



# Scottish Civil Justice Council and Criminal Legal Assistance Act 2013

## 2013 asp 3

### PART 2 **S**

#### CRIMINAL LEGAL ASSISTANCE

##### *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—

“(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).

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**Changes to legislation:** *Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, Section 18 is up to date with all changes known to be in force on or before 13 September 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*

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- (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.”.

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#### **Commencement Information**

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

**Changes to legislation:**

Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, Section 18 is up to date with all changes known to be in force on or before 13 September 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.

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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\(10\)\(c\)](#)