



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART VI

MISCELLANEOUS

Solicitors and counsel

31 Solicitors and counsel.

- (1) ^{F1}Subject to subsection (1A) below,] a person to whom legal aid or advice and assistance is made available may select—
- the solicitor to advise or act for him; and
 - if the case requires counsel, ^{F2}or a solicitor holding rights of audience by virtue of section 25A (rights of audience) of the Solicitor (Scotland) Act 1980, his counsel or such a solicitor],
- and he shall be entitled to make the selection himself.

^{F3}(1A) Subsection (1) above is subject to—

- section 25A(3) of this Act;
[section 28M(3),]
^{F4}(aa)
- section 30(2) of this Act;
- regulations made under section 28A(6) of this Act;
- regulations made under section 33A(4) of this Act; ^{F5} . . .
[regulations made under section 33B(4),]
^{F6}(da)
- regulations made under subsection (9) below ^{F7}; and
- ^{F8}sections 92(2), (2B)(b), (2D) and (2E) [^{F9}, 150A(4)(b), (6) and (7)] and 288D of the Criminal Procedure (Scotland) Act 1995 (c.46)]

^{F10}and does not apply where the person is being provided with criminal legal assistance [^{F11}or children's legal assistance] by a solicitor employed by the Board under section 26 and 27 of this Act]]

Changes to legislation: Legal Aid (Scotland) Act 1986, Cross Heading: Solicitors and counsel is up to date with all changes known to be in force on or before 10 March 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

- (2) Nothing in subsection (1) above shall prejudice any right of a solicitor or advocate to refuse or give up a case or to entrust it to another solicitor or advocate.
- (3) The [^{F12}Board] may decide to exclude any advocate or solicitor either from being selected under subsection (1) above, or from giving advice and assistance to or from acting for a person to whom legal aid is made available on the ground that there is good reason for excluding him arising out of—
- (a) his conduct when acting or selected to act for persons to whom legal aid or advice and assistance is made available;
 - (b) his professional conduct generally;
 - (c) in the case of a member of a firm of solicitors or a director of an incorporated practice, such conduct on the part of any person who is for the time being a member of the firm or a director of the practice.
- [^{F13}(d) in the case of a solicitor investor in a licensed legal services provider, such conduct on the part of any person who is for the time being a solicitor investor in it.]
- (4) The [^{F14}Board] may decide to exclude a solicitor or advocate under subsection (3) above in respect of any specified period or without limit of time.
- (5) A solicitor or advocate who is aggrieved by a decision of the [^{F15}Board] under subsection (3) above may appeal against his exclusion or the period of such exclusion to the Court of Session; and the court in determining such an appeal may make such order as it thinks fit.
- ^{F16}(6)
- (7) Except in so far as expressly provided under this Act, the fact that the services of counsel or a solicitor are given by way of legal aid or advice and assistance shall not affect the relationship between or the respective rights in that connection of counsel, solicitor and client.
- (8) The Board may arrange that, in such circumstances as it may specify, a solicitor shall be available for the purposes of providing legal aid or advice and assistance.
- (9) Where a solicitor is available as is mentioned in subsection (8) above, the Secretary of State may, by regulations made under this section, provide that—
- (a) subsection (1) above shall not apply; and
 - (b) [^{F17}Subject to subsection (11) below,] legal aid or, as the case may be, advice and assistance shall be provided only by the solicitor so made available.
- ^{F18}(10)
- [^{F19}(11) Nothing in subsection (9)(b) above shall enable the Secretary of State to make regulations authorising the granting of legal aid only to solicitors holding rights of audience under section 25A (rights of audience) of the Solicitors (Scotland) Act 1980.]

Textual Amendments

- F1** Words in s. 31(1) substituted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(8)(a)**; S.I. 1997/2323, **art. 6(2)**
- F2** Words in s. 31(1) substituted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), Sch. 8 para. 36(13); S.I. 1991/2151, **art. 3, Sch.**
- F3** S. 31(1A) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(8)(b)**; S.I. 1997/2323, **art. 6(2)**

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- F4** S. 31(1A)(aa) inserted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(4)(a)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F5** Word preceding s.31(1A)(e) repealed (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. **2(3)(a)**; S.S.I. 2002/443, **art. 3**
- F6** S. 31(1A)(da) inserted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(4)(b)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F7** S. 31(1A)(f) and preceding word inserted (1.11.2002) by Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp 9), s. **2(3)(b)**; S.S.I. 2002/443, **art. 3** (with transitional provisions in art. 4(1)(2))
- F8** Words in s. 31(1A)(f) substituted (1.2.2005) by Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), **ss. 10(8)**, 27(1); S.S.I. 2004/405, **art. 2(1)**, Sch. 1 (with arts. 3-5)
- F9** Words in s. 31(1A)(f) inserted (10.12.2007) by Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), **ss. 80, 84(1)**, **Sch. para. 5(b)**; S.S.I. 2007/479, **art. 3(1)**, Sch. (as amended by S.S.I. 2007/527)
- F10** Words in s. 31(1A) added (6.7.2001) by 2001 asp 7, **ss. 9(8)**, 15(3)
- F11** Words in s. 31(1A) inserted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(4)(c)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F12** Word in s. 31(3) substituted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(a)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)
- F13** S. 31(3)(d) inserted (2.7.2012) by The Legal Services (Scotland) Act 2010 (Ancillary Provision) Regulations 2012 (S.S.I. 2012/212), regs. 1, **3(2)**
- F14** Word in s. 31(4) substituted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(a)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)
- F15** Word in s. 31(5) substituted (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(a)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)
- F16** S. 31(6) repealed (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(b)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)
- F17** Words in s. 31(9)(b) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74(1), Sch. 8 para. 36(14); S.I. 1991/2151, art. 3, **Sch.**
- F18** S. 31(10) repealed (1.5.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 140(b)**, 150(2); S.S.I. 2011/180, art. 4(b) (with art. 8)
- F19** S. 31(11) inserted (30.9.1991) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2) s. 74(1), Sch. 8 para. 36(15); S.I. 1991/2151, art. 3, **Sch.**

Modifications etc. (not altering text)

- C1** S. 31(1) excluded (6.2.2002) by S.S.I. 2001/464, **reg. 2(a)**
- C2** S. 31(1) excluded (6.6.2011) by The Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 (S.S.I. 2011/163), regs. 1(1), **7(7)(a)**
- C3** S. 31(1) excluded (4.7.2011) by The Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 (S.S.I. 2011/163), **reg. 3(2)(a)**
- C4** S. 31(1) excluded (24.6.2013) by The Childrens Legal Assistance (Scotland) Regulations 2013 (S.S.I. 2013/200), regs. 1, **35(a)**

32 Restriction on payment and employment of solicitor or counsel.

Where legal aid is available to a person in connection with any proceedings (whether legal aid is available in connection with all or only part of the proceedings)—

- (a) the solicitor or counsel providing legal aid shall not take any payment in respect of any advice given or anything done in connection with such proceedings during any period when legal aid was so available except for such payment as may be made, in accordance with this Act . . . ^{F20}; and

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- (b) except as is mentioned in section 31(2) of this Act, no solicitor or counsel other than the solicitor or counsel referred to in paragraph (a) above shall advise or act for him in connection with the proceedings.

Textual Amendments

F20 Words repealed by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), ss. 44, 45(2), Sch. 4 Pt. I para. 4, [Sch. 6](#)

33 Fees and outlays of solicitors and counsel.

- (1) [^{F21}Subject to subsections (3A) and (3B) below,] any solicitor or counsel who acts for any person by providing legal aid or advice and assistance under this Act shall be paid out of the Fund in accordance with section 4(2)(a) of this Act in respect of any fees or outlays properly incurred by him in so acting.
- [^{F22}(1A) A registered organisation shall be paid out of the Fund in accordance with section 4(2) (a) of this Act in respect of any fees or outlays properly incurred by it in respect of the advisers it approves providing advice and assistance under this Act.]
- (2) The Secretary of State may, by regulations made under this section, make such provision as seems to him appropriate in respect of the fees and outlays of solicitors and counsel [^{F23}and, in respect of advice and assistance as mentioned in paragraph (b) of this subsection, advisers]—
- (a) acting in any proceedings for a person to whom legal aid has been made available; or
 - (b) providing advice and assistance in accordance with Part II of this Act.
- (3) Without prejudice to the generality of subsection (2) above, regulations made under this section may—
- (a) prescribe the work in respect of which fees may be charged;
 - (b) prescribe rates or scales of payment of fees and outlays allowable and the conditions under which such fees and outlays may be allowed;
 - (c) provide for the assessment and taxation of fees and outlays, and for the review of any such assessment or taxation, either by the Secretary of State or by any other person;
 - (d) prescribe general principles to be applied in connection with any such assessment, taxation or review;
 - (e) prescribe forms to be used for the purposes of any regulations made under this section; and
 - (f) make different provision for different cases.
- [^{F24}(3A) The Secretary of State may by regulations under this section prescribe fixed payments to be made to a solicitor in respect of—
- (a) his professional services in providing criminal legal assistance; and
 - (b) such outlays as may be so prescribed.
- [Regulations amending or replacing regulations made under subsection (3A) above [^{F25}(3AA) may, for the purpose specified in subsection (3AB) below, make provision as to fixed payments in relation to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of the making or coming into force of the amendment or replacement of the regulations.

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- (3AB) The purpose referred to in subsection (3AA) above is that of ensuring that persons to whom fixed payment criminal legal assistance is being provided are not, by reason of the amount of the fixed payments payable in respect of that criminal legal assistance under the regulations as they have effect immediately before the coming into force of the amendment or replacement of the regulations, deprived of the right to a fair trial.
- (3AC) In subsection (3AB) above “fixed payment criminal legal assistance” and “fixed payments” have respectively the meanings given by subsection (3E) below;]
- (3B) A solicitor who provides any criminal legal assistance in respect of which a fixed payment has been prescribed in regulations made under subsection (3A) above shall not be entitled to any other payment out of the Fund in respect of the professional services and outlays mentioned in that subsection, but shall be entitled to reimbursement of any other outlays which he has properly incurred.]
- [^{F26}(3BA) But subsection (3B) does not preclude a solicitor from being paid out of the Fund under section 4(2)(ad) following a claim for interim payment made under [section 33ZB](#) in respect of the professional services and outlays mentioned in subsection (3A).]
- [^{F27}(3C) The Scottish Ministers may, ^{F28}... for the purpose of enabling the Board to ensure that a person to whom fixed payment criminal legal assistance is provided is not, for the reason specified in subsection (3D) below, deprived of the right to a fair trial, by regulations under this subsection, provide that—
- (a) in such circumstances; and
 - (b) under such conditions,
- as may be prescribed by the regulations, a solicitor who provides such criminal legal assistance shall, instead of receiving fixed payments, be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above.
- (3D) The reason referred to in subsection (3C) above is the amount of the fixed payments payable for the criminal legal assistance provided.
- (3E) In subsection (3C) above—
- “fixed payment criminal legal assistance” means criminal legal assistance in respect of which fixed payments are prescribed under subsection (3A) above;
 - “fixed payments” means fixed payments so prescribed.
- (3F) Regulations made under subsection (3C) above shall provide that it is for the Board to determine whether any prescribed circumstances exist and whether any prescribed conditions are met.
- (3G) Circumstances may be prescribed under subsection (3C)(a) above by reference to such factors as the Scottish Ministers think fit.
- (3H) The conditions which may be prescribed under subsection (3C)(b) above include those which stipulate that a solicitor providing criminal legal assistance—
- (a) applies to the Board to exercise its power of determination under subsection (3F) above;
 - (b) does so in such manner and form as the Board may specify and at as early a stage in the provision of the criminal legal assistance as is reasonably practicable; and

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- (c) keeps proper records of all professional services provided by way of and outlays incurred in the provision of that criminal legal assistance, whether before or after the exercise of that power of determination.
- (3J) Regulations may be made under subsection (3C) above so as to relate to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of coming into force of section 7 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), and regulations so relating may disapply any condition which would otherwise apply under subsection (3C)(b) above.
- (3K) The Board shall establish a procedure under which any person—
- (a) whose solicitor’s application under subsection (3H) above has been refused; or
 - (b) on whose solicitor’s application under that subsection the Board has made a determination which is such that the solicitor will not be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above,
- may apply to the Board for review of that refusal or determination.]
- (4) In subsection (1) above the reference to acting for a person includes, in relation to a solicitor, a reference to acting for such a person on the instructions of another solicitor.
- (5) Where a person is in receipt of legal aid in connection with any proceedings, any expenses incurred in connection with the proceedings which would, if he were not in receipt of legal aid, be paid, in the first instance, by or on behalf of the solicitor acting for him, shall be so paid.
- [^{F29}(6) Where a sum is paid out of the Fund under section 4(2)(ad) in connection with the provision of legal aid or advice and assistance, that sum must be deducted from the sum payable to the solicitor or counsel under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.]

Textual Amendments

- F21** Words in s. 33(1) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(9)**; S.I. 1997/2323, **art. 6(2)**
- F22** S. 33(1A) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(7)(a), 82(2)** (with s. 77); S.S.I. 2007/335, **art. 2(a)**
- F23** Words in s. 33(2) inserted (30.7.2007) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 67(7)(b), 82(2)** (with s. 77); S.S.I. 2007/335, **art. 2(a)**
- F24** S. 33(3A)(3B) inserted (1.10.1997) by 1997 c. 48, s. 51; S.I. 1997/2323, art. 6, **Sch. 3**
- F25** S. 33(3AA)-(3AC) inserted (6.7.2001) by 2001 asp 7, **ss. 8, 15(3)**
- F26** S. 33(3BA) inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(3)(a), 59(1)** (with s. 48(1)(c)(2)(c)(3)(b))
- F27** S. 33(3C)-(3K) inserted (6.7.2001) by 2001 asp 7, **ss. 7, 15(3)**
- F28** Word in s. 33(3C) repealed (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(3)(b), 59(1)** (with s. 48(1)(c)(2)(c)(3)(b))
- F29** S. 33(6) inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 35(3)(c), 59(1)** (with s. 48(1)(c)(2)(c)(3)(b))

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[^{F30}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.]

Textual Amendments

F30 S. 33ZA inserted (11.10.2013) by [Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 \(asp 3\)](#), ss. 22, 25(2); S.S.I. 2013/262, art. 2

Changes to legislation:

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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](#)