



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}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}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—

- (a) before a court or tribunal; or

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(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 [F2]section 16(1) of the M1 Tribunals and Inquiries Act 1992];

“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.

[F3]and references to a court, tribunal or statutory inquiry include references to any court, tribunal or statutory inquiry which is established by law for purposes which are or include those of determining persons’ civil rights and obligations and to any person who or group of persons or body or procedure which (however described) is appointed or established by law for such purposes.]

Textual Amendments

F1 Words in s. 6(1) substituted (30.9.1991) by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 para. 36(2); [S.I. 1991/2151, art. 3, Sch.](#)

F2 Words in s. 6(2) substituted (01.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53\), ss. 18\(1\), 19\(2\), Sch. 3 para. 20.](#)

F3 Words in s. 6(2) added (6.7.2001) by [2001 asp 7, ss. 6\(1\), 15\(3\)](#)

Modifications etc. (not altering text)

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

Marginal Citations

M1 [1992 c. 53.](#)

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.

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Modifications etc. (not altering text)

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

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 [^{F4}£186] a week; or
- (b) he is (directly or indirectly) in receipt of [^{F5}disabled person's tax credit,][^{F6}income support [^{F7}, an income-based jobseeker's allowance (payable under the Jobseekers Act 1995)] or family credit],

and his disposable capital does not exceed [^{F8}£1,000.]

Textual Amendments

- F4** Sum in s. 8(a) substituted (9.4.2001 with application only in relation to any case where an application for advice and assistance is made on or after 9.4.2001) by S.S.I. 2001/124, regs. 2, 3 (which Regulations were revoked (8.4.2002) (except in relation to any case where an application for advice and assistance is made before that date.) by S.S.I. 2002/144, reg. 6)
- F5** Words in s. 8(b) inserted (27.9.1999) by 1999 c. 22, ss. 33, 108(3)(a)(e), Sch. 14 Pt III para. 12 (with Sch. 14 para. 7(2))
- F6** Words substituted by Social Security Act 1986 (c. 50, SIF 113:1), s. 86(1), Sch. 10 Pt. II para. 61
- F7** Words in s. 8(b) inserted (7.10.1996) by 1995 c. 18, s. 41(4), Sch. 2 para. 9(2); S.I. 1996/2208, art. 2(b)
- F8** Sum in s. 8 substituted (01.07.1992) by virtue of S.I. 1992/1587, reg. 3 (which Regulation was revoked (1.7.2002) (except in relation to any case where an application for advice and assistance is made before that date.))

Modifications etc. (not altering text)

- C5 Pt. II (ss. 6–12) applied by S.I. 1988/2290, reg. 3
- C6 S. 8 modified (7.10.1996) by S.I. 1996/2447, reg. 5(1)(a)

VALID FROM 30/10/2010

^{F9}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.]

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Textual Amendments

- F9** 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;
 - (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 pre-condition of the provision of assistance by way of representation; and
 - [^{F10}(dd) provide that assistance by way of representation shall be available in relation to such proceedings as may be prescribed, without reference to the financial limits under section 8 of this Act;
 - (de) provide that section 11(2) of this Act shall not apply as respects assistance by way of representation received in relation to such proceedings as may be prescribed;]
 - (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.

Textual Amendments

- F10** S. 9(2)(dd)(de) inserted (27.9.1999) by [1999 c. 22](#), ss. **32**, 108(3)(a) (with [Sch. 14 para. 7\(2\)](#))

Modifications etc. (not altering text)

- C7** Pt. II (ss. 6–12) applied by [S.I. 1988/2290](#), reg. **3**

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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 [^{F11}, subject to subsection (4),] with the approval of the Board.
- (2) The limit applicable under this section is [^{F12}£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;
 - (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.
- [^{F13}(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

- F11** 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\(a\)](#)
- F12** 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](#))
- F13** 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\(a\)](#)

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Modifications etc. (not altering text)

- C8** Pt. II (ss. 6–12) applied by [S.I. 1988/2290, reg. 3](#)
C9 [S. 10\(2\)](#) modified (17.12.1988) by [S.I. 1988/2288, reg. 2](#)
C10 [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) [^{F14}, (2A)] [^{F15} or (3)] below.

(2) Where—

- (a) a client's disposable income exceeds [^{F16}£79] a week; and
 (b) he is not (directly or indirectly) in receipt of [^{F17} disabled person's tax credit,] [^{F18} income support, an income-based jobseeker's allowance (payable under the Jobseekers Act 1995)] 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.

[^{F19}(2A) A client to whom paragraphs (a) and (b) of subsection (2) above apply and to whom criminal legal assistance or advice or assistance which is not criminal legal assistance has been provided by a solicitor employed by the Board under sections 26 and 27 of this Act shall pay to the Board such contribution in that respect as the Board may, subject to subsection (3A) below, determine.]

[^{F20}(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.]

[^{F19}(3A) The amount determined by the Board under subsection (2A) above shall not exceed the amount which would be charged by a solicitor who is not employed by the Board under sections 26 and 27 of this Act.]

[^{F20}(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.]

Subordinate Legislation Made

- P1** S. 11: for previous exercises of this power see Index to Government Orders.
P2 S. 11(2): s. 11(2)(with ss. 36(2)(b) and 37(1)) power exercised by [S.I.1991/1095](#)

Textual Amendments

- F14** Words in s. 11(1) inserted (6.7.2001) by [2001 asp 7, ss. 9\(2\)\(a\), 15\(3\)](#)
F15 Words in s. 11(1) inserted (1.10.1997) by [1997 c. 48, s. 62\(1\), Sch. 1 para. 12\(3\)\(a\)](#); [S.I. 1997/2323, art. 6\(2\)](#)
F16 Sum in s. 11(2)(a) substituted (9.4.2001 with application only in relation to any case where an application for advice and assistance is made on or after 9.4.2001) by [S.S.I. 2001/124, regs. 2, 4](#)

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- F17** Words in s. 11(2)(b) inserted (27.9.1999) by 1999 c. 22, ss. 33, 108(3)(a)(e), **Sch. 14 Pt III para. 12** (with **Sch. 14 para. 7(2)**)
- F18** Words substituted by **Social Security Act 1986 (c. 50, SIF 113:1)**, s. 86(1), **Sch. 10 Pt. II para. 61**
- F19** S. 11(2A)(3A) inserted (6.7.2001) by 2001 asp 7, **ss. 9(2)(b)**, 15(3)
- F20** S. 11(3)(4) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(3)(b)**; S.I. 1997/2323, **art. 6(2)**

Modifications etc. (not altering text)

- C11** Pt. II (ss. 6-12) applied by **S.I. 1988/2290, reg. 3**
- C12** S. 11 modified (7.10.1996) by **S.I. 1996/2447, reg. 5(1)(b)**

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 firm of solicitors;
 - an incorporated practice; or
 - 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

[^{F21}; but does not apply to the salary payable to a solicitor employed by the Board [^{F22}under sections 26 and 27 of this Act or to the salary payable to a solicitor employed by the Board]] by virtue of section 28A 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—
- first, out of any [^{F23}amount] payable by the client in accordance with section 11(2) of this Act;
 - 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;
 - 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;
 - fourthly, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor.

Textual Amendments

- F21** Words in s. 12(2) inserted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(4)(a)**; S.I. 1997/2323, **art. 6(2)**

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F22 Words in s. 12(2) inserted (6.7.2001) by 2001 asp 7, **ss. 9(3), 15(3)**

F23 Word in s. 12(3)(a) substituted (1.10.1997) by 1997 c. 48, s. 62(1), **Sch. 1 para. 12(4)(b)**; S.I. 1997/2323, **art. 6(2)**

Modifications etc. (not altering text)

C13 Pt. II (ss. 6–12) applied by S.I. 1988/2290, **reg. 3**

C14 S. 12(3) modified (7.10.1996) by S.I. 1996/2447, **reg. 5(1)(c)**

C15 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)**

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

Status:

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