



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART II

ADVICE AND ASSISTANCE

Modifications etc. (not altering text)

- C1** Pt. II (ss. 6-12) applied (1.1.1998) by S.I. 1997/3070, **regs. 3, 4, 5**
- C2** Pt. II applied (24.3.2003) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 (S.S.I. 2003/179), **regs. 3-5**

6 Definitions.

(1) In this Act—

“advice and assistance” means any of the following—

- (a) oral or written advice provided to a person by a solicitor (or, ^{F1}if and so far as may be necessary^{F1} where appropriate, by counsel)—
- (i) on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking the advice;
- (ii) as to any steps which that person might appropriately take (whether by way of settling any claim, instituting, conducting or defending proceedings, making an agreement or other transaction, making a will or other instrument, obtaining further legal or other advice and assistance, or otherwise) having regard to the application of Scots law to those circumstances;
- (b) assistance provided to a person by a solicitor (or, ^{F1}if and so far as may be necessary^{F1} where appropriate, by counsel) in taking any steps mentioned in paragraph (a)(ii) above, by taking such steps on his behalf or by assisting him in so taking them; and

“assistance by way of representation” means advice and assistance provided to a person by taking on his behalf any step in instituting, conducting or defending any proceedings—

Status: Point in time view as at 30/04/1991. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Legal Aid (Scotland) Act 1986, Part II is up to date with all changes known to be in force on or before 29 May 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)

- (a) before a court or tribunal; or
- (b) in connection with a statutory inquiry,

whether by representing him in those proceedings or by otherwise taking any step on his behalf (as distinct from assisting him in taking such a step on his own behalf).

(2) In this Part of this Act—

“client” means a person who seeks or receives advice and assistance in accordance with this Part of this Act;

“statutory inquiry” has the meaning assigned to it by section 19(1) of the ^{M1}Tribunals and Inquiries Act 1971;

“the solicitor” means the solicitor by whom any advice and assistance is provided or, where it is provided by counsel, the solicitor on whose instruction counsel provides it;

“tribunal” includes an arbiter or oversman, however appointed.

Textual Amendments

F1 Words "where appropriate" substituted (*prosp.*) for "if and so far as may be necessary" by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), ss. 74, 75(2), Sch. 8 para. 36(2)

Modifications etc. (not altering text)

C3 Pt. II (ss. 6–12) applied by S.I. 1988/2290, reg. 3

Marginal Citations

M1 1971 c. 62.

7 Application of Part II.

- (1) Subject to subsections (2) to (4) below, and to any exceptions and conditions prescribed by regulations made under this section or under section 9 of this Act, this Part of this Act applies to any advice and assistance.
- (2) This Part of this Act does not apply to advice and assistance provided to a person in connection with proceedings before a court or tribunal at a time when he is receiving legal aid in connection with those proceedings.
- (3) Subject to subsection (4) below and to section 9 of this Act, this Part of this Act does not apply to assistance by way of representation.
- (4) Except where subsection (2) above applies, this Part of this Act does apply, in the case of civil proceedings before a court or tribunal, to any step which consists only of negotiating on behalf of a person with a view to the settlement of a claim to which the proceedings relate.

Modifications etc. (not altering text)

C4 Pt. II (ss. 6–12) applied by S.I. 1988/2290, reg. 3

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8 Availability of advice & assistance.

Subject to section 11(2) of this Act, advice and assistance to which this Part applies shall be available in Scotland for any client if—

- (a) his disposable income does not exceed [^{F2}£135]a week; or
- (b) he is (directly or indirectly) in receipt of [^{F3}income support or family credit], and his disposable capital does not exceed [^{F4}£935.]

Textual Amendments

- F2** For “£114” there is substituted “£135” by virtue of S.I. 1990/840, **reg. 2** (which regulation was revoked (01.07.1992) by S.I. 1992/1587, **reg. 6**).
- F3** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), **Sch. 10 Pt. II para. 61**
- F4** For “£800” there is substituted “£935” by virtue of S.I. 1990/840, **reg. 3** (which regulation was revoked (01.07.1992) by S.I. 1992/1587, **reg. 6**).

Modifications etc. (not altering text)

- C5** Pt. II (ss. 6–12) applied by S.I. 1988/2290, **reg. 3**

VALID FROM 30/10/2010

[^{F5}8A Criminal advice and assistance: automatic availability in certain circumstances

- (1) The Scottish Ministers may by regulations provide that, in such circumstances as may be prescribed in the regulations, advice and assistance in relation to criminal matters is to be available for any relevant client without reference to the financial limits in section 8.
- (2) In subsection (1), “relevant client” means a client who is a person to whom section 15A of the Criminal Procedure (Scotland) Act 1995 (right of suspects to have access to a solicitor) applies.]

Textual Amendments

- F5** S. 8A inserted (30.10.2010) by Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), **ss. 2(3), 9**

9 Regulations may apply Part II to representation.

- (1) Regulations made under this section may provide for this Part of this Act to apply to assistance by way of representation; and regulations so made may make different provision for different cases or classes of case.
- (2) Such regulations may—
 - (a) describe the proceedings (or stages of proceedings) in relation to which this Part of this Act shall so apply by reference to the court, tribunal or statutory inquiry, to the issues involved, to the capacity in which the person requiring the assistance is concerned, or in any other way;

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- (b) specify, in relation to any proceedings so described, the assistance by way of representation which may be provided;
 - (c) prescribe the criteria to be applied in determining whether assistance by way of representation should be provided;
 - (d) require that the approval of the Board or of such other appropriate authority as may be prescribed shall be obtained, in certain classes of case, as a precondition of the provision of assistance by way of representation; and
 - (e) modify the financial limits under sections 8 and 10(2) of this Act in their application to assistance by way of representation by substituting for the sums specified therein such other sums as may be prescribed, and such modification of the financial limit under the said section 10(2) may substitute different sums in relation to different proceedings or stages of proceedings.
- (3) Such regulations may also make provision, for the purposes of paragraph (d) of subsection (2) above, as to—
- (a) the procedure to be followed in applying for approval and the criteria for determining whether approval should be given;
 - (b) the conditions which should or may be imposed; and
 - (c) the circumstances in which approval may be withdrawn and the effect of its withdrawal.

Subordinate Legislation Made

P1 S. 9: for previous exercises of this power see Index to Government orders.

P2 S. 9(2)(e): s. 9(2)(e)(with ss. 36(2)(b) and 37(1)) power exercised by [S.I.1991/1096](#)

Modifications etc. (not altering text)

C6 Pt. II (ss. 6–12) applied by [S.I. 1988/2290, reg. 3](#)

VALID FROM 08/02/2007

10 Financial limit.

- (1) Where at any time (whether before or after advice and assistance has begun to be provided to a client) it appears to the solicitor that the cost of giving it is likely to exceed the limit applicable under this section—
- (a) the solicitor shall determine to what extent that advice and assistance can be provided without exceeding that limit; and
 - (b) shall not give it (or, as the case may be, not instruct counsel to provide it) so as to exceed that limit except [^{F6}, subject to subsection (4),] with the approval of the Board.
- (2) The limit applicable under this section is [^{F7}£60].
- (3) For the purposes of this section, the cost of providing advice and assistance shall be taken to consist of such of the following as are applicable in the circumstances—
- (a) any outlays (including the fees and outlays of counsel) which may be incurred by the solicitor or his firm or incorporated practice in, or in connection with, the providing of the advice and assistance;

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- (b) any fees (not being charges for outlays) which, apart from section 11 of this Act, would be properly chargeable by the solicitor or his firm or incorporated practice in respect of the advice and assistance; and
- (c) in the case of advice and assistance given by a solicitor employed by the Board, any fees (not being charges for outlays) which, if the solicitor had been employed by a firm of solicitors or by an incorporated practice, would, apart from section 11 of this Act, have been properly chargeable by that firm or practice in respect of the advice and assistance.

[^{F8}(4) In the circumstances set out in subsection (5), no application may be made for the Board's approval for the cost of giving the advice and assistance—

- (a) to exceed the limit applicable under this section; or
- (b) to that limit having been exceeded.

(5) The circumstances are that the matter with which the advice and assistance is concerned is not—

- (a) specified as a distinct matter for the purposes of advice and assistance by virtue of regulations made under this Act; or
- (b) being treated as if it were a distinct matter by virtue of such regulations.]

Textual Amendments

- F6** Words in s. 10(1)(b) inserted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp. 5\)](#), [ss. 69\(2\)\(a\)](#), [82\(2\)](#) (with s. 77); [S.S.I. 2007/57](#), [art. 2\(a\)](#)
- F7** Sum in s. 10(2) substituted (1.8.1988) by [S.I. 1988/1389](#), [reg. 2](#), and different sums substituted for different cases: (17.12.1988) by [S.I. 1988/2288](#), [reg. 2](#); (10.1.1994) by [S.I. 1993/3187](#), [regs. 3, 4](#) (as amended (1.5.2007) by [S.I. 2007/248](#), [reg. 4](#))
- F8** S. 10(4)(5) inserted (8.2.2007) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 69\(4\)](#), [82\(2\)](#) (with s. 77); [S.S.I. 2007/57](#), [art. 2\(a\)](#)

Modifications etc. (not altering text)

- C7** Pt. II (ss. 6–12) applied by [S.I. 1988/2290](#), [reg. 3](#)
- C8** [S. 10\(2\)](#) modified (17.12.1988) by [S.I. 1988/2288](#), [reg. 2](#)
- C9** [S. 10\(2\)](#) modified (10.1.1994) by [S.I. 1993/3187](#), [regs. 3, 4, 5](#) (as amended (1.5.2007) by [S.I. 2007/248](#), [reg. 4](#))

11 Clients' contributions.

(1) A client shall not be required to pay any fees or outlays in respect of advice and assistance received by him in pursuance of this Part of this Act except in accordance with subsection (2) below.

(2) Where—

- (a) a client's disposable income exceeds [^{F9}£70]a week; and
- (b) he is not (directly or indirectly) in receipt of [^{F10}income support or family credit],

he shall be liable to pay, in respect of the advice and assistance, fees or outlays up to, but not in aggregate exceeding, such amount as may be prescribed by regulations made under this section, and such regulations may prescribe different maximum payments for different amounts of disposable income and for different cases or classes of case.

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Subordinate Legislation Made

P3 S. 11: for previous exercises of this power see Index to Government Orders.

P4 S. 11(2): s. 11(2)(with ss. 36(2)(b) and 37(1)) power exercised by [S.I.1991/1095](#)

Textual Amendments

F9 In s. 11(2) for the sum of £64 there is substituted £70 by virtue of [S.I.1991/1095](#), [reg. 2](#) (which regulation was revoked (01.07.1992) by [S.I. 1992/1587](#), [reg. 6](#)).

F10 Words substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86(1), [Sch. 10 Pt. II para. 61](#)

Modifications etc. (not altering text)

C10 Pt. II (ss. 6-12) applied by [S.I. 1988/2290](#), [reg. 3](#)

12 Payment of fees or outlays otherwise than through clients' contributions.

(1) In this section, in relation to advice and assistance provided by a solicitor employed by—

- (a) a firm of solicitors;
- (b) an incorporated practice; or
- (c) the Board,

in the course of that employment (or by counsel on instructions given to him by such a solicitor), “the solicitor” includes the firm, incorporated practice or the Board, as the case may be.

(2) This section applies to any fees or outlays properly chargeable (in accordance with section 33 of this Act), in respect of advice and assistance given to a client in pursuance of this Part of this Act.

(3) Except in so far as regulations made under this section otherwise provide, fees or outlays to which this section applies shall be paid to the solicitor as follows—

- (a) first, out of any contribution payable by the client in accordance with section 11(2) of this Act;
- (b) secondly, in priority to all other debts, out of any expenses which (by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the client by any other person in respect of the matter in connection with which the advice and assistance is provided;
- (c) thirdly, in priority to all other debts, out of any property (of whatever nature and wherever situated) which is recovered or preserved for the client in connection with that matter, including his rights under any settlement arrived at in connection with that matter in order to avoid or bring to an end any proceedings;
- (d) fourthly, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor.

Modifications etc. (not altering text)

C11 Pt. II (ss. 6–12) applied by [S.I. 1988/2290](#), [reg. 3](#)

C12 [S. 12\(3\)](#) modified (7.10.1996) by [S.I. 1996/2447](#), [reg. 5\(1\)\(c\)](#)

C13 [S. 12\(3\)\(c\)](#) restricted by [S.I. 1987/382](#), [reg. 15\(1\)](#)

[S. 12\(3\)\(c\)](#) excluded (7.10.1996) by [S.I. 1996/2447](#), [reg. 16\(2\)](#)

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S. 12(3)(c): power to exclude conferred (7.10.1996) by S.I. 1996/2447, **reg. 16(3)**

Status:

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