



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

^{F1}[^{F1}PART 5A

CHILDREN'S LEGAL AID]

28L [^{F1}Power of Scottish Ministers to extend or restrict types of proceedings before children's hearings in which children's legal aid to be available]

- (1) The Scottish Ministers may by regulations modify this Part so as to—
 - (a) extend or restrict the types of proceedings before a children's hearing in connection with which children's legal aid is to be available, and
 - (b) specify the persons to whom children's legal aid is to be available.
- (2) If regulations are made making children's legal aid available to a child, the regulations must include provision—
 - (a) requiring the Board to be satisfied that—
 - (i) one of the conditions in subsection (3) is met, and
 - (ii) the conditions in section 28D(3) are met before children's legal aid is made available, and
 - (b) requiring the Board, in determining for the purposes of subsection (3)(b)(ii) whether the child would be able to participate effectively in the proceedings, to take into account in particular the matters mentioned in subsection (4).
- (3) The conditions are—
 - (a) that it might be necessary for the children's hearing to decide whether a compulsory supervision order or, as the case may be, an interim compulsory supervision order should include or (where a compulsory supervision order is being reviewed) continue to include a secure accommodation authorisation, and
 - (b) that—
 - (i) the condition in paragraph (a) is not met, and

Changes to legislation: *Legal Aid (Scotland) Act 1986, Section 28L is up to date with all changes known to be in force on or before 24 January 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*

- (ii) for the purpose of enabling the child to participate effectively in the proceedings before the children's hearing, it is necessary that the child be represented by a solicitor or counsel.
- (4) The matters are—
 - (a) the nature and complexity of the case (including any points of law),
 - (b) the ability of the appropriate person, with the assistance of any accompanying person, to consider and challenge any document or information before the children's hearing,
 - (c) the ability of the appropriate person, with the assistance of any accompanying person, to give the appropriate person's views at the children's hearing in an effective manner.
- (5) If regulations are made making children's legal aid available to a person other than the child to whom the proceedings relate, the regulations must include provision—
 - (a) requiring the Board to be satisfied that the conditions in subsection (6) are met before children's legal aid is made available, and
 - (b) requiring the Board, in determining for the purposes of the condition in subsection (6)(a) whether the person would be able to participate effectively in the proceedings, to take into account in particular the matters mentioned in subsection (4).
- (6) The conditions are—
 - (a) that, for the purpose of enabling the person to participate effectively in the proceedings before the children's hearing, it is necessary that the person be represented by a solicitor or counsel,
 - (b) that it is reasonable in the particular circumstances of the case that the person should receive children's legal aid, and
 - (c) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person.
- (7) In subsection (4)—
 - “accompanying person” means a person entitled to accompany the child or other person to the children's hearing by virtue of rules under section 177 of the 2011 Act,
 - “appropriate person” means—
 - (a) for the purposes of subsection (2)(b), the child,
 - (b) for the purposes of subsection (5)(b), the other person.
- (8) The Scottish Ministers may by regulations modify—
 - (a) the matters for the time being set out in subsection (4),
 - (b) the definition of “accompanying person” for the time being set out in subsection (7).

Textual Amendments

- F1** S. 28L heading substituted (28.11.2016) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), ss. [92\(2\)](#), [102\(3\)](#); S.S.I. 2016/254, art. [3\(2\)\(a\)](#)

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](#)