



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

### PART IV

#### CRIMINAL LEGAL AID

#### **22 Automatic availability of criminal legal aid.**

- (1) Subject to regulations made under section 21(2) of this Act, criminal legal aid shall be available to every accused person—
- (a) where he is given representation as mentioned in paragraph (b) of section 21(4) of this Act;
  - (b) where his case is being prosecuted under solemn procedure until either—
    - (i) an application for legal aid under section [F<sup>1</sup>23A(1)] of this Act has been determined; or
    - (ii) he is admitted to bail or he is committed until liberated in due course of law,whichever first occurs;
  - (c) where he is being prosecuted under summary procedure, and either is in custody or has been liberated under section 295(1)(a) of the Criminal Procedure (Scotland) Act 1975 (liberation by police on undertaking to appear)—
    - (i) until the conclusion of the first diet at which he tenders a plea of guilty or not guilty; or
    - (ii) where he has tendered a plea of guilty at that diet, until his case is finally disposed of;
  - (d) where he is in custody and he is being prosecuted under summary procedure and he has—
    - (i) tendered a plea of not guilty; and
    - (ii) made an application to the Board for legal aid in connection with the proceedings,until his application has been determined by the Board; and

**Changes to legislation:** *Legal Aid (Scotland) Act 1986, Section 22 is up to date with all changes known to be in force on or before 20 June 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*

- [<sup>F2</sup>(da) in relation to any proceedings under solemn or summary procedure whereby the court determines (whether or not on a plea by the accused person) whether [<sup>F3</sup>the accused is unfit for trial under section 53F of the Criminal Procedure (Scotland) Act 1995;]
- (db) in relation to an examination of facts held under section 55 of the Criminal Procedure (Scotland) Act 1995 and the disposal of the case following such examination of facts;
- (dc) in relation to any appeal under section 62 or 63 (appeal by, respectively, accused or prosecutor [<sup>F4</sup>where accused found not criminally responsible or unfit for trial]) of that Act of 1995;]
- [<sup>F5</sup>(dd) where a solicitor has been appointed under section 288D of the Criminal Procedure (Scotland) Act 1995 (c.46) (appointment by court of solicitor for person accused of [<sup>F6</sup>certain offences] and thereby prohibited from conducting defence in person) [<sup>F7</sup>or section 92(2), (2B)(b) or (2E) of that Act (appointment of solicitor for accused where the trial is to proceed in his absence)] to act on his instructions or in his interests;]
- [<sup>F8</sup>(de) where a solicitor has been appointed under subsection (4)(b) or (7) of section 150A (proceedings in absence of accused) of the Criminal Procedure (Scotland) Act 1995 to represent the accused's interests;]
- (e) where he is being prosecuted under section 255 or 452B of the Criminal Procedure (Scotland) Act 1975 (new prosecution for the same or similar offence), until his case is finally disposed of,
- [<sup>F9</sup> and, in relation to paragraph (dc) above, “accused person” includes a person authorised to institute or continue an appeal under section 303A(4) of the Criminal Procedure (Scotland) Act 1995 (transfer of rights of appeal of deceased person).]
- (2) Criminal legal aid made available in the circumstances referred to in paragraph (c) (i) of subsection (1) above shall also be available in connection with any steps taken in the making of and representation in connection with any application for liberation following upon the diet referred to in that paragraph.

#### Textual Amendments

- F1** Words in s. 22(1)(b)(i) substituted (25.11.2010) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 64(2), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**
- F2** S. 22(1)(da)-(dc) inserted (1.4.1996) by [1995 c. 40](#), **ss. 5, 7(2)**, **Sch. 4 para. 63(3)**
- F3** Words in s. 22(1)(da) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 16(a)**; S.S.I. 2012/160, art. 3, sch.
- F4** Words in s. 22(1)(dc) substituted (with application in accordance with art. 3 of the commencing S.S.I.) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), s. 206(1), **sch. 7 para. 16(b)**; S.S.I. 2012/160, art. 3, sch.
- F5** S. 22(1)(dd) inserted (1.11.2002) by [Sexual Offences \(Procedure and Evidence\) \(Scotland\) Act 2002 \(asp 9\)](#), **s. 2(2)**; S.S.I. 2002/443, **art. 3** (with transitional provisions in art. 4(1)(2))
- F6** Words in s. 22(1)(dd) substituted (1.4.2019) by [Domestic Abuse \(Scotland\) Act 2018 \(asp 5\)](#), s. 15(2), **sch. para. 3(2)**; S.S.I. 2018/387, **reg. 2** (with reg. 7)
- F7** Words in s. 22(1)(dd) inserted (1.2.2005) by [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), **ss. 10(7), 27(1)**; S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with arts. 3-5)
- F8** S. 22(1)(de) inserted (10.12.2007) by [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(asp 6\)](#), **ss. 80, 84(1)**, **Sch. para. 5(a)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)

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**F9** Words in s. 22(1) inserted (20.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(6)**; S.I. 1997/2323, art. 3, **Sch.1**

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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. 4(2)(aba)(abb) inserted by [2007 asp 5 s. 75\(2\)](#)
- s. 4(2)(aba) word substituted by [S.S.I. 2011/235 art. 5\(2\)\(a\)](#) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)
- s. 4(2)(abb) word substituted by [S.S.I. 2011/235 art. 5\(2\)\(b\)](#) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)
- s. 4(2)(ba) inserted by [2007 asp 5 s. 70\(1\)](#)
- s. 4(3)(ca)(cb) inserted by [2007 asp 5 s. 75\(3\)](#)
- s. 9A9B inserted by [2013 asp 3 s. 18\(2\)](#)
- s. 10(1A)(1B) inserted by [2007 asp 5 s. 69\(3\)](#)
- s. 12C and cross-heading inserted by [2007 asp 5 s. 70\(2\)](#)
- s. 17(2C)-(2I) inserted by [2007 asp 5 s. 75\(4\)](#)
- s. 17(2DA)(2DB) s. 17(2C)(2D) renumbered as s. 17(2DA)(2DB) by [S.S.I. 2011/235 art. 5\(3\)](#) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)
- s. 25AA(5)-(9) inserted by [2013 asp 3 s. 21](#)
- s. 25AC25AD inserted by [2013 asp 3 s. 20](#)