

SCHEDULE 5
MINOR AND CONSEQUENTIAL AMENDMENTS

Legal Aid (Scotland) Act 1986 (c.47)

- 1 (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
- (2) In section 4 (Scottish Legal Aid Fund)—
 - (a) in subsection (2)—
 - (i) in paragraph (aza), after sub-paragraph (ii) insert—

“(iia) children’s legal assistance;”, and
 - (ii) after paragraph (aza) insert—

“(azb) any sums payable by the Board under contracts made by virtue of section 33B;”, and
 - (b) in subsection (3), after paragraph (cb) insert—

“(cc) any contribution payable to the Board by any person in pursuance of section 28K of this Act;”.
- (3) In section 4A (Scottish Legal Aid Board’s power to make grants in respect of provision of civil legal aid etc.)—
 - (a) in subsection (2)—
 - (i) in paragraph (a) for the words from “aid” to “matters” substitute “aid, advice and assistance in relation to civil matters or children’s legal assistance”,
 - (ii) in paragraph (b) after “matters” insert “or children’s matters”, and
 - (iii) in paragraph (c) at the end add “or children’s matters”,
 - (b) in subsection (13)—
 - (i) for the words “aid or advice and assistance” substitute “aid, advice and assistance or children’s legal aid”, and
 - (ii) at the end add “or children’s legal aid”, and
 - (c) in subsection (14), at the end add “and
“children’s matters” means matters relating to children’s hearings, pre-hearing panels (as defined in section 79(2)(a) of the 2011 Act) or proceedings under Part 10 or 15 of the 2011 Act”.
- (4) In subsection (1A) of section 31 (selection of solicitors and counsel)—
 - (a) after paragraph (a), insert—

“(aa) section 28M(3);”,
 - (b) after paragraph (d), insert—

“(da) regulations made under section 33B(4);”, and
 - (c) in the full-out, after “assistance” insert “or children’s legal assistance”.
- (5) In section 35A (Board’s powers to obtain information from solicitors in certain cases)—
 - (a) after subsection (1) insert—

“(1A) The Board may, for the purpose of determining whether—
 - (a) a solicitor, an employee of the solicitor or an employee of the solicitor’s firm may be committing a criminal offence in connection with children’s legal assistance,

Status: This is the original version (as it was originally enacted).

- (b) a solicitor may be seeking, in relation to children's legal assistance, to recover from the Fund money to which the solicitor is not entitled, as, for example, by performing unnecessary work, or
 - (c) a solicitor or firm whose name appears on the register maintained under section 28M(1) is or may not be complying with the code of practice under section 28N for the time being in force,
 require the solicitor or firm to produce such information and documents relating wholly or partly to the provision of children's legal assistance as it may specify, at such time and place as it may specify.”, and
 - (b) in subsection (2), after “(1)” insert “or (1A)”.
- (6) In section 35B (Board's powers of entry)—
- (a) in subsection (1), after paragraph (c) insert “or
 - (ca) a solicitor whose name appears on the register maintained under section 28M(1) may not be complying with the code of practice under section 28N for the time being in force;”,
 - (b) in subsection (2)—
 - (i) in paragraph (b), at the beginning insert “in the case mentioned in subsection (2A),”, and
 - (ii) after paragraph (b) insert—
 - “(ba) in the case mentioned in subsection (2B), take possession of any documents which appear to him to relate, wholly or partly, to any children's legal assistance provided in or from those premises;”, and
 - (c) after subsection (2) insert—
 - “(2A) The case mentioned in subsection (2)(b) is where the warrant is issued in pursuance of—
 - (a) paragraph (a), (b) or (c) of subsection (1), or
 - (b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1) of section 35A.
 - (2B) The case mentioned in subsection (2)(ba) is where the warrant is issued in pursuance of—
 - (a) paragraph (ca) of subsection (1), or
 - (b) paragraph (d) of subsection (1) where the requirement to produce the documents was made under subsection (1A) of section 35A.”.
- (7) In section 37(2) (regulations under Act which require to be laid in draft and approved by the Scottish Parliament before being made), after “24(4)” insert “, 28C(3), 28K(2), 28L(1) or (8),”.
- (8) In section 41 (interpretation)—
- (a) after “requires—” insert—
 - ““the 2011 Act” means the Children's Hearings (Scotland) Act 2011 (asp 1);”,

Status: This is the original version (as it was originally enacted).

- (b) after the definition of “the Board” insert—
 - ““children’s legal aid” has the meaning given to it in section 28B(2) of this Act;
 - “children’s legal assistance” means—
 - (a) children’s legal aid, and
 - (b) advice and assistance in relation to children’s hearings, pre-hearing panels (as defined in section 79(2)(a) of the 2011 Act) or proceedings under Part 10 or 15 of the 2011 Act;”, and
 - (c) in the definition of “legal aid”—
 - (i) after “aid,” where it third occurs, insert “children’s legal aid”, and
 - (ii) the words from “or”, where it second occurs, to the end of the definition are repealed.
- (9) In section 42 (disposable income and disposable capital: regulations), after subsection (3) insert—
- “(4) Regulations under this section may make different provision for—
 - (a) children’s legal aid and legal aid other than children’s legal aid,
 - (b) advice and assistance in relation to children’s matters and advice and assistance other than advice and assistance in relation to children’s matters.
 - (5) In subsection (4)(b), “children’s matters” has the meaning given by section 4A(14).”.