



Legal Aid (Scotland) Act 1986

1986 CHAPTER 47

PART V

EMPLOYMENT OF SOLICITORS BY THE BOARD

VALID FROM 02/11/2001

26 Employment to which Part V applies.

- (1) This Part of this Act applies to the employment of solicitors by the Board for any of the following purposes—
 - (a) giving advice and assistance to which Part II of this Act applies [^{F1}either generally or in cases of any such description as may be prescribed by regulations made under this section];
 - (b) acting for persons receiving legal aid, either generally or in cases of any such description as may be prescribed by regulations made under this section;
 - (c) providing any such services as are mentioned in subsection (2) below.
- (2) The services referred to in subsection (1)(c) above are services provided by a solicitor for or in connection with any local organisation and consisting of—
 - (a) assisting the organisation in its function of giving advice and guidance to applicants;
 - (b) promoting contacts between the organisation and solicitors practising in the locality for which the organisation is established, with a view to enabling applicants to obtain the professional services of those solicitors in cases where those services are required;
 - (c) giving oral advice to applicants, instead of referring them to other solicitors, in cases which can be readily disposed of by such advice.
- (3) In subsection (2) above—
 - (a) “local organisation” means an organisation concerned in the giving of advice or guidance (whether generally or with respect to any particular classes of

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matters) to persons residing in the locality for which the organisation is established; and

- (b) “applicants”, in relation to such an organisation, means persons who apply to the organisation for advice or guidance or are referred to it with a view to their receiving advice or guidance from it.

- (4) In this section “organisation” includes a branch or section of an organisation; and, in relation to such a branch or section, any reference to the locality for which the organisation is established shall be construed as a reference to the locality for which the branch or section is established.

Textual Amendments

- F1** Words in s. 26(1)(a) added (6.7.2001) by 2001 asp 7, ss. 9(6), 15(3)

VALID FROM 02/11/2001

27 Arrangements for employment to which Part V applies.

- (1) The Secretary of State may, by regulations made under this section, make provision as to the employment of solicitors under this Part of this Act and as to the circumstances in which solicitors may be so employed.
- (2) Section 32(a) of this Act shall not apply to the remuneration of a solicitor by the Board in respect of any employment to which this Part of this Act applies.
- (3) Notwithstanding section 33(1) of this Act, a solicitor who, in the course of employment to which this Part of this Act applies, acts for a person in receipt of legal aid or advice and assistance shall not be paid out of the Fund for so acting.

VALID FROM 02/11/2001

28 General provisions relating to employment to which Part V applies.

- (1) In relation to any solicitor who is employed by the Board in employment to which this Part of this Act applies, and in relation to any work performed, or other thing done or omitted to be done, by any such solicitor in the course of that employment—
- (a) the enactments relating to solicitors, and
- (b) any rule of law which relates to solicitors, or is applicable to things done, or omitted to be done, by solicitors in their capacity as solicitors,
- shall have effect as if the Board were a firm of solicitors.
- (2) Nothing in subsection (1) above shall prohibit 2 or more solicitors employed by the Board in employment to which this Part of this Act applies from acting (including acting in any proceedings) for different parties having opposing or otherwise different interests in relation to the same matter.

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[^{F2}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.
- (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.

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- (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 “; [^{F3}or] 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” [^{F4}, where it second occurs,] 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.]
- [^{F5}(15) The power to bring sections 26 to 28 of this Act into force is not affected—
- (a) by the provisions of this section; or
 - (b) by the fact that it is exercised before the expiry of the period of five years referred to in subsection (11) above.]

Textual Amendments

- F2** S. 28A inserted (1.10.1997) by 1997 c. 48, s. 50; S.I. 1997/2323, art. 6, Sch. 3
- F3** Word in s. 28A(12)(c) substituted (6.7.2001) by 2001 asp 7, ss. 9(7)(a)(i), 15(3)
- F4** Words in s. 28A(12)(e) inserted (6.7.2001) by 2001 asp 7, ss. 9(7)(a)(ii), 15(3)
- F5** S. 28A(15) inserted (6.7.2001) by 2001 asp 7, ss. 9(7)(b), 15(3)

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