



Crime and Punishment (Scotland) Act 1997

1997 CHAPTER 48

PART V

CRIMINAL LEGAL ASSISTANCE

Employment of solicitors

50 Employment of solicitors in relation to criminal legal assistance

After section 28 of the 1986 Act there shall be inserted the following section—

“28A Power of Board to employ solicitors to provide criminal assistance

- (1) The Secretary of State may, in accordance with the provisions of this section, provide for the carrying out of a study into the feasibility of providing criminal legal assistance by means of solicitors employed directly by the Board and, accordingly, may by regulations made under this section empower the Board to employ solicitors for the purpose of providing criminal legal assistance.
- (2) The Board shall not, by virtue of this section, employ more solicitors than are necessary to enable it to maintain at all times a working staff of such number of full-time or part-time solicitors as will equal six full-time solicitors; and any solicitor employed by the Board on a casual or temporary basis to fill a vacancy left by the absence on leave or because of illness of a permanent appointee shall require to be a registered solicitor.
- (3) The Secretary of State may authorise the Board to make such preparations for the feasibility study as will enable it to begin the study as soon as regulations under subsection (1) above come into force; and such preparations may relate to the purchase and equipping of heritable and moveable property and the employment of staff including, but only for the purposes of training, solicitors.

Status: This is the original version (as it was originally enacted).

- (4) The provisions of paragraph 8 of Schedule 1 to this Act shall apply to solicitors employed by the Board by virtue of this section as they apply to employees appointed by the Board under that paragraph.
- (5) Regulations made by the Secretary of State under this section may make such provision as appears to him to be appropriate for the purposes of this section and, without prejudice to the generality of the foregoing, may—
 - (a) specify in which area or areas employed solicitors are to be used; and
 - (b) make different provision in relation to different areas.
- (6) Regulations under this section may provide that where the Board has by virtue of this section employed solicitors to provide criminal legal assistance in any area, the Board may, subject to subsection (7) below, require as many of the persons seeking criminal legal assistance in that area as it considers appropriate to instruct the solicitors employed by it.
- (7) In requiring persons seeking criminal legal assistance to instruct solicitors employed by the Board, the Board shall, where there is or may be a conflict of interest, make provision for any particular person to be re-allocated to another solicitor or, where registration is in force, to a registered solicitor in the area.
- (8) Regulations made under this section may make such transitional and consequential provisions and savings as appear to the Secretary of State to be necessary or expedient.
- (9) Sections 26, 27 and 28 of this Act shall not apply in relation to solicitors employed by the Board by virtue of this section.
- (10) Within three years of the date on which regulations made under subsection (1) above first come into effect, the Secretary of State shall lay before each House of Parliament a report on the results of the feasibility study.
- (11) This section, and the provisions of this Act mentioned in subsection (12) below, shall cease to have effect five years after the date on which regulations made under subsection (1) above first come into effect.
- (12) The provisions referred to in subsection (11) above are—
 - (a) in section 4, subsection (2)(aa) and (3)(ab);
 - (b) in section 11—
 - (i) in subsection (1) the words “or (3)”; and
 - (ii) subsections (3) and (4);
 - (c) in section 12(2), the words “; but does not apply to the salary payable to a solicitor employed by the Board by virtue of section 28A of this Act.”;
 - (d) section 25A(4);
 - (e) in section 25B(2), the words from “including” to the end; and
 - (f) in section 31(1A), paragraph (c).
- (13) Prior to the date on which this section ceases to have effect the Board shall make arrangements for the transfer to solicitors or, where registration is in force, registered solicitors not employed by it of any work currently being undertaken by way of criminal legal assistance by solicitors employed by it by virtue of this section.

- (14) On the date when this section ceases to have effect the Board shall remove from the Register the name of any solicitor employed by it by virtue of this section who is not otherwise entitled to be registered.”