



Convention Rights (Compliance) (Scotland) Act 2001

2001 asp 7

PART 3 **S**

LEGAL AID

6 Extension of advice and assistance and civil legal aid under Legal Aid (Scotland) Act 1986 **S**

- (1) In section 6(2) (definitions for purposes of Part II — advice and assistance) of the Legal Aid (Scotland) Act 1986 (c.47) (the “1986 Act”) after the definition of “tribunal” there is added—

“and references to a court, tribunal or statutory inquiry include references to any court, tribunal or statutory inquiry which is established by law for purposes which are or include those of determining persons’ civil rights and obligations and to any person who or group of persons or body or procedure which (however described) is appointed or established by law for such purposes.”.

- (2) In section 13 (meaning of “civil legal aid”) of the 1986 Act—

- (a) subsection (5) is repealed; and
(b) at the end there is added—

“(6) In subsection (4) above, the reference to a court or tribunal includes a reference to a court or tribunal which is established by law for purposes which are or include those of determining persons’ civil rights and obligations and to any person who or group of persons, body, statutory inquiry or other procedure which (however described) is appointed or established by law for such purposes.”.

- (3) In section 14 (availability of civil legal aid) of the 1986 Act, after subsection (1), there is inserted—

“(1A) In the case of proceedings in such courts or tribunals as may be specified in regulations under this Act, civil legal aid shall be available to a person only if, in addition to the requirements which have to be met under subsection (1)

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above and section 15 of this Act, such criteria as may be prescribed in those regulations are met.

(1B) In subsection (1A) above, the reference to courts or tribunals shall be construed in accordance with section 13(6) of this Act.”.

(4) In section 16 (which includes provision that, in sections 17 to 20, “court” includes tribunal) of the 1986 Act, in subsection (2), at the end of the definition of “court”, there is added “ and references to either shall be construed in accordance with section 13(6) of this Act ”.

(5) In section 38 (which, amongst other things, enables the Court of Session to regulate the procedure of the civil courts in relation to legal aid) of the 1986 Act, after subsection (1), there is inserted—

“(1A) In subsection (1)(a) above, the reference to any court or tribunal shall be construed, except in relation to criminal proceedings, in accordance with section 13(6) of this Act.”.

7 **Fixed payments for criminal legal assistance: exceptional cases** **S**

In section 33 of the 1986 Act, after subsection (3B) (which provides that where fixed payments to solicitors for criminal legal assistance are prescribed, a solicitor providing it is not entitled to any other legal aid payment), there is inserted—

“(3C) The Scottish Ministers may, however, for the purpose of enabling the Board to ensure that a person to whom fixed payment criminal legal assistance is provided is not, for the reason specified in subsection (3D) below, deprived of the right to a fair trial, by regulations under this subsection, provide that—

- (a) in such circumstances; and
- (b) under such conditions,

as may be prescribed by the regulations, a solicitor who provides such criminal legal assistance shall, instead of receiving fixed payments, be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above.

(3D) The reason referred to in subsection (3C) above is the amount of the fixed payments payable for the criminal legal assistance provided.

(3E) In subsection (3C) above—

“fixed payment criminal legal assistance” means criminal legal assistance in respect of which fixed payments are prescribed under subsection (3A) above;

“fixed payments” means fixed payments so prescribed.

(3F) Regulations made under subsection (3C) above shall provide that it is for the Board to determine whether any prescribed circumstances exist and whether any prescribed conditions are met.

(3G) Circumstances may be prescribed under subsection (3C)(a) above by reference to such factors as the Scottish Ministers think fit.

(3H) The conditions which may be prescribed under subsection (3C)(b) above include those which stipulate that a solicitor providing criminal legal assistance—

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- (a) applies to the Board to exercise its power of determination under subsection (3F) above;
- (b) does so in such manner and form as the Board may specify and at as early a stage in the provision of the criminal legal assistance as is reasonably practicable; and
- (c) keeps proper records of all professional services provided by way of and outlays incurred in the provision of that criminal legal assistance, whether before or after the exercise of that power of determination.

(3J) Regulations may be made under subsection (3C) above so as to relate to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of coming into force of section 7 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), and regulations so relating may disapply any condition which would otherwise apply under subsection (3C)(b) above.

(3K) The Board shall establish a procedure under which any person—

- (a) whose solicitor’s application under subsection (3H) above has been refused; or
- (b) on whose solicitor’s application under that subsection the Board has made a determination which is such that the solicitor will not be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above,

may apply to the Board for review of that refusal or determination.”.

8 **Criminal legal assistance: retrospective revision of fixed payments regulations** S

In section 33 of the 1986 Act, after subsection (3A) (prescription of fixed payments for criminal legal assistance), there is inserted—

“(3AA) Regulations amending or replacing regulations made under subsection (3A) above may, for the purpose specified in subsection (3AB) below, make provision as to fixed payments in relation to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of the making or coming into force of the amendment or replacement of the regulations.

(3AB) The purpose referred to in subsection (3AA) above is that of ensuring that persons to whom fixed payment criminal legal assistance is being provided are not, by reason of the amount of the fixed payments payable in respect of that criminal legal assistance under the regulations as they have effect immediately before the coming into force of the amendment or replacement of the regulations, deprived of the right to a fair trial.

(3AC) In subsection (3AB) above “fixed payment criminal legal assistance” and “fixed payments” have respectively the meanings given by subsection (3E) below;”.

9 **Employment of solicitors by Scottish Legal Aid Board: further provisions** S

(1) In section 4 of the 1986 Act, in subsection (3), after paragraph (aa), there is inserted—

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“(aaa) any award of expenses made by a criminal court to a person to whom criminal legal assistance has been provided by a solicitor employed by the Board under sections 26 and 27 of this Act.”.

(2) In section 11 (which includes provision about contributions by clients in respect of advice or assistance by solicitors employed by the Board) of the 1986 Act—

- (a) in subsection (1), after “(2)” there is inserted “, (2A) ”;
- (b) after subsection (2) there is inserted—

“(2A) A client to whom paragraphs (a) and (b) of subsection (2) above apply and to whom criminal legal assistance or advice or assistance which is not criminal legal assistance has been provided by a solicitor employed by the Board under sections 26 and 27 of this Act shall pay to the Board such contribution in that respect as the Board may, subject to subsection (3A) below, determine.”;

and

- (c) after subsection (3) there is inserted—

“(3A) The amount determined by the Board under subsection (2A) above shall not exceed the amount which would be charged by a solicitor who is not employed by the Board under sections 26 and 27 of this Act.”.

(3) In section 12 of the 1986 Act, in subsection (2) (which provides that the rules in that section about the payment of solicitor’s fees etc. do not apply to the salary of a solicitor employed by the Board under section 28A), after “Board” there is inserted “ under sections 26 and 27 of this Act or to the salary payable to a solicitor employed by the Board ”.

(4) In section 25A (Criminal Legal Assistance Register) of the 1986 Act, after subsection (3) there is inserted—

“(3A) A solicitor employed by the Board under sections 26 and 27 of this Act to provide criminal legal assistance shall require to be registered, and the entry relating to his name on the Register shall include a note that he is so employed; but the Board shall not be regarded as a firm for the purposes of this section, and shall not itself require to be registered.”.

(5) In section 25B of the 1986 Act, in subsection (2) (which enables provision in the criminal legal assistance code of practice which is different for solicitors employed by the Board under section 28A from that for solicitors generally), after “including” there is inserted “ in relation to solicitors employed by the Board under sections 26 and 27 of this Act to provide criminal legal assistance, different provision to reflect the fact that they are so employed and including ”.

(6) In section 26 of the 1986 Act, in subsection (1), in paragraph (a) (which provides that the purposes for which solicitors may be employed by the Board include those of giving advice and assistance to which Part II of the Act applies), there is added at the end “ either generally or in cases of any such description as may be prescribed by regulations made under this section ”.

(7) In section 28A (feasibility study of provision of criminal legal assistance by solicitors employed by the Board) of the 1986 Act—

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- (a) in subsection (12) (provisions which cease to have effect five years after employed solicitors regulations come into effect)—
 - (i) in paragraph (c), for “but does not apply” there is substituted “ or ”; and
 - (ii) in paragraph (e), after “including” there is inserted “ , where it second occurs, ”; and
 - (b) at the end, there is inserted—
 - “(15) The power to bring sections 26 to 28 of this Act into force is not affected—
 - (a) by the provisions of this section; or
 - (b) by the fact that it is exercised before the expiry of the period of five years referred to in subsection (11) above.”.
- (8) In section 31 of the 1986 Act, in subsection (1A) (exceptions to provision entitling person receiving legal aid or advice and assistance to select a solicitor and counsel) there is added at the end “and does not apply where the person is being provided with criminal legal assistance by a solicitor employed by the Board under section 26 and 27 of this Act.”.

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