

Changes to legislation: Legal Aid (Scotland) Act 1986, SCHEDULE 2 is up to date with all changes known to be in force on or before 24 February 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

SCHEDULES

SCHEDULE 2

PART I

COURTS IN WHICH CIVIL LEGAL AID IS AVAILABLE

- 1 Civil legal aid shall be available in relation to civil proceedings in—
- [^{F1}the [^{F2}Supreme Court], in references, appeals and applications for special leave to appeal under paragraphs 10, 12 [^{F3}, 13(b), 32 and 33] of Schedule 6 to the Scotland Act 1998;]
 - the [^{F4}Supreme Court], in appeals from the Court of Session;
 - the Court of Session;
 - the Lands Valuation Appeal Court;
 - the Scottish Land Court;
 - [^{F5}the Sheriff Appeal Court;]
 - the sheriff court,
- and in relation to proceedings—
- before any person to whom a case is referred in whole or in part by a court mentioned above;
 - ^{F6}
 - in the Lands Tribunal for Scotland;
 - in the Employment Appeal Tribunal[^{F7};
 - before the Proscribed Organisations Appeal Commission;]
 - [^{F8}comprising an appeal to the Social Security Commissioners;
 - ^{F9}];
 - [^{F10}before the First-tier Tribunal for Scotland of the type described in paragraph 2A;]
 - [^{F11}in or with respect to an appeal to the Upper Tribunal for Scotland a (including an application for permission to appeal);]
 - [^{F12}before the Upper Tribunal of the type described in paragraph 3].

Textual Amendments

- F1** Sch. 2 Pt. 1 para. 1: entry inserted (6.5.1999) by [The Scotland Act 1998 \(Consequential Modifications\) \(No.1\) Order 1999 \(S.I. 1999/1042\)](#), art. 3, **Sch. 1 para. 11(5)**
- F2** Words in Sch. 2 Pt. 1 para. 1 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 5\)](#), ss. 40, 148(1), [Sch. 9](#) {para. 85(4)}; [S.I. 2009/1604](#), **art. 2(d)**
- F3** Words in Sch. 2 Pt. 1 para. 1 substituted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **73(2)**, 82(2) (with s. 77); [S.I. 2007/57](#), **art. 2(c)**

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- F4** Words in Sch. 2 Pt. 1 para. 1 substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148(1), **Sch. 9 para. 45**; S.I. 2009/1604, **art. 2(d)**
- F5** Sch. 2 Pt. 1 para. 1: entry inserted (1.1.2016) by The Courts Reform (Scotland) Act 2014 (asp 18), **sch. 5 para. 14(4)**; S.S.I. 2015/378, **art. 2, sch**
- F6** Sch. 2 Pt. 1 para. 1: entry omitted (19.2.2001) by virtue of S.S.I. 2001/42, **regs. 2, 3(a)**
- F7** Sch. 2 Pt. 1 para. 1: entry added (19.2.2001) by S.S.I. 2001/42, **regs. 2, 3(b)**
- F8** Sch. 2 Pt. 1 para. 1: entries inserted (1.12.2002) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2002 (S.I. 2002/532), **reg. 2**
- F9** Sch. 2 Pt. 1 para. 1: entry omitted (9.6.2010) by virtue of The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (S.S.I. 2010/239), **reg. 3(2)** (with reg. 2)
- F10** Sch. 2 Pt. 1 para. 1: entry inserted (1.12.2017) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 (S.S.I. 2017/397), **regs. 1, 3(2)**
- F11** Sch. 2 Pt. 1 para. 1: entry inserted (1.12.2016) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2016 (S.S.I. 2016/356), **reg. 2**
- F12** Sch. 2 Pt. 1 para. 1: entry inserted (9.6.2010) by The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (S.S.I. 2010/239), {reg. 3(3)}

2 For the purposes of section 13 of this Act, proceedings in the European Court of Justice on a reference, under [^{F13}Article 267 of the Treaty on the Functioning of the European Union], made by a court mentioned in paragraph 1 above are part of the proceedings in the court making the reference.

Textual Amendments

- F13** Words in Sch 2. para. 2 substituted (1.8.2012) by The Treaty of Lisbon (Changes in Terminology or Numbering) Order 2012 (S.I. 2012/1809), **art. 2(1), Sch. Pt. 1** (with art. 2(2))

Proceedings before the First-tier Tribunal for Scotland

- [^{F14}2A. The proceedings before the First-tier Tribunal for Scotland mentioned in paragraph 1 are—
- (a) those transferred to it by section 16(1) of the Housing (Scotland) Act 2014, in relation to the following enactments—
 - (i) the Rent (Scotland) Act 1984;
 - (ii) the Housing (Scotland) Act 1988;
 - (iii) the Housing (Scotland) Act 2006;
 - (b) those in relation to the Private Housing (Tenancies) (Scotland) Act 2016.]

Textual Amendments

- F14** Sch. 2 Pt. 1 para. 2A inserted (1.12.2017) by The Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 (S.S.I. 2017/397), **regs. 1, 3(3)**

Proceedings for judicial review before the Upper Tribunal

- [^{F15}3 The proceedings before the Upper Tribunal mentioned in paragraph 1 are those arising from an application to the supervisory jurisdiction of the Court of Session that has been transferred under section 20 of the Tribunals, Courts and Enforcement Act 2007.]

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Textual Amendments

F15 Sch. 2 Pt. 1 para. 3 inserted (9.6.2010) by [The Advice and Assistance and Civil Legal Aid \(Transfer of Tribunal Functions\) \(No. 2\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/239\)](#), [reg. 3\(4\)](#)

PART II

EXCEPTED PROCEEDINGS

1 Subject to [^{F16}section 14(1C) and] paragraph 2 below, civil legal aid shall not be available in proceedings which are wholly or partly concerned with defamation or verbal injury.

Textual Amendments

F16 Words in Sch. 2 Pt. II para. 1 inserted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#), {arts. 71(3)(a)}, 82(2) (with s. 77); [S.S.I. 2007/57](#), [art. 2\(b\)](#)

2 The making of a counterclaim for defamation or verbal injury in any proceedings shall not of itself affect the availability of legal aid to the other party ^{F17}. . . .

Textual Amendments

F17 Words in Sch. 2 Pt. II para. 2 repealed (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#) (asp 5), [ss. 71\(3\)\(b\)](#), 82(2) (with s. 77); [S.I. 2007/57](#), [art. 2\(b\)](#)

[^{F183} Civil legal aid shall not be available in relation to —
(a) election petitions under the Representation of the People Act 1983 ^{M1};
(b) simplified divorce applications under the Rules of Procedure of the Court of Session or the sheriff court;
^{F19}(c)
(d) petitions by a debtor for the sequestration of his estate under section [^{F20}2(1) (a) of the Bankruptcy (Scotland) Act 2016] .]

Textual Amendments

F18 Sch. 2 Pt. II para. 3 substituted (1.4.1993) by [S.I. 1993/969](#), [reg. 2](#)
F19 Sch. 2 Pt. II para. 3(c) repealed (28.11.2016) by [Courts Reform \(Scotland\) Act 2014](#) (asp 18), s. 138(2), [sch. 5 para. 23\(2\)](#); [S.S.I. 2016/291](#), art. 2, 3(1)(3), [sch.](#)
F20 Sch. 2 Pt. II para. 3(d) words substituted (30.11.2016) by [Bankruptcy \(Scotland\) Act 2016](#) (asp 21), s.237(2), sch. 8 para 10; [S.S.I. 2016/294](#), reg. 2.

Marginal Citations

M1 1983 c. 2

[^{F213A} Civil legal aid shall not be available in relation to the following categories of simple procedure case (within the meaning of section 72(9) of the Courts Reform (Scotland) Act 2014) at first instance, namely—

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- (a) proceedings for payment of a sum of money not exceeding £3,000 (exclusive of interest and expenses), other than—
 - (i) proceedings in respect of aliment or interim aliment, and
 - (ii) actions for personal injury,
- (b) actions ad factum praestandum and proceedings for the recovery of possession of moveable property in which (in either case) there is included, as an alternative to the claim, a claim for payment of a sum of money not exceeding £3,000 (exclusive of interest and expenses).

Textual Amendments

F21 Sch. 2 Pt. II paras. 3A, 3B inserted (28.11.2016) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 5 para. 23\(3\)](#); S.S.I. 2016/291, art. 2, sch. (with art. 3(1)(3))

3B In paragraph 3A—

- (a) “actions for personal injury” means actions to which section 17 or 18 of the Prescription and Limitation (Scotland) Act 1973 applies, and
- (b) “actions ad factum praestandum” includes actions for delivery and actions for implement but does not include actions for count, reckoning and payment.]

Textual Amendments

F21 Sch. 2 Pt. II paras. 3A, 3B inserted (28.11.2016) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), s. 138(2), [sch. 5 para. 23\(3\)](#); S.S.I. 2016/291, art. 2, sch. (with art. 3(1)(3))

[^{F224} Subject to paragraph 5 below, civil legal aid shall not be available in relation to proceedings at first instance under the Debtors (Scotland) Act ^{M2}1987, [^{F23} or Part 2 or 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)] [^{F24} or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)] other than proceedings in connection with an application under section 1(1) or 3(1) of that Act [^{F25} of 1987] to a Lord Ordinary or to the sheriff in an ordinary cause.]

Textual Amendments

- F22** Sch. 2 Pt. II paras. 4, 5 added by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), ss. 98, 108(2), [Sch. 1 para. 5](#)
- F23** Words inserted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. [44\(a\)\(i\)](#)
- F24** Words in Sch. 2 Pt. 2 para. 4 inserted (23.11.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 5 para. 15\(a\)](#) (with s. 223); S.S.I. 2009/369, [art. 3\(2\)\(3\)](#), Sch. 1 (with art. 4)
- F25** Words inserted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. [44\(a\)\(ii\)](#)

Marginal Citations

M2 [1987 c.18 \(45:2\)](#).

^{F26}[⁵ Nothing in paragraph 4 above shall preclude any third party to proceedings under the Debtors (Scotland) Act ^{M3}1987 [^{F27} or Part 2 or 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)] [^{F28} or Part 8 of the Bankruptcy and

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Diligence etc. (Scotland) Act 2007 (asp 3)] from obtaining legal aid in connection with those proceedings.]

Textual Amendments

F26 Sch. 2 Pt. II paras. 4, 5 added by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), ss. 98, 108(2), [Sch. 1 para. 5](#)

F27 Words inserted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. 44(b)

F28 Words in Sch. 2 Pt. 2 para. 5 inserted (23.11.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 5 para. 15\(b\)](#) (with s. 223); S.S.I. 2009/369, [art. 3\(2\)\(3\)](#), Sch. 1 (with art. 4)

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M3 [1987 c.18 \(45:2\)](#).

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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](#)