# Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

**2013 asp 3**

## PART 2 S

CRIMINAL LEGAL ASSISTANCE

*Contributions in respect of automatically available criminal advice and assistance*

### 17 Contributions in respect of automatically available criminal advice and assistance S

In the Legal Aid (Scotland) Act 1986 (c. 47) ("the 1986 Act"), in section 8A (criminal advice and assistance: automatic availability in certain circumstances)—

(a) after subsection (1) insert—

"(1A) Regulations under subsection (1) may also provide that, in such circumstances as may be prescribed in the regulations, section 11(2) is not to apply in respect of advice and assistance made available to a relevant client.",

(b) in subsection (2), for "subsection (1)" insert " subsections (1) and (1A) ".

**Commencement Information**

**I1** S. 17 in force at 11.10.2013 by S.S.I. 2013/262, **art. 2**

*Assistance by way of representation in relation to criminal matters*

### 18 Availability of criminal assistance by way of representation S

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

**Status:** *This version of this part contains provisions that are prospective.*
**Changes to legislation:** *Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, PART 2 is up to date with all changes known to be in force on or before 20 July 2024. 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*

"(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).

(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.

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(6) A scheme of eligibility may make different provision for different cases or classes of case.”.

**Commencement Information**

**I2** S. 18(1) in force at 11.10.2013 by S.S.I. 2013/262, **art. 2**

## 19 Clients' contributions for criminal assistance by way of representation S

(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—

(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).”.

**Commencement Information**

**I3** S. 19 in force at 11.10.2013 by S.S.I. 2013/262, **art. 2**

**Status:** *This version of this part contains provisions that are prospective.*
**Changes to legislation:** *Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, PART 2 is up to date with all changes known to be in force on or before 20 July 2024. 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*

PROSPECTIVE

*Contributions for criminal legal aid*

**20 Contributions for criminal legal aid** S

After section 25AB of the 1986 Act insert—

"**25AC Legal aid: contributions**

(1) A person (A) is not to be required to pay any sums in respect of criminal legal aid received in pursuance of this Part except in accordance with subsection (3) or section 25AA(5).

(2) Subsection (3) applies where—
(a) the legal aid is not being provided in any of the circumstances described in section 22(1) or under section 23(1), and
(b) A—
(i) has disposable income of, or exceeding, £82 a 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.

(3) A is liable to pay a contribution in respect of the criminal legal aid provided of up to, but not in aggregate exceeding, such amount as may be prescribed by regulations made under section 33ZA(1).

(4) Except where regulations made under section 33ZA(1) otherwise provide—
(a) in a case where the criminal legal aid is being provided—
(i) in relation to solemn proceedings, proceedings relating to an appeal or proceedings relating to the Supreme Court,
(ii) by a solicitor employed by the Board by virtue of sections 26 and 27 or, as the case may be, section 28A, or
(iii) by counsel instructed by such a solicitor,
it is for the Board to collect any contribution payable by A under subsection (3), and
(b) in any other case, it is for the solicitor to collect any contribution payable by A under subsection (3).

(5) A contribution collected by the solicitor is to be treated as payment of a fee or outlay properly chargeable (in accordance with section 33).

(6) For the purposes of subsections (4)(b) and (5), "the solicitor" means the solicitor by whom any criminal legal aid is being provided or, where it is provided by counsel, the solicitor on whose instruction counsel provides it.

**25AD Payment of fees or outlays otherwise than through contributions**

(1) Except in so far as regulations made by the Scottish Ministers under this section or section 33ZA(1) otherwise provide, any fees and outlays payable to the solicitor in respect of criminal legal aid are to be paid as follows—

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(a) *first*, out of any contribution payable by the person receiving the criminal legal aid in accordance with section 25AC(3),

(b) *second*, in priority to all other debts, out of any expenses which by virtue of an order of a criminal court are payable to that person by any other person in respect of the matter in connection with which the criminal legal aid was given, and

(c) *third*, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor.

(2) In subsection (1)—

(a) the reference to fees and outlays is a reference to any fees and outlays properly chargeable (in accordance with section 33) in respect of criminal legal aid given to a person under this Part (but does not include the salary payable to a solicitor employed by the Board under sections 26 and 27 or section 28A),

(b) the reference to a contribution payable by the person receiving criminal legal aid does not include a contribution which it is for the Board to collect (whether under section 25AC(4)(a) or any regulations made under section 33ZA(1)).

(3) For the purposes of this section, "the solicitor" means the solicitor by whom any criminal legal aid is being provided or, where it is provided by counsel, the solicitor on whose instruction counsel provides it.".

PROSPECTIVE

*Contributions for appeals where appellant deceased*

**21 Contributions for appeals where appellant deceased** S

In section 25AA of the 1986 Act (legal aid in respect of appeals under section 303A of the Criminal Procedure (Scotland) Act 1995), after subsection (4) insert—

"(5) Where legal aid is being made available to an authorised person under this section (in either of the circumstances described in subsection (2) or (3)), the Board may require the payment of a contribution in respect of the expenses of the criminal legal aid of such amount as the Board may determine.

(6) The Board may require the contribution to be paid from the estate of the deceased person or by the authorised person.

(7) The amount determined by the Board under subsection (5) must not exceed the whole expenses of the criminal legal aid provided.

(8) The Board must take into account any contribution made by the deceased person prior to death in assessing the amount of contribution payable.

(9) It is for the Board to collect any contribution payable under subsection (5).".

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*General*

**22 Regulations about contributions for criminal legal assistance** S

After section 33 of the 1986 Act insert—

"**33ZA Regulations about contributions for criminal legal assistance**

(1) The Scottish Ministers may by regulations make provision in connection with the amount, determination and collection of any contribution payable under section 11 (in so far as relating to criminal matters) or section 11A, 25AA or 25AC.

(2) Regulations made under subsection (1) may, in particular—
- (a) make provision permitting a lower contribution to be payable where otherwise the person liable to pay the contribution, or the dependants of such person, would suffer undue hardship,
- (b) make provision for determining appropriate contributions where the person is in receipt of criminal legal assistance in respect of two or more distinct proceedings,
- (c) except in relation to section 25AA, specify whether it is for the Board or the solicitor providing the assistance to determine the amount of, or collect, a contribution,
- (d) specify how a person's contributions are to be transferred or accounted for in relation to proceedings which are—
  - (i) instituted by way of summary complaint but which are subsequently dealt with under solemn procedure, or
  - (ii) instituted by way of indictment but which are subsequently dealt under summary procedure,
- (e) make provision about the payment of contributions by instalments,
- (f) make provision requiring the Board to make arrangements to provide to solicitors a service of collecting contributions payable to solicitors on their behalf.

(3) Regulations made under subsection (1) containing provision made in pursuance of subsection (2)(f) may include provision about the operation of the service, including provision—
- (a) regulating the arrangements for remitting to a solicitor the amount of a contribution (or an instalment of a contribution) following its collection,
- (b) enabling or requiring, or, where enabled or required, regulating, the imposition by the Board of charges for the recovery of any reasonable costs the Board incurs in connection with the provision of the service to a solicitor.

(4) Regulations made under subsection (1) may provide for different provision in relation to different cases or classes of case.

(5) In this section "the solicitor" means the solicitor by whom any criminal legal aid is being provided or, where it is provided by counsel, the solicitor on whose instruction counsel provides it.".

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**Commencement Information**

**I4** S. 22 in force at 11.10.2013 by S.S.I. 2013/262, **art. 2**

## 23 Consequential modifications S

(1) The 1986 Act is amended as follows.

(2) In section 4(3)(aa) (Scottish Legal Aid Fund), after "11" insert " , 11A, 25AA or 25AC ".

(3) In section 8 (availability of advice & assistance), after "8A(1)" insert " or 9(1) ".

(4) In section 8A(1) (criminal advice and assistance: automatic availability in certain circumstances)—

(a) the words "the financial limits in section 8" become paragraph (a),

(b) after that paragraph insert "; or—

(b) the criteria mentioned in section 9A(2)".

(5) In section 9(2) (regulations may apply Part 2 to representation), in paragraph (de), after "11(2)" insert or " 11A ".

(6) In section 11 (clients' contributions)—

(a) in subsection (1)—

(i) after "(2)" insert " or ",

(ii) the words "or (3)" are repealed,

(b) in subsection (2A)—

(i) for the words from "criminal" where it first occurs to "assistance" where it third occurs substitute " advice and assistance (other than assistance by way of representation to which section 9A applies) ",

(ii) after "27" insert " or section 28A ",

(c) in subsection (3A), after "27" insert " or section 28A ", and

(d) subsections (3) and (4) are repealed.

(7) In section 12 (payment of fees and outlays otherwise than through clients' contributions)—

(a) in subsection (3)(a), after "11(2)" insert " or, as the case may be, section 11A(2) ", and

(b) after subsection (3), insert—

"(4) In subsection (3), the reference to an amount payable by the client does not include an amount which it is for the Board to collect (whether under section 11A(3) or any regulations made under section 33ZA(1)).".

(8) In section 33A (contracts for the provision of criminal legal assistance)—

(a) in subsection (5)(a), after "11(2)" insert " , 11A(2) or 25AC(3) ", and

(b) after subsection (5), insert—

"(5A) In subsection (5), the reference to an amount payable by the client does not include an amount which it is for the Board to

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collect (whether under section 11A(3), section 25AC(4)(a), or any regulations made under section 33ZA(1)).”.

(9) In section 36(2) (regulations)—

(a) in paragraph (b)—

(i) after “11(2),” insert “ 11A(1), ”,

(ii) for “and 17(2)” substitute “ , 17(2) and 25AC(2) ”,

(iii) for “amount specified in section 10(2)” substitute “ amounts specified in sections 10(2), 11A(1) and 25AC(2) and, in so far as relating to criminal matters, sections 8 and 11(2) ”.

(10) In section 37(2) (parliamentary procedure) after “24(4)” insert “ , 33ZA(1) ”.

**Commencement Information**

**I5** S. 23 in force at 11.10.2013 by S.S.I. 2013/262, **art. 2**

**Status:**
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**Changes to legislation:**
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**Changes and effects yet to be applied to :**

- specified provisions amendment to earlier commencing SSI 2013/271 art. 2 by S.S.I. 2013/271 art. 2

**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. 2(1)(c)(ii) inserted by 2014 asp 10 sch. 9 para. 13(2)(b)(ii)
- s. 2(1)(ba) inserted by 2014 asp 10 sch. 9 para. 13(2)(a)
- s. 2(3)(ca) inserted by 2014 asp 10 sch. 9 para. 13(3)
- s. 2(7) inserted by 2014 asp 10 sch. 9 para. 13(4)
- s. 6(1)(aa) inserted by 2014 asp 10 sch. 9 para. 13(6)(b)
- s. 6(1)(ea) inserted by 2014 asp 10 sch. 9 para. 13(6)(c)
- s. 8(3A) inserted by 2014 asp 10 sch. 9 para. 13(7)(b)
- s. 13A and cross-heading inserted by 2014 asp 10 sch. 9 para. 13(9)
- s. 16(1) s. 16 renumbered as s. 16(1) by 2014 asp 10 sch. 9 para. 13(10)(a)
- s. 16(1) words inserted by 2014 asp 10 sch. 9 para. 13(10)(b)
- s. 16(2) inserted by 2014 asp 10 sch. 9 para. 13(10)(c)