



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART VI

MISCELLANEOUS

Regulations and rules of court

36 Regulations.

- (1) The Secretary of State may make such regulations under this section as appear to him necessary or desirable for giving effect to, or for preventing abuses of, this Act; and regulations made under this section may make different provision—
 - (a) in relation to legal aid and to advice and assistance respectively; and
 - (b) for different cases or classes of case.
 - (2) Without prejudice to subsection (1) above or to any other provision of this Act authorising the making of regulations, regulations made under this section may—
 - (a) make provision as to the exercise by the Board of its functions under this Act;
 - (b) substitute different amounts for any of the amounts specified in section 8, 10(2), 11(2), [^{F1}11A(1),] 15 [^{F2}, 17(2) and 25AC(2)] of this Act [^{F3}and the power to substitute different amounts for the [^{F4}amounts specified in sections 10(2), 11A(1) and 25AC(2) and, in so far as relating to criminal matters, sections 8 and 11(2)] of this Act includes power to substitute different amounts in relation to different cases or classes of case];
 - (c) make provision as to the proceedings which are or are not to be treated as distinct proceedings for the purposes of legal aid, and as to the matters which are or are not to be treated as distinct matters for the purposes of advice and assistance;
- [^{F5}(ca) make provision allowing the Board to determine—
- (i) the matters which, subject to subsection (2A), are or are not to be treated as distinct matters for the purposes of advice and assistance;
 - (ii) on a case by case basis, matters which may be treated as if they were distinct matters for the purposes of advice and assistance;]

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- (d) make provision as to the manner of making applications for legal aid or advice and assistance under this Act and the time when such applications may be made and disposed of;
- (e) make provision as to the information to be furnished by a person seeking or receiving legal aid or advice and assistance;
- (f) make provision as to the cases in which a person may be refused legal aid or advice and assistance by reason of his conduct when seeking or receiving legal aid or advice and assistance (whether in the same or in a different matter or proceedings);
- (g) make provision in connection with the recovery of sums due to the Fund and making effective the priorities conferred by this Act on the payment of such sums out of awards of expenses or property recovered or preserved for a person receiving legal aid, including—
 - (i) provision in connection with the enforcement (by whatever means) for the benefit of the Fund of any award of expenses or any agreement as to expenses in favour of a person who has received legal aid; and
 - (ii) provision making a solicitor's right to payment out of the Fund dependent, in whole or in part, on his performing any duties imposed on him by regulations made for the purposes of this paragraph;
- (h) modify any provision of this Act so far as appears to the Secretary of State necessary to meet any of the special circumstances mentioned in subsection (3) below.

[^{F6}(2A) Regulations made under this section which include provision as mentioned in subsection (2)(ca)(i) must include provision to the effect that—

- (a) any determination by the Board as to the matters which are or are not to be so treated as distinct matters may only be made after consultation with the Law Society;
- (b) where a matter has been determined by the Board to be so treated as a distinct matter, the Board may not determine that the matter is no longer to be so treated unless the Scottish Ministers consent.]

(3) The special circumstances referred to in subsection (2)(h) above are where a person seeking or receiving legal aid or advice and assistance—

- (a) is not resident in Scotland;
- (b) is concerned in a representative, fiduciary or official capacity;
- [^{F7}(bb) is [^{F8}applying for an order under section 53(1), 57(1), 60(1), 62(1) or 63(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (in relation to himself or any other adult) or is otherwise] concerned as claiming or having an interest in the property, financial affairs or personal welfare of an adult under [^{F9}that Act];]
- (c) is concerned jointly with or has the same interest as other persons, whether receiving legal aid or advice and assistance or not;
- (d) has available to him rights and facilities making it unnecessary for him to take advantage of the provisions of this Act, or has a reasonable expectation of receiving financial or other help from a body of which he is a member;
- (e) seeks legal aid or advice and assistance in a matter of special urgency;
- (f) begins to receive legal aid or advice and assistance after having consulted a solicitor in the ordinary way with respect to the same proceedings, or ceases to receive legal aid or advice and assistance before the proceedings in question are finally settled;

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- (g) has, while receiving legal aid or advice and assistance, any change of circumstances such that, had the changed circumstances subsisted at the time the application for legal aid or advice and assistance was made, the original disposal of the application would have been likely to have been affected.
- (4) Regulations made under this section may also modify this Act or any instrument having effect under this Act (including so much of any of those provisions as specifies a sum of money) for the purposes of its application—
- (a) in cases where such modification appears to the Secretary of State necessary for the purpose of fulfilling any obligation imposed on the United Kingdom or Her Majesty's government therein by any international agreement; or
- (b) in relation to proceedings for securing the recognition or enforcement in Scotland of judgments given outside the United Kingdom for whose recognition or enforcement in the United Kingdom provision is made by any international agreement.

Textual Amendments

- F1** Word in s. 36(2)(b) inserted (11.10.2013) by [Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 \(asp 3\)](#), **ss. 23(9)(a)(i)**, 25(2); S.S.I. 2013/262, art. 2
- F2** Words in s. 36(2)(b) substituted (11.10.2013) by [Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 \(asp 3\)](#), **ss. 23(9)(a)(ii)**, 25(2); S.S.I. 2013/262, art. 2
- F3** Words added by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 44, **Sch. 4 Pt. 1 para. 6**
- F4** Words in s. 36(2)(b) substituted (11.10.2013) by [Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 \(asp 3\)](#), **ss. 23(9)(a)(iii)**, 25(2); S.S.I. 2013/262, art. 2
- F5** S. 36(2)(ca) inserted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 76(2)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(d)**
- F6** S. 36(2A) inserted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 76(3)**, 82(2) (with s. 77); S.S.I. 2007/57, **art. 2(d)**
- F7** S. 36(3)(bb) inserted (2.4.2001) by [2000 asp 4](#), **ss. 88(2)**, **Sch. 5 para. 19**; S.S.I. 2001/81, art. 2, **Sch. 1**
- F8** Words in s. 36(3)(bb) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 77(1)**, 79(3). {Sch. 1 para. 3(b)(i)}; S.S.I. 2007/334, **art. 2(b)**, Sch. 2
- F9** Words in s. 36(3)(bb) substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 77(1)**, 79(3). {Sch. 1 para. 3(b)(ii)}; S.S.I. 2007/334, **art. 2(b)**, Sch. 2

37 Parliamentary procedure.

- (1) Regulations under this Act shall be made by the Secretary of State by statutory instrument and, except as provided in subsection (2) below, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) No regulations shall be made under section 7, [^{F10}8A(1),] 9, 11(2), 13(4), 17(2), 21(2), 24(4) [^{F11}, 28C(3), 28K(2), 28L(1) or (8),] [^{F12}28LA(1),] [^{F13}28LB(1),] [^{F14}, 33ZA(1)] or 36(2)(b) of this Act unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

^{F15}(3)

Textual Amendments

- F10** Words in s. 37(2) inserted (30.10.2010) by [Criminal Procedure \(Legal Assistance, Detention and Appeals\) \(Scotland\) Act 2010 \(asp 15\)](#), **ss. 2(4)**, 9

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- F11** Words in s. 37(2) inserted (24.6.2013) by Children’s Hearings (Scotland) Act 2011 (asp 1), s. 206(2), **sch. 5 para. 1(7)** (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F12** Word in s. 37(2) inserted (28.11.2016) by Children and Young People (Scotland) Act 2014 (asp 8), s. 102(3), **sch. 5 para. 3(3)**; S.S.I. 2016/254, art. 3(2)(b)
- F13** Word in s. 37(2) inserted (31.3.2020) by Age of Criminal Responsibility (Scotland) Act 2019 (asp 7), **ss. 73(4), 84(2)**; S.S.I. 2020/74, reg. 2, sch.
- F14** Word in s. 37(2) inserted (11.10.2013) by Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), **ss. 23(10), 25(2)**; S.S.I. 2013/262, art. 2
- F15** S. 37(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. 1 para. 86(4)**

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.

[^{F16}(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.]

- (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 [^{F17}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.

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Textual Amendments

F16 S. 38(1A) inserted (6.7.2001) by [2001 asp 7, ss. 6\(5\), 15\(3\)](#)

F17 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](#)