



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART IV

CRIMINAL LEGAL AID

24 Legal aid in summary proceedings.

- (1) Subject to regulations made under section 21(2) of this Act, to section 21(3) of this Act and to [^{F1}subsections (1A), (2) and] (3) below, criminal legal aid shall be available to an accused person in summary proceedings on an application made to the Board if the Board is satisfied—
- (a) after consideration of the financial circumstances of the accused person, that the expenses of the case cannot be met without undue hardship to him or his dependants; and
 - (b) that in all the circumstances of the case it is in the interests of justice that legal aid should be made available to him.

[^{F2}(1A) Legal aid made available to a person under subsection (1) may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.]

- (2) The Board may require a person receiving criminal legal aid under this section to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that
- [^{F3}(a) after consideration of the financial circumstances of the person, the expenses of the case cannot be met without undue hardship to him or his dependants;
 - (b)] it is in the interests of justice for him to continue to receive criminal legal aid.
- (3) The factors to be taken into account by the Board in determining whether it is in the interests of justice that criminal legal aid be made available in any case shall include—
- (a) the offence is such that if proved it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of his livelihood;

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- (b) the determination of the case may involve consideration of a substantial question of law, or of evidence of a complex or difficult nature;
 - (c) the accused may be unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise;
 - (d) it is in the interests of someone other than the accused that the accused be legally represented;
 - (e) the defence to be advanced by the accused does not appear to be frivolous;
 - (f) the accused has been remanded in custody pending trial.
- (4) The Secretary of State may, by regulations made under this section, vary the factors listed in subsection (3) above by amending factors in the list or by adding new factors to the list.
- (5) The Board shall establish a procedure under which any person whose application for criminal legal aid in summary proceedings has been refused may apply to the Board for a review of his application.
- [^{F4}(5A) The Board shall establish a procedure under which any person receiving criminal legal aid under this section which is subject to conditions by virtue of subsection (1A) may apply to the Board for a review of any such condition.]
- (6) Where a person who is being prosecuted under summary procedure is not represented by a solicitor or counsel and ^{F5} . . . —
- (a) [^{F6}has] not applied for criminal legal aid in connection with proceedings; ^{F7} . . .
 - (b) [^{F8}has] applied for criminal legal aid but been refused it on the grounds that it is not in the interests of justice [^{F9}; or
 - (c) is no longer receiving criminal legal aid in connection with proceedings because the Board is no longer satisfied as to the matters mentioned in paragraphs (a) and (b) of subsection (1)],
- the court at the trial diet may, if it considers that owing to the exceptional circumstances of the case it would be inequitable to proceed with the trial without such representation and without legal aid being made available to him, adjourn the diet to enable an application for legal aid to be made to the Board, which shall consider the application expeditiously.
- (7) Where the trial of an accused person is adjourned as is mentioned in subsection (6) above, and he has made an application to the Board, criminal legal aid shall be available to him until his application is determined by the Board.
- (8) Where any person to whom criminal legal aid has been made available in pursuance of subsection (7) above has his application for criminal legal aid under subsection (6) above refused by the Board on the ground that it is satisfied that subsection (1)(a) above does not apply in his case, the Board may require him to pay to the Fund the whole or part of the amount of any sums paid out of the Fund under section 4(2)(a) of this Act in respect of the criminal legal aid so made available.

Textual Amendments

- F1** Words in s. 24(1) substituted (25.11.2010) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 65(2), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**
- F2** S. 24(1A) inserted (25.11.2010) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 65(3), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**

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- F3** Words in s. 24(2) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(4), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**
- F4** S. 24(5A) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(5), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**
- F5** Words in s. 24(6) repealed (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(a), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**
- F6** Word in s. 24(6)(a) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(b), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**
- F7** Word in s. 24(6)(a) repealed (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(c), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**
- F8** Word in s. 24(6)(b) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(d), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**
- F9** S. 24(6)(c) and preceding word inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), **ss. 65(6)(e), 82(2)** (with s. 77); S.S.I. 2010/376, **art. 2**

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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](#)