



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

### <sup>F1</sup>[<sup>F1</sup>PART 5A

#### CHILDREN'S LEGAL AID

##### Textual Amendments

- F1** Pts. 5A, 5B inserted (31.1.2012 for s. 28B(2), s. 28M(7) for specified purposes and s. 28N) by Children's Hearings (Scotland) Act 2011 (asp 1), ss. 191, 206(2) (with s. 186); S.S.I. 2012/1, art. 2(1), sch.

#### **28B Children's legal aid**

- (1) This Part applies to children's legal aid.
- (2) In this Act, “children's legal aid” means representation by a solicitor and, where appropriate, by counsel in proceedings mentioned in [<sup>F2</sup>subsections (3) and (3A)], on the terms provided for in this Act, and includes all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to those proceedings.
- (3) The proceedings are—
  - (a) proceedings before the sheriff in relation to an application under section 48 of the 2011 Act (application for variation or termination of child protection order),
  - (b) proceedings before a children's hearing arranged by virtue of section 45 or 46 of the 2011 Act (children's hearing following making of child protection order),
  - (c) proceedings before a children's hearing or a pre-hearing panel if the children's hearing or the panel considers that it might be necessary to make a compulsory supervision order including a secure accommodation authorisation in relation to the child to whom the proceedings relate,

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- (d) proceedings before a children's hearing to which section 69(3) of the 2011 Act applies (children's hearing following arrest of child and detention in place of safety),
- (e) proceedings under Part 10 or 15 of the 2011 Act.

[ The proceedings are, where regulations under section 28LB are made, proceedings <sup>F3</sup>(3A) before the sheriff and appeals from the sheriff under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019.]

(4) In this Part—

“compulsory supervision order” has the meaning given by section 83 of that Act,

“pre-hearing panel” has the meaning given by section 79 of that Act,

“secure accommodation authorisation” has the meaning given by section 85 of that Act.

#### Textual Amendments

- F2** Words in s. 28B(2) substituted (31.3.2020) by [Age of Criminal Responsibility \(Scotland\) Act 2019](#) (asp 7), **ss. 73(2)(a)**, 84(2); S.S.I. 2020/74, reg. 2, sch.
- F3** S. 28B(3A) inserted (31.3.2020) by [Age of Criminal Responsibility \(Scotland\) Act 2019](#) (asp 7), **ss. 73(2)(b)**, 84(2); S.S.I. 2020/74, reg. 2, sch.

## 28C Circumstances where children's legal aid automatically available

(1) Subsection (2) applies where—

- (a) an application is made under section 48 of the 2011 Act for variation or termination of a child protection order,
- (b) a children's hearing is arranged in relation to a child by virtue of section 45 or 46 of the 2011 Act,
- (c) a children's hearing or a pre-hearing panel considers that it might be necessary to make a compulsory supervision order including a secure accommodation authorisation in relation to a child, <sup>F4</sup>...
- (d) a children's hearing to which section 69(3) of the 2011 Act applies is arranged in relation to a child,

[ an application in relation to a child is made under section 34 (application for order authorising search in relation to child under 12), 42 (application for child interview order) or 61 (application for order authorising taking of prints and samples from child) of the 2019 Act, or

- (f) an order is made in relation to a child under section 36 (search in relation to child under 12), 44 (child interview) or 63 (taking of prints and samples from child) of the 2019 Act].

(2) If assistance by way of representation has not been made available to the child, children's legal aid is available to the child for the purposes of—

- (a) proceedings before the sheriff in relation to the application mentioned in paragraph (a) of subsection (1),
- (b) the children's hearing mentioned in paragraph (b) or, as the case may be, (c) or (d) of that subsection, <sup>F6</sup>...

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- (c) if that children's hearing is deferred, any subsequent children's hearing held under Part 11 of the 2011 Act,
  - [<sup>F7</sup>(d) representations in respect of an application mentioned in subsection (1)(e), and
  - (e) proceedings before the sheriff under section 38 (appeal against decision under section 36), 46 (appeal against decision under section 44) or 67 (appeal against decision under section 63) of the 2019 Act in respect of permission to appeal a decision and, where such permission is given, proceedings before the Sheriff Appeal Court in respect of such an appeal].
- (3) The Scottish Ministers may by regulations—
- (a) modify subsection (1),
  - (b) modify subsection (2) and section 28B(3) and (4) in consequence of modifications made under paragraph (a).

#### Textual Amendments

- F4** Word in s. 28C(1)(c) omitted (8.11.2021) by virtue of [The Children's Legal Assistance \(Miscellaneous Amendments and Consequential Provisions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/368\)](#), regs. 1(1), **2(2)(a)**
- F5** S. 28C(1)(e)(f) inserted (8.11.2021) by [The Children's Legal Assistance \(Miscellaneous Amendments and Consequential Provisions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/368\)](#), regs. 1(1), **2(2)(b)**
- F6** Word in s. 28C(2)(b) omitted (8.11.2021) by virtue of [The Children's Legal Assistance \(Miscellaneous Amendments and Consequential Provisions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/368\)](#), regs. 1(1), **2(2)(c)**
- F7** S. 28C(2)(d)(e) inserted (8.11.2021) by [The Children's Legal Assistance \(Miscellaneous Amendments and Consequential Provisions\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/368\)](#), regs. 1(1), **2(2)(d)**

### 28D Availability of children's legal aid: child

- (1) Subsection (2) applies in relation to proceedings under Part 10 or 15 of the 2011 Act (other than an appeal to the [<sup>F8</sup>Sheriff Appeal Court] or the Court of Session).
- (2) Children's legal aid is available to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that the conditions in subsection (3) are met.
- (3) The conditions are—
  - (a) that it is in the best interests of the child that children's legal aid be made available,
  - (b) that it is reasonable in the particular circumstances of the case that the child should receive children's legal aid, and
  - (c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child.
- (4) Subsection (5) applies in relation to an appeal to the [<sup>F9</sup>Sheriff Appeal Court] or the Court of Session under Part 15 of the 2011 Act.
- (5) Children's legal aid is available to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that—
  - (a) the conditions in subsection (3) are met, and

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- (b) the child has substantial grounds for making or responding to the appeal.

#### Textual Amendments

- F8** Words in s. 28D(1) substituted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 1(2)(a)** (with art. 4(2))
- F9** Words in s. 28D(4) substituted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 1(2)(b)** (with art. 4(2))

### 28E Availability of children's legal aid: relevant person

- (1) Subsection (2) applies in relation to—
- (a) proceedings before the sheriff in relation to an application under section 48 of the 2011 Act (application for variation or termination of child protection order), and
  - (b) proceedings under Part 10 or 15 of the 2011 Act (other than an appeal to the [<sup>F10</sup>Sheriff Appeal Court] or the Court of Session).
- (2) Children's legal aid is available to a relevant person in relation to the child to whom the proceedings relate if, on an application made to the Board, the Board is satisfied that the conditions in subsection (3) are met.
- (3) The conditions are—
- (a) that it is reasonable in the particular circumstances of the case that the relevant person should receive children's legal aid, and
  - (b) that, after consideration of the disposable income and disposable capital of the relevant person, the expenses of the case cannot be met without undue hardship to the relevant person.
- (4) Subsection (5) applies in relation to an appeal to the [<sup>F11</sup>Sheriff Appeal Court] or the Court of Session under Part 15 of the 2011 Act.
- (5) Children's legal aid is available to a relevant person in relation to the child to whom the appeal relates if, on an application made to the Board, the Board is satisfied that—
- (a) the conditions in subsection (3) are met, and
  - (b) the relevant person has substantial grounds for making or responding to the appeal.
- (6) In this Part, “relevant person”—
- (a) has the meaning given by section 200 of the 2011 Act, and
  - (b) includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(6) of that Act.

#### Textual Amendments

- F10** Words in s. 28E(1)(b) substituted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 1(3)(a)** (with art. 4(2))

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**F11** Words in s. 28E(4) substituted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, [sch. 3 para. 1\(3\)\(b\)](#) (with art. 4(2))

## **28F Availability of children's legal aid: appeals relating to deemed relevant person**

- (1) Subsection (2) applies in relation to—
- (a) an appeal under section 154 or 163(1)(a)(iii) or (2) of the 2011 Act arising from a determination of a children's hearing mentioned in section 142(1)(a) if by virtue of section 142(4)(b) an individual is no longer to be deemed to be a relevant person,
  - (b) an appeal to the sheriff under section 160(1)(a) of that Act against a determination of a pre-hearing panel or children's hearing that an individual is not to be deemed <sup>F12</sup>, or is no longer to be deemed,] a relevant person in relation to a child,
  - (c) an appeal to the sheriff under section 160(1)(b) of that Act against a direction under section 142(4)(a) that an individual is no longer to be deemed a relevant person in relation to a child,
  - (d) an appeal to the <sup>F13</sup>Sheriff Appeal Court] or the Court of Session under section 164(1) of that Act against a decision of the sheriff in an appeal under section 160(1)—
    - (i) confirming a determination that an individual is not to be deemed <sup>F14</sup>, or is no longer to be deemed,] a relevant person in relation to a child, or
    - (ii) quashing a determination that an individual is to be deemed <sup>F15</sup>, or is to continue to be deemed,] a relevant person in relation to a child, and
  - (e) an appeal to the Court of Session under section 164(2) of that Act against a determination of the <sup>F16</sup>Sheriff Appeal Court] where the effect of the <sup>F17</sup>Sheriff Appeal Court's] determination is that an individual is not to be deemed <sup>F18</sup>, or is no longer to be deemed,] a relevant person in relation to a child.
- (2) Children's legal aid is available to the individual if, on an application made to the Board, the Board is satisfied—
- (a) that it is reasonable in the particular circumstances of the case that the individual should receive children's legal aid,
  - (b) that, after consideration of the disposable income and disposable capital of the individual, the expenses of the case cannot be met without undue hardship to the individual, and
  - (c) that—
    - (i) in relation to an appeal mentioned in paragraph (a) of subsection (1), the individual has substantial grounds for making or, as the case may be, responding to the appeal,
    - (ii) in relation to an appeal mentioned in any other paragraph of that subsection, the individual has substantial grounds for making the appeal.

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### Textual Amendments

- F12** Words in s. 28F(1)(b) inserted (26.1.2015) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), **sch. 5 para. 3(2)**; S.S.I. 2014/353, art. 2(2)(3), sch.
- F13** Words in s. 28F(1)(d) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(4)(a)** (with art. 4(2))
- F14** Words in s. 28F(1)(d)(i) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 26(5)(a)**, 34(2); S.S.I. 2020/412, reg. 2(2)(d)
- F15** Words in s. 28F(1)(d)(ii) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 26(5)(b)**, 34(2); S.S.I. 2020/412, reg. 2(2)(d)
- F16** Words in s. 28F(1)(e) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(4)(b)(i)** (with art. 4(2))
- F17** Words in s. 28F(1)(e) substituted (28.11.2016) by The Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 (S.S.I. 2016/387), art. 1, **sch. 3 para. 1(4)(b)(ii)** (with art. 4(2))
- F18** Words in s. 28F(1)(e) inserted (26.7.2021) by Children (Scotland) Act 2020 (asp 16), **ss. 26(5)(c)**, 34(2); S.S.I. 2020/412, reg. 2(2)(d)

## 28G Conditions

The Board may make the grant of children's legal aid subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.

## 28H Board to establish review procedures

- (1) The Board must establish a procedure under which a person whose application for children's legal aid has been refused may apply to the Board for a review of the application.
- (2) The Board must establish a procedure under which any person receiving children's legal aid which is subject to conditions by virtue of section 28G may apply to the Board for a review of any such condition.

## 28J Board's power to require compliance with conditions

The Board may require a person receiving children's legal aid to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for the person to continue to receive children's legal aid.

## 28K Contributions to the Fund

- (1) A person in receipt of children's legal aid (the “assisted person”) may be required by the Board to contribute to the Fund in respect of any proceedings in connection with which the assisted person is granted children's legal aid.
- (2) A contribution under subsection (1) is to be determined by the Board and may include—
  - (a) if the assisted person's disposable income exceeds £3,355 a year, a contribution in respect of income which is not to be more than one-third of

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- the excess (or such other proportion of the excess, or such amount, as may be prescribed by regulations made under this section), and
- (b) if the assisted person's disposable capital exceeds £7,504, a contribution in respect of capital which is not to be more than the excess (or such proportion of the excess or such lesser amount as may be prescribed by regulations made under this section).
- (3) Regulations under this section may prescribe different proportions or amounts for different amounts of disposable income and for different cases or classes of case.]

**28L [F19 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
- (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—

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- (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

**F19** 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\(2\)\(a\)](#)

#### <sup>F20</sup>**28LA Power of Scottish Ministers to provide for children's legal aid to be available to other persons in relation to court proceedings**

- (1) The Scottish Ministers may by regulations modify this Part so as to—
- (a) provide that children's legal aid is to be available, in relation to a type of court proceedings under the 2011 Act, to a person to whom it is not available by virtue of section 28D, 28E or 28F,
  - (b) vary any availability provided by virtue of paragraph (a), or
  - (c) remove any availability provided by virtue of paragraph (a).
- (2) If regulations are made making children's legal aid available to a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (3) are met before children's legal aid is made available.
- (3) The conditions are—



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- (a) that it is in the best interests of the child that children's legal aid be made available,
  - (b) that it is reasonable in the particular circumstances of the case that the child should receive children's legal aid,
  - (c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child, and
  - (d) if the proceedings are an appeal to the [<sup>F21</sup>Sheriff Appeal Court] or the Court of Session under Part 15 of the 2011 Act, that the child has substantial grounds for making or responding to the appeal.
- (4) If regulations are made making children's legal aid available to a person other than a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (5) are met before children's legal aid is made available.
- (5) The conditions are—
- (a) that it is reasonable in the particular circumstances of the case that the person should receive children's legal aid,
  - (b) 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, and
  - (c) if the proceedings are an appeal to the [<sup>F22</sup>Sheriff Appeal Court] or the Court of Session under Part 15 of the 2011 Act, that the person has substantial grounds for making or responding to the appeal.]

#### Textual Amendments

- F20** S. 28LA inserted (28.11.2016) by [Children and Young People \(Scotland\) Act 2014 \(asp 8\)](#), **ss. 92(3)**, 102(3); [S.S.I. 2016/254](#), art. 3(2)(a)
- F21** Words in s. 28LA(3)(d) substituted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 1(5)(a)** (with art. 4(2))
- F22** Words in s. 28LA(5)(c) substituted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 1(5)(b)** (with art. 4(2))

#### [<sup>F23</sup>28LB] **Power of Scottish Ministers to provide for children's legal aid to be available in relation to proceedings under the Age of Criminal Responsibility (Scotland) Act 2019**

- (1) The Scottish Ministers may by regulations modify this Part so as to—
- (a) provide for children's legal aid to be available to a child in connection with proceedings before the sheriff and appeals from the sheriff under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, and
  - (b) specify the other persons (if any) to whom children's legal aid is to be available in connection with such proceedings and appeals.
- (2) Regulations under subsection (1) may in particular made provision about—
- (a) the proceedings in relation to which and the circumstances in which children's legal aid is to be available automatically,

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- (b) the proceedings in relation to which and the circumstances in which children's legal aid is to be available on application to the Board.
- (3) Where regulations under subsection (1) include provision as is mentioned in subsection (2)(b), the regulations—
- (a) must make provision for the conditions as to which the Board is to be satisfied before children's legal aid is to be made available,
  - (b) may make provision for different conditions to be satisfied in relation to different persons.]

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#### **Textual Amendments**

**F23** S. 28LB inserted (31.3.2020) by [Age of Criminal Responsibility \(Scotland\) Act 2019 \(asp 7\)](#), **ss. 73(3)**, **84(2)**; S.S.I. 2020/74, reg. 2, sch.

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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](#)