



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART VI

MISCELLANEOUS

Regulations and rules of court

38 Rules of court.

- (1) The court may by act of adjournal or, as the case may be, by act of sederunt—
- (a) regulate the procedure of any court or tribunal in relation to legal aid, and in particular may make provision as to the cases in which and the extent to which a person receiving legal aid may be required to find caution, and the manner in which caution in such cases may be found;
 - (b) make provision as to the cases in which a person may be treated as having disentitled himself to a continuance of legal aid by his conduct in connection with his receipt of legal aid;
 - (c) make provision as to the apportionment of sums recovered or recoverable by virtue of any award of expenses made generally with respect to proceedings or matters which are to be treated as distinct by virtue of regulations made under section 36(2)(c) of this Act;
 - (d) make provision as to the proceedings which are or are not to be treated as having been instituted by the legally assisted person for the purposes of section 19(3)(b) of this Act;
 - (e) regulate the procedure to be followed in connection with an order under section 19 of this Act, in particular to enable the Board to be heard in connection with such an order.

[^{F1}(1A) In subsection (1)(a) above, the reference to any court or tribunal shall be construed, except in relation to criminal proceedings, in accordance with section 13(6) of this Act.]

Changes to legislation: *Legal Aid (Scotland) Act 1986, Section 38 is up to date with all changes known to be in force on or before 18 January 2024. 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) The court may by act of adjournal or, as the case may be, by act of sederunt restrict the fees to be paid to auditors of court, messengers-at-arms, sheriff officers and shorthand writers in any case where such fees are payable in the first instance by or on behalf of a person receiving legal aid to such proportion thereof as may be provided for the time being.
- (3) Before making rules of court regulating the procedure of any court or tribunal, the court shall, so far as practicable, consult [^{F2}the Scottish Civil Justice Council,] any rules council or similar body by whom or on whose advice rules of procedure for the court or tribunal may, apart from this Act, be made or whose consent or concurrence is required to any such rules so made.
- (4) In this section “the court” means in relation to criminal proceedings, the High Court of Justiciary, and in relation to civil proceedings, the Court of Session.

Textual Amendments

F1 S. 38(1A) inserted (6.7.2001) by 2001 asp 7, ss. 6(5), 15(3)

F2 Words in s. 38(3) inserted (28.5.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), ss. 15(1), 25(2); S.S.I. 2013/124, art. 2 (with art. 3)

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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](#)