



# Legal Aid (Scotland) Act 1986

## 1986 CHAPTER 47

### PART I S

#### SCOTTISH LEGAL AID BOARD

##### *The Board*

#### 1 The Scottish Legal Aid Board. S

- (1) There shall be established a body to be known as the Scottish Legal Aid Board (in this Act referred to as “the Board”).
- (2) The Board shall have the general functions—
  - (a) of securing that legal aid and advice and assistance are available in accordance with this Act; and
  - (b) of administering the Fund.
- [<sup>F1</sup>(2A) The Board also has the general function of monitoring the availability and accessibility of legal services in Scotland (including by reference to any relevant factor relating particularly to rural or urban areas).]
- (3) The Board shall consist of not less than 11 and not more than 15 members appointed by the Secretary of State; and the Secretary of State shall appoint one of the members to be chairman.
- (4) The Secretary of State shall appoint to membership of the Board—
  - (a) at least two members of the Faculty of Advocates;
  - (b) at least two members of the Law Society; and
  - (c) at least one other person having experience of the procedure and practice of the courts.
- (5) Before appointing persons to be members of the Board in pursuance of either paragraph (a) or paragraph (b) of subsection (4) above, the Secretary of State shall consult with the professional body mentioned in that paragraph.

*Status: Point in time view as at 01/04/2011.*

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(6) Schedule 1 to this Act shall have effect with respect to the Board.

#### Textual Amendments

**F1** S. 1(2A) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 141(a)**, 150(2); S.S.I. 2011/180, art. 3, sch.

## 2 Powers of the Board. **S**

- (1) Subject to the provisions of this Act, the Board may do anything—
- (a) which it considers necessary or expedient for securing the provision of legal aid and of advice and assistance in accordance with this Act; or
  - (b) which is calculated to facilitate or is incidental to or conducive to the discharge of its functions.
- (2) Without prejudice to the generality of subsection (1) above, the Board shall have power—
- (a) to enter into any contract or agreement, including, subject to subsection (3) below, any contract or agreement to acquire or dispose of land;
  - (b) to invest money;
  - (c) to promote or assist in the promotion of publicity relating to the functions of the Board;
  - (d) to undertake any inquiry or investigation which the Board considers necessary or expedient in relation to the discharge of its functions; and
  - [<sup>F2</sup>(da) to give the Scottish Ministers such advice as it may consider appropriate in relation to the availability and accessibility of legal services in Scotland;]
  - (e) to give to the Secretary of State such advice as it may consider appropriate in relation to the provision of legal aid and advice and assistance in accordance with this Act.
- (3) The power under subsection (2)(a) above to enter into any contract or agreement to acquire or dispose of land shall not be exercised without the approval in writing of the Secretary of State.

#### Textual Amendments

**F2** S. 2(2)(da) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 141(b)**, 150(2); S.S.I. 2011/180, art. 3, sch.

## 3 Duties of the Board. **S**

- (1) The Board shall, from time to time, publish information as to the discharge of its functions in relation to legal aid and advice and assistance including the forms and procedures and other matters connected therewith.
- (2) The Board shall, from time to time, furnish to the Secretary of State such information as he may require relating to its property and to the discharge and proposed discharge of its functions.

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- [<sup>F3</sup>(2A) The Board is, from time to time, to give the Scottish Ministers such information as they may require relating to the availability and accessibility of legal services in Scotland.]
- (3) It shall be the duty of the Board to provide to the Secretary of State, as soon as possible after 31st March in each year, a report on the exercise of its functions during the preceding 12 months.
- (4) The Board shall have regard, in the exercise of its functions, to such guidance as may from time to time be given by the Secretary of State.
- (5) Guidance under subsection (4) above shall not relate to the consideration or disposal (whether in general or in respect of individual applications) of—
- (a) applications for legal aid or advice and assistance;
  - (b) supplementary or incidental applications or requests to the Board in connection with any case where legal aid or advice and assistance has been made available.
- (6) For the purposes of subsection (2) above, without prejudice to the requirements of section 5 of this Act, the Board shall permit any person authorised in that behalf by the Secretary of State to inspect and make copies of any accounts or documents of the Board and shall furnish such explanation of them as that person or the Secretary of State may require.

#### Textual Amendments

- F3** S. 3(2A) inserted (1.4.2011) by [Legal Services \(Scotland\) Act 2010 \(asp 16\)](#), **ss. 141(c)**, 150(2); [S.S.I. 2011/180](#), art. 3, sch.

### *The Fund*

#### 4 Scottish Legal Aid Fund. **S**

- (1) The Board shall establish and maintain a fund to be known as the Scottish Legal Aid Fund (in this Act referred to as “the Fund”).
- (2) There shall be paid out of the Fund—
- (a) [<sup>F4</sup>subject to section 4A(13),] such sums as are, by virtue of this Act or any regulations made thereunder, due [<sup>F5</sup>out of the Fund] to any solicitor or counsel [<sup>F6</sup>or registered organisation] in respect of fees and outlays properly incurred [<sup>F7</sup>or in respect of payments made in accordance with regulations made under section 33(3A) of this Act], in connection with the provision, in accordance with this Act, of legal aid or advice and assistance;
  - [<sup>F8</sup>(aza) any expenses incurred by the Board in connection with the provision by solicitors employed by it by virtue of section 27(1) of this Act of—
    - (i) advice and assistance in relation to civil matters;
    - (ii) civil legal aid;
    - (iii) any services as are mentioned in section 26(2) of this Act;]
    - [<sup>F9</sup>(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;

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- (ab) any sums payable by the Board under contracts made by virtue of section 33A of this Act;]
  - [<sup>F10</sup>[<sup>F11</sup>(abc)] any sums payable by the Board under section 17(2D) of this Act;]
  - [<sup>F12</sup>(ac) such sums as are, by virtue of section 4A, due out of the Fund to any person;]
  - (b) expenses awarded to any person under section 19 of this Act; and
  - (c) such other payments <sup>F13</sup> . . . as the Secretary of State may <sup>F14</sup> . . . determine.
- (3) There shall be paid into the Fund—
- (a) any contribution payable to the Fund by any person in pursuance of section 17 of this Act;
  - [<sup>F15</sup>(aa) any contribution payable to the Board by any person in pursuance of section 11 of this Act;
  - [<sup>F16</sup>(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;]
  - (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;]
  - [<sup>F17</sup>(ac) any sums recovered from a person who is receiving or has been in receipt of advice and assistance, civil legal aid or criminal legal aid under section 24, but who has available to him rights and facilities making it unnecessary for him to take advantage of the provisions of this Act.]
  - [<sup>F18</sup>(ad) any sums recovered from a person in connection with a grant made by the Board in accordance with section 4A;]
  - (b) any sum recovered under an award of a court or an agreement as to expenses in any proceedings in favour of any party who is in receipt of civil legal aid;
  - (c) any sum which is to be paid in accordance with section 17 of this Act out of property recovered or preserved for any party to any proceedings who is in receipt of civil legal aid;
  - (d) the sums to be paid by the Secretary of State in pursuance of section 40(1) (a) of this Act; and
  - (e) such other receipts of the Board as the Secretary of State may, <sup>F14</sup> . . . determine.

#### Textual Amendments

- F4** Words in s. 4(2)(a) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 68(2)(a)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(b)**
- F5** Words inserted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 44, **Sch. 4 Pt. I para. 1(a)**
- F6** Words in s. 4(2)(a) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 67(2)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(a)**
- F7** Words in s. 4(2)(a) substituted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(2)(a)(i)**; S.I. 1997/2323, **art. 6(2)**
- F8** S. 4(2)(aza) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 74(1)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(c)**
- F9** S. 4(2)(aa)(ab) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(2)(a)(ii)**; S.I. 1997/2323, **art. 6(2)**
- F10** S. 4(2)(ac) inserted (1.10.2007) by [Equality Act 2006 \(c. 3\)](#), ss. 40, 93(1), **Sch. 3 para. 39(2)** (with s. 92); S.I. 2007/2603, **art. 2(d)**
- F11** S. 4(2)(ac) renumbered as s. 4(2)(abc) (23.3.2011) by [The Legal Profession and Legal Aid \(Scotland\) Act 2007 \(Modification and Consequential Provisions\) Order 2011 \(S.S.I. 2011/235\)](#), arts. 2(1), 4

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- F12** S. 4(2)(ac) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 68(2)(b)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(b)**
- F13** Words repealed by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), ss. 44, 45(2), Sch. 4 Pt. I para. 1(b), **Sch. 6**
- F14** Words in s. 4(2)(c)(3)(e) repealed (1.7.1999) by 1999/1820, arts. 1(2), 4, Sch. 2 Pt I para. 86(2), Pt. IV
- F15** S. 4(3)(aa)(ab) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(2)(b)**; S.I. 1997/2323, **art. 6(2)**
- F16** S. 4(3)(aaa) inserted (6.7.2001) by 2001 asp 7, **ss. 9(1)**, 15(3)
- F17** S. 4(3)(ac) inserted (4.12.2004) by [The Legal Aid \(Scotland\) Act 1986 Amendment Regulations 2004 \(S.S.I. 2004/493\)](#), **reg. 2**
- F18** S. 4(3)(ad) inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 68(2)(c)**, 82(2) (with s. 77); S.S.I. 2007/335, **art. 2(b)**

#### [<sup>F19</sup>4A Power of Board to make grants for certain purposes **S**

- (1) The Board may, on an application made to it by any person, make grants of such amount and subject to such conditions (including conditions as to repayment) as it may determine to the person in respect of—
  - (a) any of the matters mentioned in subsection (2);
  - (b) any of the purposes mentioned in subsection (3).
- (2) The matters are—
  - (a) any civil legal aid or advice and assistance in relation to civil matters provided, or to be provided, by any solicitor or counsel;
  - (b) any advice and assistance in relation to civil matters provided, or to be provided, by any adviser;
  - (c) any advice, assistance or representation (not falling within paragraphs (a) or (b)) provided, or to be provided, by any person, which is connected to civil matters.
- (3) The purposes are facilitating, supporting and developing the provision of any of the matters referred to in subsection (2).
- (4) The Scottish Ministers must specify a limit to the total amount that may be paid out of the Fund by virtue of subsection (1).
- (5) In specifying any limit under subsection (4) the Scottish Ministers must specify the period in relation to which that limit applies.
- (6) Any grant made under subsection (1) must be made in accordance with an approved plan.
- (7) The Board must prepare and publish a plan as to the criteria which the Board will apply in considering whether or not to make such a grant; and the Board must submit the plan to the Scottish Ministers for approval.
- (8) The Scottish Ministers may approve a plan submitted to them under subsection (7) with or without modification.
- (9) The Scottish Ministers may at any time—
  - (a) approve a modification of an approved plan proposed by the Board or withdraw approval of such a plan or modification;
  - (b) require the Board to prepare and publish a plan under subsection (7).

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- (10) An application under subsection (1) must include such information as the Board may reasonably require.
- (11) In preparing and publishing the plan under subsection (7) the Board must do so in accordance with such directions as the Scottish Ministers may give.
- (12) Any money due to a person by virtue of this section shall be paid to the person by the Board out of the Fund.
- (13) Any money paid to a person under subsection (1) as provided in subsection (12), in respect of—
  - (a) any civil legal aid or advice and assistance provided by any solicitor or counsel;
  - (b) any advice and assistance provided by an adviser,
 shall be taken to be a payment in accordance with this Act; and no other payment may be made out of the Fund in respect of that civil legal aid or, as the case may be, advice and assistance.
- (14) In this section, “approved plan” means a plan approved, for the time being, by the Scottish Ministers under subsection (8); and includes any part or modification of the plan so approved.
- (15) For the purposes of this section, “person” includes a body corporate or unincorporate.]

**Textual Amendments**  
**F19** S. 4A inserted (30.7.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), **ss. 68(3), 82(2)** (with [s. 77](#)); [S.S.I. 2007/335](#), **art. 2(b)**

**5 Accounts and audit. S**

- (1) The Board shall keep separate accounts with respect to—
  - (a) the Fund; and
  - (b) the receipts and expenditure of the Board which do not relate to the Fund, and shall prepare in respect of each financial year a statement of accounts.
- (2) The accounts shall be kept and the statement of accounts shall be prepared in such form as the Secretary of State may, <sup>F20</sup> . . . direct.
- [<sup>F21</sup>(2A) The Board shall send the accounts and the statement of accounts to the Scottish Ministers by such time as they may direct.
- (2B) The Scottish Ministers shall send the accounts and the statement of accounts to the Auditor General for Scotland for auditing.]
- <sup>F22</sup>(3) . . . . .
- <sup>F22</sup>(4) . . . . .
- <sup>F22</sup>(5) . . . . .
- <sup>F22</sup>(6) . . . . .
- (7) The Secretary of State shall lay before each House of Parliament a copy of every—

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- (a) annual report of the Board under section 3(3) of this Act;
  - <sup>F22</sup>(b) .....
  - <sup>F22</sup>(c) .....
- (8) In this section “financial year” means the period beginning with the commencement of this section and ending with 31st March next following and each subsequent period of 12 months ending with 31st March in each year.

**Textual Amendments**

- F20** Words in s. 5 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2)(3), 4, **Sch. 2 Pt I para. 86(3)**.
- F21** S. 5(2A)(2B) inserted (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 6(2)**; S.S.I. 2000/10, **art. 2(3)**
- F22** S. 5(3)-(6) repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 6(3)**; S.S.I. 2000/10, **art. 2(3)**

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