

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) Notwithstanding sub-paragraph (2)(c) above, all lands and heritages occupied by the Board shall, for the purposes of the Lands Valuation (Scotland) Act 1854, the Acts amending that Act and any other enactment relating to valuation of lands and heritages, be treated as if they were occupied by or on behalf of the Crown for the purposes of the Crown.

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 ;
 - (b) he is unable to carry out his duties as a Board member by reason of physical or mental illness ;

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- (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—
- (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

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- (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 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.
- 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 the Employment Protection (Consolidation) Act 1978, 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,Part VI of the Employment Protection (Consolidation) Act 1978 shall not apply to him and he shall not be treated for the purposes of any scheme under section 12 of the 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 purposes of any scheme under section 1 of the 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.

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- (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.
- 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.
- (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

- 14 (1) The fixing of the seal of the Board shall be authenticated by the Chairman or another member of the Board and by some other person authorised either generally or specially by the Board to act for that purpose.
- (2) A document purporting to be duly executed under the seal of the Board, or to be signed on the Board's behalf, shall be received in evidence and, unless the contrary is proved, be deemed to be so executed or signed.

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.

SCHEDULE 2

Section 13.

PART I

COURTS IN WHICH CIVIL LEGAL AID IS AVAILABLE

- 1 Civil legal aid shall be available in relation to civil proceedings in—
the House of Lords, in appeals from the Court of Session ;
the Court of Session ;
the Lands Valuation Appeal Court;
the Scottish Land Court;
the sheriff court,
and in relation to proceedings—
before any person to whom a case is referred in whole or in part by a court mentioned above ;
in the Restrictive Practices Court under Part III of the Fair Trading Act 1973 (including any proceedings in that court in consequence of an offer made or undertaking given to the court under that Part of that Act);
in the Lands Tribunal for Scotland ;
in the Employment Appeal Tribunal.
- 2 For the purposes of section 13 of this Act, proceedings in the European Court of Justice on a reference, under Article 177 of the EEC Treaty, made by a court mentioned in paragraph 1 above are part of the proceedings in the court making the reference.

PART II

EXCEPTED PROCEEDINGS

- 1 Subject to paragraph 2 below, civil legal aid shall not be available in proceedings which are wholly or partly concerned with defamation or verbal injury.

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- 2 The making of a counterclaim for defamation or verbal injury in any proceedings shall not of itself affect the availability of legal aid to the other party, and legal aid may be granted for the purposes of defending such a counterclaim.
- 3 Civil legal aid shall not be available in relation to—
 election petitions under the Representation of the People Act 1983 ;
 simplified divorce applications under the rules of procedure of the Court of Session or the sheriff court.

SCHEDULE 3

Section 45.

MINOR AND CONSEQUENTIAL AMENDMENTS

The Maintenance Orders {Reciprocal Enforcement} Act 1972 (c.18)

- 1 (1) In section 31(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 for the words from " secretary " where it first occurs to " taking " there shall be substituted the words: —
- “Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the sheriff court within the jurisdiction of which that other person resides or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purposes of enabling the solicitor to take”.
- (2) In section 32 of that Act—
- (a) after subsection (7) there shall be inserted the following subsections—
- “(7A) The Secretary of State on receiving notice under subsection (6) above shall send a copy of the registered order and of the related documents to the Secretary of the Law Society of Scotland who shall send the copy of the order and of the related documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate for the purpose of enabling the solicitor to take, on behalf of the person entitled to the payments for which the order provides, such steps as appear to the solicitor appropriate to enforce the order.
- “(7B) Where an order is registered in the sheriff court by virtue of subsection (3) above, any provision of the order by virtue of which the payments for which the order provides are required to be made through or to any officer or person on behalf of the person entitled thereto shall be of no effect so long as the order is so registered.”;
- (b) subsection (9)(e) of that section shall be omitted.
- (3) In section 34(5) of that Act, for paragraph (b) there shall be substituted the following paragraph—
- “(b) for subsection (3) there shall be substituted the following subsection—
- “(3) Where the Secretary of State receives from the appropriate authority in a convention country an application by a person

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in that country for the variation of a registered order, he shall, if the registering court is a sheriff court, send the application, together with any documents accompanying it, to the Secretary of the Law Society of Scotland who shall send the application and any accompanying documents to a solicitor practising in the registering court or to such other solicitor practising in Scotland as appears to the Secretary to be appropriate, for the purpose of enabling the solicitor to take on behalf of the applicant such steps as appear to the solicitor appropriate in respect of the application.”.”.

- 2 (1) Section 43A of that Act shall be amended as follows.
 - (2) In subsection (1) for the words " section 2(1) and (6)(c), 3 and 4 of the Legal Aid (Scotland) Act 1967 " there shall be substituted the words " sections 15 and 17 of the Legal Aid (Scotland) Act 1986 ".
 - (3) In subsection (2) for the words " sections 2(1) and (6)(c), 3 and 4 of the said Act of 1967 ", there shall be substituted the words " sections 15 and 17 of the said Act of 1986 ".
 - (4) In subsection (3) for the words from " legal advice " to " said Act of 1972)", where they second occur, there shall be substituted the words " advice and assistance under the said Act of 1986, shall, notwithstanding any financial conditions or requirements to make contributions imposed by sections 8 and 11 of that Act,".

The House of Commons Disqualification Act 1975 (c.24)

- 3 In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Chairman of the Scottish Legal Aid Board”.

The Northern Ireland Assembly Disqualification Act 1975 (c.25)

- 4 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Chairman of the Scottish Legal Aid Board”.

The Sex Discrimination Act 1975 (c. 65)

- 5 In section 75(4) of the Sex Discrimination Act 1975 for the words " the Legal Aid and Advice (Scotland) Acts 1967 and 1972 " there shall be substituted the words " the Legal Aid (Scotland) Act 1986 ".

The Race Relations Act 1976 (c.74)

- 6 In section 66(6) of the Race Relations Act 1976 for the words " the Legal Aid and Advice (Scotland) Acts 1967 and 1972 " there shall be substituted the words " the Legal Aid (Scotland) Act 1986 ".

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The Solicitors (Scotland) Act 1980 (c.46)

- 7 In section 35(4) of the Solicitors (Scotland) Act 1980 for paragraph (b) there shall be substituted—
- “(b) who is in employment to which Part V of the Legal Aid (Scotland) Act 1986 applies ;”.
- 8 (1) Section 51 of that Act shall be amended as follows.
- (2) In subsection (2) after the word " client" there shall be inserted the words " or against the Scottish Legal Aid Fund ".
- (3) In subsection (3) after paragraph (d) there shall be inserted the following paragraph—
- “(e) the Scottish Legal Aid Board.”.

The Tenants' Rights, Etc. (Scotland) Act 1980 (c.52)

- 9 In section 9B(4) of the Tenants' Rights, Etc. (Scotland) Act 1980 for the words " Legal Aid and Advice (Scotland) Acts 1967 and 1972 and to any provision of those Acts for payment of any sum into the legal aid fund" there shall be substituted the words " Legal Aid (Scotland) Act 1986 and to any provision of that Act for payment of any sum into the Scottish Legal Aid Fund ".

SCHEDULE 4

Section 45.

TRANSITIONAL PROVISIONS AND SAVINGS

The Legal Aid (Scotland) Fund

- 1 (1) On the appointed day the Legal Aid (Scotland) Fund (" the Old Fund ") established under section 9 of the Legal Aid (Scotland) Act 1967 (" the 1967 Act") shall be wound up.
- (2) If, as at the appointed day, after taking account of all receipts and expenses of the Law Society attributable to the 1967 Act or to their functions under the Legal Advice and Assistance Act 1972 (" the 1972 Act"), there is in relation to the Old Fund any surplus or deficit—
- (a) such surplus shall be paid by the Law Society to the Secretary of State ; and
- (b) such deficit shall be made up by payment to the Law Society by the Secretary of State of the amount of the deficit.
- (3) Notwithstanding their repeal by this Act—
- (a) sections 8(10) and (11) and 11 of the 1967 Act shall continue to have effect for the purposes of requiring the Law Society to account for the Old Fund and to report on its discharge of its functions under that Act up to the appointed day ; and
- (b) section 9 (5) of that Act shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society,
- and, if the appointed day falls on a day which is not the last day of the financial year (for the purposes of the said section 11), references in those sections to the financial year shall be construed as references to the period commencing on the day

immediately following the end of the last complete financial year and ending with the appointed day.

Rights, obligations and property

- 2 Subject to paragraph 1 above, on the appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1967 Act or under the 1972 Act shall become rights, obligations and property of the Board.

Legal aid and advice and assistance

- 3 (1) Nothing in this Act shall affect any legal aid under the 1967 Act or advice and assistance under the 1972 Act in respect of which an application has been determined before the appointed day ; and, notwithstanding the repeal by this Act of these Acts, they and any schemes, regulations, orders or rules of court made under them shall continue to have effect for the purposes of such legal aid or advice and assistance.
- (2) For the purposes of -sub-paragraph (1) above, where the 1967 Act or the 1972 Act or any such scheme, regulation, order or rule of court—
- (a) requires or enables anything to be done by the Law Society or any of its committees or by any person on its behalf; or
 - (b) requires or enables the person in receipt of such legal aid or advice and assistance to do anything in relation to the Law Society,
- that thing shall, on and after the appointed day, be required or, as the case may be, enabled to be done by or in relation to the Board.
- (3) Any payments which are required to be made into or out of the Old Fund in connection with such legal aid or advice and assistance shall, on and after the appointed day, be made into or out of the Fund ; and for the purposes of this sub-paragraph, any reference in the 1967 Act or the 1972 Act to the Old Fund shall be construed as a reference to the Fund.
- 4 (1) Any application for legal aid duly made under the 1967 Act or for advice and assistance duly made under the 1972 Act which has been made, but not determined, before the appointed day shall be treated as an application duly made under this Act.
- (2) For the purposes of this paragraph and paragraph 3 above an application for legal aid is determined—
- (a) in the case of legal aid in connection with—
 - (i) civil proceedings (including an appeal in such proceedings) ;
 - (ii) an appeal in criminal proceedings ; or
 - (iii) an appeal against the decision of the sheriff under Part III of the Social Work (Scotland) Act 1968, when a legal aid certificate is issued or refused ;
 - (b) in the case of legal aid in connection with—
 - (i) criminal proceedings ; or
 - (ii) proceedings before the sheriff under Part III of the Social Work (Scotland) Act 1968,when the court grants or refuses legal aid.
- (3) For the purposes of this paragraph and paragraph 3 above an application for advice and assistance is determined when the solicitor to whom the application is made

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agrees or, as the case may be, refuses to accept the application and to provide advice and assistance.

Pensions

- 5 Any arrangements made by the Law Society under section 12 of the 1967 Act in respect of any person shall be treated on and after the appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 8 (3) of Schedule 1 to this Act, and any pension scheme administered by the Law Society immediately before the appointed day shall be deemed to be a pension scheme established and administered by the Board under that paragraph and shall continue to be administered accordingly.

General

- 6 (1) In this Schedule "the appointed day" means the day appointed by the Secretary of State under section 46(2) of this Act for the coming into force of section 4 thereof.
- (2) Subject to sub-paragraph (1) above, expressions used in this Schedule and in the 1967 Act or, as the case may be, in the 1972 Act shall have the same meaning in this Schedule as they do in that Act

SCHEDULE 5

Section 45.

REPEALS

<i>Chapter</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
1967 c. 43.	The Legal Aid (Scotland) Act 1967.	The whole Act.
1968 c. 49.	The Social Work (Scotland) Act 1968.	Section 53. Schedule 4.
1972 c. 11.	The Superannuation Act 1972.	Section 18(2).
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 32(9)(e).
1972 c. 50.	The Legal Advice and Assistance Act 1972.	The whole Act.
1973 c. 41.	The Fair Trading Act 1973.	In section 43(1), paragraph (b). Section 43(2).
1975 c. 20.	The District Courts (Scotland) Act 1975.	Section 21.
1977 c. 38.	The Administration of Justice Act 1977.	Section 1(2). In Schedule 1, Part II.

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<i>Chapter</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
1979 c. 26.	The Legal Aid Act 1979.	Part II. Section 12(2). In section 14(2), the words " and may be cited together with the Act of 1967 and the Act of 1972 as the Legal Aid and Advice (Scotland) Acts 1967 to 1979." Section 14(3)(b). In section 14(4), the words ", or as the case may be the Secretary of State " Section 14(5)(b). In Schedule 1, paragraphs 1 to 8.
1980 c. 30.	The Social Security Act 1980.	In Schedule 4, paragraph 4.
1980 c. 55.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980.	Section 26.
1980 c. 62.	The Criminal Justice (Scotland) Act 1980.	Section 10(4).
1981 c. 49.	The Contempt of Court Act 1981.	Section 13(4). In Schedule 2, Part II.
1982 c. 27.	The Civil Jurisdiction and Judgments Act 1982.	Section 40(2).
1983 c. 12.	The Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983.	Section 3. In the Schedule, paragraph 11 and paragraphs 14 to 17.