



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, Section 31 is up to date with all changes known to be in force on or before 16 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

- (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)**

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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](#)