

1987 No. 307 (S. 18)

**LEGAL AID AND ADVICE, SCOTLAND**

**The Criminal Legal Aid (Scotland) Regulations 1987**

*Made* - - - - - *26th February 1987*

*Laid before Parliament* *5th March 1987*

*Coming into force* *1st April 1987*

**ARRANGEMENT OF REGULATIONS**

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The Secretary of State, in exercise of the powers conferred on him by sections 31 and 36 of the Legal Aid (Scotland) Act 1986(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Criminal Legal Aid (Scotland) Regulations 1987 and shall come into force on 1st April 1987.

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(a) 1986 c.47.

## Interpretation

2. In these Regulations, unless the context otherwise requires—  
“the Act” means the Legal Aid (Scotland) Act 1986;  
“the 1975 Act” means the Criminal Procedure (Scotland) Act 1975(a);  
“assisted person” means a person to whom criminal legal aid has been made available in relation to the proceedings in question.

## Revocation

3. Without prejudice to their continuation in effect for certain purposes by virtue of paragraph 3 of Schedule 4 to the Act, the Legal Aid (Scotland) (Criminal Proceedings) Regulations 1975(b) are hereby revoked.

## Distinct proceedings for purposes of criminal legal aid

4.—(1) For purposes of criminal legal aid, the following shall be treated as distinct proceedings:—

- (a) any such identification parade as is referred to in section 21(4)(b) of the Act;
- (b) any such proceedings as are described in section 22(1)(b) of the Act;
- (c) solemn proceedings other than the proceedings referred to in sub-paragraph (b) above;
- (d) any such proceedings as are described in section 22(1)(c) of the Act;
- (e) summary proceedings other than the proceedings referred to in sub-paragraph (d) above;
- (f) appeals to the High Court of Justiciary against conviction, sentence or acquittal;
- (g) petitions to the *nobile officium* of the High Court of Justiciary (whether arising in the course of any proceedings or otherwise);
- (h) references by the Secretary of State under section 263 of the 1975 Act(c);
- (i) such proceedings as are described in section 22(1)(e) of the Act.

(2) The distinct proceedings specified in paragraph (1) above shall be treated as including the following related proceedings (which are accordingly not to be treated as distinct proceedings for purposes of criminal legal aid):—

- (a) applications for bail or review of bail, or appeals in respect of bail;
- (b) in relation to paragraph (1)(c) above, proceedings following a remit for sentence to the High Court of Justiciary under section 104 of the 1975 Act(d);
- (c) in relation to paragraph (1)(f) above, proceedings following a remit from the High Court of Justiciary to the inferior court in accordance with section 452A of the 1975 Act(e).

## Duty solicitors

5.—(1) The Board shall make arrangements for there to be available, in each sheriff court district and district court district, at all times throughout the year, when required, solicitors, hereinafter referred to as “duty solicitors”, for the following purposes:—

- (a) attending (other than in the circumstances specified in sub-paragraph (b) below), whether in person or by means of a representative who is a solicitor, at any such identification parade as is referred to in section 21(4)(b) of the Act at which the services of the duty solicitor are required;
- (b) attending on any person who has been taken into custody on a charge of murder, attempted murder or culpable homicide and who requires the services of the duty solicitor, and advising and acting for such a person until he is admitted to bail or is committed until liberated in due course of law;

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(a) 1975 c.21.

(b) S.I. 1975/717, amended by S.I. 1982/1553, 1984/520.

(c) Section 263 was amended by the Criminal Justice (Scotland) Act 1980 (c.62), Schedule 6, paragraph 22(b) and Schedule 8.

(d) A new section 104 was inserted by the Criminal Justice (Scotland) Act 1980, Schedule 4, paragraph 15.

(e) Section 452A was inserted by the Criminal Justice (Scotland) Act 1980, Schedule 3, paragraph 11.

- (c) advising and acting for any person in custody (other than a person referred to in sub-paragraph (b) above) whose case is being prosecuted under solemn procedure, on the day when that person is first brought before a sheriff for examination and thereafter until he is admitted to bail or is committed until liberated in due course of law;
- (d) advising and acting for any person who is being prosecuted under summary procedure and who is either in custody or has been liberated under section 295(1)(a) of the 1975 Act(a) (liberation by police on undertaking to appear) on the day when that person is first brought before a court to answer to any complaint and thereafter—
  - (i) until the conclusion of the first diet at which he is called upon to plead and in connection with any application for liberation following upon that diet; and
  - (ii) where he has tendered a plea of guilty at that diet, until his case is finally disposed of.

(2) Where a duty solicitor is available by virtue of arrangements made by the Board in accordance with sub-paragraphs (a) or (d) of paragraph (1) above, section 31(1) of the Act shall not apply, and criminal legal aid for the purposes specified in the said sub-paragraphs (a) and (d) shall be provided only by such solicitor.

#### **Applications for criminal legal aid in solemn proceedings**

6. An application for criminal legal aid under section 23(1)(a) of the Act shall be made in writing and shall be in such form as the court may require.

#### **Availability of other rights and facilities in proceedings to which section 23 of the Act applies**

7.—(1) Where it appears to the court that an applicant for criminal legal aid under section 23 of the Act has available to him rights and facilities making it unnecessary for him to obtain legal aid, or has a reasonable expectation of receiving financial or other help from a body of which he is a member, the court shall not, unless it is satisfied that there is special reason for doing so, make legal aid available to him.

(2) The court, before making legal aid available under section 23 of the Act to a person who is a member of a body which might reasonably have been expected to give him financial help towards his defence, shall require him to undertake in writing that he will pay to the Board any sum received from that body on account of the expenses of his defence.

#### **Applications for criminal legal aid in summary proceedings**

8.—(1) An application for criminal legal aid under section 24 of the Act in relation to summary proceedings shall—

- (a) be made in writing in such form as the Board may require and be signed by the applicant;
- (b) subject to paragraph (2) below, be lodged with the Board within 14 days after the conclusion of the first diet at which the applicant has tendered a plea of not guilty; and
- (c) include a statement signed by or on behalf of the solicitor nominated by the applicant as to his willingness to act for the applicant.

(2) Paragraph (1)(b) above shall not apply where either—

- (a) in the circumstances specified in section 24(6) of the Act the court has adjourned the trial diet to enable an application for legal aid to be made to the Board and that application is lodged with the Board within 14 days of the adjournment;
- (b) the Board considers that there is special reason for it to consider a late application; or
- (c) the first diet at which the applicant tendered a plea of not guilty was concluded prior to 1st April 1987 and the application is lodged with the Board not later than 15th April 1987.

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(a) A new section 295 was inserted by the Bail etc. (Scotland) Act 1980 (c.4), section 8.

### **Attendance for interview and supply of information**

9. An applicant for criminal legal aid under section 24 of the Act shall, if required by the Board to do so, attend for interview by a representative of the Board or supply such further information or such documents as the Board may require to enable it to determine the application.

### **Availability of other rights and facilities in summary proceedings**

10.—(1) Where it appears to the Board that an applicant for criminal legal aid under section 24 of the Act has available to him rights and facilities making it unnecessary for him to obtain legal aid, or has a reasonable expectation of receiving financial or other help from a body of which he is a member, the Board shall not, unless it is satisfied that there is special reason for doing so, make legal aid available to him.

(2) The Board, before making criminal legal aid available under section 24 of the Act to a person who is a member of a body which might reasonably have been expected to give him financial help towards his defence, shall require him to undertake in writing that he will pay to the Board any sum received from that body on account of the expenses of his defence.

### **Notification of decision**

11.—(1) The Board shall inform an applicant for criminal legal aid under section 24 of the Act, and the solicitor nominated by him, of its decision in regard to the application.

(2) Where the Board refuses an application for criminal legal aid under section 24 of the Act, it shall inform the applicant and the solicitor that the application has been refused on one or more of the following grounds, that -

- (a) the proceedings in question are not proceedings for which such legal aid is available;
- (b) the Board is not satisfied that the expenses of the case cannot be met without undue hardship to the accused person or his dependants;
- (c) the Board is not satisfied that in all the circumstances of the case it is in the interests of justice that legal aid should be made available to him; or
- (d) it appears to the Board that the applicant has available to him rights and facilities making it unnecessary for him to receive legal aid or has a reasonable expectation of receiving financial or other help from a body of which he is a member, and the Board is not satisfied that there is special reason for making legal aid available to him.

### **Applications for review**

12.—(1) An application for a review under section 24(5) of the Act shall—

- (a) be in writing;
- (b) be signed by the applicant; and
- (c) subject to paragraph (2) below, be lodged with the Board within 7 days of the time when notice of the refusal of his application was given to the applicant.

(2) Paragraph (1)(c) above shall not apply where the Board considers that there is special reason for it to consider a late application for a review.

### **Legal aid for criminal appeals**

13.—(1) An application under section 25 of the Act for legal aid in relation to an appeal against conviction, sentence or acquittal in criminal proceedings shall—

- (a) be in writing in such form as the Board may require and be signed by the applicant;
- (b) include a statement signed by or on behalf of the solicitor nominated by the applicant as to his willingness to act for the applicant; and
- (c) except where the appeal is against acquittal, include, where the solicitor nominated by the applicant is of the opinion that in all the circumstances there are substantial grounds for taking an appeal, a statement as to the nature of those grounds.

(2) Regulations 9, 10 and 11(1) above shall apply in relation to legal aid under section 25 as they apply in relation to legal aid in summary proceedings under section 24.

### **Employment of counsel and expert witnesses**

- 14.—(1) Subject to paragraph (2) below, the prior approval of the Board shall be required—
- (a) where the proceedings are in the High Court and are not proceedings relating to a prosecution or conviction for murder, for the employment of senior counsel alone, of senior counsel with junior counsel, or of more than one junior counsel;
  - (b) where the proceedings are in the sheriff court or the district court, for the employment of counsel; and
  - (c) for the employment of an expert witness.

(2) Paragraph (1) above shall not apply where the Board, on an application made to it for retrospective approval for the employment of counsel or, as the case may be, of an expert witness, considers that the employment would have been approved by them and that there was special reason why prior approval was not applied for.

### **Matters of special urgency**

15.—(1) Where an applicant seeks legal aid under section 24 or section 25 of the Act in a matter of special urgency, the Board may, if it thinks fit, make criminal legal aid available to him notwithstanding that it has not been satisfied—

- (a) in the case of an application under section 24 of the Act, as to the matters specified in subsection (1) of that section; and
- (b) in the case of an application under section 25 of the Act, as to the matters specified in subsection (2) of that section.

- (2) Where criminal legal aid is made available under paragraph (1) above, the Board shall—
- (a) specify that it is available only for such limited purposes as it thinks appropriate in the circumstances;
  - (b) require the assisted person as soon as practicable to satisfy it that the requirements of section 24 or, as the case may be, section 25 of the Act are met;
  - (c) in the case of the assisted person not so satisfying it, cease to make criminal legal aid available to him.

### **Duty to report completion of proceedings**

16. It shall be the duty of the solicitor acting for an assisted person to inform the Board of the conclusion and outcome of the proceedings in respect of which criminal legal aid was made available to the assisted person.

### **Changes of solicitor**

17.—(1) Where the solicitor nominated by an assisted person determines that he should cease to act for him, the solicitor shall notify the Board and, where possible, the assisted person accordingly, and shall supply to the Board a statement of his reasons for ceasing to act.

(2) Where an assisted person has required the solicitor nominated by him to cease to act for him, the solicitor shall notify the Board accordingly and shall supply the Board with a statement of the circumstances, so far as they are known to him, in which he was required to cease to act.

(3) Where an assisted person desires that a solicitor other than the solicitor presently nominated by him shall act for him, he shall apply to the Board for authority to nominate another specified solicitor to act for him, and shall inform the Board of the reason for his application; and the Board, if it is satisfied that there is good reason for the application and, in the case of legal aid made available under section 24 or section 25 of the Act, that it is in the interests of justice or, as the case may be, is reasonable, for him to receive or continue to receive criminal legal aid, may grant the application.

### **Duty of Board to cease to make criminal legal aid available and right to recover sums paid out of the Fund**

18.—(1) The Board shall cease to make criminal legal aid available if it is satisfied that the assisted person has wilfully failed to comply with the provisions of these Regulations as

to the information to be furnished by him or, in furnishing such information, has knowingly made a false statement or false representation.

(2) Where the Board, in accordance with paragraph (1) above, ceases to make legal aid available—

- (a) the Board shall have the right to recover from the assisted person the amount paid out of the Fund in respect of the fees and outlays of his solicitor and counsel; and
- (b) the solicitor who acted for the assisted person shall have the right to receive from him the difference between the amount payable out of the Fund and the full amount which would be payable to him on a solicitor and client basis in respect of fees and outlays.

New St. Andrew's House, Edinburgh  
26th February 1987

*Ian Lang*  
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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the administration of criminal legal aid in Scotland following the coming into force on 1st April 1987 of the main provisions of the Legal Aid (Scotland) Act 1986. In particular, the Regulations take account of the transfer of responsibility for the administration of legal aid from the Law Society of Scotland to the Scottish Legal Aid Board, and of responsibility for granting legal aid in summary criminal proceedings from the courts to the Board. They supersede in relation to applications for criminal legal aid granted on or after 1st April 1987 the Legal Aid (Scotland) (Criminal Proceedings) Regulations 1975, which are revoked, and the Legal Aid (Scotland) (Criminal Proceedings) Scheme 1975.

The Regulations make provision as to—

- (i) what are to be treated as distinct proceedings for purposes of criminal legal aid (regulation 4);
- (ii) the availability of duty solicitors and the circumstances in which criminal legal aid is to be provided only by the duty solicitor (regulation 5);
- (iii) how to apply for criminal legal aid (regulations 6, 8 and 13);
- (iv) the availability of criminal legal aid where other rights and facilities may be available (regulations 7 and 10);
- (v) attendance for interview and supply of information by applicants (regulation 9);
- (vi) notification of decisions by the Scottish Legal Aid Board as to the availability of criminal legal aid for summary proceedings, and applications for review of such decisions (regulations 11 and 12);
- (vii) employment of counsel and expert witnesses (regulation 14);
- (viii) applications in matters of special urgency (regulation 15);
- (ix) the duty of the solicitor to notify the Board of the conclusion and outcome of the proceedings (regulation 16);
- (x) changes of nominated solicitor (regulation 17); and
- (xi) the duty of the Board in certain circumstances to cease to make criminal legal aid available, and its right to recover sums paid out of the Scottish Legal Aid Fund (regulation 18).