
Changes to legislation: Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Paragraph 36 is up to date with all changes known to be in force on or before 22 August 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 8

AMENDMENT OF ENACTMENTS

PART II

MISCELLANEOUS

The Legal Aid (Scotland) Act 1986 (c. 47)

- 36 (1) In subsection (3) of section 4 (Scottish Legal Aid Fund) of the Legal Aid (Scotland) Act 1986—
- (a) paragraph (a) shall cease to have effect; and
 - (b) in paragraph (c), after the word “property” there shall be inserted “ (including money) ”.
- (2) In subsection (1) of section 6 (definitions) of that Act, for the words “if and so far as may be necessary”, in both places where they occur, there shall be substituted the words “ where appropriate ”.
- (3) In subsection (2) of section 13 (meaning of “civil legal aid”) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.
- (4) In subsection (3) of section 14 (availability of civil legal aid) of that Act, at the beginning there shall be inserted the words “ Subject to subsections (4) to (6) below, ”.
- (5) After the said subsection (3) there shall be inserted the following subsections—
- “(4) Where—
 - (a) the Board has refused an application for civil legal aid by a person who has applied for such aid for the purpose of raising an action against the Board; and
 - (b) the applicant has applied to the Board for a review of his application, the Board shall, unless they decide to grant the application forthwith, refer the application, together with all relevant precognitions, statements and other papers, including any observations they wish to make on the application, to the sheriff for Lothian and Borders at Edinburgh. - (5) Subject to section 15 of this Act, and to subsection (2) above, where the sheriff decides—
 - (a) that the applicant has *aprobabilis causa litigandi*; and
 - (b) that it is reasonable in the particular circumstances of the case that he should receive legal aid,

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he shall so inform the Board, and the Board shall make civil legal aid available to the applicant.

(6) A decision made by the sheriff under subsection (5) above shall be final.”

(6) After subsection (2) of section 17 (contributions and payments out of property received) of that Act, there shall be inserted the following subsections—

“(2A) Except in so far as regulations made under this section otherwise provide, any sum of money recovered under an award of or an agreement as to expenses in favour of any party in any proceedings in respect of which he is or has been in receipt of civil legal aid shall be paid to the Board.

(2B) Except in so far as regulations made under this section otherwise provide, where, in any proceedings, there is a net liability of the Fund on the account of any party, the amount of that liability shall be paid to the Board by that party, in priority to any other debts, out of any property (wherever situate) which is recovered or preserved for him—

(a) in the proceedings; or

(b) under any settlement to avoid them or to bring them to an end.”.

(7) Subsections (3) to (5) of that section shall cease to have effect.

(8) In subsection (6) of that section, for the words “subsection (5)” there shall be substituted the words “ subsection (2A) or (2B) ”.

(9) In subsection (8) of that section, for the words from “subsection” to the end there shall be substituted the words “ subsection (1) above and in section 33 of this Act to “fees and outlays” include references to sums which would have been payable to that solicitor if he had been so employed. ”

(10) In subsection (4) of section 21 (scope and nature of criminal legal aid) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.

(11) In subsection (8) of section 29 (legal aid in certain proceedings relating to children) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.

(12) In subsection (4) of section 30 (legal aid in contempt proceedings) of that Act, for the words “(so far as is necessary)” there shall be substituted the words “ , where appropriate, ”.

(13) In subsection (1) of section 31 (solicitors and counsel) of that Act, for the words “his counsel” there shall be substituted the words “ or a solicitor holding rights of audience by virtue of section 25A (rights of audience) of the Solicitors (Scotland) Act 1980, his counsel or such a solicitor ”.

(14) In subsection (9)(b) of the said section 31, at the beginning there shall be inserted “ Subject to subsection (11) below, ”.

(15) At the end of the said section 31 there shall be inserted the following subsection—

“(11) Nothing in subsection (9)(b) above shall enable the Secretary of State to make regulations authorising the granting of legal aid only to solicitors holding rights of audience under section 25A (rights of audience) of the Solicitors (Scotland) Act 1980.”.

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(16) In subsection (3) of section 33 (fees and outlays of counsel and solicitors) of that Act—

- (a) in paragraph (c) the words “and taxation” and “or taxation”; and
- (b) in paragraph (d) the word “; taxation”,

shall cease to have effect.

Commencement Information

- II** Sch. 8 para. 36 partly in force; para. 36 not in force at Royal Assent see s. 75(2); para. 36(6) in force at 26.08.1991 by S.I. 1991/1903, art. 3, **Sch.**; para. 36(2)-(5)(10)-(15) in force at 30.9.1991 by S.I. 1991/2151, 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. 21A(1)(c) words substituted by [2007 asp 5 Sch. 5 para. 3\(7\)\(a\)\(iii\)](#)
- s. 33(6) inserted by [2007 asp 5 Sch. 5 para. 3\(11\)](#)