



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART VI

MISCELLANEOUS

General

40 Finance.

- (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, ^{F1} . . . determine are required for the other expenditure of the Board.
- (2) The Secretary of State may, ^{F1} . . .
 - (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.

Textual Amendments

F1 Words in s. 40(1)(b)(2) repealed (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 86\(5\)](#)

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41 Interpretation.

In this Act, unless the context otherwise requires—

[^{F2} “the 2011 Act” means the Children’s Hearings (Scotland) Act 2011 (asp 1);]

[^{F3} “the 2019 Act” means the Age of Criminal Responsibility (Scotland) Act 2019 (asp 7);]

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

[^{F4} “adviser” has the meaning given to it in section 6(2) of this Act;

“adviser code” means the code of practice in relation to the register of advice organisations for the time being in force under Schedule 1A to 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;

[^{F5} “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 [^{F6} or in relation to proceedings under Part 4 of the 2019 Act];]

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

[^{F7} “the code” means the code of practice in relation to criminal legal assistance for the time being in force under section 25B of this Act;]

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

[^{F8} “criminal legal assistance” means criminal legal aid and advice and assistance in relation to criminal matters;

“document ” includes information recorded in any form;

“firm” includes an incorporated practice, [^{F9} a licensed legal services provider,] a sole solicitor and a law centre;]

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

“incorporated practice” has the same meaning as in the ^{M1} Solicitors’ (Scotland) Act 1980;

[^{F10} “law centre” means a body—

- (a) established for the purpose of providing legal services to the public generally as well as to individual members of the public; and
- (b) which does not distribute any profits made either to its members or otherwise, but reinvests any such profits for the purposes of the law centre;]

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

“legal aid” means civil legal aid, criminal legal aid, [^{F11} children’s legal aid] or legal aid given in connection with proceedings for contempt of court ^{F12}...;

[^{F13} “licensed legal services provider” and “solicitor investor” are to be construed in accordance with Part 2 of the Legal Services (Scotland) Act 2010;]

“person”

- (a) ^{F14} does not include a body corporate or unincorporate, except where such body is acting in a representative, fiduciary or official capacity, so

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- as to authorise legal aid or advice and assistance to be provided to such a body]]^{F15}; and
- (b) includes a person under the age of sixteen years.]
- ^{F16} “the Register” means the Register established and maintained under section 25A of this Act;
- ^{F17} “the register of advice organisations” means the register established and maintained under section 12A of this Act;]
- “registered firm ” means a firm whose name appears on the Register;
- ^{F18} “registered organisation” means an organisation whose name appears on the register of advice organisations;]
- “registered solicitor ” means a solicitor whose name appears on the Register;
- “sole solicitor ” means a solicitor practising under his own name or as a single solicitor under a firm name; and
- “solicitor connected with a firm” includes a sole solicitor ^{F19}, a solicitor investor in a firm] and a solicitor who is a partner, director or employee of a firm, and cognate expressions shall be construed accordingly.]

Textual Amendments

- F2** S. 41: definition of “the 2011 Act” inserted (31.1.2012) by [Children’s Hearings \(Scotland\) Act 2011](#) (asp 1), s. 206(2), [sch. 5 para. 1\(8\)\(a\)](#) (with s. 186); S.S.I. 2012/1, art. 2(2)
- F3** Words in s. 41 inserted (8.11.2021) by [The Children’s Legal Assistance \(Miscellaneous Amendments and Consequential Provisions\) \(Scotland\) Regulations 2021](#) (S.S.I. 2021/368), regs. 1(1), [2\(3\)\(a\)](#)
- F4** S. 41: definitions of “adviser” and “adviser code” inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#) (asp 5), [ss. 67\(8\)\(a\), 82\(2\)](#) (with s. 77); S.S.I. 2007/335, [art. 2\(a\)](#)
- F5** S. 41: definitions “children’s legal aid” and “children’s legal assistance” inserted (31.1.2012) by [Children’s Hearings \(Scotland\) Act 2011](#) (asp 1), s. 206(2), [sch. 5 para. 1\(8\)\(b\)](#) (with s. 186); S.S.I. 2012/1, art. 2(2)
- F6** Words in s. 41 inserted (8.11.2021) by [The Children’s Legal Assistance \(Miscellaneous Amendments and Consequential Provisions\) \(Scotland\) Regulations 2021](#) (S.S.I. 2021/368), regs. 1(1), [2\(3\)\(b\)](#)
- F7** Definition in s. 41 inserted (1.10.1997) by 1997 c. 48, s. 62(1), [Sch. 1 para. 12\(10\)\(a\)](#); S.I. 1997/2323, [art. 6\(2\)](#)
- F8** Definitions in s. 41 inserted (1.10.1997) by 1997 c. 48, s. 62(1), [Sch. 1 para. 12\(10\)\(b\)](#); S.I. 1997/2323, [art. 6\(2\)](#)
- F9** S. 41: words in definition “firm” inserted (2.7.2012) by [The Legal Services \(Scotland\) Act 2010 \(Ancillary Provision\) Regulations 2012](#) (S.S.I. 2012/212), regs. 1, [3\(3\)\(a\)](#)
- F10** Definition in s. 41 inserted (1.10.1997) by 1997 c. 48, s. 62(1), [Sch. 1 para. 12\(10\)\(c\)](#); S.I. 1997/2323, [art. 6\(2\)](#)
- F11** S. 41: words in definition “legal aid” inserted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011](#) (asp 1), s. 206(2), [sch. 5 para. 1\(8\)\(c\)\(i\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F12** S. 41: words in definition “legal aid” repealed (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011](#) (asp 1), s. 206(2), [sch. 5 para. 1\(8\)\(c\)\(ii\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3
- F13** S. 41: definition “licensed legal services provider” and “solicitor investor” inserted (2.7.2012) by [The Legal Services \(Scotland\) Act 2010 \(Ancillary Provision\) Regulations 2012](#) (S.S.I. 2012/212), regs. 1, [3\(3\)\(b\)](#)
- F14** S. 41: in the definition of “person” the existing words become para. (a) (1.11.1995) by virtue of 1995 c. 36, s. 105(4), [Sch. 4 para. 40\(b\)](#) (with s. 103(1)); S.I. 1995/2787, art. 3, [Sch.](#)
- F15** S. 41: in the definition of “person”, para. (b) and preceding word added (1.11.1995) by 1995 c. 36, s. 105(4), [Sch. 4 para. 40\(b\)](#) (with s. 103(1)); S.I. 1995/2787, art. 3, [Sch.](#)
- F16** Definitions in s. 41 inserted (1.10.1997) by 1997 c. 48, s. 62(1), [Sch. 1 para. 12\(10\)\(d\)](#); S.I. 1997/2323, [art. 6\(2\)](#)

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- F17** S. 41: definition of “the register of advice organisations” inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 67(8)(b)**, 82(2) (with s. 77); [S.S.I. 2007/335](#), **art. 2(a)**
- F18** S. 41: definition of “registered organisation” inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 67(8)(c)**, 82(2) (with s. 77); [S.S.I. 2007/335](#), **art. 2(a)**
- F19** S. 41: words in definition “solicitor connected with a firm” inserted (2.7.2012) by [The Legal Services \(Scotland\) Act 2010 \(Ancillary Provision\) Regulations 2012 \(S.S.I. 2012/212\)](#), regs. 1, **3(3)(c)**

Marginal Citations

- M1** 1980 c. 46.

[^{F20}41A Regulations in relation to criminal legal assistance.

- (1) The Secretary of State may by regulations made under this section provide that any reference in, under or by virtue of this Act to “criminal legal assistance” shall relate, for any of the purposes of this Act, to such class or classes of criminal legal assistance as he thinks appropriate.
- (2) Without prejudice to the generality of subsection (1) above, the power conferred by that subsection may be exercised by reference to—
 - (a) the class or classes of person who are to receive criminal legal assistance;
 - (b) the class or classes of case in respect of which such assistance is to be given;
 - (c) the nature of the work;
 - (d) the place or places where the assistance is to be provided;
 - (e) the period for which it is to be provided,
 or to any combination of the foregoing; and different provision may be made under that subsection for different purposes, or in relation to different areas or different periods.]

Textual Amendments

- F20** S. 41A inserted (1.10.1997) by [1997 c. 48, s.54](#); [S.I. 1997/2323](#), **art. 6, Sch.3**

42 Disposable income and capital.

- (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—
 - (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.
- (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

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and pupils and other special cases, for taking into account the resources of other persons.

- [^{F21}(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).]

Textual Amendments

F21 S. 42(4)(5) inserted (24.6.2013) by [Children’s Hearings \(Scotland\) Act 2011 \(asp 1\)](#), s. 206(2), [sch. 5 para. 1\(9\)](#) (with s. 186); S.S.I. 2013/195, arts. 2, 3

Modifications etc. (not altering text)

C1 S. 42 extended (7.10.1996) by [S.I. 1996/2447](#), [reg. 7\(2\)](#)

C2 S. 42 amended by [S.S.I. 2002/494](#), [reg. 11\(2\)](#) (as substituted (7.4.2003 with effect as mentioned in reg. 2 of the substituting S.S.I.) by [The Civil Legal Aid \(Scotland\) Amendment Regulations 2003 \(S.S.I. 2003/49\)](#), [reg. 4](#))

43 Act not to affect certain taxations etc.

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.

^{F22}[43A Applications of Act to services provided under Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

- (1) Advice and assistance shall be available, in accordance with the provisions of this Act, in relation to the provision of executry services by executry practitioners ^{F23} . . . and conveyancing services by independent [^{F24} conveyancing practitioners], all within the meaning of section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 as they are so available in relation to the provision of the like services by solicitors.
- (2) Subject to any act of sederunt or act of adjournal made under subsection (7) of section 26 of that Act (consideration of applications made under 25) advice and assistance, civil legal aid and criminal legal aid shall be available, in accordance with the provisions of this Act, in relation to the provision of services by persons who have acquired rights to conduct litigation or, as the case may be, rights of audience by virtue of that section as they are so available in relation to the provision of the like services by solicitors and, where appropriate, by advocates.
- (3) Where advice and assistance, civil legal aid or criminal legal aid has been made available by virtue of this section, the provisions of this Act shall apply in relation to

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the person providing those services as they apply in relation to a solicitor or advocate providing like services.]

Textual Amendments

- F22** S. 43A inserted (30.9.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\), s.38](#); S.I. 1991/2151, [art. 3](#), Sch.
- F23** Words in s. 43A(1) repealed (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\), ss. 17, 21\(2\), Sch. 4 para. 9\(a\)](#); S.S.I. 2003/384, [art. 2\(d\)](#)
- F24** Words in s. 43A(1) substituted (15.8.2003) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp. 4\), ss. 17, 21\(2\), Sch. 4 para. 9\(b\)](#); S.S.I. 2003/384, [art. 2\(d\)](#)

44 Crown application.

This Act shall bind the Crown.

45 Amendments, transitional provisions, savings and repeals.

- (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 ^{M2}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.

Marginal Citations

M2 1978 c. 30.

46 Short title, commencement and extent.

- (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.

Subordinate Legislation Made

P1 S. 46(2) power partly exercised: different dates appointed for specified provisions by S.Is. 1986/1617, 1987/289, 1992/1226.

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S. 46(2) power fully exercised: 2.11.2001 appointed for remaining provisions by [S.S.I. 2001/393](#), [art. 2](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(2)(aba)(abb) inserted by [2007 asp 5 s. 75\(2\)](#)
- s. 4(2)(aba) word substituted by [S.S.I. 2011/235 art. 5\(2\)\(a\)](#) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)
- s. 4(2)(abb) word substituted by [S.S.I. 2011/235 art. 5\(2\)\(b\)](#) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)
- s. 4(2)(ba) inserted by [2007 asp 5 s. 70\(1\)](#)
- s. 4(3)(ca)(cb) inserted by [2007 asp 5 s. 75\(3\)](#)
- s. 9A9B inserted by [2013 asp 3 s. 18\(2\)](#)
- s. 10(1A)(1B) inserted by [2007 asp 5 s. 69\(3\)](#)
- s. 12C and cross-heading inserted by [2007 asp 5 s. 70\(2\)](#)
- s. 17(2C)-(2I) inserted by [2007 asp 5 s. 75\(4\)](#)
- s. 17(2DA)(2DB) s. 17(2C)(2D) renumbered as s. 17(2DA)(2DB) by [S.S.I. 2011/235 art. 5\(3\)](#) (This amendment comes into force immediately after the commencement of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), s. 75, see art. 2(2). That provision is still prospective.)
- s. 25AA(5)-(9) inserted by [2013 asp 3 s. 21](#)
- s. 25AC25AD inserted by [2013 asp 3 s. 20](#)