

SCHEDULES

SCHEDULE 4

Section 44.

AMENDMENTS OF LEGAL AID (SCOTLAND) ACT 1986 (C. 47)

PART I

DIRECT PAYMENT OF FEES AND OUTLAYS BY LEGALLY ASSISTED PERSON

- 1 In section 4(2) (payments out of the Scottish Legal Aid Fund)—
- (a) in paragraph (a), after the word “due” there shall be inserted the words “out of the Fund”.
 - (b) in paragraph (c), the words “for the purposes of this Act” are repealed.
- 2 In section 16—
- (a) subsection (1) is repealed;
 - (b) in subsection (2), the words “In this section and” are repealed.
- 3 In section 17 (contributions, etc.)—
- (a) in subsection (1), for the words from “by the Board” to “the Fund” there shall be substituted the words “to contribute to the fees and outlays incurred by them (or on their behalf)”;
 - (b) subsections (3) to (8) are repealed;
 - (c) at the end there shall be added the following subsections—
 - “(9) Except insofar as regulations made under this section otherwise provide—
 - (a) any award of expenses to a legally assisted person; and
 - (b) any property (wherever situated) recovered or preserved for him in the proceedings for which he is legally assisted, shall be paid initially to the Fund, to be applied towards—
 - (i) the fees and outlays incurred by or on behalf of the legally assisted person in those proceedings;
 - (ii) recouping any sums paid out of the fund on his behalf in respect of advice and assistance in relation to those proceedings or to any matter to which those proceedings relate.
 - (10) 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 (1) above and in section 33 of this Act to “fees and outlays” include references to sums which would have been payable to that solicitor had he not been so employed.
 - (11) Nothing in subsection (9) above shall prejudice the power of the court to allow any damages or expenses to be set off.

Status: This is the original version (as it was originally enacted).

- (12) An account of expenses which—
- (a) has been agreed between the board and the solicitor acting for the legally assisted person; or
 - (b) has been taxed,
- shall not be liable to taxation by an auditor of court in any proceedings.”
- 4 In section 32 (a) (restriction on payment etc.), the words “, out of the Fund” are repealed.
- 5 In section 33 (fees and outlays of solicitors and counsel) in subsection (1), for the words from “out” to the end there shall be substituted the words—
- “in respect of any fees or outlays properly incurred by him in so acting—
- (a) by the person concerned, to the extent to which a contribution has been determined for him under section 17 of this Act;
 - (b) to the extent that such fees and outlays exceed any such contribution out of the Fund in accordance with section 4(2)(a) of this Act.”
- 6 In section 36(2) (regulations), in paragraph (b) at end add—
- “and the power to substitute different amounts for the amount specified in section 10(2) of this Act includes power to substitute different amounts in relation to different cases or classes of case”.

PART II

LIABILITY OF LEGALLY ASSISTED PERSON FOR EXPENSES TO BE ASSESSED IN ALL CASES

- 7 In section 18 (expenses)—
- (a) subsection (1) is repealed;
 - (b) in subsection (2), for the words “in proceedings to which this section applies”, there shall be substituted the words “in any proceedings”.
- 8 In section 19(1) (expenses out of the Fund), for the words “to which this section applies” there shall be substituted the words “to which a legally assisted person is party and which are finally decided in favour of an unassisted party”.
- 9 In section 20(1) (supplementary), for the words “sections 18 and” there shall be substituted the word “section”.

PART III

BOARD’S PROPERTY TO BE RATEABLE

- 10 In Schedule 1, paragraph 2(4) is repealed.