

*Status: Point in time view as at 25/11/2010.*

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## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE SCOTTISH LEGAL AID BOARD

##### *Incorporation and Status*

- 1 The Board shall be a body corporate with a common seal.
- 2 (1) The Board is not an emanation of the Crown and shall not act or be treated as the servant or agent of the Crown.
  - (2) Accordingly—
    - (a) neither the Board, nor any of its members, nor any member of its staff as such is entitled to any status, immunity, privilege or exemption enjoyed by the Crown;
    - (b) the members of the Board and the members of its staff are not, in such capacity, Crown servants; and
    - (c) the Board's property is not the property of or held on behalf of the Crown.
  - (3) Subject to sub-paragraph (4) below, the Board shall not be exempt from any tax, duty, rate, levy or other charge whatever (whether general or local).
  - (4) ..... **F1**

##### **Textual Amendments**

- F1** Sch. 1 para. 2(4) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. III para. 10, Sch. 6

##### *Tenure of Members*

- 3 Subject to paragraphs 4 and 5 below any member of the Board shall hold and vacate office in accordance with the terms of his appointment, but a person shall not be appointed a member of the Board for a period of more than 5 years.
- 4 (1) The chairman or a member may resign office by giving notice in writing to the Secretary of State, and if the chairman ceases to be a member he shall cease to be the chairman.
  - (2) A person who ceases to be the chairman or a member shall be eligible for reappointment.
- 5 The Secretary of State may terminate the appointment of a member of the Board if satisfied that—
  - (a) he has had his estate sequestrated, or has been adjudged bankrupt or has granted a trust deed for or entered into an arrangement with his creditors;

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- (b) he is unable to carry out his duties as a Board member by reason of physical or mental illness;
- (c) he has been absent from meetings of the Board for a period longer than six consecutive months without the permission of the Board; or
- (d) he is otherwise unable or unfit to discharge the functions of a member of the Board, or is unsuitable to continue as a member.

#### *Remuneration of members*

- 6 (1) The Board may—
- (a) pay to its members such remuneration; and
  - (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,
- as the Secretary of State may, <sup>F2</sup> . . . determine.
- (2) Where a person ceases to be a member of the Board otherwise than on the expiry of his term of office, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may, <sup>F3</sup> . . . direct the Board to make that person a payment of such amount as the Secretary of State may, <sup>F3</sup> . . . determine.

#### **Textual Amendments**

- F2** Words in Sch. 1 para. 6(1) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 86(6)(a), Pt. IV
- F3** Words in Sch. 1 para. 6(2) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 86(6)(b), Pt. IV

#### *Staff*

- 7 (1) The Board shall, after consultation with, and subject to the approval of, the Secretary of State, appoint on such terms and conditions as it may determine a person to be the principal officer of the Board.
- (2) The principal officer shall be responsible to the Board for the exercise of its functions.
- 8 (1) Subject to paragraph 9 below, the Board may appoint, on such terms and conditions as it may determine, such other employees as it thinks fit.
- (2) A determination as to terms and conditions under paragraph 7(1) or sub-paragraph (1) above shall be subject to the approval of the Secretary of State <sup>F4</sup> . . .
- (3) The Board shall, in respect of such of its employees as it may determine, with the approval of the Secretary of State <sup>F5</sup> . . . make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the Board or otherwise, of one or more pension schemes.
- (4) The reference in sub-paragraph (3) above to pensions, allowances or gratuities in respect of employees of the Board includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment.

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- (5) If an employee of the Board becomes a member of the Board and was by reference to his employment by the Board a participant in a pension scheme established and administered by it for the benefit of its employees—
- (a) the Board may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Board whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 6 above; but
  - (b) if the Board determines as aforesaid, any discretion as to the benefits payable to or in respect of him which the scheme confers on the Board shall be exercised only with the consent of the Secretary of State<sup>F6</sup> . . .

#### Textual Amendments

- F4** Words in [Sch. 1 para. 8\(2\)](#) repealed (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 86(6)(c), Pt. IV
- F5** Words in [Sch. 1 para. 8\(3\)](#) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. I para. 86\(6\)\(d\)](#), Pt. IV
- F6** Words in [Sch. 1 para. 8\(5\)\(b\)](#) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, [Sch. 2 Pt. I para. 86\(6\)\(e\)](#), Pt. IV

- 9 (1) The Board shall, not later than such date as the Secretary of State may determine, make an offer of employment by the Board to each person employed immediately before that date—
- (a) by the Law Society for the purpose of their functions under the<sup>M1</sup>Legal Aid (Scotland) Act 1967; and
  - (b) in the civil service of the State wholly or mainly in connection with the assessment of a person's means under section 4 of that Act.
- (2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (3) For the purposes of sub-paragraph (2) above no account shall be taken of the fact that employment with the Board is not employment in the service of the Crown.
- (4) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

#### Marginal Citations

- M1** 1967 c. 43.

- 10 (1) Where a person becomes an employee of the Board on acceptance of an offer made under paragraph 9 above, then, for the purposes of [<sup>F7</sup>the Employment Rights Act 1996], his period of employment with the Law Society or, as the case may be, in the civil service of the State, shall count as a period of employment by the Board, and the change of employment shall not break the continuity of the period of employment.
- (2) Where an offer is made in pursuance of paragraph 9(1) above to any person employed as is mentioned in that paragraph, none of the agreed redundancy procedures applicable to such a person shall apply to him and—

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- (a) where a person employed as is mentioned in sub-paragraph (a) of that paragraph ceases to be so employed—
- (i) on becoming a member of the staff of the Board in consequence of that paragraph; or
  - (ii) having unreasonably refused the offer,
- <sup>F8</sup> . . . he shall not be treated for the purposes of any scheme under section 12 of the <sup>M2</sup>Legal Aid (Scotland) Act 1967 as having been retired on redundancy;
- (b) where a person employed as is mentioned in sub-paragraph (b) of that paragraph ceases to be so employed on becoming a member of the staff of the Board in consequence of that paragraph, he shall not be treated for the purposes of any scheme under section 1 of the <sup>M3</sup>Superannuation Act 1972 as having been retired on redundancy.
- (3) Without prejudice to sub-paragraph (2) above, where a person has unreasonably refused an offer made to him in pursuance of paragraph 9 above, the Law Society or, as the case may be, the Secretary of State shall not terminate that person's employment unless it or, as the case may be, he has first had regard to the feasibility of employing him in a suitable alternative position with the Law Society or, as the case may be, in the civil service of the State.
- (4) Where a person continues in employment in the Law Society or, as the case may be, the civil service of the State either—
- (a) not having unreasonably refused an offer made to him in pursuance of this paragraph, or
  - (b) having been placed in a suitable alternative position as mentioned in sub-paragraph (3) above,
- he shall be treated for all purposes as if the offer mentioned in paragraph 9(1) above had not been made.

#### Textual Amendments

- F7** Words in [Sch. 1 para. 10\(1\)](#) substituted (22.8.1996) by [1996 c. 18, ss. 240, 243, Sch. 1 para.30](#) (with [ss. 191-195, 202](#))
- F8** Words in [Sch. 1 para. 10\(2\)\(a\)](#) repealed (22.8.1996) by [1996 c. 18, ss. 242, 243, Sch. 3 Pt.I](#) (with [ss. 191-195, 202](#))

#### Marginal Citations

- M2** [1967 c. 43.](#)
- M3** [1972 c. 11.](#)

- 11 (1) Any dispute as to whether an offer under sub-paragraph (1) of paragraph 9 above complies with sub-paragraph (2) of that paragraph shall be referred to and be determined by an [<sup>F9</sup>employment tribunal].
- (2) An [<sup>F9</sup>employment tribunal] shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

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- (3) Subject to sub-paragraph (4) below there shall be no appeal from the decision of an [<sup>F9</sup>employment tribunal] under this paragraph.
- (4) An appeal to the Employment Appeal Tribunal may be made only on a question of law arising from the decision of, or in proceedings before, an [<sup>F9</sup>employment tribunal] under this paragraph.

#### Textual Amendments

**F9** Words in [Sch. 1 para. 11](#) substituted (1.8.1998) by [1998 c. 8, s. 1\(2\)](#) (with [s. 16\(2\)](#)); [S.I. 1998/1658, art. 2\(1\)](#), [Sch. 1](#)

#### *Proceedings*

- 12 (1) Subject to anything in regulations made by the Secretary of State under this Act, the Board may regulate its own proceedings.
- (2) The Board may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of specified functions.
- (3) Committees may be appointed and may be dissolved by the Board, and may include, or consist entirely of, persons who are not members of the Board.
- (4) A committee shall act in accordance with such directions as the Board may from time to time give, and the Board may provide for anything done by a committee to have effect as if it had been done by the Board.
- (5) The validity of any proceedings of the Board or of any committee appointed by the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

#### *Allowances*

- 13 The Board may pay to each of its members and the members of any committee such reasonable allowances in respect of expenses or loss of remuneration as the Secretary of State may, <sup>F10</sup> . . . , determine.

#### Textual Amendments

**F10** Words in [para. 13](#) repealed (1.7.1999) by [S.I. 1999/1820, arts. 1\(2\), 4](#), [Sch. 2 Pt. I para. 86\(6\)\(f\)](#), [Pt. IV](#)

#### *Instruments*

<sup>F11</sup>14 . . . . .

#### Textual Amendments

**F11** [Sch. 1 para. 14](#) repealed (1.8.1995) by [1995 c. 7, ss. 14\(2\), 15\(2\)](#), [Sch.5](#) (with [ss. 9\(3\)\(5\)\(7\), 13, 14\(3\)](#))

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*Board not dominus litis*

- 15 Nothing done by the Board for the purpose of securing that legal aid or advice and assistance is available to any person in connection with any proceedings shall render it liable to be held to *bedominus litis* in relation to the proceedings.

[<sup>F12</sup>SCHEDULE 1A

(introduced by section 12A(3))

FURTHER PROVISION IN RELATION TO THE REGISTER OF ADVICE ORGANISATIONS

**Textual Amendments**

- F12** Sch. 1A inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **67(9)**, **82(2)** (with s. 77); S.S.I. 2007/335, art. **2(a)**

*Register of advice organisations*

- 1 (1) An organisation which satisfies the Board that it complies with the relevant provisions of the adviser code shall be approved by the Board as an organisation that may approve a person to provide advice and assistance on behalf of the organisation; and the Board shall make an appropriate entry on the register of advice organisations.
- (2) An individual may apply for entry on the register of advice organisations as an organisation; and if the Board is satisfied that the individual complies with the relevant provisions of the adviser code in relation to an organisation, the Board shall approve the individual and treat the individual as an organisation for the purposes of this Schedule.
- (3) The Board must make the register of advice organisations available for public inspection, without charge, at all reasonable times.
- (4) In this Schedule an “organisation” includes—
- (a) a firm of solicitors;
  - (b) an incorporated practice within the meaning of section 34(1A)(c) of the Solicitors (Scotland) Act 1980 (c. 46).

*Applications*

- 2 (1) An application for entry on the register of advice organisations shall be made in such form as the Board may determine, and shall be accompanied by such documents as the Board may specify.
- (2) On receipt of an application the Board shall make such enquiries as it thinks appropriate for the purposes of determining whether the applicant complies with the relevant provisions of the adviser code.
- (3) The Board may determine an application to be entered on the register of advice organisations by—
- (a) granting the application; or
  - (b) refusing the application.

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- (4) Where the Board decides to refuse an application it shall as soon as practicable thereafter send the applicant, by recorded delivery, a written note of its reasons.

*Further provision on applications*

- 3 (1) In determining any application for entry on the register of advice organisations, the Board may limit the grant of the application to any of the particular categories of circumstances as specified by virtue of section 12B(1).
- (2) Where the Board limits the grant of an application as mentioned in sub-paragraph (1), the entry made on the register under paragraph 1(1) must state the categories in relation to which the organisation is registered; and any adviser approved by the organisation may provide advice and assistance under this Act only in relation to those categories.

*Adviser code*

- 4 (1) The Board shall prepare a code of practice (an “adviser code”) in relation to advisers and registered organisations.
- (2) The adviser code prepared under sub-paragraph (1) must include—
- (a) the conditions to be complied with in order to qualify for registration;
  - (b) the types of organisations eligible for registration;
  - (c) the conditions to be complied with in order for a person to be approved by a registered organisation as an adviser;
  - (d) the laying down of standards, conduct, practice and training expected in relation to—
    - (i) the provision of advice and assistance by advisers;
    - (ii) the supervision of such activity by registered organisations;
  - (e) arrangements for dealing with complaints about the activities of advisers and registered organisations;
  - (f) arrangements for monitoring the activities of advisers and registered organisations.
- (3) The adviser code prepared under sub-paragraph (1) has effect on such date as the Board may confirm.
- (4) But the adviser code may not have effect unless and until it has been—
- (a) approved by the Scottish Ministers; and
  - (b) the Board has laid a copy of the prepared code before the Scottish Parliament.
- (5) The Board is to publish the adviser code in such way as, in its opinion, is likely to bring it to the attention of those interested in it.
- (6) The Board is to—
- (a) keep the adviser code under review; and
  - (b) revise it where appropriate.
- (7) The provisions of this paragraph apply in relation to any revision of the adviser code as they apply in relation to the version originally prepared.
- (8) Registered organisations shall comply with the relevant requirements of the adviser code.

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### *Monitoring*

- 5 The Board is to monitor—
- (a) the provision of advice and assistance and related activities by advisers;
  - (b) compliance with the adviser code by registered organisations.

### *Removal of name from the register of advice organisations*

- 6
- (1) Where it appears to the Board (whether or not following a complaint made to it) that a registered organisation may not be, or may not have been, complying with the adviser code, it shall investigate the matter in such manner as it thinks fit.
  - (2) Where the Board conducts an investigation under sub-paragraph (1) it must allow the registered organisation concerned the opportunity to make representations.
  - (3) Following an investigation under sub-paragraph (1), the Board may give the registered organisation concerned an opportunity, within such time as it may specify, to remedy any defect in the compliance with the adviser code.
  - (4) Where, after carrying out the procedures mentioned in sub-paragraph (1) and, where a time limit has been set under sub-paragraph (3), after the expiry of that time limit, the Board is satisfied that the registered organisation is not complying with the adviser code, it shall remove from the register of advice organisations the name of the organisation.
  - (5) Where, after carrying out the procedures mentioned in sub-paragraph (1) and, where a time limit has been set under sub-paragraph (3), after the expiry of that time limit, the Board is satisfied that, regardless of whether or not there is current compliance with the code, the registered organisation has not complied with the code in a material regard, it may remove the name of the organisation from the register of advice organisations.
  - (6) Where the Board decides to remove the name of an organisation from the register of advice organisations in accordance with sub-paragraph (4) it shall as soon as practicable thereafter send the organisation, by recorded delivery, a written note of its reasons.

### *Appeals*

- 7
- (1) A decision by the Board to refuse an application under paragraph 2(3)(b) may be appealed by the applicant to the Court of Session within 21 days of the receipt of the notification of the Board's reasons under paragraph 2(4).
  - (2) A decision by the Board under paragraph 6(4) or (5) to remove from the register of advice organisations the name of a registered organisation may be appealed to the Court of Session within 21 days of the receipt of the notification of the Board's reasons under paragraph 6(6); but the making of an appeal shall not have the effect of restoring the name to the register of advice organisations.
  - (3) An appeal under sub-paragraph (1) or (2) may be on questions of both fact and law and the court, after hearing such evidence and representations as it considers appropriate, may make such order as it thinks fit.]



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## SCHEDULE 2

### PART I

#### COURTS IN WHICH CIVIL LEGAL AID IS AVAILABLE

- 1 Civil legal aid shall be available in relation to civil proceedings in—
- [<sup>F13</sup>the [<sup>F14</sup>Supreme Court], in references, appeals and applications for special leave to appeal under paragraphs 10, 12 [<sup>F15</sup>, 13(b), 32 and 33] of Schedule 6 to the Scotland Act 1998;]
  - the [<sup>F16</sup>Supreme Court], in appeals from the Court of Session;
  - the Court of Session;
  - the Lands Valuation Appeal Court;
  - the Scottish Land Court;
  - the sheriff court,
- and in relation to proceedings—
- before any person to whom a case is referred in whole or in part by a court mentioned above;
  - <sup>F17</sup>.....
  - in the Lands Tribunal for Scotland;
  - in the Employment Appeal Tribunal[<sup>F18</sup>;
  - before the Proscribed Organisations Appeal Commission;]
  - [<sup>F19</sup>comprising an appeal to the Social Security Commissioners;
  - <sup>F20</sup>.....];
  - [<sup>F21</sup>before the Upper Tribunal of the type described in paragraph 3].

#### Textual Amendments

- F13** Sch. 2 Pt. 1 para. 1: entry inserted (6.5.1999) by [The Scotland Act 1998 \(Consequential Modifications\) \(No.1\) Order 1999 \(S.I. 1999/1042\)](#), art. 3, **Sch. 1 para. 11(5)**
- F14** Words in Sch. 2 Pt. 1 para. 1 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 5\)](#), ss. 40, 148(1), **Sch. 9** {para. 85(4)}; [S.I. 2009/1604](#), **art. 2(d)**
- F15** Words in Sch. 2 Pt. 1 para. 1 substituted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), ss. **73(2)**, 82(2) (with s. 77); [S.S.I. 2007/57](#), **art. 2(c)**
- F16** Words in Sch. 2 Pt. 1 para. 1 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40(4), 148(1), **Sch. 9 para. 45**; [S.I. 2009/1604](#), **art. 2(d)**
- F17** Sch. 2 Pt. 1 para. 1: entry omitted (19.2.2001) by virtue of [S.S.I. 2001/42](#), **regs. 2, 3(a)**
- F18** Sch. 2 Pt. 1 para. 1: entry added (19.2.2001) by [S.S.I. 2001/42](#), **regs. 2, 3(b)**
- F19** Sch. 2 Pt. 1 para. 1: entries inserted (1.12.2002) by [The Legal Aid \(Scotland\) Act 1986 Amendment Regulations 2002 \(S.I. 2002/532\)](#), **reg. 2**
- F20** Sch. 2 Pt. 1 para. 1: entry omitted (9.6.2010) by virtue of [The Advice and Assistance and Civil Legal Aid \(Transfer of Tribunal Functions\) \(No. 2\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/239\)](#), **reg. 3(2)** (with [reg. 2](#))
- F21** Sch. 2 Pt. 1 para. 1: entry inserted (9.6.2010) by [The Advice and Assistance and Civil Legal Aid \(Transfer of Tribunal Functions\) \(No. 2\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/239\)](#), {[reg. 3\(3\)](#)}

- 2 For the purposes of section 13 of this Act, proceedings in the European Court of Justice on a reference, under Article [<sup>F22</sup>234] of the EEC Treaty, made by a court

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mentioned in paragraph 1 above are part of the proceedings in the court making the reference.

#### Textual Amendments

**F22** Words in [Sch. 2 Pt. I para. 2](#) substituted (19.2.2001) by [S.S.I. 2001/42](#), [regs. 2, 4](#)

#### *Proceedings for judicial review before the Upper Tribunal*

[<sup>F23</sup> The proceedings before the Upper Tribunal mentioned in paragraph 1 are those arising from an application to the supervisory jurisdiction of the Court of Session that has been transferred under section 20 of the Tribunals, Courts and Enforcement Act 2007.]

#### Textual Amendments

**F23** [Sch. 2 Pt. 1 para. 3](#) inserted (9.6.2010) by [The Advice and Assistance and Civil Legal Aid \(Transfer of Tribunal Functions\) \(No. 2\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/239\)](#), [reg. 3\(4\)](#)

## PART II

### EXCEPTED PROCEEDINGS

1 Subject to [<sup>F24</sup>section 14(1C) and] paragraph 2 below, civil legal aid shall not be available in proceedings which are wholly or partly concerned with defamation or verbal injury.

#### Textual Amendments

**F24** Words in [Sch. 2 Pt. II para. 1](#) inserted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#), {arts. 71(3)(a)}, 82(2) (with s. 77); [S.S.I. 2007/57](#), [art. 2\(b\)](#)

2 The making of a counterclaim for defamation or verbal injury in any proceedings shall not of itself affect the availability of legal aid to the other party <sup>F25</sup>. . . .

#### Textual Amendments

**F25** Words in [Sch. 2 Pt. II para. 2](#) repealed (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007](#) (asp 5), [ss. 71\(3\)\(b\), 82\(2\)](#) (with s. 77); [S.I. 2007/57](#), [art. 2\(b\)](#)

[<sup>F263</sup> Civil legal aid shall not be available in relation to —

- (a) election petitions under the Representation of the People Act 1983 <sup>M4</sup>;
- (b) simplified divorce applications under the Rules of Procedure of the Court of Session or the sheriff court;
- (c) small claims processes at first instance under section 35(2) of the Sheriff Courts (Scotland) Act 1971 <sup>M5</sup> summary causes); and
- (d) petitions by a debtor for the sequestration of his estate under section 5(2) (a) of the Bankruptcy (Scotland) Act 1985 <sup>M6</sup>.]

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#### Textual Amendments

**F26** Sch. 2 Pt. II para. 3 substituted (1.4.1993) by [S.I. 1993/969, reg. 2](#)

#### Marginal Citations

**M4** [1983 c. 2](#)

**M5** [1971 c. 58](#); [section 35\(2\)](#) was substituted by section 18(1) of the [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73\)](#).

**M6** Section 5(2)(a) amended by section 3(2) of the [Bankruptcy \(Scotland\) Act 1993 \(c. 6\)](#).

[<sup>F27</sup>4 Subject to paragraph 5 below, civil legal aid shall not be available in relation to proceedings at first instance under the Debtors (Scotland) Act <sup>M7</sup>1987, [<sup>F28</sup>or Part 2 or 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)] [<sup>F29</sup>or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)] other than proceedings in connection with an application under section 1(1) or 3(1) of that Act [<sup>F30</sup>of 1987] to a Lord Ordinary or to the sheriff in an ordinary cause.]

#### Textual Amendments

**F27** Sch. 2 Pt. II paras. 4, 5 added by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), ss. 98, 108(2), [Sch. 1 para. 5](#)

**F28** Words inserted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. [44\(a\)\(i\)](#)

**F29** Words in Sch. 2 Pt. 2 para. 4 inserted (23.11.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 5 para. 15\(a\)](#) (with s. 223); S.S.I. 2009/369, [art. 3\(2\)\(3\)](#), Sch. 1 (with art. 4)

**F30** Words inserted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. [44\(a\)\(ii\)](#)

#### Marginal Citations

**M7** [1987 c.18 \(45:2\)](#).

[<sup>F31</sup>5 Nothing in paragraph 4 above shall preclude any third party to proceedings under the Debtors (Scotland) Act <sup>M8</sup>1987 [<sup>F32</sup>or Part 2 or 3 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17)] [<sup>F33</sup>or Part 8 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)] from obtaining legal aid in connection with those proceedings.]

#### Textual Amendments

**F31** Sch. 2 Pt. II paras. 4, 5 added by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), ss. 98, 108(2), [Sch. 1 para. 5](#)

**F32** Words inserted (30.12.2002) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), s. [44\(b\)](#)

**F33** Words in Sch. 2 Pt. 2 para. 5 inserted (23.11.2009) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226, 227(3), [Sch. 5 para. 15\(b\)](#) (with s. 223); S.S.I. 2009/369, [art. 3\(2\)\(3\)](#), Sch. 1 (with art. 4)

#### Marginal Citations

**M8** [1987 c.18 \(45:2\)](#).

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## SCHEDULE 3

Section 45.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c.18)*

- 1 (1) In section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 for the words from “secretary” where it first occurs to “taking” there shall be substituted the words:—

“Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the sheriff court within the jurisdiction of which that other person resides or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purposes of enabling the solicitor to take”.

- (2) In section 32 of that Act—

- (a) after subsection (7) there shall be inserted the following subsections—

“(7A) The Secretary of State on receiving notice under subsection (6) above shall send a copy of the registered order and of the related documents to the Secretary of the Law Society of Scotland who shall send the copy of the order and of the related documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate for the purpose of enabling the solicitor to take, on behalf of the person entitled to the payments for which the order provides, such steps as appear to the solicitor appropriate to enforce the order.

“(7B) Where an order is registered in the sheriff court by virtue of subsection (3) above, any provision of the order by virtue of which the payments for which the order provides are required to be made through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered.”;

- (b) subsection (9)(e) of that section shall be omitted.

- (3) In section 34(5) of that Act, for paragraph (b) there shall be substituted the following paragraph—

“(b) for subsection (3) there shall be substituted the following subsection—

- (3) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person in that country for the variation of a registered order, he shall, if the registering court is a sheriff court, send the application, together with any documents accompanying it, to the Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purpose of enabling the solicitor to take on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.’”.

- 2 (1) Section 43A of that Act shall be amended as follows.

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- (2) In subsection (1) for the words “section 2(1) and (6)(c), 3 and 4 of the Legal Aid (Scotland) Act 1967” there shall be substituted the words “sections 15 and 17 of the Legal Aid (Scotland) Act 1986”.
- (3) In subsection (2) for the words “sections 2(1) and (6)(c), 3 and 4 of the said Act of 1967”, there shall be substituted the words “sections 15 and 17 of the said Act of 1986”.
- (4) In subsection (3) for the words from “legal advice” to “said Act of 1972)”, where they second occur, there shall be substituted the words “advice and assistance under the said Act of 1986, shall, notwithstanding any financial conditions or requirements to make contributions imposed by sections 8 and 11 of that Act,”.

*The House of Commons Disqualification Act 1975 (c.24)*

- 3 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Chairman of the Scottish Legal Aid Board”.

*The Northern Ireland Assembly Disqualification Act 1975 (c.25)*

- 4 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Chairman of the Scottish Legal Aid Board”.

*The Sex Discrimination Act 1975 (c.65)*

- 5 <sup>F34</sup> .....

**Textual Amendments**

**F34** Sch. 3 para. 5 repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 91, 93(1), Sch. 4 (with s. 92); S.I. 2007/2603, art. 2(d)

*The Race Relations Act 1976 (c.74)*

- 6 <sup>F35</sup> .....

**Textual Amendments**

**F35** Sch. 3 para. 6 repealed (1.10.2007) by Equality Act 2006 (c. 3), ss. 91, 93(1), Sch. 4 (with s. 92); S.I. 2007/2603, art. 2(d)

*The Solicitors (Scotland) Act 1980 (c.46)*

- 7 In section 35(4) of the Solicitors (Scotland) Act 1980 for paragraph (b) there shall be substituted—

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“(b) who is in employment to which Part V of the Legal Aid (Scotland) Act 1986 applies;”.

- 8 (1) Section 51 of that Act shall be amended as follows.
- (2) In subsection (2) after the word “client” there shall be inserted the words “or against the Scottish Legal Aid Fund”.
- (3) In subsection (3) after paragraph (d) there shall be inserted the following paragraph—  
“(e) the Scottish Legal Aid Board.”.

*The Tenants’ Rights, Etc. (Scotland) Act 1980 (c.52)*

- 9 In section 9B(4) of the Tenants’ Rights, Etc. (Scotland) Act 1980 for the words “Legal Aid and Advice (Scotland) Acts 1967 and 1972 and to any provision of those Acts for payment of any sum into the legal aid fund” there shall be substituted the words “Legal Aid (Scotland) Act 1986 and to any provision of that Act for payment of any sum into the Scottish Legal Aid Fund”.

SCHEDULE 4

Section 45.

TRANSITIONAL PROVISIONS AND SAVINGS

*The Legal Aid (Scotland) fund*

- 1 (1) On the appointed day the Legal Aid (Scotland) Fund (“the Old Fund”) established under section 9 of the Legal Aid (Scotland) Act 1967 (“the 1967 Act”) shall be wound up.
- (2) If, as at the appointed day, after taking account of all receipts and expenses of the Law Society attributable to the 1967 Act or to their functions under the Legal Advice and Assistance Act 1972 (“the 1972 Act”), there is in relation to the Old Fund any surplus or deficit—
- (a) such surplus shall be paid by the Law Society to the Secretary of State; and
- (b) such deficit shall be made up by payment to the Law Society by the Secretary of State of the amount of the deficit.
- (3) Notwithstanding their repeal by this Act—
- (a) sections 8(10) and (11) and 11 of the 1967 Act shall continue to have effect for the purposes of requiring the Law Society to account for the Old Fund and to report on its discharge of its functions under that Act up to the appointed day; and
- (b) section 9(5) of that Act shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society,

and, if the appointed day falls on a day which is not the last day of the financial year (for the purposes of the said section 11), references in those sections to the financial year shall be construed as references to the period commencing on the day immediately following the end of the last complete financial year and ending with the appointed day.

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*Rights, obligations and property*

- 2 Subject to paragraph 1 above, on the appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1967 Act or under the 1972 Act shall become rights, obligations and property of the Board.

*Legal aid and advice and assistance*

- 3 (1) Nothing in this Act shall affect any legal aid under the 1967 Act or advice and assistance under the 1972 Act in respect of which an application has been determined before the appointed day; and, notwithstanding the repeal by this Act of these Acts, they and any schemes, regulations, orders or rules of court made under them shall continue to have effect for the purposes of such legal aid or advice and assistance.
- (2) For the purposes of sub-paragraph (1) above, where the 1967 Act or the 1972 Act or any such scheme, regulation, order or rule of court—
- (a) requires or enables anything to be done by the Law Society or any of its committees or by any person on its behalf; or
  - (b) requires or enables the person in receipt of such legal aid or advice and assistance to do anything in relation to the Law Society,
- that thing shall, on and after the appointed day, be required or, as the case may be, enabled to be done by or in relation to the Board.
- (3) Any payments which are required to be made into or out of the Old Fund in connection with such legal aid or advice and assistance shall, on and after the appointed day, be made into or out of the Fund; and for the purposes of this sub-paragraph, any reference in the 1967 Act or the 1972 Act to the Old Fund shall be construed as a reference to the Fund.
- 4 (1) Any application for legal aid duly made under the 1967 Act or for advice and assistance duly made under the 1972 Act which has been made, but not determined, before the appointed day shall be treated as an application duly made under this Act.
- (2) For the purposes of this paragraph and paragraph 3 above an application for legal aid is determined—
- (a) in the case of legal aid in connection with—
    - (i) civil proceedings (including an appeal in such proceedings);
    - (ii) an appeal in criminal proceedings; or
    - (iii) an appeal against the decision of the sheriff under Part III of the <sup>M9</sup>Social Work (Scotland) Act 1968,when a legal aid certificate is issued or refused;
  - (b) in the case of legal aid in connection with—
    - (i) criminal proceedings; or
    - (ii) proceedings before the sheriff under Part III of the Social Work (Scotland) Act 1968,when the court grants or refuses legal aid.
- (3) For the purposes of this paragraph and paragraph 3 above an application for advice and assistance is determined when the solicitor to whom the application is made agrees or, as the case may be, refuses to accept the application and to provide advice and assistance.

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### Marginal Citations

M9 1968 c. 49.

### *Pensions*

- 5 Any arrangements made by the Law Society under section 12 of the 1967 Act in respect of any person shall be treated on and after the appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 8(3) of Schedule 1 to this Act, and any pension scheme administered by the Law Society immediately before the appointed day shall be deemed to be a pension scheme established and administered by the Board under that paragraph and shall continue to be administered accordingly.

### *General*

- 6 (1) In this Schedule “the appointed day” means the day appointed by the Secretary of State under section 46(2) of this Act for the coming into force of section 4 thereof.
- (2) Subject to sub-paragraph (1) above, expressions used in this Schedule and in the 1967 Act or, as the case may be, in the 1972 Act shall have the same meaning in this Schedule as they do in that Act.

## SCHEDULE 5

### REPEALS

Chapter	Short title	Extent of repeal
1967 c. 43.	The Legal Aid (Scotland) Act 1967.	The whole Act.
1968 c. 49.	The Social Work (Scotland) Act 1968.	Section 53. Schedule 4.
1972 c. 11.	The Superannuation Act 1972.	Section 18(2).
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 32(9)(e).
1972 c. 50.	The Legal Advice and Assistance Act 1972.	The whole Act.
1973 c. 41.	The Fair Trading Act 1973.	In section 43(1), paragraph (b). Section 43(2).
1975 c. 20.	The District Courts (Scotland) Act 1975.	Section 21.



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1977 c. 38.	The Administration of Justice Act 1977.	Section 1(2).  In Schedule 1, Part II.
1979 c. 26.	The Legal Aid Act 1979.	Part II. Section 12(2). In section 14(2), the words “and may be cited together with the Act of 1967 and the Act of 1972 as the Legal Aid and Advice (Scotland) Acts 1967 to 1979.”. Section 14(3)(b). In section 14(4), the words “, or as the case may be the Secretary of State”. Section 14(5)(b). In Schedule 1, paragraphs 1 to 8.
1980 c. 30.	The Social Security Act 1980.	In Schedule 4, paragraph 4.
1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	Section 26.
1980 c. 62.	The Criminal Justice (Scotland) Act 1980.	Section 10(4).
1981 c. 49.	The Contempt of Court Act 1981.	Section 13(4).  In Schedule 2, Part II.
1982 c. 27.	The Civil Jurisdiction and Judgments Act 1982.	Section 40(2).
1983 c. 12.	The Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.	Section 3.  In the Schedule, paragraph 11 and paragraphs 14 to 17.

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