



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

### PART III

#### CIVIL LEGAL AID

##### *Expenses*

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

(1) ..... <sup>F1</sup>

(2) <sup>F2</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

**F1** S. 16(1) repealed by [Legal Aid Act 1988](#) (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt.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](#)

**F2** Words repealed by [Legal Aid Act 1988](#) (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt.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>F3</sup>by the Board to contribute to the Fund][<sup>F3</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>F4</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

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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).

[<sup>F5</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>F6</sup>(3) .....

[<sup>F7</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

**F3** 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. I para. 3\(a\)](#)

**F4** For “£2,255” there is substituted “£2,645” by virtue of [S.I. 1990/839, reg. 4](#)

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- F5** 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)**
- F6** S. 17(3)–(8) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. I 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.*)).
- F7** 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)**

- C1** S. 17 excluded by S.I. 1987/381, **regs. 46(2)(a), 47(2)(a)**

**18 Expenses of unassisted party.**

<sup>F8</sup>(1) . . . . .

(2) The liability of a legally assisted person under an award of expenses [<sup>F9</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**

- F8** 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**
- F9** 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)**

- C2** 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>F10</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.

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- (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 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

**F10** 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)

**C3** 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 [F11 section]19 of this Act, civil proceedings are finally decided in favour of an unassisted party—
- (a) if no appeal may be made against the decision in his favour;
  - (b) 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;
  - (c) 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
  - (d) 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—
- (a) 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;

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- (b) where leave to appeal is granted or is not required, the time limit for appeals expires without an appeal being made; or
  - (c) 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 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**

**F11** Word substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 44, **Sch. 4 Pt. II para. 9**

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