



Coronavirus (Recovery and Reform) (Scotland) Act 2022

2022 asp 8

PART 3

PUBLIC SERVICE REFORM

Legal aid and advice

35 Claim for interim payment of fees and outlays

- (1) The Legal Aid (Scotland) Act 1986 is modified by subsections (2) to (4).
- (2) In section 4 (Scottish Legal Aid Fund)—
 - (a) in subsection (2)—
 - (i) in paragraph (a), for “section 4A(13)” substitute “sections 4A(13) and 33(6)”,
 - (ii) after paragraph (ac) insert—
 - “(ad) such sums as are, by virtue of [section 33ZB](#) of this Act, due out of the Fund to a solicitor or counsel in connection with the provision of legal aid or advice and assistance;”,
 - (b) in subsection (3), after paragraph (ad) insert—
 - “(ae) any sums payable to the Board by a solicitor or counsel by virtue of [section 33ZC](#) of this Act;”.
- (3) In section 33 (fees and outlays of solicitors and counsel)—
 - (a) after subsection (3B) insert—
 - “(3BA) But subsection (3B) does not preclude a solicitor from being paid out of the Fund under section 4(2)(ad) following a claim for interim payment made under [section 33ZB](#) in respect of the professional services and outlays mentioned in subsection (3A).”.
 - (b) in subsection (3C), the word “however,” is repealed,
 - (c) after subsection (5) insert—

Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Recovery and Reform) (Scotland) Act 2022, Section 35. (See end of Document for details)

“(6) Where a sum is paid out of the Fund under section 4(2)(ad) in connection with the provision of legal aid or advice and assistance, that sum must be deducted from the sum payable to the solicitor or counsel under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.”.

(4) After section 33ZA insert—

“Interim payments to solicitors and counsel

33ZB Claim for interim payment

- (1) A claim for interim payment may be submitted to the Board by—
 - (a) a solicitor who is acting for a person by providing legal aid or advice and assistance under this Act,
 - (b) counsel who is acting for a person by providing legal aid under this Act.
- (2) A claim for interim payment must—
 - (a) be submitted in the manner specified by the Board,
 - (b) include a declaration from the solicitor or (as the case may be) counsel that the sum claimed does not exceed the sum that the solicitor or counsel would expect to be paid under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.
- (3) If a claim for interim payment is submitted to the Board, the sum claimed must be paid out of the Fund in accordance with section 4(2)(ad) to the solicitor or counsel who submitted the claim.
- (4) But the Board may reject the claim if it appears to it that the sum claimed is likely to exceed the sum it would expect to be payable to the solicitor or counsel under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance.
- (5) In forming an expectation about the sum payable under section 4(2)(a), for the purposes of subsections (2) and (4), no account is to be taken of the deduction that would be made under section 33(6) if the claim for interim payment were met.

33ZC Recovery where interim payment excessive

- (1) This section applies where—
 - (a) a sum has been paid out of the Fund under section 4(2)(ad) to a solicitor or counsel while providing legal aid or advice and assistance, and
 - (b) the solicitor or counsel is no longer providing the legal aid or advice and assistance.
- (2) Where the sum paid out of the Fund exceeds the sum that would, but for section 33(6), be payable under section 4(2)(a) in connection with the provision of the legal aid or advice and assistance, the solicitor or (as the case may be) counsel is liable to the Board for the difference between the sums.

Changes to legislation: There are currently no known outstanding effects for the Coronavirus (Recovery and Reform) (Scotland) Act 2022, Section 35. (See end of Document for details)

- (3) A firm is jointly and severally liable for a sum owed by a solicitor to the Board by virtue of [subsection \(2\)](#) if the interim payment referred to in that subsection was made to the firm on the solicitor's instruction.
- (4) Where—
- (a) a firm is jointly and severally liable to the Board for a sum by virtue of [subsection \(3\)](#), and
 - (b) a separate sum is due to be paid out of the Fund to the firm, on the instruction of a solicitor,
- the Board may deduct all or part of the sum mentioned in [paragraph \(a\)](#) from the sum mentioned in [paragraph \(b\)](#).
- (5) This section is without prejudice to any other enactment or rule of law under which the difference between the sums mentioned in [subsection \(2\)](#) may be recovered.”.

- (5) Regulation 11 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 ([S.I. 1989/1490](#)) is revoked.

Commencement Information

II [S. 35](#) in force at 1.10.2022, see [s. 59\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Coronavirus (Recovery and Reform) (Scotland) Act 2022, Section 35.