



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

### PART VI

#### MISCELLANEOUS

##### *Proceedings in relation to children*

#### **[<sup>F1</sup>29 Legal aid in respect of certain proceedings relating to children.**

- (1) This section applies to legal aid in connection with—
  - (a) proceedings before the sheriff (including, without prejudice to that generality, proceedings on an appeal to the sheriff principal from a decision of the sheriff) in respect of any matter arising under Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995 (in this section referred to as “the 1995 Act”); or
  - (b) an appeal to the Court of Session in connection with such proceedings.
- (2) Subject to subsections (3) to (5) below, legal aid to which this section applies shall be available to a child and any relevant person in relation to him in connection with—
  - (a) proceedings before the sheriff on an application for a child protection order or child assessment order, or for the variation or recall of such an order;
  - (b) an appeal to the sheriff under section 51 of the 1995 Act against—
    - (i) a decision of a children’s hearing to grant a warrant such as is mentioned in subsection (5)(a) of that subsection; or
    - (ii) any other decision of a children’s hearing;
  - (c) an application—
    - (i) by virtue of section 65(7) or (9) of the 1995 Act for a finding as to whether the grounds for a referral are established; or
    - (ii) under section 85 of the 1995 Act for a review of such a finding;
  - (d) an appeal to the sheriff principal or to Court of Session under section 51 of the 1995 Act.
- (3) Legal aid shall be available under subsection (2)(b)(i) above on an application made to the sheriff without inquiry into the resources of the child or the relevant person.

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*Status: Point in time view as at 25/11/2010. This version of this provision has been superseded.*

*Changes to legislation: Legal Aid (Scotland) Act 1986, Section 29 is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (4) Legal aid shall be available under subsection (2)(a),(b)(ii) or (c) above on an application made to the sheriff if the sheriff is satisfied—
- (a) that it is in the interests of the child that legal aid be made available; and
  - (b) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the case cannot be met without undue hardship to the child or to any relevant person in relation to him or the dependants of any of them.
- (5) Legal aid shall be available under subsection (2)(d) above on an application made to the Board if it is satisfied—
- (a) after consideration of the financial circumstances of the child and any relevant person in relation to him that the expenses of the appeal cannot be met without undue hardship to the child or to any relevant person in relation to him or the dependants of any of them; and
  - (b) that the child, or as the case may be the relevant person has substantial grounds for making or responding to the appeal and it is reasonable, in the particular circumstances of the case, that legal aid should be made available accordingly.
- [ Legal aid made available to a person under subsection (2)(d) above or subsection (9)<sup>F2</sup>(5A) below may be subject to such conditions as the Board considers expedient; and such conditions may be imposed at any time.]
- (6) The Board may require a person receiving legal aid under subsection (2)(d) above or subsection (9) below to comply with such conditions as it considers expedient to enable it to satisfy itself from time to time that it is reasonable for him to continue to receive such legal aid.
- [ The Board shall establish a procedure under which any person whose application for<sup>F3</sup>(6A) legal aid under subsection (2)(d) above or subsection (9) below has been refused may apply to the Board for a review of his application.
- (6B) The Board shall establish a procedure under which any person receiving legal aid under subsection (2)(d) above or subsection (9) below which is subject to conditions by virtue of subsection (5A) may apply to the Board for a review of any such condition.]
- (7) Subject to subsection (8) below, legal aid to which this section applies shall be available in connection with proceedings before the sheriff on an application for an exclusion order (or for the variation or recall of such an order) to—
- (a) a child;
  - (b) a relevant person in relation to a child;
  - (c) a person who is a named person, or will be such a person if the application is granted;
  - (d) a spouse or partner of a person mentioned in paragraph (c) above; and
  - (e) a person who is an appropriate person, or will be such a person if the application is granted.
- (8) Legal aid shall be available under subsection (7) above on an application to the sheriff if the sheriff is satisfied after consideration of the financial circumstances of the applicant and, where the applicant is a child, of any relevant person or appropriate person in relation to him that the expenses of the case cannot be met without undue hardship to the applicant or any dependant of the applicant.

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- (9) Legal aid shall be available in connection with any appeal from a decision of the sheriff on an application for an exclusion order or for the variation or recall of such an order to any of the persons mentioned in paragraphs (a) to (e) of subsection (7) above on an application to the Board if it is satisfied—
- (a) after consideration of the financial circumstances of the applicant and, where the applicant is a child, of any relevant person or appropriate person in relation to him, that the expenses of the appeal cannot be met without undue hardship to the applicant or any dependant of the applicant; and
  - (b) that the applicant has substantial grounds for making or responding to the appeal and that it is reasonable, in the particular circumstances of the case, that legal aid should be made available accordingly.
- (10) Where in connection with any proceedings—
- (a) the sheriff has been satisfied as is mentioned in subsection (4)(b) or subsection (8) above; or
  - (b) the Board has been satisfied as is mentioned in subsection (5)(a) or subsection (9)(a) above,
- and has made legal aid available to any person, it shall not be necessary for the sheriff or, as the case may be, the Board to be so satisfied in respect of an application for legal aid by such a person in connection with any subsequent proceedings arising from such proceedings.
- (11) Legal aid to which this section applies shall consist of representation by a solicitor and, where appropriate, by counsel in any proceedings (including any appeal) mentioned in subsection (1) above and shall include all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to such proceedings.
- (12) In this section—
- (a) “child” and “relevant person” have the meanings given by section 93(2)(b) of the 1995 Act;
  - (b) “child protection order”, “child assessment order” and “exclusion order” have the meanings given by section 93(1) of that Act;
  - (c) “named person” and “appropriate person” have the meanings given by section 76 of that Act; and
  - (d) “partner” shall be construed in accordance with section 79(4) of that Act.]

#### Textual Amendments

- F1** S. 29 substituted (1.4.1997) by 1995 c. 36, s.92 (with ss. 90, 103(1)); S.I. 1996/3201, art. 3(7)
- F2** S. 29(5A) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 72(5), 82(2) (with s. 77); S.S.I. 2010/376, art. 2
- F3** S. 29(6A)(6B) inserted (25.11.2010) by Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), ss. 72(6), 82(2) (with s. 77); S.S.I. 2010/376, art. 2

#### Modifications etc. (not altering text)

- C1** S. 29(5)(9) excluded (1.4.1997) by S.I. 1997/690, reg. 8(1)

**Status:**

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