



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

### PART III

#### CIVIL LEGAL AID

#### 13 Meaning of “civil legal aid”.

- (1) This Part of this Act applies to civil legal aid.
- (2) In this Act, “civil legal aid” means representation by a solicitor and <sup>F1</sup>(so far as is necessary) <sup>F1</sup>, where appropriate,]by counsel in any proceedings mentioned in Part I of Schedule 2 to this Act, on the terms provided for in this Act, and includes all such assistance as is usually given by solicitor or counsel in the steps preliminary to or incidental to proceedings, or in arriving at or giving effect to a settlement to prevent them or bring them to an end.
- (3) Subject to sections 14 and 15 of this Act and to regulations made under this section, civil legal aid shall be available in connection with any proceedings mentioned in subsection (2) above, except insofar as Part II of Schedule 2 to this Act otherwise provides.
- (4) Schedule 2 to this Act may be varied by regulations made under this section, so as to extend or restrict the categories of proceedings in which civil legal aid is available, by reference to the court or tribunal, to the issues involved, to the capacity in which the person seeking civil legal aid is concerned, or otherwise.
- (5) Regulations under subsection (4) above may not have the effect of adding any reference to proceedings in any court or tribunal before which persons have no right to be and are not normally represented by counsel or a solicitor.

#### Textual Amendments

- F1** Words “,where appropriate,” substituted (*prosp.*) for “(so far as is necessary)” by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 c. 40, SIF 76:2, ss. 74(1)(2), 75(2), Sch. 8 para. 36(3)

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## 14 Availability of civil legal aid.

(1) Subject to section 15 of this Act and to subsection (2) below, civil legal aid shall be available to a person if, on an application made to the Board—

- (a) the Board is satisfied that he has *aprobabilis causa litigandi*; and
- (b) it appears to the Board that it is reasonable in the particular circumstances of the case that he should receive legal aid.

(2) The Board may require a person receiving civil legal aid 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 civil legal aid.

(3) <sup>F2</sup>Subject to subsections (4) to (6) below,]the Board shall establish a procedure under which any person whose application for legal aid under this section has been refused may apply to the Board for a review of his application.

<sup>F3</sup>(4) Where—

- (a) the Board has refused an application for civil legal aid by a person who has applied for such aid for the purpose of raising an action against the Board; and
- (b) the applicant has applied to the Board for a review of his application,

the Board shall, unless they decide to grant the application forthwith, refer the application, together with all relevant precognitions, statements and other papers, including any observations they wish to make on the application, to the sheriff for Lothian and Borders at Edinburgh.

(5) Subject to section 15 of this Act, and to subsection (2) above, where the sheriff decides—

- (a) that the applicant has a *probabilis causa litigandi*; and
- (b) that it is reasonable in the particular circumstances of the case that he should receive legal aid,

he shall so inform the Board, and the Board shall make civil legal aid available to the applicant.

(6) A decision made by the sheriff under subsection (5) above shall be final.]

### Textual Amendments

**F2** Words in s. 14(3) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 36(4)**; S.I. 1991/2151, **art. 3**, Sch

**F3** S. 14(4)–(6) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), **Sch. 8 para. 36(5)**; S.I. 1991/2151, **art. 3**, Sch.

### Modifications etc. (not altering text)

**C1** S. 14 excluded by S.I. 1987/381, **reg. 46(2)(b)**

## 15 Financial conditions.

(1) A person shall be eligible for civil legal aid if his disposable income does not exceed <sup>F4</sup>£6,350]a year.

(2) A person may be refused civil legal aid if—

- (a) his disposable capital exceeds <sup>F5</sup>£6,310]; and

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- (b) it appears to the Board that he can afford to proceed without legal aid.
- (3) For the purposes of this section, a person's disposable income and disposable capital shall be determined by the Board.

#### Textual Amendments

- F4** For “£5,415” there is substituted “£6,350” by virtue of S.I. 1990/839, **reg. 2** (which regulation was revoked (01.07.1998) by S.I. 1992/1586, **reg. 5**).
- F5** For “£4,710” there is substituted “£6,310” by virtue of S.I. 1990/839, **reg. 3** (which regulation was revoked (01.07.1998) by S.I. 1992/1586, **reg. 5**).

#### Modifications etc. (not altering text)

- C2** S. 15 excluded by S.I. 1987/381, **regs. 46(2)(a), 47(2)(a)**

### Expenses

#### 16 Expenses in favour of certain assisted persons.

- (1) ..... <sup>F6</sup>
- (2) <sup>F7</sup> . . . in sections 17 to 20 of this Act—  
“court” includes tribunal;  
“legally assisted person” means a person in receipt of civil legal aid in the proceedings in question or a person in receipt of assistance by way of representation in any proceedings to which this Part applies.

#### Textual Amendments

- F6** S. 16(1) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. I para. 2(a), **Sch. 6**
- F7** Words repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. I para. 2(b), **Sch. 6**

#### 17 Contributions, and payments out of property recovered.

- (1) Legally assisted persons may be required [<sup>F8</sup>by the Board to contribute to the Fund][<sup>F8</sup>to contribute to the fees and outlays incurred by them (or on their behalf)] in accordance with this section in respect of any proceedings in connection with which they are granted civil legal aid.
- (2) A legally assisted person's contribution under this section shall be determined by the Board, and may include—
- (a) if his disposable income exceeds [<sup>F9</sup>£2,645] a year, a contribution in respect of income which shall not be more than one-quarter of the excess (or such other proportion of the excess, or such amount, as may be prescribed by regulations made under this section); and
- (b) if his disposable capital exceeds £3,000, a contribution in respect of capital which shall not be more than the excess (or such proportion of the excess or such lesser amount as may be prescribed by regulations made under this section).

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[<sup>F10</sup>(2A) Except in so far as regulations made under this section otherwise provide, any sum of money recovered under an award of or an agreement as to expenses in favour of any party in any proceedings in respect of which he is or has been in receipt of civil legal aid shall be paid to the Board.

(2B) Except in so far as regulations made under this section otherwise provide, where, in any proceedings, there is a net liability of the Fund on the account of any party, the amount of that liability shall be paid to the Board by that party, in priority to any other debts, out of any property (wherever situate) which is recovered or preserved for him—

- (a) in the proceedings; or
- (b) under any settlement to avoid them to bring them to an end.]

<sup>F11</sup>(3) .....

[<sup>F12</sup>(9) Except insofar as regulations made under this section otherwise provide—

- (a) any award of expenses to a legally assisted person; and
- (b) any property (wherever situated) recovered or preserved for him in the proceedings for which he is legally assisted,

shall be paid initially to the Fund, to be applied towards—

- (i) the fees and outlays incurred by or on behalf of the legally assisted person in those proceedings;
- (ii) recouping any sums paid out of the fund on his behalf in respect of advice and assistance in relation to those proceedings or to any matter to which those proceedings relate.

(10) Where the solicitor acting for a legally assisted person is employed by the Board for the purposes of Part V of this Act, references in subsection (1) above and in section 33 of this Act to “fees and outlays” include references to sums which would have been payable to that solicitor had he not been so employed.

(11) Nothing in subsection (9) above shall prejudice the power of the court to allow any damages or expenses to be set off.

(12) An account of expenses which—

- (a) has been agreed between the board and the solicitor acting for the legally assisted person; or
- (b) has been taxed,

shall not be liable to taxation by an auditor of court in any proceedings.]

#### Textual Amendments

**F8** For from “by the Board” to “the Fund” there is substituted (*prosp.*) “to contribute to the fees and outlays incurred by them (or on their behalf)” by [Legal Aid Act 1988 \(c.34, SIF 77:1\)](#), ss. 44, 47(2), [Sch. 4 Pt. 1 para. 3\(a\)](#)

**F9** For “£2,255” there is substituted “£2,645” by virtue of [S.I. 1990/839, reg. 4](#)

**F10** S. 17(2A)(2B) inserted (*prosp.*) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), ss. 74(1), 75(2), [Sch. 8 para. 36\(6\)](#)

**F11** S. 17(3)–(8) repealed by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), ss. 44, 45(2), [Sch. 4 Pt. 1 para. 3\(b\)](#), [Sch. 6](#) (and, by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), ss. 74(1)(2), 75(2), [Sch. 8 para. 36\(7\)](#), [Sch. 9](#), subsections 17(3)–(5) are expressed to be repealed (*prosp.*) and subsections 17(6)(8) are expressed to be amended (*prosp.*)).

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**F12** S. 17(9)–(12) added (*prosp.*) by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 47(2), **Sch. 4 Pt. I para. 3(c)**

**Modifications etc. (not altering text)**

**C3** S. 17 excluded by S.I. 1987/381, **regs. 46(2)(a), 47(2)(a)**

**18 Expenses of unassisted party.**

<sup>F13</sup>(1) . . . . .

(2) The liability of a legally assisted person under an award of expenses [<sup>F14</sup>in any proceedings] shall not exceed the amount (if any) which in the opinion of the court or tribunal making the award is a reasonable one for him to pay, having regard to all the circumstances including the means of all the parties and their conduct in connection with the dispute.

(3) None of the following, namely a legally assisted person's house, wearing apparel, household furniture and the tools and implements of his trade or profession shall—

- (a) be taken into account in assessing his means for the purposes of subsection (2) above; or
- (b) be subject to diligence or any corresponding process in any part of the United Kingdom in connection with any award of expenses in proceedings to which this section applies,

except insofar as regulations made under this section may prescribe.

**Textual Amendments**

**F13** S. 18(1) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. II para. 7(a), **Sch. 6**

**F14** Words substituted by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), **Sch. 4 Pt. II para. 7(b)**

**Modifications etc. (not altering text)**

**C4** S. 18(2) applied by S.I. 1987/381, **regs. 33, 35** and modified by S.I. 1987/381, **reg. 36**

S. 18(2) applied (S.) (7.10.1996) by S.I. 1996/2444, **reg.34**

S. 18(2) applied (S.) (1.12.2002) by S.S.I. 2002/494, **reg.34**

**19 Expenses out of the Fund.**

(1) In any proceedings [<sup>F15</sup>to which a legally assisted person is party and which are finally decided in favour of an unassisted party], subject to subsections (2) and (3) below, the court may make an award out of the Fund to an unassisted party of the whole or any part of any expenses incurred by him (so far as attributable to any part of the proceedings in connection with which another party was a legally assisted person).

(2) Before making an order under this section, the court shall consider making an award of expenses against the legally assisted person.

(3) An order under this section may be made only if—

- (a) an order for expenses might be made in the proceedings, apart from this Act; and
- (b) in the case of expenses of proceedings in a court of first instance, those proceedings were instituted by the legally assisted person, and the court is

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- satisfied that the unassisted party will suffer severe financial hardship unless the order is made; and
- (c) in any case, the court is satisfied that it is just and equitable in all the circumstances that the award should be paid out of public funds.
- (4) The provisions of subsection (3)(b) above regarding financial hardship may be modified, in their application to persons who are concerned in proceedings only in a fiduciary, representative or official capacity, by regulations made under this section.
- (5) No appeal may be made against an order made under this section, or against a refusal to make such an order, except on a point of law.
- (6) In this section, “expenses” means expenses as between party and party, and includes the expenses of applying for an order under this section.

#### Textual Amendments

**F15** Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 44, [Sch. 4 Pt. II para. 8](#)

#### Modifications etc. (not altering text)

**C5** S. 19(3)(b) modified by [S.I. 1987/381](#), [reg. 37](#)

## 20 Provisions supplementary to sections 18 and 19.

- (1) For the purposes of [<sup>F16</sup>section]19 of this Act, civil proceedings are finally decided in favour of an unassisted party—
- if no appeal may be made against the decision in his favour;
  - if an appeal may be made against the decision with leave, and the time limit for applications for leave expires and either no application has been made, or leave has been refused;
  - if leave to appeal against the decision is granted or is not required and no appeal is made within the time limit for appeals; or
  - if an appeal is made but is abandoned before it is determined.
- (2) Where an appeal is allowed to be made late, the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the unassisted party to the Fund of the whole or any part of any sum previously paid to him under section 19 of this Act in respect of those proceedings.
- (3) Where a court decides any proceedings in favour of the unassisted party and an appeal may be made (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under section 19 of this Act, but any order so made shall not take effect unless—
- where leave to appeal is required, the time limit for applications for leave to appeal expires and no application has been made or leave is refused;
  - where leave to appeal is granted or is not required, the time limit for appeals expires without an appeal being made; or
  - an appeal is made but is abandoned before it is determined.
- (4) It shall be competent, at any time within such period after the making of an award of expenses to which section 18(2) of this Act applies as may be prescribed by regulations made under this section, for any party concerned with the award to apply to the court

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or tribunal which made the award for re-assessment of its amount, on the ground that since the award was made there has been a relevant change of circumstances, and on such application the court or tribunal may make such re-assessment of the amount of the award as seems to them proper.

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**Textual Amendments**

**F16** Word substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 44, **Sch. 4 Pt. II para. 9**

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