



Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

2013 asp 3

PART 2

CRIMINAL LEGAL ASSISTANCE

Assistance by way of representation in relation to criminal matters

18 Availability of criminal assistance by way of representation

(1) In section 9(2) of the 1986 Act (regulations may apply Part 2 to representation), after paragraph (dd), insert—

“(dda) provide that, in relation to assistance by way of representation which relates to such criminal proceedings as may be prescribed, sections 9A and 11A are to apply instead of sections 8 and 11;”.

(2) After section 9 of the 1986 Act insert—

“9A Availability of specified criminal assistance by way of representation

(1) Assistance by way of representation to which this section applies by virtue of regulations made under section 9(1) is to be available to a client where—

- (a) the solicitor—
 - (i) has considered the financial circumstances of the client, and
 - (ii) is satisfied as to the criteria mentioned in subsection (2), or
- (b) the Board has approved the provision of the assistance.

(2) The criteria are—

- (a) the scheme of eligibility provides that the fees and outlays of the assistance cannot be met without undue hardship to the client or the dependants of the client, and
- (b) any further criterion prescribed in pursuance of section 9(2)(c).

Status: This is the original version (as it was originally enacted).

- (3) The Board must establish a procedure for a client to apply to the Board for approval under subsection (1)(b) in circumstances where assistance by way of representation has not been made available under subsection (1)(a).
- (4) For the purposes of this section, “scheme of eligibility” means a scheme approved under section 9B(3).
- (5) This section is subject to any provision made in regulations under section 8A(1).

9B Scheme of eligibility

- (1) The Board must, for the purposes of section 9A, prepare and publish a scheme of eligibility setting out financial circumstances in which the Board considers that paying the fees and outlays in respect of assistance by way of representation will result in undue hardship for a client or the dependants of a client.
- (2) Before publishing a scheme of eligibility the Board must submit the scheme to the Scottish Ministers for approval.
- (3) The Scottish Ministers may approve a scheme of eligibility submitted to them under subsection (2) with or without modification.
- (4) The Scottish Ministers may at any time—
 - (a) approve a modification of an approved scheme of eligibility proposed by the Board or withdraw approval of such a scheme or modification,
 - (b) require the Board to prepare and publish a scheme under subsection (1).
- (5) In preparing and publishing the scheme of eligibility under subsection (1) the Board must comply with any direction given by the Scottish Ministers.
- (6) A scheme of eligibility may make different provision for different cases or classes of case.”.

19 Clients’ contributions for criminal assistance by way of representation

- (1) In section 11(1) of the 1986 Act (clients’ contributions), after “below” insert “or, where applicable, section 11A”.
- (2) The title of section 11 becomes “**Clients’ contributions: general**”.
- (3) After section 11 insert—

“11A Clients’ contributions: specified criminal assistance by way of representation

- (1) This section applies where—
 - (a) assistance by way of representation has been made available to a client under section 9A(1) (“the assistance”), and
 - (b) the client—

Status: This is the original version (as it was originally enacted).

- (i) has disposable income of, or exceeding, £82 per week and is not (directly or indirectly) in receipt of any of the benefits mentioned in section 11(2)(b), or
 - (ii) has disposable capital of, or exceeding, £750.
- (2) The client is liable to pay a contribution in respect of the assistance provided of up to, but not in aggregate exceeding, such amount as may be prescribed by regulations made under section 33ZA(1).
- (3) Except where regulations made under section 33ZA(1) otherwise provide—
 - (a) in a case where the assistance is being provided—
 - (i) by a solicitor employed by the Board by virtue of sections 26 and 27 or, as the case may be, section 28A, or
 - (ii) by counsel instructed by such a solicitor,
it is for the Board to determine the amount of and collect any contribution payable by the client under subsection (2), and
 - (b) in any other case, it is for the solicitor to determine the amount of and collect any contribution payable by the client under subsection (2).
- (4) A contribution collected by the solicitor is to be treated as payment of a fee or outlay properly chargeable (in accordance with section 33).”.