

**Changes to legislation:** There are currently no known outstanding effects for the Crime and Punishment (Scotland) Act 1997, Paragraph 12. (See end of Document for details)

## SCHEDULES

### SCHEDULE 1

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### Extent Information

**E1** Sch. 1: amendments/repeals are coextensive with the enactments they affect see s. 65(7).

#### *The Legal Aid (Scotland) Act 1986 (c.47)*

##### Commencement Information

**II** Sch. 1 para. 12 partly in force; Sch. 1 para. 12 not in force at Royal Assent see s. 65(2); Sch. 1 para. 12(1) (7) in force at 1.8.1997 by S.I. 1997/1712, art. 3, Sch. (with arts. 4, 5); Sch. 1 para. 12(5)(6) in force at 20.10.1997 by S.I. 1997/2323, art. 3, Sch. 1

- 12 (1) The Legal Aid (Scotland) Act 1986 shall be amended in accordance with this paragraph.
- (2) In section 4 (Scottish Legal Aid Fund)—
- (a) in subsection (2)—
- (i) in paragraph (a), for the words “by him” there shall be substituted the words “ or in respect of payments made in accordance with regulations made under section 33(3A) of this Act ”;
- (ii) after paragraph (a) there shall be inserted the following paragraphs—
- “(aa) any expenses incurred by the Board in connection with the provision of criminal legal assistance by solicitors employed by it by virtue of section 28A of this Act;
- (ab) any sums payable by the Board under contracts made by virtue of section 33A of this Act;”;
- (b) in subsection (3), after paragraph (a) there shall be inserted the following paragraphs—
- “(aa) any contribution payable to the Board by any person in pursuance of section 11 of this Act;
- (ab) 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 by virtue of section 28A of this Act;”.
- (3) In section 11 (clients’ contributions)—

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- (a) in subsection (1), after the words “subsection (2)” there shall be inserted the words “ or (3) ”; and
- (b) after subsection (2) there shall be inserted the following subsections—
  - “(3) Where a client to whom paragraphs (a) and (b) of subsection (2) above apply receives criminal legal assistance from a solicitor employed by the Board by virtue of section 28A of this Act, he shall pay to the Board such contribution in respect of that assistance as the Board may, subject to subsection (4) below, determine.
  - (4) The amount determined by the Board under subsection (3) above shall not exceed the amount which could have been charged in respect of the assistance in question by a solicitor.”.
- (4) In section 12 (payment of fees or outlays otherwise than through clients’ contributions)—
  - (a) at the end of subsection (2) there shall be inserted 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.”; and
  - (b) for the word “contribution”, where it appears in subsection (3)(a), there shall be substituted the word “ amount ”.
- (5) In section 21 (scope and nature of criminal legal aid), in subsection (1)(aa), for the word “discretionary” there shall be substituted the word “ designated ”.
- (6) In section 22 (automatic availability of legal aid), at the end of subsection (1) there shall be inserted the words—
  - “and, in relation to paragraph (dc) above, “accused person” includes a person authorised to institute or continue an appeal under section 303A(4) of the Criminal Procedure (Scotland) Act 1995 (transfer of rights of appeal of deceased person).”.
- (7) After section 25 (legal aid in appeals) there shall be inserted the following section—

**“25AA Legal aid in respect of appeals under section 303A of the 1995 Act.**

- (1) Subject to the provisions of this section, section 25 of this Act applies to any appeal, within the meaning of section 303A of the Criminal Procedure (Scotland) Act 1995 (transfer of rights of appeal of deceased person), instituted or continued by a person (an “authorised person”) authorised under subsection (4) of the said section 303A.
- (2) Where an authorised person is continuing an appeal which has been instituted by the deceased person, and criminal legal aid, within the meaning of section 25, has been awarded to the deceased person in connection with any proceedings, such legal aid shall continue to be made available to the authorised person in respect of those proceedings.
- (3) Where—
  - (a) the deceased person had applied for criminal legal aid within the meaning of section 25, but the application had not been determined prior to his death; or
  - (b) the deceased person had not applied for such legal aid,

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the authorised person shall be regarded as the applicant and, in a case to which paragraph (b) applies, may apply for such legal aid.

(4) Notwithstanding subsection (3) above—

- (a) in section 25(2)(a) of this Act, where the authorised person is the executor of the deceased, any reference to—
  - (i) the financial circumstances of the applicant shall be construed as a reference to the value of the deceased person's estate; and
  - (ii) the applicant's dependants shall be construed as a reference to the beneficiaries of the deceased's estate; and
- (b) any reference in section 25(2)(c) or (2A) of this Act to whether it is in the interests of justice that the applicant should receive legal aid shall be construed as a reference to whether it would have been in the interests of justice that the deceased should have received legal aid.”.

(8) In section 31 (solicitors and counsel)—

- (a) in subsection (1), for the words from the beginning to “below” there shall be substituted the words “ Subject to subsection (1A) below, ”;
- (b) after subsection (1) there shall be inserted the following subsection—

“(1A) Subsection (1) above is subject to—

- (a) section 25A(3) of this Act;
- (b) section 30(2) of this Act;
- (c) regulations made under section 28A(6) of this Act;
- (d) regulations made under section 33A(4) of this Act; and
- (e) regulations made under subsection (9) below.”.

(9) In section 33 (fees and outlays of counsel and solicitors), in subsection (1), at the beginning there shall be inserted the words “ Subject to subsections (3A) and (3B) below, ”.

(10) In section 41 (interpretation)—

- (a) after the definition of “civil legal aid” there shall be inserted the following definition—

““the code” means the code of practice in relation to criminal legal assistance for the time being in force under section 25B of this Act;”;
- (b) after the definition of “criminal legal aid” there shall be inserted the following definitions—

““criminal legal assistance” means criminal legal aid and advice and assistance in relation to criminal matters;

“document” includes information recorded in any form;

“firm” includes an incorporated practice, a sole solicitor and a law centre;”;
- (c) after the definition of “incorporated practice” there shall be inserted the following definition—

““law centre” means a body—

  - (a) established for the purpose of providing legal services to the public generally as well as to individual members of the public; and

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- (b) which does not distribute any profits made either to its members or otherwise, but reinvests any such profits for the purposes of the law centre;” and
- (d) after the definition of “person” there shall be inserted the following definitions—
- ““the Register” means the Register established and maintained under section 25A of this Act;
  - “registered firm” means a firm whose name appears on the Register;
  - “registered solicitor” means a solicitor whose name appears on the Register;
  - “sole solicitor” means a solicitor practising under his own name or as a single solicitor under a firm name; and
  - “solicitor connected with a firm” includes a sole solicitor and a solicitor who is a partner, director or employee of a firm, and cognate expressions shall be construed accordingly.”.

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