



# Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

## PART 4

### LEGAL AID

VALID FROM 25/11/2010

#### **64 Criminal legal aid in solemn proceedings**

- (1) The 1986 Act is amended as follows.
- (2) In section 22(1)(b)(i) (automatic availability of criminal legal aid), for “23(1)(a)” substitute “23A(1)”.
- (3) In section 23 (power of the court to grant legal aid)—
  - (a) paragraph (a) of subsection (1); and
  - (b) paragraph (a) of subsection (2),are repealed.
- (4) After that section, insert—

#### **“23A Legal aid in solemn proceedings**

- (1) Criminal legal aid shall be available on an application made to the Board, where a person is being prosecuted under solemn procedure, if the Board is satisfied after consideration of the person's financial circumstances that the expenses of the case cannot be met without undue hardship to the person or the person's dependants.
- (2) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.

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- (3) The Board may require a person receiving legal aid under subsection (1) to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive criminal legal aid.
- (4) The Board shall establish a procedure under which any person whose application for legal aid under subsection (1) has been refused may apply to the Board for a review of the application.
- (5) The Board shall establish a procedure under which any person receiving criminal legal aid under subsection (1) which is subject to conditions by virtue of subsection (2) may apply to the Board for a review of any such condition.”.
- (5) In section 25(4) (legal aid in appeals), after “23” insert “ , 23A ”.
- (6) In section 25AB(4) (legal aid in references, appeals or applications for special leave to appeal to the Judicial Committee or the Privy Council), after “23” insert “ , 23A ”.
- (7) In section 30(3)(a) (legal aid in contempt proceedings), after “23” insert “ , 23A ”.

VALID FROM 25/11/2010

## **65 Criminal legal aid: conditions and reviews**

- (1) Section 24 (legal aid in summary proceedings) of the 1986 Act is amended in accordance with subsections (2) to (6) of this section.
- (2) In subsection (1), for “subsection” substitute “ subsections (1A), (2) and ”.
- (3) After subsection (1) insert—
  - “(1A) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.”.
- (4) In subsection (2), after “that” insert “—
  - (a) after consideration of the financial circumstances of the person, the expenses of the case cannot be met without undue hardship to him or his dependants;
  - (b)”.
- (5) After subsection (5) insert—
  - “(5A) The Board shall establish a procedure under which any person receiving criminal legal aid under this section which is subject to conditions by virtue of subsection (1A) may apply to the Board for a review of any such condition.”.
- (6) In subsection (6)—
  - (a) the word “has either” is repealed;
  - (b) at the beginning of paragraph (a) insert “ has ”;
  - (c) at the end of paragraph (a) “or” is repealed;

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- (d) at the beginning of paragraph (b) insert “ has ”;
  - (e) at the end of paragraph (b) insert “; or
    - (c) is no longer receiving criminal legal aid in connection with proceedings because the Board is no longer satisfied as to the matters mentioned in paragraphs (a) and (b) of subsection (1)”.
- (7) Section 25 (legal aid in appeals) of the 1986 Act is amended in accordance with subsections (8) and (9) of this section.
- (8) After subsection (2A) insert—
- “(2B) Where a person is no longer receiving criminal legal aid because the Board is no longer satisfied as mentioned in subsection (2)(c) above the High Court may, at any time prior to the disposal of the appeal, whether or not on application made to it, notwithstanding the Board no longer being so satisfied, determine that it is in the interests of justice that the person should receive criminal legal aid in connection with the appeal, and the Board shall forthwith make such legal aid available to him.
- (2C) Legal aid made available to a person under subsection (2) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.”.
- (9) After subsection (3) insert—
- “(3A) The Board shall establish a procedure under which any person whose application for criminal legal aid under subsection (2) has been refused may apply to the Board for a review of his application.
- (3B) The Board shall establish a procedure under which any person receiving criminal legal aid under subsection (2) which is subject to conditions by virtue of subsection (2C) may apply to the Board for a review of any such condition.”.
- (10) Section 25AB (legal aid in references, appeals or applications for special leave to appeal to the Judicial Committee of the Privy Council) is amended in accordance with subsections (11) and (12) of this section.
- (11) After subsection (2) insert—
- “(2A) Legal aid made available to a person under subsection (2) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.”.
- (12) After subsection (3) insert—
- “(3A) The Board shall establish a procedure under which any person whose application for criminal legal aid under subsection (2) has been refused may apply to the Board for a review of his application.
- (3B) The Board shall establish a procedure under which any person receiving criminal legal aid under this section which is subject to conditions by virtue of subsection (2A) may apply to the Board for a review of any such condition.”.

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VALID FROM 01/10/2008

**66 Criminal Legal Assistance Register: removal of name following failure to comply with code**

- (1) Section 25D (removal of name from Register following failure to comply with code) of the 1986 Act is amended as follows.
- (2) In subsection (1), after “be” insert “, or may not have been, ”.
- (3) After subsection (4), insert—
  - “(4A) Where, after carrying out the procedures mentioned in subsection (1) above and, where a time limit has been set under subsection (3) above, after the expiry of that time limit, the Board is satisfied that, regardless of whether or not there is current compliance with the code—
    - (a) the firm have not complied with the code in a material regard, it may remove the names of the firm and, subject to subsection (5) below, of any registered solicitors connected with the firm from the Register;
    - (b) the solicitor has not complied with the code in a material regard, it may remove his name from the Register.”.
- (4) In subsection (5), after “(4)(a)” insert “ or (4A)(a) ”.
- (5) In subsection (8), after “(4)” insert “ or (4A) ”.

VALID FROM 30/07/2007

**67 Register of advice organisations: advice and assistance**

- (1) The 1986 Act is amended as follows.
- (2) In section 4(2)(a) (Scottish Legal Aid Fund), after “counsel” insert “ or registered organisation ”.
- (3) In section 6 (definitions)—
  - (a) in subsection (1)—
    - (i) in the definition of “advice and assistance” after paragraph (a) insert—
      - “(aa) oral or written advice provided by an adviser—
        - (i) on the application of Scots law to any specified categories of circumstances which have arisen in relation to the person seeking advice;
        - (ii) as to any steps which that person might appropriately take having regard to the application of Scots law to those circumstances;”;
    - (ii) in that definition, after paragraph (b) insert—

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- “assistance provided to a person by an adviser in taking any steps mentioned in paragraph (aa)(ii) above, by taking such steps on his behalf or by assisting him in so taking them;”;
- (iii) in the definition of “assistance by way of representation”, after the word “means” insert “, subject to section 12B(3) of this Act, ”;
- (b) in subsection (2), before the definition of “client” insert—
- ““adviser” means a person who is approved by a registered organisation for the purposes of providing advice and assistance on behalf of the organisation and who is the person by whom advice and assistance is provided;”.
- (4) In section 10 (financial limit)—
- (a) in subsection (1)—
- (i) after the word “solicitor” where it first occurs insert “ or, as the case may be, adviser ”;
- (ii) in paragraph (a), after the word “solicitor” insert “ or adviser ”;
- (b) in subsection (3)—
- (i) after paragraph (a) insert—
- “(aa) any outlays which may be incurred by the registered organisation (which approved the adviser) in, or in connection with, the providing of the advice and assistance;”;
- (ii) after paragraph (b) insert—
- “(ba) any fees (not being charges for outlays) which, apart from section 11 of this Act, would be properly chargeable by the registered organisation (which approved the adviser) in respect of the advice and assistance;”.
- (5) In section 12 (payments of fees or outlays otherwise than through clients' contributions)—
- (a) in subsection (3), after the word “solicitor” where it first occurs insert “ or, as the case may be, the registered organisation, ”;
- (b) in paragraph (d) of that subsection, after “solicitor” insert “ or the registered organisation ”.
- (6) After section 12, insert—

*“Register of advice organisations*

**12A Register of advice organisations**

- (1) The Board shall establish and maintain a register of advice organisations (“the register of advice organisations”) of organisations approved by the Board as registered organisations in relation to the provision of advice and assistance by persons approved by such organisations as advisers.
- (2) A person who—
- (a) is a solicitor;
- (b) is an advocate;

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(c) is a conveyancing practitioner or an executry practitioner, within the meaning of section 23 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);

(d) has acquired any right to conduct litigation or right of audience by virtue of section 27 of that Act,

may not be an adviser.

(3) Schedule 1A makes further provision about advisers and registered organisations, the register of advice organisations, code of practice for advisers etc.

### **12B Advice and assistance**

(1) The Scottish Ministers may by regulations specify categories of circumstances for the purposes of paragraph (aa) of the definition of “advice and assistance” in section 6(1) of this Act.

(2) The power under subsection (1) may specify different categories for different purposes.

(3) In this Act—

(a) “advice and assistance” as defined in section 6(1)(c) is limited to the extent to which it is competent for the adviser to perform any steps on behalf of the person or by assisting him in so taking them;

(b) “assistance by way of representation” as defined in section 6(1) includes advice and assistance provided by an adviser but only to the extent to which it is competent for the adviser to perform such steps referred to in that definition.”.

(7) In section 33 (fees and outlays of solicitors and counsel)—

(a) after subsection (1) insert—

“(1A) A registered organisation shall be paid out of the Fund in accordance with section 4(2)(a) of this Act in respect of any fees or outlays properly incurred by it in respect of the advisers it approves providing advice and assistance under this Act.”;

(b) in subsection (2), after “counsel” insert “ and, in respect of advice and assistance as mentioned in paragraph (b) of this subsection, advisers ”.

(8) In section 41 (interpretation)—

(a) after the definition of “advice and assistance” insert—

““adviser” has the meaning given to it in section 6(2) of this Act;

“adviser code” means the code of practice in relation to the register of advice organisations for the time being in force under Schedule 1A to this Act;”;

(b) after the definition of “the Register” insert—

““the register of advice organisations” means the register established and maintained under section 12A of this Act;”;

(c) after the definition of “registered firm” insert—

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““registered organisation” means an organisation whose name appears on the register of advice organisations;”.

(9) After Schedule 1 (Scottish Legal Aid Board) to the 1986 Act, insert—

#### “SCHEDULE 1A

*(introduced by section 12A(3))*

#### FURTHER PROVISION IN RELATION TO THE REGISTER OF ADVICE ORGANISATIONS

##### *Register of advice organisations*

- 1 (1) An organisation which satisfies the Board that it complies with the relevant provisions of the adviser code shall be approved by the Board as an organisation that may approve a person to provide advice and assistance on behalf of the organisation; and the Board shall make an appropriate entry on the register of advice organisations.
- (2) An individual may apply for entry on the register of advice organisations as an organisation; and if the Board is satisfied that the individual complies with the relevant provisions of the adviser code in relation to an organisation, the Board shall approve the individual and treat the individual as an organisation for the purposes of this Schedule.
- (3) The Board must make the register of advice organisations available for public inspection, without charge, at all reasonable times.
- (4) In this Schedule an “organisation” includes—
  - (a) a firm of solicitors;
  - (b) an incorporated practice within the meaning of section 34(1A)(c) of the Solicitors (Scotland) Act 1980 (c. 46).

##### *Applications*

- 2 (1) An application for entry on the register of advice organisations shall be made in such form as the Board may determine, and shall be accompanied by such documents as the Board may specify.
- (2) On receipt of an application the Board shall make such enquiries as it thinks appropriate for the purposes of determining whether the applicant complies with the relevant provisions of the adviser code.
- (3) The Board may determine an application to be entered on the register of advice organisations by—
  - (a) granting the application; or
  - (b) refusing the application.
- (4) Where the Board decides to refuse an application it shall as soon as practicable thereafter send the applicant, by recorded delivery, a written note of its reasons.



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#### *Further provision on applications*

- 3 (1) In determining any application for entry on the register of advice organisations, the Board may limit the grant of the application to any of the particular categories of circumstances as specified by virtue of section 12B(1).
- (2) Where the Board limits the grant of an application as mentioned in sub-paragraph (1), the entry made on the register under paragraph 1(1) must state the categories in relation to which the organisation is registered; and any adviser approved by the organisation may provide advice and assistance under this Act only in relation to those categories.

#### *Adviser code*

- 4 (1) The Board shall prepare a code of practice (an “adviser code”) in relation to advisers and registered organisations.
- (2) The adviser code prepared under sub-paragraph (1) must include—
  - (a) the conditions to be complied with in order to qualify for registration;
  - (b) the types of organisations eligible for registration;
  - (c) the conditions to be complied with in order for a person to be approved by a registered organisation as an adviser;
  - (d) the laying down of standards, conduct, practice and training expected in relation to—
    - (i) the provision of advice and assistance by advisers;
    - (ii) the supervision of such activity by registered organisations;
  - (e) arrangements for dealing with complaints about the activities of advisers and registered organisations;
  - (f) arrangements for monitoring the activities of advisers and registered organisations.
- (3) The adviser code prepared under sub-paragraph (1) has effect on such date as the Board may confirm.
- (4) But the adviser code may not have effect unless and until it has been—
  - (a) approved by the Scottish Ministers; and
  - (b) the Board has laid a copy of the prepared code before the Scottish Parliament.
- (5) The Board is to publish the adviser code in such way as, in its opinion, is likely to bring it to the attention of those interested in it.
- (6) The Board is to—
  - (a) keep the adviser code under review; and
  - (b) revise it where appropriate.
- (7) The provisions of this paragraph apply in relation to any revision of the adviser code as they apply in relation to the version originally prepared.



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- (8) Registered organisations shall comply with the relevant requirements of the adviser code.

#### *Monitoring*

- 5 The Board is to monitor—
- (a) the provision of advice and assistance and related activities by advisers;
  - (b) compliance with the adviser code by registered organisations.

#### *Removal of name from the register of advice organisations*

- 6 (1) Where it appears to the Board (whether or not following a complaint made to it) that a registered organisation may not be, or may not have been, complying with the adviser code, it shall investigate the matter in such manner as it thinks fit.
- (2) Where the Board conducts an investigation under sub-paragraph (1) it must allow the registered organisation concerned the opportunity to make representations.
- (3) Following an investigation under sub-paragraph (1), the Board may give the registered organisation concerned an opportunity, within such time as it may specify, to remedy any defect in the compliance with the adviser code.
- (4) Where, after carrying out the procedures mentioned in sub-paragraph (1) and, where a time limit has been set under sub-paragraph (3), after the expiry of that time limit, the Board is satisfied that the registered organisation is not complying with the adviser code, it shall remove from the register of advice organisations the name of the organisation.
- (5) Where, after carrying out the procedures mentioned in sub-paragraph (1) and, where a time limit has been set under sub-paragraph (3), after the expiry of that time limit, the Board is satisfied that, regardless of whether or not there is current compliance with the code, the registered organisation has not complied with the code in a material regard, it may remove the name of the organisation from the register of advice organisations.
- (6) Where the Board decides to remove the name of an organisation from the register of advice organisations in accordance with sub-paragraph (4) it shall as soon as practicable thereafter send the organisation, by recorded delivery, a written note of its reasons.

#### *Appeals*

- 7 (1) A decision by the Board to refuse an application under paragraph 2(3)(b) may be appealed by the applicant to the Court of Session within 21 days of the receipt of the notification of the Board's reasons under paragraph 2(4).
- (2) A decision by the Board under paragraph 6(4) or (5) to remove from the register of advice organisations the name of a registered organisation may be appealed to the Court of Session within 21 days of the receipt of the notification of the Board's reasons under paragraph 6(6); but the making of

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an appeal shall not have the effect of restoring the name to the register of advice organisations.

- (3) An appeal under sub-paragraph (1) or (2) may be on questions of both fact and law and the court, after hearing such evidence and representations as it considers appropriate, may make such order as it thinks fit.”.

VALID FROM 30/07/2007

## 68 Scottish Legal Aid Board: grants for certain purposes

- (1) The 1986 Act is amended as follows.
- (2) In section 4 (Scottish Legal Aid Fund)—
- (a) at the beginning of subsection (2)(a) insert “ subject to section 4A(13), ”;
  - (b) after subsection (2)(ab) insert—
    - “(ac) such sums as are, by virtue of section 4A, due out of the Fund to any person;”;
  - (c) after subsection (3)(ac) insert—
    - “(ad) any sums recovered from a person in connection with a grant made by the Board in accordance with section 4A;”.
- (3) After that section insert—

### “4A Power of Board to make grants for certain purposes

- (1) The Board may, on an application made to it by any person, make grants of such amount and subject to such conditions (including conditions as to repayment) as it may determine to the person in respect of—
  - (a) any of the matters mentioned in subsection (2);
  - (b) any of the purposes mentioned in subsection (3).
- (2) The matters are—
  - (a) any civil legal aid or advice and assistance in relation to civil matters provided, or to be provided, by any solicitor or counsel;
  - (b) any advice and assistance in relation to civil matters provided, or to be provided, by any adviser;
  - (c) any advice, assistance or representation (not falling within paragraphs (a) or (b)) provided, or to be provided, by any person, which is connected to civil matters.
- (3) The purposes are facilitating, supporting and developing the provision of any of the matters referred to in subsection (2).
- (4) The Scottish Ministers must specify a limit to the total amount that may be paid out of the Fund by virtue of subsection (1).
- (5) In specifying any limit under subsection (4) the Scottish Ministers must specify the period in relation to which that limit applies.
- (6) Any grant made under subsection (1) must be made in accordance with an approved plan.

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- (7) The Board must prepare and publish a plan as to the criteria which the Board will apply in considering whether or not to make such a grant; and the Board must submit the plan to the Scottish Ministers for approval.
- (8) The Scottish Ministers may approve a plan submitted to them under subsection (7) with or without modification.
- (9) The Scottish Ministers may at any time—
  - (a) approve a modification of an approved plan proposed by the Board or withdraw approval of such a plan or modification;
  - (b) require the Board to prepare and publish a plan under subsection (7).
- (10) An application under subsection (1) must include such information as the Board may reasonably require.
- (11) In preparing and publishing the plan under subsection (7) the Board must do so in accordance with such directions as the Scottish Ministers may give.
- (12) Any money due to a person by virtue of this section shall be paid to the person by the Board out of the Fund.
- (13) Any money paid to a person under subsection (1) as provided in subsection (12), in respect of—
  - (a) any civil legal aid or advice and assistance provided by any solicitor or counsel;
  - (b) any advice and assistance provided by an adviser,shall be taken to be a payment in accordance with this Act; and no other payment may be made out of the Fund in respect of that civil legal aid or, as the case may be, advice and assistance.
- (14) In this section, “approved plan” means a plan approved, for the time being, by the Scottish Ministers under subsection (8); and includes any part or modification of the plan so approved.
- (15) For the purposes of this section, “person” includes a body corporate or unincorporate.”.

## **69 Financial limit: advice and assistance**

- (1) Section 10 (financial limit) of the 1986 Act is amended as follows.
- (2) In subsection (1)(b)—
  - (a) after “except” insert “, subject to subsection (4), ”;
  - (b) at the end insert “ or in the circumstances set out in subsection (1A) ”.
- (3) After subsection (1) insert—

“(1A) The circumstances are that—

  - (a) the advice and assistance requires to be given urgently; and
  - (b) it is not possible to seek the approval of the Board before the advice and assistance requires to be given,and following which an application may be made under subsection (1B) for the Board's approval.

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(1B) If the Board is satisfied that the circumstances set out in subsection (1A) were present it may, on application by the solicitor or adviser concerned, give its approval to the limit having been exceeded.”.

(4) After subsection (3) insert—

“(4) In the circumstances set out in subsection (5), no application may be made for the Board's approval for the cost of giving the advice and assistance—

- (a) to exceed the limit applicable under this section; or
- (b) to that limit having been exceeded.

(5) The circumstances are that the matter with which the advice and assistance is concerned is not—

- (a) specified as a distinct matter for the purposes of advice and assistance by virtue of regulations made under this Act; or
- (b) being treated as if it were a distinct matter by virtue of such regulations.”.

#### Commencement Information

- II** S. 69 partly in force; s. 69 not in force at Royal Assent, see s. 82; s. 69(1)(2)(a)(4) in force at 8.2.2007 by S.S.I. 2007/57, art. 2

PROSPECTIVE

## 70 Further provision in relation to the Fund: advice and assistance

(1) In section 4 of the 1986 Act (Scottish Legal Aid Fund) in subsection (2), after paragraph (b) insert—

“(ba) any sums as are, by virtue of section 12C of this Act, due out of the Fund;”.

(2) After section 12B of that Act (inserted by section 67 of this Act) insert—

*“Advice and assistance: further provision in relation to the Fund*

### 12C Further provision in relation to the Fund: advice and assistance

(1) This section applies where, in respect of any matter in connection with which advice and assistance has been provided, the sums mentioned in section 4(3) (aa), (ca) and (cb) which are payable into the Fund have been so paid.

(2) There shall be paid out of the Fund any sum which, in the opinion of the Board the party concerned would have been likely to receive, after the operation of section 12(3), if the advice and assistance provided had not been provided—

- (a) by virtue of a grant made under section 4A; or
- (b) by a solicitor in the course of employment to which Part V of this Act applies.”.

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## **71 Availability of civil legal aid for defamation or verbal injury**

- (1) The 1986 Act is amended as follows.
- (2) In section 14 (availability of civil legal aid), after subsection (1B) insert—
  - “(1C) In the case of proceedings described in paragraph 1 of Part II of Schedule 2 to this Act, civil legal aid shall be available to a person only if, in addition to the requirements which have to be met under subsection (1) and section 15 of this Act and subject to paragraph 2 of Part II of Schedule 2, such criteria as may be set out by the Scottish Ministers in directions given to the Board are met.
  - (1D) A direction given under subsection (1C) may—
    - (a) include criteria in respect of which the Board may require to satisfy itself;
    - (b) make different provision for different purposes;
    - (c) be varied or revoked at any time.
  - (1E) Where the Scottish Ministers give a direction under subsection (1C)—
    - (a) the Board must comply with it;
    - (b) the Scottish Ministers must arrange for the direction to be published in such manner as they consider appropriate.”.
- (3) In Part II of Schedule 2 (excepted proceedings)—
  - (a) in paragraph 1, after “to” insert “ section 14(1C) and ”;
  - (b) in paragraph 2, the words “, and legal” to the end are repealed.

VALID FROM 25/11/2010

## **72 Civil legal aid: conditions and reviews**

- (1) Section 14 (availability of civil legal aid) of the 1986 Act is amended in accordance with subsections (2) and (3) of this section.
- (2) In subsection (1), for “subsection” substitute “ subsections (1F) and ”.
- (3) After subsection (1E) (inserted by section 71(2) of this Act), insert—
  - “(1F) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.
  - (1G) The Board shall establish a procedure under which any person receiving civil legal aid under this section which is subject to conditions by virtue of subsection (1F) may apply to the Board for a review of any such condition.”.
- (4) Section 29 (legal aid in certain proceedings relating to children) of the 1986 Act is amended in accordance with subsections (5) and (6) of this section.
- (5) After subsection (5) insert—
  - “(5A) Legal aid made available to a person under subsection (2)(d) above or subsection (9) below may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.”.

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(6) After subsection (6) insert—

“(6A) The Board shall establish a procedure under which any person whose application for legal aid under subsection (2)(d) above or subsection (9) below has been refused may apply to the Board for a review of his application.

(6B) The Board shall establish a procedure under which any person receiving legal aid under subsection (2)(d) above or subsection (9) below which is subject to conditions by virtue of subsection (5A) may apply to the Board for a review of any such condition.”

### 73 Availability of legal aid: Judicial Committee of the Privy Council

- (1) In section 25AB (legal aid in references, appeals or applications for special leave to appeal to the Judicial Committee of the Privy Council) of the 1986 Act—
- (a) in subsection (1), for “or 13(a)” substitute “, 13(a) or 33 ”;
  - (b) in subsection (4), after “11” insert “ or 33 ”.
- (2) In paragraph 1 of Part 1 of Schedule 2 to that Act, for “and 13(b)” substitute “, 13(b), 32 and 33 ”.

VALID FROM 30/07/2007

### 74 Solicitors employed by the Scottish Legal Aid Board

- (1) In section 4 (Scottish Legal Aid Fund) of the 1986 Act, after subsection (2)(a) insert—
- “(aza) any expenses incurred by the Board in connection with the provision by solicitors employed by it by virtue of section 27(1) of this Act of—
- (i) advice and assistance in relation to civil matters;
  - (ii) civil legal aid;
  - (iii) any services as are mentioned in section 26(2) of this Act;”.
- (2) In section 26 (employment to which Part V applies)—
- (a) in subsection (2)—
    - (i) the word “local” is repealed;
    - (ii) in paragraph (a), for “its function” substitute “ any function it has ”;
  - (b) in subsection (3)(a)—
    - (i) the word “local” is repealed;
    - (ii) after “concerned” insert “ (whether wholly or partly) ”.
- (3) In section 27 (arrangements for employment to which Part V applies) of that Act—
- (a) after subsection (1), insert—
 

“(1A) The provisions of paragraph 8 of Schedule 1 to this Act shall apply to solicitors employed by the Board by virtue of subsection (1) as they apply to employees appointed by the Board under that paragraph.”;

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(b) subsections (2) and (3) are repealed.

PROSPECTIVE

## 75 Contributions, and payments out of property recovered

- (1) The 1986 Act is amended as follows.
- (2) In section 4 (Scottish Legal Aid Fund) in subsection (2), after paragraph (ab) insert—
  - “(aba) any sums repayable to a person in accordance with section 17(2C) of this Act;
  - (abb) any sums payable to a person in accordance with section 17(2D) of this Act;”.
- (3) In that section, after subsection (3)(c) insert—
  - “(ca) any sum recovered as to expenses under an award of a court or an agreement or otherwise in favour of any person in respect of any matter in connection with which advice and assistance has been provided to the person—
    - (i) by virtue of a grant made under section 4A; or
    - (ii) by a solicitor in the course of employment to which Part V of this Act applies;
  - (cb) any sum which is to be paid out of property (of whatever nature and wherever situated) recovered or preserved for any person in respect of any matter in connection with which advice and assistance has been provided to the person (including his rights under any settlement arrived at in connection with that matter in order to avoid or bring to an end any proceedings)—
    - (i) by virtue of a grant made under section 4A; or
    - (ii) by a solicitor in the course of employment to which Part V of this Act applies;”.
- (4) In section 17 (contributions, and payments out of property recovered), after subsection [F1(2D)] insert—
  - “(2C) If the total contribution to the Fund made by a person in respect of any proceedings exceeds the net liability of the Fund on the person's account, the excess shall be repaid to the person.
  - (2D) Any sums paid to the Board under subsection (2B) which are no longer required to meet the net liability of the Fund on a person's account, having taken into account any relevant sums paid to the Board under subsection (2A), shall be paid to the person.
  - (2E) Nothing in subsection (2B) shall prejudice the power of the court to allow any damages or expenses to be set off.
  - (2F) In this section, the reference to a “net liability of the Fund” on a legally assisted person's account is a reference to the aggregate amount of—
    - (a) the sums paid or payable to a solicitor or counsel out of the Fund on the person's account, in respect of the proceedings in question; and



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- (b) any sums paid or payable to a solicitor, counsel or registered organisation (in respect of the advisers it approves) out of the Fund on the person's account, for advice and assistance in connection with the proceedings in question or any matter to which those proceedings relate,

being sums not recouped by the Fund out of expenses in respect of those proceedings, or as a result of any right which the person may have to be indemnified against such expenses.

- (2G) Where the solicitor for a legally assisted person is employed by the Board for the purposes of Part V of this Act, references in subsection (2F) to sums payable out of the Fund include references to sums which would have been so payable had the legal aid and, as the case may be, advice and assistance been provided in circumstances other than those specified in subsection (2I).

- (2H) Where—

- (a) civil legal aid is or has been provided in respect of the proceedings in question by virtue of a grant made under section 4A; and
- (b) advice and assistance is or has been provided in connection with the proceedings by virtue of a grant made under section 4A,

references in subsection (2F) to sums payable out of the Fund include references to sums which would have been so payable had the legal aid and, as the case may be, advice and assistance been provided in circumstances other than those specified in subsection (2I).

- (2I) The circumstances are that the legal aid and, as the case may be, advice and assistance has been provided—

- (a) by virtue of a grant made under section 4A; or
- (b) by a solicitor in the course of employment to which Part V of this Act applies.”.

#### Textual Amendments

- F1** Word in s. 75(4) substituted (23.3.2011) by [The Legal Profession and Legal Aid \(Scotland\) Act 2007 \(Modification and Consequential Provisions\) Order 2011 \(S.S.I. 2011/235\)](#), arts. 2(1), 7

## 76 Regulations under section 36 of the 1986 Act

- (1) Section 36 (regulations) of the 1986 Act is amended as follows.

- (2) After paragraph (c) of subsection (2) insert—

“(ca) make provision allowing the Board to determine—

- (i) the matters which, subject to subsection (2A), are or are not to be treated as distinct matters for the purposes of advice and assistance;
- (ii) on a case by case basis, matters which may be treated as if they were distinct matters for the purposes of advice and assistance;”.

- (3) After subsection (2) insert—

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“(2A) Regulations made under this section which include provision as mentioned in subsection (2)(ca)(i) must include provision to the effect that—

- (a) any determination by the Board as to the matters which are or are not to be so treated as distinct matters may only be made after consultation with the Law Society;
- (b) where a matter has been determined by the Board to be so treated as a distinct matter, the Board may not determine that the matter is no longer to be so treated unless the Scottish Ministers consent.”.

**Status:**

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**Changes to legislation:**

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