



# Legal Aid (Scotland) Act 1986

## CHAPTER 47

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## ELIZABETH II



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

An Act to establish the Scottish Legal Aid Board and the Scottish Legal Aid Fund; to make new provision in connection with the availability of criminal legal aid in Scotland; to repeal and re-enact with modifications certain enactments relating to legal aid and to advice and assistance in Scotland; and for connected purposes.  
[25th July 1986]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### SCOTTISH LEGAL AID BOARD

##### *The Board*

1.—(1) There shall be established a body to be known as the **The Scottish Legal Aid Board** (in this Act referred to as “the **Legal Aid Board**”).

(2) The Board shall have the general functions—

- (a) of securing that legal aid and advice and assistance are available in accordance with this Act; and
- (b) of administering the Fund.

**PART I**

(3) The Board shall consist of not less than 11 and not more than 15 members appointed by the Secretary of State ; and the Secretary of State shall appoint one of the members to be chairman.

(4) The Secretary of State shall appoint to membership of the Board—

- (a) at least two members of the Faculty of Advocates ;
- (b) at least two members of the Law Society ; and
- (c) at least one other person having experience of the procedure and practice of the courts.

(5) Before appointing persons to be members of the Board in pursuance of either paragraph (a) or paragraph (b) of subsection (4) above, the Secretary of State shall consult with the professional body mentioned in that paragraph.

(6) Schedule 1 to this Act shall have effect with respect to the Board.

**Powers of the Board.**

2.—(1) Subject to the provisions of this Act, the Board may do anything—

- (a) which it considers necessary or expedient for securing the provision of legal aid and of advice and assistance in accordance with this Act ; or
- (b) which is calculated to facilitate or is incidental to or conducive to the discharge of its functions.

(2) Without prejudice to the generality of subsection (1) above, the Board shall have power—

- (a) to enter into any contract or agreement, including, subject to subsection (3) below, any contract or agreement to acquire or dispose of land ;
- (b) to invest money ;
- (c) to promote or assist in the promotion of publicity relating to the functions of the Board ;
- (d) to undertake any inquiry or investigation which the Board considers necessary or expedient in relation to the discharge of its functions ; and
- (e) to give to the Secretary of State such advice as it may consider appropriate in relation to the provision of legal aid and advice and assistance in accordance with this Act.

(3) The power under subsection (2)(a) above to enter into any contract or agreement to acquire or dispose of land shall not be exercised without the approval in writing of the Secretary of State.

3.—(1) The Board shall, from time to time, publish information as to the discharge of its functions in relation to legal aid and advice and assistance including the forms and procedures and other matters connected therewith. PART I  
Duties of the  
Board.

(2) The Board shall, from time to time, furnish to the Secretary of State such information as he may require relating to its property and to the discharge and proposed discharge of its functions.

(3) It shall be the duty of the Board to provide to the Secretary of State, as soon as possible after 31st March in each year, a report on the exercise of its functions during the preceding 12 months.

(4) The Board shall have regard, in the exercise of its functions, to such guidance as may from time to time be given by the Secretary of State.

(5) Guidance under subsection (4) above shall not relate to the consideration or disposal (whether in general or in respect of individual applications) of—

- (a) applications for legal aid or advice and assistance ;
- (b) supplementary or incidental applications or requests to the Board in connection with any case where legal aid or advice and assistance has been made available.

(6) For the purposes of subsection (2) above, without prejudice to the requirements of section 5 of this Act, the Board shall permit any person authorised in that behalf by the Secretary of State to inspect and make copies of any accounts or documents of the Board and shall furnish such explanation of them as that person or the Secretary of State may require.

### *The Fund*

4.—(1) The Board shall establish and maintain a fund to be known as the Scottish Legal Aid Fund (in this Act referred to as “the Fund”). Scottish Legal  
Aid Fund.

(2) There shall be paid out of the Fund—

- (a) such sums as are, by virtue of this Act or any regulations made thereunder, due to any solicitor or counsel in respect of fees and outlays properly incurred by him, in connection with the provision, in accordance with this Act, of legal aid or advice and assistance ;
- (b) expenses awarded to any person under section 19 of this Act ; and
- (c) such other payments for the purposes of this Act as the Secretary of State may, with the concurrence of the Treasury, determine.

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- (3) There shall be paid into the Fund—
- (a) any contribution payable to the Fund by any person in pursuance of section 17 of this Act ;
  - (b) any sum recovered under an award of a court or an agreement as to expenses in any proceedings in favour of any party who is in receipt of civil legal aid ;
  - (c) any sum which is to be paid in accordance with section 17 of this Act out of property recovered or preserved for any party to any proceedings who is in receipt of civil legal aid ;
  - (d) the sums to be paid by the Secretary of State in pursuance of section 40(1)(a) of this Act ; and
  - (e) such other receipts of the Board as the Secretary of State may, with the concurrence of the Treasury, determine.

**Accounts and audit.**

5.—(1) The Board shall keep separate accounts with respect to—

- (a) the Fund ; and
- (b) the receipts and expenditure of the Board which do not relate to the Fund,

and shall prepare in respect of each financial year a statement of accounts.

(2) The accounts shall be kept and the statement of accounts shall be prepared in such form as the Secretary of State may, with the approval of the Treasury, direct.

(3) The accounts shall be audited by persons to be appointed in respect of each financial year by the Secretary of State in accordance with a scheme of audit approved by him, and the auditors shall be furnished by the Board with copies of the statement and shall prepare a report to the Secretary of State on the accounts and the statement.

(4) No person shall be qualified to be appointed auditor under subsection (3) above unless he is a member of one of the following bodies—

- (a) the Institute of Chartered Accountants of Scotland ;
- (b) the Institute of Chartered Accountants in England and Wales ;
- (c) the Chartered Association of Certified Accountants ;
- (d) the Institute of Chartered Accountants in Ireland.

(5) Upon completion of the audit of the accounts, the auditors shall send to the Secretary of State a copy of the statement of accounts and of their report, and the Secretary of State shall send a copy of the statement and of the report to the Comptroller and Auditor General.

(6) The Secretary of State and the Comptroller and Auditor General may inspect the accounts and any records relating thereto.

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(7) The Secretary of State shall lay before each House of Parliament a copy of every—

- (a) annual report of the Board under section 3(3) of this Act;
- (b) statement of accounts under subsection (1) above; and
- (c) report of the auditors under subsection (3) above.

(8) In this section “ financial year ” means the period beginning with the commencement of this section and ending with 31st March next following and each subsequent period of 12 months ending with 31st March in each year.

PART II

ADVICE AND ASSISTANCE

6.—(1) In this Act—

Definitions.

“ advice and assistance ” means any of the following—

(a) oral or written advice provided to a person by a solicitor (or, if and so far as may be necessary, by counsel)—

- (i) on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking the advice;
- (ii) as to any steps which that person might appropriately take (whether by way of settling any claim, instituting, conducting or defending proceedings, making an agreement or other transaction, making a will or other instrument, obtaining further legal or other advice and assistance, or otherwise) having regard to the application of Scots law to those circumstances;

(b) assistance provided to a person by a solicitor (or, if and so far as may be necessary, by counsel) in taking any steps mentioned in paragraph (a)(ii) above, by taking such steps on his behalf or by assisting him in so taking them; and

“ assistance by way of representation ” means advice and assistance provided to a person by taking on his behalf any step in instituting, conducting or defending any proceedings—

- (a) before a court or tribunal; or
- (b) in connection with a statutory inquiry,

## PART II

whether by representing him in those proceedings or by otherwise taking any step on his behalf (as distinct from assisting him in taking such a step on his own behalf).

## (2) In this Part of this Act—

“client” means a person who seeks or receives advice and assistance in accordance with this Part of this Act ;

1971 c. 62.

“statutory inquiry” has the meaning assigned to it by section 19(1) of the Tribunals and Inquiries Act 1971 ;

“the solicitor” means the solicitor by whom any advice and assistance is provided or, where it is provided by counsel, the solicitor on whose instruction counsel provides it ;

“tribunal” includes an arbiter or oversman, however appointed.

Application  
of Part II.

7.—(1) Subject to subsections (2) to (4) below, and to any exceptions and conditions prescribed by regulations made under this section or under section 9 of this Act, this Part of this Act applies to any advice and assistance.

(2) This Part of this Act does not apply to advice and assistance provided to a person in connection with proceedings before a court or tribunal at a time when he is receiving legal aid in connection with those proceedings.

(3) Subject to subsection (4) below and to section 9 of this Act, this Part of this Act does not apply to assistance by way of representation.

(4) Except where subsection (2) above applies, this Part of this Act does apply, in the case of civil proceedings before a court or tribunal, to any step which consists only of negotiating on behalf of a person with a view to the settlement of a claim to which the proceedings relate.

Availability of  
advice &  
assistance.

8. Subject to section 11(2) of this Act, advice and assistance to which this Part applies shall be available in Scotland for any client if—

(a) his disposable income does not exceed £114 a week ; or

(b) he is (directly or indirectly) in receipt of supplementary benefit under the Supplementary Benefits Act 1976 or of family income supplement under the Family Income Supplements Act 1970,

1976 c. 71.

1970 c. 55.

and his disposable capital does not exceed £800.

9.—(1) Regulations made under this section may provide for this Part of this Act to apply to assistance by way of representation; and regulations so made may make different provision for different cases or classes of case.

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Regulations may apply Part II to representation.

(2) Such regulations may—

- (a) describe the proceedings (or stages of proceedings) in relation to which this Part of this Act shall so apply by reference to the court, tribunal or statutory inquiry, to the issues involved, to the capacity in which the person requiring the assistance is concerned, or in any other way;
- (b) specify, in relation to any proceedings so described, the assistance by way of representation which may be provided;
- (c) prescribe the criteria to be applied in determining whether assistance by way of representation should be provided;
- (d) require that the approval of the Board or of such other appropriate authority as may be prescribed shall be obtained, in certain classes of case, as a pre-condition of the provision of assistance by way of representation; and
- (e) modify the financial limits under sections 8 and 10(2) of this Act in their application to assistance by way of representation by substituting for the sums specified therein such other sums as may be prescribed, and such modification of the financial limit under the said section 10(2) may substitute different sums in relation to different proceedings or stages of proceedings.

(3) Such regulations may also make provision, for the purposes of paragraph (d) of subsection (2) above, as to—

- (a) the procedure to be followed in applying for approval and the criteria for determining whether approval should be given;
- (b) the conditions which should or may be imposed; and
- (c) the circumstances in which approval may be withdrawn and the effect of its withdrawal.

10.—(1) Where at any time (whether before or after advice and assistance has begun to be provided to a client) it appears to the solicitor that the cost of giving it is likely to exceed the limit applicable under this section—

**Financial**  
limit.

- (a) the solicitor shall determine to what extent that advice and assistance can be provided without exceeding that limit; and

## PART III

(4) Schedule 2 to this Act may be varied by regulations made under this section, so as to extend or restrict the categories of proceedings in which civil legal aid is available, by reference to the court or tribunal, to the issues involved, to the capacity in which the person seeking civil legal aid is concerned, or otherwise.

(5) Regulations under subsection (4) above may not have the effect of adding any reference to proceedings in any court or tribunal before which persons have no right to be and are not normally represented by counsel or a solicitor.

Availability of  
civil legal aid.

14.—(1) Subject to section 15 of this Act and to subsection (2) below, civil legal aid shall be available to a person if, on an application made to the Board—

- (a) the Board is satisfied that he has a *probabilis causa litigandi*; and
- (b) it appears to the Board that it is reasonable in the particular circumstances of the case that he should receive legal aid.

(2) The Board may require a person receiving civil 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 him to continue to receive civil legal aid.

(3) The Board shall establish a procedure under which any person whose application for legal aid under this section has been refused may apply to the Board for a review of his application.

Financial  
conditions.

15.—(1) A person shall be eligible for civil legal aid if his disposable income does not exceed £5,415 a year.

(2) A person may be refused civil legal aid if—

- (a) his disposable capital exceeds £4,710; and
- (b) it appears to the Board that he can afford to proceed without legal aid.

(3) For the purposes of this section, a person's disposable income and disposable capital shall be determined by the Board.

*Expenses*Expenses in  
favour of  
certain  
assisted  
persons.

16.—(1) Any sums recovered under an award of a court or an agreement as to expenses in favour of a legally assisted person in receipt of civil legal aid shall be paid to the Fund.

(2) In this section and in sections 17 to 20 of this Act—

“ court ” includes tribunal;

“ legally assisted person ” means a person in receipt of civil legal aid in the proceedings in question or a person in

receipt of assistance by way of representation in any proceedings to which this Part applies.

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17.—(1) Legally assisted persons may be required by the Board to contribute to the Fund in accordance with this section in respect of any proceedings in connection with which they are granted civil legal aid.

Contributions, and payments out of property recovered.

(2) A legally assisted person's contribution under this section shall be determined by the Board, and may include—

- (a) if his disposable income exceeds £2,255 a year, a contribution in respect of income which shall not be more than one-quarter of 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 his disposable capital exceeds £3,000, a contribution in respect of capital which shall not 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) A legally assisted person may be required to make his contribution to the Fund in one sum or by instalments.

(4) If the total contribution to the Fund made by a person in respect of any proceedings exceeds the net liability of the Fund on his account, the excess shall be repaid to him.

(5) Except insofar as regulations made under this section otherwise provide—

- (a) any sums remaining unpaid in respect of a person's contribution to the Fund in respect of any proceedings; and
- (b) any deficiency by reason of his total contribution being less than the net liability of the Fund on his account,

shall be paid, in priority to any other debts, out of any property (wherever situate) which is recovered or preserved for him—

- (i) in the proceedings; or
- (ii) under any settlement to avoid them or bring them to an end.

(6) Nothing in subsection (5) above shall prejudice the power of the court to allow any damages or expenses to be set off.

(7) In this section references to the net liability of the Fund on a legally assisted person's account are references to the aggregate amount of—

- (a) the sums paid or payable to a solicitor or counsel out of the Fund on his account, in respect of the proceedings in question; and

**PART III**

(b) any sums so paid or payable, for advice and assistance in connection with the proceedings in question or any matter to which those proceedings relate,

being sums not recouped by the Fund out of expenses in respect of those proceedings, or as a result of any right which he may have to be indemnified against such expenses.

(8) Where the solicitor acting for a legally assisted person is employed by the Board for the purposes of Part V of this Act, references in subsection (7) above to sums payable out of the Fund include references to sums which would have been so payable had he not been so employed.

Expenses of unassisted party.

**18.**—(1) This section and section 19 of this Act apply to proceedings to which a legally assisted person is party and which are finally decided in favour of an unassisted person.

(2) The liability of a legally assisted person under an award of expenses in proceedings to which this section applies shall not exceed the amount (if any) which in the opinion of the court or tribunal making the award is a reasonable one for him to pay, having regard to all the circumstances including the means of all the parties and their conduct in connection with the dispute.

(3) None of the following, namely a legally assisted person's house, wearing apparel, household furniture and the tools and implements of his trade or profession shall—

- (a) be taken into account in assessing his means for the purposes of subsection (2) above ; or
- (b) be subject to diligence or any corresponding process in any part of the United Kingdom in connection with any award of expenses in proceedings to which this section applies,

except insofar as regulations made under this section may prescribe.

Expenses out of the Fund.

**19.**—(1) In any proceedings to which this section applies, subject to subsections (2) and (3) below, the court may make an award out of the Fund to an unassisted party of the whole or any part of any expenses incurred by him (so far as attributable to any part of the proceedings in connection with which another party was a legally assisted person).

(2) Before making an order under this section, the court shall consider making an award of expenses against the legally assisted person.

(3) An order under this section may be made only if—

- (a) an order for expenses might be made in the proceedings, apart from this Act ; and

- (b) in the case of expenses of proceedings in a court of first instance, those proceedings were instituted by the legally assisted person, and the court is satisfied that the unassisted party will suffer severe financial hardship unless the order is made ; and
- (c) in any case, the court is satisfied that it is just and equitable in all the circumstances that the award should be paid out of public funds.

(4) The provisions of subsection (3)(b) above regarding financial hardship may be modified, in their application to persons who are concerned in proceedings only in a fiduciary, representative or official capacity, by regulations made under this section.

(5) No appeal may be made against an order made under this section, or against a refusal to make such an order, except on a point of law.

(6) In this section, “expenses” means expenses as between party and party, and includes the expenses of applying for an order under this section.

**20.**—(1) For the purposes of sections 18 and 19 of this Act, civil proceedings are finally decided in favour of an unassisted party—

Provisions supplementary to sections 18 and 19.

- (a) if no appeal may be made against the decision in his favour ;
- (b) if an appeal may be made against the decision with leave, and the time limit for applications for leave expires and either no application has been made, or leave has been refused ;
- (c) if leave to appeal against the decision is granted or is not required and no appeal is made within the time limit for appeals ; or
- (d) if an appeal is made but is abandoned before it is determined.

(2) Where an appeal is allowed to be made late, the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the unassisted party to the Fund of the whole or any part of any sum previously paid to him under section 19 of this Act in respect of those proceedings.

(3) Where a court decides any proceedings in favour of the unassisted party and an appeal may be made (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under section 19 of this Act, but any order so made shall not take effect unless—

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- (a) where leave to appeal is required, the time limit for applications for leave to appeal expires and no application has been made or leave is refused ;
- (b) where leave to appeal is granted or is not required, the time limit for appeals expires without an appeal being made ; or
- (c) an appeal is made but is abandoned before it is determined.

(4) It shall be competent, at any time within such period after the making of an award of expenses to which section 18(2) of this Act applies as may be prescribed by regulations made under this section, for any party concerned with the award to apply to the court or tribunal which made the award for re-assessment of its amount, on the ground that since the award was made there has been a relevant change of circumstances, and on such application the court or tribunal may make such re-assessment of the amount of the award as seems to them proper.

## PART IV

## CRIMINAL LEGAL AID

Scope and  
nature of  
criminal legal  
aid.

**21.**—(1) This Part of this Act applies to legal aid in connection with—

- (a) criminal proceedings before any of the following—
  - (i) the High Court of Justiciary ;
  - (ii) the sheriff ;
  - (iii) the district court ; and

- (b) any reference in connection with such proceedings under Article 177 of the EEC Treaty,

and such legal aid is referred to in this Act as “criminal legal aid”.

(2) The Secretary of State may, by regulations made under this section, prescribe by reference to such considerations as appear to him to be appropriate any class or stage of proceedings in connection with which criminal legal aid shall or, as the case may be, shall not be available.

(3) Subject to regulations made under this section, and to sections 22 and 23 of this Act, criminal legal aid shall not be available in connection with summary criminal proceedings until the conclusion of the first diet at which the accused has tendered a plea of not guilty.

(4) Criminal legal aid shall consist of representation, on terms provided for by this Act—

- (a) by a solicitor and (so far as necessary) by counsel ;
- (b) by a solicitor at any identification parade held, by or on behalf of the prosecutor (within the meaning of section

462 of the Criminal Procedure (Scotland) Act 1975), in connection with or in contemplation of criminal proceedings against the person so represented,

and shall include all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to criminal proceedings.

**22.**—(1) Subject to regulations made under section 21(2) of this Act, criminal legal aid shall be available to every accused person—

PART IV  
1975 c. 21.  
Automatic availability of criminal legal aid.

(a) where he is given representation as mentioned in paragraph (b) of section 21(4) of this Act ;

(b) where his case is being prosecuted under solemn procedure until either—

(i) an application for legal aid under section 23(1)(a) of this Act has been determined ; or

(ii) he is admitted to bail or he is committed until liberated in due course of law, whichever first occurs ;

(c) where he is being prosecuted under summary procedure, and either is in custody or has been liberated under section 295(1)(a) of the Criminal Procedure (Scotland) Act 1975 (liberation by police on undertaking to appear)—

(i) until the conclusion of the first diet at which he tenders a plea of guilty or not guilty ; or

(ii) where he has tendered a plea of guilty at that diet, until his case is finally disposed of ;

(d) where he is in custody and he is being prosecuted under summary procedure and he has—

(i) tendered a plea of not guilty ; and

(ii) made an application to the Board for legal aid in connection with the proceedings,

until his application has been determined by the Board ; and

(e) where he is being prosecuted under section 255 or 452B of the Criminal Procedure (Scotland) Act 1975 (new prosecution for same or similar offence), until his case is finally disposed of.

(2) Criminal legal aid made available in the circumstances referred to in paragraph (c)(i) of subsection (1) above shall also be available in connection with any steps taken in the making of and representation in connection with any application for liberation following upon the diet referred to in that paragraph.

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Power of the court to grant legal aid.

**23.**—(1) Criminal legal aid shall be available on an application made to the court—

(a) where a person is being prosecuted under solemn procedure ; or

(b) where a person who has not previously been sentenced to imprisonment or detention has been convicted in summary proceedings, and the court is considering a sentence of imprisonment or detention or the imposition of imprisonment under section 396(2) of the Criminal Procedure (Scotland) Act 1975 (failure to pay a fine when no time for payment is allowed),

if the court is satisfied after consideration of the person's financial circumstances that the expenses of the case cannot be met without undue hardship to him or his dependants.

(2) In subsection (1) above, " the court " means—

(a) in relation to solemn proceedings—

(i) the sheriff before whom the person is brought for examination ; or

(ii) where criminal legal aid has not been made available at any earlier stage of the proceedings in a case before it, the High Court of Justiciary ;

(b) in relation to summary proceedings, the court before which the proceedings are being taken,

and references in that subsection to detention shall be construed in accordance with section 41(2)(b) of the Criminal Justice (Scotland) Act 1980.

1975 c. 21.

1980 c. 62.

Legal aid in summary proceedings.

**24.**—(1) Subject to regulations made under section 21 (2) of this Act, to section 21(3) of this Act and to subsection (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.

(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 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 ;
- (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.

(6) Where a person who is being prosecuted under summary procedure is not represented by a solicitor or counsel and has either—

- (a) not applied for criminal legal aid in connection with proceedings ; or
- (b) applied for criminal legal aid but been refused it on the grounds that it is not in the interests of justice,

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.

## PART IV

(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.

## Legal aid in appeals.

25.—(1) This section shall apply to criminal legal aid in connection with an appeal against conviction, sentence or acquittal in criminal proceedings.

(2) Subject to regulations made under section 21(2) of this Act criminal legal aid to which this section applies shall be available on an application made to the Board if the Board is satisfied—

- (a) subject to subsection (4) below, after consideration of the financial circumstances of the applicant, that the expenses of the appeal cannot be met without undue hardship to the applicant or his dependants; and
- (b) where the applicant is the appellant, that he has substantial grounds for making the appeal and that it is reasonable, in the particular circumstances of the case, that legal aid should be made available to him.

(3) 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 it is reasonable for him to continue to receive criminal legal aid.

(4) Subsection (2) (a) above does not apply where criminal legal aid was made available under section 23 or 24 of this Act in connection with the proceedings in respect of which the appeal is being made.

(5) Subsections (2) to (4) above shall apply in relation to an application for criminal legal aid in connection with—

(a) a petition to the *nobile officium* of the High Court of Justiciary (whether arising in the course of any proceedings or otherwise); or

(b) a reference by the Secretary of State under section 263 of the Criminal Procedure (Scotland) Act 1975,

as they apply for the purposes of subsection (1) above.

PART V

PART V

EMPLOYMENT OF SOLICITORS BY THE BOARD

26.—(1) This Part of this Act applies to the employment of solicitors by the Board for any of the following purposes—

Employment to which Part V applies.

- (a) giving advice and assistance to which Part II of this Act applies ;
- (b) acting for persons receiving legal aid, either generally or in cases of any such description as may be prescribed by regulations made under this section ;
- (c) providing any such services as are mentioned in subsection (2) below.

(2) The services referred to in subsection (1)(c) above are services provided by a solicitor for or in connection with any local organisation and consisting of—

- (a) assisting the organisation in its function of giving advice and guidance to applicants ;
- (b) promoting contacts between the organisation and solicitors practising in the locality for which the organisation is established, with a view to enabling applicants to obtain the professional services of those solicitors in cases where those services are required ;
- (c) giving oral advice to applicants, instead of referring them to other solicitors, in cases which can be readily disposed of by such advice.

(3) In subsection (2) above—

- (a) “local organisation” means an organisation concerned in the giving of advice or guidance (whether generally or with respect to any particular classes of matters) to persons residing in the locality for which the organisation is established ; and
- (b) “applicants”, in relation to such an organisation, means persons who apply to the organisation for advice or guidance or are referred to it with a view to their receiving advice or guidance from it.

(4) In this section “organisation” includes a branch or section of an organisation ; and, in relation to such a branch or section, any reference to the locality for which the organisation is established shall be construed as a reference to the locality for which the branch or section is established.

27.—(1) The Secretary of State may, by regulations made under this section, make provision as to the employment of solicitors under this Part of this Act and as to the circumstances in which solicitors may be so employed.

Arrangements for employment to which Part V applies.

**PART V**

(2) Section 32(a) of this Act shall not apply to the remuneration of a solicitor by the Board in respect of any employment to which this Part of this Act applies.

(3) Notwithstanding section 33(1) of this Act, a solicitor who, in the course of employment to which this Part of this Act applies, acts for a person in receipt of legal aid or advice and assistance shall not be paid out of the Fund for so acting.

General provisions relating to employment to which Part V applies.

**28.**—(1) In relation to any solicitor who is employed by the Board in employment to which this Part of this Act applies, and in relation to any work performed, or other thing done or omitted to be done, by any such solicitor in the course of that employment—

- (a) the enactments relating to solicitors, and
- (b) any rule of law which relates to solicitors, or is applicable to things done, or omitted to be done, by solicitors in their capacity as solicitors,

shall have effect as if the Board were a firm of solicitors.

(2) Nothing in subsection (1) above shall prohibit 2 or more solicitors employed by the Board in employment to which this Part of this Act applies from acting (including acting in any proceedings) for different parties having opposing or otherwise different interests in relation to the same matter.

**PART VI****MISCELLANEOUS***Proceedings in relation to children*

**29.**—(1) This section applies to legal aid in connection with—

- (a) proceedings before the sheriff in respect of any matter arising under Part III of the Social Work (Scotland) Act 1968 (in this section referred to as “the 1968 Act”); and
- (b) any appeal to the Court of Session in connection with such proceedings.

(2) Subject to subsections (3) to (5) below, legal aid to which this section applies shall be available to a child or his parent—

- (a) in connection with an appeal to the sheriff under Part III of the 1968 Act—

- (i) against a decision of a children’s hearing to grant a warrant for the detention of the child; or
- (ii) against any other decision of a children’s hearing;

Legal aid in certain proceedings relating to children.

1968 c. 49.

- (b) in connection with an application to the sheriff under section 42 of the 1968 Act for a finding as to whether the grounds for a referral (or any of them) are established ; and
- (c) in connection with an appeal to the Court of Session against a decision of the sheriff under Part III of the 1968 Act.

(3) Legal aid shall be available under subsection (2)(a)(i) above on an application made to the sheriff without inquiry into the resources of the child or his parent.

(4) Legal aid shall be available under subsection (2)(a)(ii) or (b) above on an application made to the sheriff if the sheriff is satisfied—

- (a) that it is in the interests of the child that legal aid be made available ; and
- (b) after consideration of the financial circumstances of the child and his parent that the expenses of the case cannot be met without undue hardship to the child or his parent or the dependants of either.

(5) Legal aid shall be available under subsection (2)(c) above on an application made to the Board if it is satisfied—

- (a) after consideration of the financial circumstances of the child and his parent that the expenses of the appeal cannot be met without undue hardship to the child or his parent or the dependants of either ; and
- (b) that the child or, as the case may be, his parent has substantial grounds for making or responding to the appeal and that it is reasonable, in the particular circumstances of the case, that legal aid should be made available to him.

(6) The Board may require a person receiving legal aid under subsection (2)(c) above to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive such legal aid.

(7) Where, in connection with any proceedings, the sheriff or the Board has been satisfied as is mentioned in subsection (4)(b) above or, as the case may be, subsection (5)(a) above and has made legal aid available to a child or his parent, it shall not be necessary for the Board or, as the case may be, the sheriff to be so satisfied in respect of an application for legal aid by the child or his parent in connection with any subsequent proceedings arising from such proceedings.

(8) Legal aid to which this section applies shall consist of representation by a solicitor and (so far as is necessary) by counsel in any proceedings (including any appeal) mentioned in

## PART VI

subsection (1) above and shall include all such assistance as is usually given by solicitor or counsel in the steps preliminary to or incidental to proceedings.

(9) In this section “child” and “parent” shall be construed in accordance with section 30 of the 1968 Act.

*Contempt of court*

Legal aid in contempt proceedings.

30.—(1) Where a person is liable to be dealt with for contempt of court during the course of or in connection with any proceedings, legal aid shall be available to him on an application being made to the court if it is satisfied—

- (a) after consideration of the person’s financial circumstances that the expenses of the proceedings for contempt of court 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.

(2) In making legal aid available under subsection (1) above, the court may order in any case that the legal aid shall consist of representation by counsel only or, in a court where solicitors have a right of audience, by a solicitor only ; and, notwithstanding section 31 of this Act, the court may assign for the purpose any counsel or solicitor who is within the precincts of the court at the time when the order is made.

(3) Section 25 of this Act shall apply in relation to legal aid in connection with an appeal against a decision of a court in proceedings for contempt of court as it applies in relation to legal aid in connection with an appeal against conviction, sentence or acquittal in criminal proceedings, and in such application—

- (a) for the reference in subsection (4) of that section to criminal legal aid having been made available under section 23 or 24 of this Act there shall be substituted a reference to legal aid having been made available under subsection (1) above ; and
- (b) in subsection (5) of that section the reference to the *nobile officium* of the High Court of Justiciary shall include a reference to the *nobile officium* of the Court of Session.

(4) Subject to subsection (2) above legal aid made available under this section shall consist of representation by a solicitor and (so far as necessary) by counsel and shall include all such assistance as is usually given by a solicitor or counsel in the steps preliminary to or incidental to proceedings for contempt of court or, in the case of legal aid made available under subsection (3) above, any appeal in connection with such proceedings.

*Solicitors and counsel*

PART VI

**31.**—(1) Subject to section 30(2) of this Act and to regulations made under subsection (9) below, a person to whom legal aid or advice and assistance is made available may select—

Solicitors and  
counsel.

(a) the solicitor to advise or act for him ; and

(b) if the case requires counsel, his counsel,

and he shall be entitled to make the selection himself.

(2) Nothing in subsection (1) above shall prejudice any right of a solicitor or advocate to refuse or give up a case or to entrust it to another solicitor or advocate.

(3) The relevant body may decide to exclude any advocate or solicitor either from being selected under subsection (1) above, or from giving advice and assistance to or from acting for a person to whom legal aid is made available on the ground that there is good reason for excluding him arising out of—

(a) his conduct when acting or selected to act for persons to whom legal aid or advice and assistance is made available ;

(b) his professional conduct generally ;

(c) in the case of a member of a firm of solicitors or a director of an incorporated practice, such conduct on the part of any person who is for the time being a member of the firm or a director of the practice.

(4) The relevant body may decide to exclude a solicitor or advocate under subsection (3) above in respect of any specified period or without limit of time.

(5) A solicitor or advocate who is aggrieved by a decision of the relevant body under subsection (3) above may appeal against his exclusion or the period of such exclusion to the Court of Session ; and the court in determining such an appeal may make such order as it thinks fit.

(6) Where the relevant body decides or the Court of Session, on an appeal against such a decision, orders that an advocate or solicitor be excluded under subsection (3) above, the relevant body shall inform the Board of the decision or order.

(7) Except in so far as expressly provided under this Act, the fact that the services of counsel or a solicitor are given by way of legal aid or advice and assistance shall not affect the relationship between or the respective rights in that connection of counsel, solicitor and client.

(8) The Board may arrange that, in such circumstances as it may specify, a solicitor shall be available for the purposes of providing legal aid or advice and assistance.

## PART VI

(9) Where a solicitor is available as is mentioned in subsection (8) above, the Secretary of State may, by regulations made under this section, provide that—

- (a) subsection (1) above shall not apply ; and
- (b) legal aid or, as the case may be, advice and assistance shall be provided only by the solicitor so made available.

(10) In this section, “ the relevant body ” means—

- (a) in relation to an advocate, the Faculty of Advocates ;
- (b) in relation to a solicitor, the Law Society or the Scottish Solicitors’ Discipline Tribunal,

and in considering whether to exclude a solicitor under subsection (3) above, section 52 of and Part II of Schedule 4 to the Solicitors (Scotland) Act 1980 shall apply in relation to the procedure of that Tribunal as they apply in relation to its procedure in respect of a complaint under section 51(1) of that Act.

1980 c. 46.

Restriction on payment and employment of solicitor or counsel.

**32.** Where legal aid is available to a person in connection with any proceedings (whether legal aid is available in connection with all or only part of the proceedings)—

- (a) the solicitor or counsel providing legal aid shall not take any payment in respect of any advice given or anything done in connection with such proceedings during any period when legal aid was so available except for such payment as may be made, in accordance with this Act, out of the Fund ; and
- (b) except as is mentioned in section 31(2) of this Act, no solicitor or counsel other than the solicitor or counsel referred to in paragraph (a) above shall advise or act for him in connection with the proceedings.

Fees and outlays of solicitors and counsel.

**33.—**(1) Any solicitor or counsel who acts for any person by providing legal aid or advice and assistance under this Act shall be paid out of the Fund in accordance with section 4(2)(a) of this Act in respect of any fees or outlays properly incurred by him in so acting.

(2) The Secretary of State may, by regulations made under this section, make such provision as seems to him appropriate in respect of the fees and outlays of solicitors and counsel—

- (a) acting in any proceedings for a person to whom legal aid has been made available ; or
- (b) providing advice and assistance in accordance with Part II of this Act.

(3) Without prejudice to the generality of subsection (2) above, regulations made under this section may— PART IV

- (a) prescribe the work in respect of which fees may be charged ;
- (b) prescribe rates or scales of payment of fees and outlays allowable and the conditions under which such fees and outlays may be allowed ;
- (c) provide for the assessment and taxation of fees and outlays, and for the review of any such assessment or taxation, either by the Secretary of State or by any other person ;
- (d) prescribe general principles to be applied in connection with any such assessment, taxation or review ;
- (e) prescribe forms to be used for the purposes of any regulations made under this section ; and
- (f) make different provision for different cases.

(4) In subsection (1) above the reference to acting for a person includes, in relation to a solicitor, a reference to acting for such a person on the instructions of another solicitor.

(5) Where a person is in receipt of legal aid in connection with any proceedings, any expenses incurred in connection with the proceedings which would, if he were not in receipt of legal aid, be paid, in the first instance, by or on behalf of the solicitor acting for him, shall be so paid.

### *Information*

34.—(1) Subject to subsection (2) below, no information furnished for the purposes of this Act to the Board or to any person acting on its behalf shall be disclosed— Confidentiality  
of information

- (a) in the case of such information furnished by, or by any person acting for, a person seeking or receiving legal aid or advice and assistance, without the consent of the person seeking or receiving legal aid or advice and assistance ; or
- (b) in the case of such information furnished otherwise than as mentioned in paragraph (a) above, without the consent of the person who furnished it,

and any person who, in contravention of this subsection, discloses any information obtained by him when employed by, or acting on behalf of, the Board shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) Subsection (1) above shall not apply to the disclosure of information—

- (a) for the purpose of the proper performance or facilitating the proper performance by the Secretary of State, the

## PART VI

Board, any court or tribunal or by any other person or body of duties or functions under this Act ;

- (b) for the purpose of investigating, prosecuting or determining any complaint of professional misconduct—
  - (i) against a solicitor, by the Law Society or the Scottish Solicitors' Discipline Tribunal ;
  - (ii) against an advocate, by the Faculty of Advocates ;
- (c) for the purpose of investigating or prosecuting any offence or for the report of any proceedings in relation to such an offence.

(3) For the purposes of this section, information furnished to any person in his capacity as counsel or a solicitor by or on behalf of a person seeking or receiving legal aid or advice and assistance is not information furnished to the Board or to a person acting on its behalf.

False  
information.  
etc.

**35.**—(1) If any person seeking or receiving legal aid or advice and assistance—

- (a) wilfully fails to comply with any regulations as to the information to be furnished by him ; or
- (b) for the purpose of obtaining legal aid or advice and assistance knowingly makes any false statement or false representation,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 60 days or to both.

1975 c. 21.

(2) Notwithstanding section 331 of the Criminal Procedure (Scotland) Act 1975, proceedings for an offence under subsection (1) above may be commenced at any time within 2 years from the date of the commission of the offence or within 6 months from the date when evidence sufficient in the opinion of the Lord Advocate to justify proceedings comes to his knowledge, whichever period is the shorter ; and for the purposes of this subsection a certificate by the Lord Advocate as to the date on which such evidence came to his knowledge shall be conclusive evidence of that fact.

*Regulations and rules of court*

Regulations.

**36.**—(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), 15 and 17(2) of this Act ;
- (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 ;
- (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.

(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 ;

## PART VI

- (b) is concerned in a representative, fiduciary or official capacity ;
- (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 ;
- (g) has, while receiving legal aid or advice and assistance, any change of circumstances such that, had the change of 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.

Parliamentary procedure.

**37.**—(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 regulation shall be made under section 7, 9, 11(2), 13(4), 17(2), 21(2), 24(4) 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.

(3) Regulations made under section 42 of this Act shall be made with the concurrence of the Treasury. PART VI

**38.**—(1) The court may by act of adjournal or, as the case may be, by act of sederunt— Rules of court.

- (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.

(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 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.

## PART VI

*Rights of indemnity*

Adaptation of  
rights to  
indemnity.

**39.**—(1) This section shall have effect in relation to any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him in connection with any proceedings.

(2) In determining in respect of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of the provisions of this Act shall be disregarded.

(3) Where a person, having any such right to be indemnified against expenses, receives legal aid in connection with the proceedings, then the right shall enure also for the benefit of the Fund as if the expenses incurred by the Fund on his behalf in connection with the proceedings had been incurred by him.

(4) Where—

(a) such a right to be indemnified against expenses arises by virtue of an agreement and is subject to any express provision conferring on those liable under the agreement any right with respect to the bringing or conduct of the proceedings ; and

(b) those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity,

the right to be indemnified shall be treated, for the purposes of subsection (3) above, as not being subject to that provision.

*General*

Finance.

**40.**—(1) The Secretary of State shall pay to the Board out of moneys provided by Parliament—

(a) such sums as are required (after allowing for payments into the Fund under paragraphs (a) to (c) and (e) of section 4(3) of this Act) to meet payments out of the Fund under this Act ; and

(b) such sums as he may, with the approval of the Treasury, determine are required for the other expenditure of the Board.

(2) The Secretary of State may, with the approval of the Treasury—

(a) determine the manner in which and times at which the sums referred to in subsection (1) (a) above shall be paid to the Board ; and

(b) impose conditions on the payment of the sums referred to in subsection (1)(b) above.

(3) The Secretary of State shall pay to the Law Society in accordance with paragraph 1(2)(b) of Schedule 4 to this Act out of moneys provided by Parliament the amount required to make up any deficit in the Legal Aid (Scotland) Fund.

(4) Any payments received by the Secretary of State from the Law Society in accordance with paragraph 1(2)(a) of Schedule 4 to this Act shall be paid by him into the Consolidated Fund.

**41.** In this Act, unless the context otherwise requires— Interpretation.

“advice and assistance” has the meaning given to it in section 6(1) of this Act;

“assistance by way of representation” has the meaning given to it in section 6(1) of this Act;

“the Board” has the meaning given to it in section 1(1) of this Act;

“civil legal aid” has the meaning given to it in section 13(2) of this Act;

“criminal legal aid” has the meaning given to it in section 21(1) of this Act;

“the Fund” has the meaning given to it in section 4(1) of this Act;

“incorporated practice” has the same meaning as in the Solicitors’ (Scotland) Act 1980; 1980 c. 46.

“the Law Society” means the Law Society of Scotland;

“legal aid” means civil legal aid, criminal legal aid, or legal aid given in connection with proceedings for contempt of court or proceedings under Part III of the Social Work (Scotland) Act 1968; 1968 c. 49.

“person” does not include a body corporate or unincorporate, except where such body is acting in a representative, fiduciary or official capacity, so as to authorise legal aid or advice and assistance to be provided to such a body.

**42.—**(1) In this Act “disposable income” or “disposable capital” in relation to any person means his income or, as the case may be, the amount of his capital, after making such deductions and allowances as regulations made under this section may prescribe— Disposable income and capital.

(a) in respect of maintenance of dependants, interest on loans, income tax, rates, rent and other matters for which that person must or reasonably may provide;

(b) to take account of the nature of his resources, and does not include the subject matter of the dispute.

## PART VI

(2) Regulations made under this section may make provision as to the determination of a person's income and the amount of his capital and in particular for determining whether any resources are to be treated as income or capital and for taking into account fluctuations of income, and different provision may be made for legal aid and for advice and assistance.

(3) Except in so far as regulations made under this section otherwise provide, the resources of a person's spouse shall be treated for the purposes of this section as that person's own resources, and such regulations may also make provision, in relation to minors and pupils and other special cases, for taking into account the resources of other persons.

Act not to  
affect certain  
taxations etc.

43. Nothing in this Act shall affect the sum recoverable by virtue of—

- (a) an award of expenses in favour of a person to whom legal aid has been made available ; or
- (b) an agreement as to expenses in favour of such a person which provides for taxation,

and for the purpose of any such award or agreement, the solicitor who acted for the person in whose favour it is made shall be treated as having paid any counsel's fees.

Crown  
application.

44. This Act shall bind the Crown.

Amendments,  
transitional  
provisions,  
savings and  
repeals.  
1978 c. 30.

45.—(1) The enactments mentioned in Schedule 3 to this Act shall have effect subject to the amendments there specified (being minor amendments and amendments consequential on this Act).

(2) Without prejudice to sections 16 and 17 of the Interpretation Act 1978 (effect of repeals) and section 46(3) of this Act, the transitional provisions and savings contained in Schedule 4 to this Act shall have effect.

(3) The enactments set out in columns 1 and 2 of Schedule 5 to this Act are repealed to the extent specified in the third column of that Schedule.

Short title,  
commence-  
ment and  
extent.

46.—(1) This Act may be cited as the Legal Aid (Scotland) Act 1986.

(2) This Act, apart from this section, shall come into force on such day as the Secretary of State may, by order made by statutory instrument, appoint ; and different days may be so appointed for different purposes and for different provisions.

(3) An order under subsection (2) above may contain such transitional provisions and savings as appear to the Secretary of State necessary or expedient.

(4) This Act, except section 18(3), extends only to Scotland.

## SCHEDULES

## SCHEDULE 1

## Section 1.

## THE SCOTTISH LEGAL AID BOARD

*Incorporation and Status*

1. The Board shall be a body corporate with a common seal.
- 2.—(1) The Board is not an emanation of the Crown and shall not act or be treated as the servant or agent of the Crown.
- (2) Accordingly—
  - (a) neither the Board, nor any of its members, nor any member of its staff as such is entitled to any status, immunity, privilege or exemption enjoyed by the Crown ;
  - (b) the members of the Board and the members of its staff are not, in such capacity, Crown servants ; and
  - (c) the Board's property is not the property of or held on behalf of the Crown.
- (3) Subject to sub-paragraph (4) below, the Board shall not be exempt from any tax, duty, rate, levy or other charge whatever (whether general or local).
- (4) Notwithstanding sub-paragraph (2)(c) above, all lands and heritages occupied by the Board shall, for the purposes of the Lands Valuation (Scotland) Act 1854, the Acts amending that Act and any other enactment relating to valuation of lands and heritages, be treated as if they were occupied by or on behalf of the Crown for the purposes of the Crown. 1854 c. 91.

*Tenure of Members*

3. Subject to paragraphs 4 and 5 below any member of the Board shall hold and vacate office in accordance with the terms of his appointment, but a person shall not be appointed a member of the Board for a period of more than 5 years.
- 4.—(1) The chairman or a member may resign office by giving notice in writing to the Secretary of State, and if the chairman ceases to be a member he shall cease to be the chairman.
- (2) A person who ceases to be the chairman or a member shall be eligible for reappointment.
5. The Secretary of State may terminate the appointment of a member of the Board if satisfied that—
  - (a) he has had his estate sequestrated, or has been adjudged bankrupt or has granted a trust deed for or entered into an arrangement with his creditors ;

## SCH. 1

- (b) he is unable to carry out his duties as a Board member by reason of physical or mental illness ;
- (c) he has been absent from meetings of the Board for a period longer than six consecutive months without the permission of the Board ; or
- (d) he is otherwise unable or unfit to discharge the functions of a member of the Board, or is unsuitable to continue as a member.

*Remuneration of members*

6.—(1) The Board may—

- (a) pay to its members such remuneration ; and
- (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,

as the Secretary of State may, with the approval of the Treasury, determine.

(2) Where a person ceases to be a member of the Board otherwise than on the expiry of his term of office, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may, with the consent of the Treasury, direct the Board to make that person a payment of such amount as the Secretary of State may, with the consent of the Treasury, determine.

*Staff*

7.—(1) The Board shall, after consultation with, and subject to the approval of, the Secretary of State, appoint on such terms and conditions as it may determine a person to be the principal officer of the Board.

(2) The principal officer shall be responsible to the Board for the exercise of its functions.

8.—(1) Subject to paragraph 9 below, the Board may appoint, on such terms and conditions as it may determine, such other employees as it thinks fit.

(2) A determination as to terms and conditions under paragraph 7(1) or sub-paragraph (1) above shall be subject to the approval of the Secretary of State given with the consent of the Treasury.

(3) The Board shall, in respect of such of its employees as it may determine, with the approval of the Secretary of State and the consent of the Treasury make such arrangements for providing pensions, allowances or gratuities as it may determine ; and such arrangements may include the establishment and administration, by the Board or otherwise, of one or more pension schemes.

(4) The reference in sub-paragraph (3) above to pensions, allowances or gratuities in respect of employees of the Board includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment.

(5) If an employee of the Board becomes a member of the Board and was by reference to his employment by the Board a participant in a pension scheme established and administered by it for the benefit of its employees—

- (a) the Board may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Board whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 6 above ; but
- (b) if the Board determines as aforesaid, any discretion as to the benefits payable to or in respect of him which the scheme confers on the Board shall be exercised only with the consent of the Secretary of State given with the approval of the Treasury.

9.—(1) The Board shall, not later than such date as the Secretary of State may determine, make an offer of employment by the Board to each person employed immediately before that date—

- (a) by the Law Society for the purpose of their functions under the Legal Aid (Scotland) Act 1967 ; and
- (b) in the civil service of the State wholly or mainly in connection with the assessment of a person's means under section 4 of that Act.

1967 c. 43.

(2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.

(3) For the purposes of sub-paragraph (2) above no account shall be taken of the fact that employment with the Board is not employment in the service of the Crown.

(4) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

10.—(1) Where a person becomes an employee of the Board on acceptance of an offer made under paragraph 9 above, then, for the purposes of the Employment Protection (Consolidation) Act 1978, his period of employment with the Law Society or, as the case may be, in the civil service of the State, shall count as a period of employment by the Board, and the change of employment shall not break the continuity of the period of employment.

1978 c. 44.

(2) Where an offer is made in pursuance of paragraph 9(1) above to any person employed as is mentioned in that paragraph, none of the agreed redundancy procedures applicable to such a person shall apply to him and—

- (a) where a person employed as is mentioned in sub-paragraph (a) of that paragraph ceases to be so employed—
  - (i) on becoming a member of the staff of the Board in consequence of that paragraph ; or

## SCH. 1

1978 c. 44.

1967 c. 43.

1972 c. 11.

(ii) having unreasonably refused the offer,

Part VI of the Employment Protection (Consolidation) Act 1978 shall not apply to him and he shall not be treated for the purposes of any scheme under section 12 of the Legal Aid (Scotland) Act 1967 as having been retired on redundancy ;

(b) where a person employed as is mentioned in sub-paragraph (b) of that paragraph ceases to be so employed on becoming a member of the staff of the Board in consequence of that paragraph, he shall not be treated for the purposes of any scheme under section 1 of the Superannuation Act 1972 as having been retired on redundancy.

(3) Without prejudice to sub-paragraph (2) above, where a person has unreasonably refused an offer made to him in pursuance of paragraph 9 above, the Law Society or, as the case may be, the Secretary of State shall not terminate that person's employment unless it or, as the case may be, he has first had regard to the feasibility of employing him in a suitable alternative position with the Law Society or, as the case may be, in the civil service of the State.

(4) Where a person continues in employment in the Law Society or, as the case may be, the civil service of the State either—

(a) not having unreasonably refused an offer made to him in pursuance of this paragraph, or

(b) having been placed in a suitable alternative position as mentioned in sub-paragraph (3) above,

he shall be treated for all purposes as if the offer mentioned in paragraph 9(1) above had not been made.

11.—(1) Any dispute as to whether an offer under sub-paragraph (1) of paragraph 9 above complies with sub-paragraph (2) of that paragraph shall be referred to and be determined by an industrial tribunal.

(2) An industrial tribunal shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

(3) Subject to sub-paragraph (4) below there shall be no appeal from the decision of an industrial tribunal under this paragraph.

(4) An appeal to the Employment Appeal Tribunal may be made only on a question of law arising from the decision of, or in proceedings before, an industrial tribunal under this paragraph.

*Proceedings*

12.—(1) Subject to anything in regulations made by the Secretary of State under this Act, the Board may regulate its own proceedings.

(2) The Board may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of specified functions.

(3) Committees may be appointed and may be dissolved by the Board, and may include, or consist entirely of, persons who are not members of the Board.

(4) A committee shall act in accordance with such directions as the Board may from time to time give, and the Board may provide for anything done by a committee to have effect as if it had been done by the Board.

(5) The validity of any proceedings of the Board or of any committee appointed by the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

*Allowances*

13. The Board may pay to each of its members and the members of any committee such reasonable allowances in respect of expenses or loss of remuneration as the Secretary of State may, with the approval of the Treasury, determine.

*Instruments*

14.—(1) The fixing of the seal of the Board shall be authenticated by the Chairman or another member of the Board and by some other person authorised either generally or specially by the Board to act for that purpose.

(2) A document purporting to be duly executed under the seal of the Board, or to be signed on the Board's behalf, shall be received in evidence and, unless the contrary is proved, be deemed to be so executed or signed.

*Board not dominus litis*

15. Nothing done by the Board for the purpose of securing that legal aid or advice and assistance is available to any person in connection with any proceedings shall render it liable to be held to be *dominus litis* in relation to the proceedings.

SCHEDULE 2

Section 13.

PART I

COURTS IN WHICH CIVIL LEGAL AID IS AVAILABLE

1. Civil legal aid shall be available in relation to civil proceedings in—

- the House of Lords, in appeals from the Court of Session ;
- the Court of Session ;
- the Lands Valuation Appeal Court ;

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the Scottish Land Court ;  
the sheriff court,

and in relation to proceedings—

before any person to whom a case is referred in whole or in part by a court mentioned above ;

1973 c. 41.

in the Restrictive Practices Court under Part III of the Fair Trading Act 1973 (including any proceedings in that court in consequence of an offer made or undertaking given to the court under that Part of that Act) ;

in the Lands Tribunal for Scotland ;

in the Employment Appeal Tribunal.

2. For the purposes of section 13 of this Act, proceedings in the European Court of Justice on a reference, under Article 177 of the EEC Treaty, made by a court mentioned in paragraph 1 above are part of the proceedings in the court making the reference.

## PART II

### EXCEPTED PROCEEDINGS

1. Subject to paragraph 2 below, civil legal aid shall not be available in proceedings which are wholly or partly concerned with defamation or verbal injury.

2. The making of a counterclaim for defamation or verbal injury in any proceedings shall not of itself affect the availability of legal aid to the other party, and legal aid may be granted for the purposes of defending such a counterclaim.

3. Civil legal aid shall not be available in relation to—

1983 c. 2.

election petitions under the Representation of the People Act 1983 ;

simplified divorce applications under the rules of procedure of the Court of Session or the sheriff court.

Section 45.

## SCHEDULE 3

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c.18)*

1.—(1) In section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 for the words from “secretary” where it first occurs to “taking” there shall be substituted the words:—

“Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the sheriff court within the jurisdiction of which that other person resides or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purposes of enabling the solicitor to take”.

(2) In section 32 of that Act—

(a) after subsection (7) there shall be inserted the following subsections—

“(7A) The Secretary of State on receiving notice under subsection (6) above shall send a copy of the registered order and of the related documents to the Secretary of the Law Society of Scotland who shall send the copy of the order and of the related documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate for the purpose of enabling the solicitor to take, on behalf of the person entitled to the payments for which the order provides, such steps as appear to the solicitor appropriate to enforce the order.

(7B) Where an order is registered in the sheriff court by virtue of subsection (3) above, any provision of the order by virtue of which the payments for which the order provides are required to be made through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered.”;

(b) subsection (9)(e) of that section shall be omitted.

(3) In section 34(5) of that Act, for paragraph (b) there shall be substituted the following paragraph—

“(b) for subsection (3) there shall be substituted the following subsection—

“(3) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the variation of a registered order, he shall, if the registering court is a sheriff court, send the application, together with any documents accompanying it, to the Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purpose of enabling the solicitor to take on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.”.

2.—(1) Section 43A of that Act shall be amended as follows.

(2) In subsection (1) for the words “section 2(1) and (6)(c), 3 and 4 of the Legal Aid (Scotland) Act 1967” there shall be substituted the words “sections 15 and 17 of the Legal Aid (Scotland) Act 1986”.

(3) In subsection (2) for the words “sections 2(1) and (6)(c), 3 and 4 of the said Act of 1967”, there shall be substituted the words “sections 15 and 17 of the said Act of 1986”.

(4) In subsection (3) for the words from “legal advice” to “said Act of 1972)”, where they second occur, there shall be substituted the words “advice and assistance under the said Act of 1986, shall,

**SCH. 3** notwithstanding any financial conditions or requirements to make contributions imposed by sections 8 and 11 of that Act.”.

*The House of Commons Disqualification Act 1975 (c.24)*

3. In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Chairman of the Scottish Legal Aid Board”.

*The Northern Ireland Assembly Disqualification Act 1975 (c.25)*

4. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Chairman of the Scottish Legal Aid Board”.

*The Sex Discrimination Act 1975 (c. 65)*

5. In section 75(4) of the Sex Discrimination Act 1975 for the words “the Legal Aid and Advice (Scotland) Acts 1967 and 1972” there shall be substituted the words “the Legal Aid (Scotland) Act 1986”.

*The Race Relations Act 1976 (c.74)*

6. In section 66(6) of the Race Relations Act 1976 for the words “the Legal Aid and Advice (Scotland) Acts 1967 and 1972” there shall be substituted the words “the Legal Aid (Scotland) Act 1986”.

*The Solicitors (Scotland) Act 1980 (c.46)*

7. In section 35(4) of the Solicitors (Scotland) Act 1980 for paragraph (b) there shall be substituted—

“(b) who is in employment to which Part V of the Legal Aid (Scotland) Act 1986 applies ;”.

8.—(1) Section 51 of that Act shall be amended as follows.

(2) In subsection (2) after the word “client” there shall be inserted the words “or against the Scottish Legal Aid Fund”.

(3) In subsection (3) after paragraph (d) there shall be inserted the following paragraph—

“(e) the Scottish Legal Aid Board.”.

*The Tenants' Rights, Etc. (Scotland) Act 1980 (c.52)*

9. In section 9B(4) of the Tenants' Rights, Etc. (Scotland) Act 1980 for the words “Legal Aid and Advice (Scotland) Acts 1967 and 1972 and to any provision of those Acts for payment of any sum into the legal aid fund” there shall be substituted the words “Legal Aid (Scotland) Act 1986 and to any provision of that Act for payment of any sum into the Scottish Legal Aid Fund”.

SCHEDULE 4

Section 45.

TRANSITIONAL PROVISIONS AND SAVINGS

*The Legal Aid (Scotland) Fund*

1.—(1) On the appointed day the Legal Aid (Scotland) Fund (“the Old Fund”) established under section 9 of the Legal Aid (Scotland) Act 1967 (“the 1967 Act”) shall be wound up.

(2) If, as at the appointed day, after taking account of all receipts and expenses of the Law Society attributable to the 1967 Act or to their functions under the Legal Advice and Assistance Act 1972 (“the 1972 Act”), there is in relation to the Old Fund any surplus or deficit—

(a) such surplus shall be paid by the Law Society to the Secretary of State; and

(b) such deficit shall be made up by payment to the Law Society by the Secretary of State of the amount of the deficit.

(3) Notwithstanding their repeal by this Act—

(a) sections 8(10) and (11) and 11 of the 1967 Act shall continue to have effect for the purposes of requiring the Law Society to account for the Old Fund and to report on its discharge of its functions under that Act up to the appointed day; and

(b) section 9 (5) of that Act shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society,

and, if the appointed day falls on a day which is not the last day of the financial year (for the purposes of the said section 11), references in those sections to the financial year shall be construed as references to the period commencing on the day immediately following the end of the last complete financial year and ending with the appointed day.

*Rights, obligations and property*

2. Subject to paragraph 1 above, on the appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1967 Act or under the 1972 Act shall become rights, obligations and property of the Board.

*Legal aid and advice and assistance*

3.—(1) Nothing in this Act shall affect any legal aid under the 1967 Act or advice and assistance under the 1972 Act in respect of which an application has been determined before the appointed day; and, notwithstanding the repeal by this Act of these Acts, they and any schemes, regulations, orders or rules of court made under them shall continue to have effect for the purposes of such legal aid or advice and assistance.

SCH. 4

(2) For the purposes of sub-paragraph (1) above, where the 1967 Act or the 1972 Act or any such scheme, regulation, order or rule of court—

- (a) requires or enables anything to be done by the Law Society or any of its committees or by any person on its behalf ; or
- (b) requires or enables the person in receipt of such legal aid or advice and assistance to do anything in relation to the Law Society,

that thing shall, on and after the appointed day, be required or, as the case may be, enabled to be done by or in relation to the Board.

(3) Any payments which are required to be made into or out of the Old Fund in connection with such legal aid or advice and assistance shall, on and after the appointed day, be made into or out of the Fund ; and for the purposes of this sub-paragraph, any reference in the 1967 Act or the 1972 Act to the Old Fund shall be construed as a reference to the Fund.

4.—(1) Any application for legal aid duly made under the 1967 Act or for advice and assistance duly made under the 1972 Act which has been made, but not determined, before the appointed day shall be treated as an application duly made under this Act.

(2) For the purposes of this paragraph and paragraph 3 above an application for legal aid is determined—

(a) in the case of legal aid in connection with—

(i) civil proceedings (including an appeal in such proceedings) ;

(ii) an appeal in criminal proceedings ; or

(iii) an appeal against the decision of the sheriff under Part III of the Social Work (Scotland) Act 1968,

when a legal aid certificate is issued or refused ;

(b) in the case of legal aid in connection with—

(i) criminal proceedings ; or

(ii) proceedings before the sheriff under Part III of the Social Work (Scotland) Act 1968,

when the court grants or refuses legal aid.

(3) For the purposes of this paragraph and paragraph 3 above an application for advice and assistance is determined when the solicitor to whom the application is made agrees or, as the case may be, refuses to accept the application and to provide advice and assistance.

### *Pensions*

5. Any arrangements made by the Law Society under section 12 of the 1967 Act in respect of any person shall be treated on and after the appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 8 (3) of Schedule 1 to this Act, and any pension scheme administered by the Law Society immediately before the appointed day shall be deemed to be a pension scheme established and administered by the Board under that paragraph and shall continue to be administered accordingly.

*General*

SCH. 4

6.—(1) In this Schedule “the appointed day” means the day appointed by the Secretary of State under section 46(2) of this Act for the coming into force of section 4 thereof.

(2) Subject to sub-paragraph (1) above, expressions used in this Schedule and in the 1967 Act or, as the case may be, in the 1972 Act shall have the same meaning in this Schedule as they do in that Act.

## SCHEDULE 5

## REPEALS

Chapter	Short title	Extent of repeal
1967 c. 43.	The Legal Aid (Scotland) Act 1967.	The whole Act.
1968 c. 49.	The Social Work (Scotland) Act 1968.	Section 53. Schedule 4.
1972 c. 11.	The Superannuation Act 1972.	Section 18(2).
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 32(9)(e).
1972 c. 50.	The Legal Advice and Assistance Act 1972.	The whole Act.
1973 c. 41.	The Fair Trading Act 1973.	In section 43(1), paragraph (b). Section 43(2).
1975 c. 20.	The District Courts (Scotland) Act 1975.	Section 21.
1977 c. 38.	The Administration of Justice Act 1977.	Section 1(2). In Schedule 1, Part II.
1979 c. 26.	The Legal Aid Act 1979.	Part II. Section 12(2). In section 14(2), the words "and may be cited together with the Act of 1967 and the Act of 1972 as the Legal Aid and Advice (Scotland) Acts 1967 to 1979." Section 14(3)(b). In section 14(4), the words " , or as the case may be the Secretary of State ". Section 14(5)(b). In Schedule 1, paragraphs 1 to 8.
1980 c. 30.	The Social Security Act 1980.	In Schedule 4, paragraph 4.
1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	Section 26.
1980 c. 62.	The Criminal Justice (Scotland) Act 1980.	Section 10(4).
1981 c. 49.	The Contempt of Court Act 1981.	Section 13(4). In Schedule 2, Part II.
1982 c. 27.	The Civil Jurisdiction and Judgments Act 1982.	Section 40(2).
1983 c. 12.	The Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.	Section 3. In the Schedule, paragraph 11 and paragraphs 14 to 17.

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