Supplementary

^{F47}45

Annotations:

Amendments (Textual)

F47 S. 45 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F48}46

Annotations:

Amendments (Textual)

F48 S. 46 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

47 **Short title, commencement and extent.**

- (1) This Act may be cited as the Legal Aid Act 1988.
- (2) Subject to subsections (3) and (4) below, this Act shall come into force on such day as the Lord Chancellor appoints by order and different days may be appointed for different provisions.
- (3) Section 44 and Schedule 4 shall come into force on such day as the Secretary of State appoints by order and different days may be appointed for different provisions.
- (4) Sections 35 (together with the repeal of section 21 of the ^{M3}Legal Aid Act 1974) and 46 shall come into force on the date on which this Act is passed.

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- (5) An order under subsection (2) or (3) above may contain such transitional and saving provisions as appear to the Lord Chancellor or, as the case may be, the Secretary of State necessary or expedient.
- (6) This Act, with the exception of sections 12(3) and 17(3), section 44 and Schedule 4 and the amendments or repeals of the enactments referred to in section 45(3), extends to England and Wales only and section 44 and Schedule 4 extend to Scotland only.

Annotations:**Modifications etc. (not altering text)**

- C7** Power of appointment conferred by s. 47(2) partly exercised: [S.I. 1988/1361](#), 1989/288
- C8** Power of appointment conferred by s. 47(3) partly exercised: [S.I. 1988/1388](#)

Marginal Citations

- M3** [1974 c. 4.](#)

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SCHEDULES

^{F49}SCHEDULE 1

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Annotations:

Amendments (Textual)

F49 Sch. 1 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F50}SCHEDULE 2

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Annotations:

Amendments (Textual)

F50 Sch. 2 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

^{F60}SCHEDULE 3

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Annotations:

Amendments (Textual)

F60 Sch. 3 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: Legal Aid Act 1988 is up to date with all changes known to be in force on or before 07 April 2018. 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)

SCHEDULE 4

Section 44.

AMENDMENTS OF LEGAL AID (SCOTLAND) ACT 1986 (C. 47)

PART I

DIRECT PAYMENT OF FEES AND OUTLAYS BY LEGALLY ASSISTED PERSON

- 1 In section 4(2) (payments out of the Scottish Legal Aid Fund)—
- (a) in paragraph (a), after the word “due ” there shall be inserted the words “out of the Fund ”.
 - (b) in paragraph (c), the words “for the purposes of this Act ” are repealed.
- 2 In section 16—
- (a) subsection (1) is repealed;
 - (b) in subsection (2), the words “In this section and ” are repealed.

PROSPECTIVE

- 3 In section 17 (contributions, etc.)—
- (a) in subsection (1), for the words from “by the Board ” to “the Fund ” there shall be substituted the words “to contribute to the fees and outlays incurred by them (or on their behalf) ”;
 - ^{F65}(b) subsections (3) to (8) are repealed;
 - ^{F66}(c)

Annotations:

Amendments (Textual)

- F65** Sch. 4 para. 3(b) repealed (*prosp.*) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76), ss. 74(2), 75(2), **Sch. 9**
- F66** Sch. 4 para. 3(c) repealed (26.8.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76), ss. 74(2), **Sch. 9**; S.I. 1991/1903, art. 3, Sch.

- 4 In section 32 (a) (restriction on payment etc.), the words “, out of the Fund ” are repealed.

PROSPECTIVE

- 5 In section 33 (fees and outlays of solicitors and counsel) in subsection (1), for the words from “out ” to the end there shall be substituted the words—

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“in respect of any fees or outlays properly incurred by him in so acting—
(a) by the person concerned, to the extent to which a contribution has been determined for him under section 17 of this Act;
(b) to the extent that such fees and outlays exceed any such contribution out of the Fund in accordance with section 4(2)(a) of this Act.”

- 6 In section 36(2) (regulations), in paragraph (b) at end add—
“and the power to substitute different amounts for the amount specified in section 10(2) of this Act includes power to substitute different amounts in relation to different cases or classes of case”.

PART II

LIABILITY OF LEGALLY ASSISTED PERSON FOR EXPENSES TO BE ASSESSED IN ALL CASES

- 7 In section 18 (expenses)—
(a) subsection (1) is repealed;
(b) in subsection (2), for the words “in proceedings to which this section applies”, there shall be substituted the words “in any proceedings”.
- 8 In section 19(1) (expenses out of the Fund), for the words “to which this section applies” there shall be substituted the words “to which a legally assisted person is party and which are finally decided in favour of an unassisted party”.
- 9 In section 20(1) (supplementary), for the words “sections 18 and ” there shall be substituted the word “section”.

PART III

BOARD’S PROPERTY TO BE RATEABLE

- 10 In Schedule 1, paragraph 2(4) is repealed.

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Changes to legislation: *Legal Aid Act 1988 is up to date with all changes known to be in force on or before 07 April 2018. 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)*

SCHEDULE 5

Section 45.

MINOR AND CONSEQUENTIAL AMENDMENTS

Public Records Act 1958 (c. 51)

- 1 In Schedule 1 to the Public Records Act 1958 (definition of public records), there shall be inserted at the end of Part I of the Table at the end of paragraph 3 the following entry—

“Lord Chancellor’s Department. Legal Aid Board.”

Parliamentary Commissioner Act 1967 (c. 13)

F67₂

Annotations:

Amendments (Textual)

F67 Sch. 5 para. 2 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

Attachment of Earnings Act 1971 (c. 32)

F68₃

Annotations:

Amendments (Textual)

F68 Sch. 5 para. 3 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b) (with transitional provisions and savings in Sch. 2 paras. 2, 5)

House of Commons Disqualification Act 1975 (c. 24)

F69₄

Annotations:

Amendments (Textual)

F69 Sch. 5 para. 4 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

F70₅

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Annotations:

Amendments (Textual)

F70 Sch. 5 para. 5 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

Sex Discrimination Act 1975 (c. 65)

6 **F71**

Annotations:

Amendments (Textual)

F71 Sch. 5 para. 6 repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 91, 93, **Sch. 4** (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)

Race Relations Act 1976 (c. 74)

7 **F72**

Annotations:

Amendments (Textual)

F72 Sch. 5 para. 7 repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 91, 93, **Sch. 4** (with s. 92); S.I. 2007/2603, art. 2 (subject to art. 3)

Child Care Act 1980 (c. 5)

F73g

Annotations:

Amendments (Textual)

F73 Sch. 5 para. 8 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 para. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

Magistrates' Courts Act 1980 (c. 43)

F74g

Annotations:

Amendments (Textual)

F74 Sch. 5 para. 9 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b) (with transitional provisions and savings in Sch. 2 paras. 2, 5)

Status: This version of this Act contains provisions that are prospective.
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[^{F75}Senior Courts Act 1981](c. 54)

Annotations:

Amendments (Textual)

F75 Sch. 5: the words "Senior Courts Act 1981" substituted (1.10.2009) for the words "Supreme Court Act 1981" wherever they occur by Constitutional Reform Act 2005 (c. 4), ss. 59, 148(1), **Sch. 11 para. 1(2)**; S.I. 2009/1604, **art. 2**

^{F76}10

Annotations:

Amendments (Textual)

F76 Sch. 5 para. 10 repealed (2.4.2001) by 1999 c.22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

Telecommunications Act 1984 (c. 12)

11

^{F77}In section 52 of the Telecommunications Act 1984, the following subsection shall be substituted for subsection (5)—

- “(5) A charge conferred by subsection (4) above is subject to—
- (a) any charge under the Legal Aid Act 1988 and any provision of that Act for payment of any sum to the Legal Aid Board;
 - (b) any charge or obligation for payment in priority to other debts under the Legal Aid (Scotland) Act 1986 and any provision of that Act for payment of any sum into the Scottish Legal Aid Fund; or
 - (c) any charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and any provision of that Order for payment of any sum into the legal aid fund.”]

Annotations:

Amendments (Textual)

F77 Sch. 5 para. 11 repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 19(1)** (with Sch. 18); S.I. 2003/1900, **art. 2(1)**, Sch. 1 (with arts. 3-6); S.I. 2003/3142, **art. 3(2)** (with art. 11)

Prosecution of Offences Act 1985 (c. 23)

^{F78}12

Annotations:

Amendments (Textual)

F78 Sch. 5 para. 12 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

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F79 13

Annotations:

Amendments (Textual)

F79 Sch. 5 para. 13 repealed (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 5 Pt. 2](#); S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

14 In section 21(1) of that Act, for the definition of “legally assisted person ” there shall be substituted the following—

““legally assisted person ”, in relation to any proceedings, means a person to whom representation under the Legal Aid Act 1988 has been granted for the purposes of the proceedings;”.

15 In section 21 of that Act, after subsection (4), there shall be inserted the following subsection—

“(4A) Where one party to any proceedings is a legally assisted person then—

- (a) for the purposes of sections 16 and 17 of this Act, his costs shall be taken not to include either the expenses incurred on his behalf by the Legal Aid Board or the Lord Chancellor or, if he is liable to make a contribution under section 23 of the Legal Aid Act 1988, any sum paid or payable by way of contribution; and
- (b) for the purposes of sections 18 and 19 of this Act, his costs shall be taken to include the expenses incurred on his behalf by the Legal Aid Board or the Lord Chancellor (without any deduction on account of any contribution paid or payable under section 23 of the Legal Aid Act 1988) but, if he is liable to make such a contribution his costs shall be taken not to include any sum paid or payable by way of contribution.”

Child Abduction and Custody Act 1985 (c. 60)

F80 16

Annotations:

Amendments (Textual)

F80 Sch. 5 para. 16 repealed (1.4.2000) by [1999 c. 22](#), s. 106, [Sch. 15 Pt. I](#) (with [Sch. 14 paras. 7\(2\), 36\(9\)](#)); S.I. 2000/774, art. 2(c), [Sch.](#) (with transitional provisions in [arts. 3-5](#))

Administration of Justice Act 1985 (c. 61)

17 In section 40 of the Administration of Justice Act 1985 (preliminary provisions concerning legal aid complaints), for the words from the beginning of paragraph (a) to the end there shall be substituted the words “the provision for any person of services under the Legal Aid Act 1988 including, in the case of a solicitor, provision for any person of such services in the capacity of agent for that person’s solicitor. ”

[F81 18]

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Annotations:

Amendments (Textual)

F81 Sch. 5 para. 18 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

- 19 In section 44 of that Act—
- (a) in subsection (3), in the inserted subsection (2A), for the words from the beginning of paragraph (a) to the end there shall be substituted the words—
 - “(a) his conduct, including conduct in the capacity of agent for another solicitor, in connection with the provision for any person of services under the Legal Aid Act 1988; or
 - (b) his professional conduct generally.”;
- F82
...
- (b)

Annotations:

Amendments (Textual)

F82 Sch. 5 para. 19(b) and the word “and” immediately preceding repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b) (with transitional provisions and savings in Sch. 2 paras. 2, 5)

Housing Act 1985 (c. 68)

F83²⁰

Annotations:

Amendments (Textual)

F83 Sch. 5 para. 20 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

Family Law Act 1986 (c. 55)

F84²¹

Annotations:

Amendments (Textual)

F84 Sch. 5 para. 21 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

Criminal Justice Act 1987 (c. 38)

F85²²

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Annotations:

Amendments (Textual)

F85 Sch. 5 para. 22 repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 paras. 2, 5)

F86SCHEDULE 6

Annotations:

Amendments (Textual)

F86 Sch. 6 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F87SCHEDULE 7

Annotations:

Amendments (Textual)

F87 Sch. 7 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15, Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

F91SCHEDULE 8

Annotations:

Amendments (Textual)

F91 Sch. 8 repealed (1.4.2000) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/774, art. 2(c), **Sch.** (with transitional provisions in arts. 3-5)

Status:

This version of this Act contains provisions that are prospective.

Changes to legislation:

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Changes and effects yet to be applied to :

- Sch. 4 para. 3(b) repealed by 1990 c. 40 Sch. 9

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act modified (prosp.) by 1996 c. 27 s. 23(8)