

Status: Point in time view as at 07/04/1997.

Changes to legislation: Legal Aid (Scotland) Act 1986, SCHEDULE 1 is up to date with all changes known to be in force on or before 26 June 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)

SCHEDULES

SCHEDULE 1

Section 1.

THE SCOTTISH LEGAL AID BOARD

Incorporation and Status

- 1 The Board shall be a body corporate with a common seal.
- 2 (1) The Board is not an emanation of the Crown and shall not act or be treated as the servant or agent of the Crown.
(2) Accordingly—
 - (a) neither the Board, nor any of its members, nor any member of its staff as such is entitled to any status, immunity, privilege or exemption enjoyed by the Crown;
 - (b) the members of the Board and the members of its staff are not, in such capacity, Crown servants; and
 - (c) the Board's property is not the property of or held on behalf of the Crown.
- (3) Subject to sub-paragraph (4) below, the Board shall not be exempt from any tax, duty, rate, levy or other charge whatever (whether general or local).
- (4) **F1**

Textual Amendments

- F1** Sch. 1 para. 2(4) repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 44, 45(2), Sch. 4 Pt. III para. 10, Sch. 6

Tenure of Members

- 3 Subject to paragraphs 4 and 5 below any member of the Board shall hold and vacate office in accordance with the terms of his appointment, but a person shall not be appointed a member of the Board for a period of more than 5 years.
- 4 (1) The chairman or a member may resign office by giving notice in writing to the Secretary of State, and if the chairman ceases to be a member he shall cease to be the chairman.
(2) A person who ceases to be the chairman or a member shall be eligible for reappointment.
- 5 The Secretary of State may terminate the appointment of a member of the Board if satisfied that—
 - (a) he has had his estate sequestrated, or has been adjudged bankrupt or has granted a trust deed for or entered into an arrangement with his creditors;

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- (b) he is unable to carry out his duties as a Board member by reason of physical or mental illness;
- (c) he has been absent from meetings of the Board for a period longer than six consecutive months without the permission of the Board; or
- (d) he is otherwise unable or unfit to discharge the functions of a member of the Board, or is unsuitable to continue as a member.

Remuneration of members

- 6 (1) The Board may—
- (a) pay to its members such remuneration; and
 - (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,
- as the Secretary of State may, with the approval of the Treasury, determine.
- (2) Where a person ceases to be a member of the Board otherwise than on the expiry of his term of office, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may, with the consent of the Treasury, direct the Board to make that person a payment of such amount as the Secretary of State may, with the consent of the Treasury, determine.

Staff

- 7 (1) The Board shall, after consultation with, and subject to the approval of, the Secretary of State, appoint on such terms and conditions as it may determine a person to be the principal officer of the Board.
- (2) The principal officer shall be responsible to the Board for the exercise of its functions.
- 8 (1) Subject to paragraph 9 below, the Board may appoint, on such terms and conditions as it may determine, such other employees as it thinks fit.
- (2) A determination as to terms and conditions under paragraph 7(1) or sub-paragraph (1) above shall be subject to the approval of the Secretary of State given with the consent of the Treasury.
- (3) The Board shall, in respect of such of its employees as it may determine, with the approval of the Secretary of State and the consent of the Treasury make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the Board or otherwise, of one or more pension schemes.
- (4) The reference in sub-paragraph (3) above to pensions, allowances or gratuities in respect of employees of the Board includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment.
- (5) If an employee of the Board becomes a member of the Board and was by reference to his employment by the Board a participant in a pension scheme established and administered by it for the benefit of its employees—

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- (a) the Board may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Board whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 6 above; but
 - (b) if the Board determines as aforesaid, any discretion as to the benefits payable to or in respect of him which the scheme confers on the Board shall be exercised only with the consent of the Secretary of State given with the approval of the Treasury.
- 9 (1) The Board shall, not later than such date as the Secretary of State may determine, make an offer of employment by the Board to each person employed immediately before that date—
- (a) by the Law Society for the purpose of their functions under the ^{M1}Legal Aid (Scotland) Act 1967; and
 - (b) in the civil service of the State wholly or mainly in connection with the assessment of a person's means under section 4 of that Act.
- (2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (3) For the purposes of sub-paragraph (2) above no account shall be taken of the fact that employment with the Board is not employment in the service of the Crown.
- (4) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

Marginal Citations

M1 1967 c. 43.

- 10 (1) Where a person becomes an employee of the Board on acceptance of an offer made under paragraph 9 above, then, for the purposes of [^{F2}the Employment Rights Act 1996], his period of employment with the Law Society or, as the case may be, in the civil service of the State, shall count as a period of employment by the Board, and the change of employment shall not break the continuity of the period of employment.
- (2) Where an offer is made in pursuance of paragraph 9(1) above to any person employed as is mentioned in that paragraph, none of the agreed redundancy procedures applicable to such a person shall apply to him and—
- (a) where a person employed as is mentioned in sub-paragraph (a) of that paragraph ceases to be so employed—
 - (i) on becoming a member of the staff of the Board in consequence of that paragraph; or
 - (ii) having unreasonably refused the offer,^{F3} . . . he shall not be treated for the purposes of any scheme under section 12 of the ^{M2}Legal Aid (Scotland) Act 1967 as having been retired on redundancy;
 - (b) where a person employed as is mentioned in sub-paragraph (b) of that paragraph ceases to be so employed on becoming a member of the staff of the Board in consequence of that paragraph, he shall not be treated for the

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purposes of any scheme under section 1 of the ^{M3}Superannuation Act 1972 as having been retired on redundancy.

- (3) Without prejudice to sub-paragraph (2) above, where a person has unreasonably refused an offer made to him in pursuance of paragraph 9 above, the Law Society or, as the case may be, the Secretary of State shall not terminate that person's employment unless it or, as the case may be, he has first had regard to the feasibility of employing him in a suitable alternative position with the Law Society or, as the case may be, in the civil service of the State.
- (4) Where a person continues in employment in the Law Society or, as the case may be, the civil service of the State either—
- (a) not having unreasonably refused an offer made to him in pursuance of this paragraph, or
 - (b) having been placed in a suitable alternative position as mentioned in sub-paragraph (3) above,
- he shall be treated for all purposes as if the offer mentioned in paragraph 9(1) above had not been made.

Textual Amendments

- F2** Words in [Sch. 1 para. 10\(1\)](#) substituted (22.8.1996) by [1996 c. 18, ss. 240, 243, Sch. 1 para.30](#) (with [ss. 191-195, 202](#))
- F3** Words in [Sch. 1 para. 10\(2\)\(a\)](#) repealed (22.8.1996) by [1996 c. 18, ss. 242, 243, Sch. 3 Pt.I](#) (with [ss. 191-195, 202](#))

Marginal Citations

- M2** [1967 c. 43.](#)
- M3** [1972 c. 11.](#)

- 11 (1) Any dispute as to whether an offer under sub-paragraph (1) of paragraph 9 above complies with sub-paragraph (2) of that paragraph shall be referred to and be determined by an industrial tribunal.
- (2) An industrial tribunal shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.
- (3) Subject to sub-paragraph (4) below there shall be no appeal from the decision of an industrial tribunal under this paragraph.
- (4) An appeal to the Employment Appeal Tribunal may be made only on a question of law arising from the decision of, or in proceedings before, an industrial tribunal under this paragraph.

Proceedings

- 12 (1) Subject to anything in regulations made by the Secretary of State under this Act, the Board may regulate its own proceedings.

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- (2) The Board may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of specified functions.
- (3) Committees may be appointed and may be dissolved by the Board, and may include, or consist entirely of, persons who are not members of the Board.
- (4) A committee shall act in accordance with such directions as the Board may from time to time give, and the Board may provide for anything done by a committee to have effect as if it had been done by the Board.
- (5) The validity of any proceedings of the Board or of any committee appointed by the Board shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

Allowances

- 13 The Board may pay to each of its members and the members of any committee such reasonable allowances in respect of expenses or loss of remuneration as the Secretary of State may, with the approval of the Treasury, determine.

Instruments

- F4 14

Textual Amendments

- F4** Sch. 1 para. 14 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), Sch.5 (with ss. 9(3)(5)(7), 13, 14(3))

Board not dominus litis

- 15 Nothing done by the Board for the purpose of securing that legal aid or advice and assistance is available to any person in connection with any proceedings shall render it liable to be held to be *dominus litis* in relation to the proceedings.

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