

SCHEDULES

SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS

Legal Aid (Scotland) Act 1986 (c. 47)

- 63 (1) The Legal Aid (Scotland) Act 1986 shall be amended as follows.
- (2) In subsection (4) of section 21, for the words “section 462 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “section 307 of the Criminal Procedure (Scotland) Act 1995”.
- (3) In subsection (1) of section 22 (circumstances in which criminal legal aid automatically available), after paragraph (d) there shall be inserted the following paragraphs—
- “(da) in relation to any proceedings under solemn or summary procedure whereby the court determines (whether or not on a plea by the accused person) whether he is insane so that his trial cannot proceed or continue;
 - (db) in relation to an examination of facts held under section 55 of the Criminal Procedure (Scotland) Act 1995 and the disposal of the case following such examination of facts;
 - (dc) in relation to any appeal under section 62 or 63 (appeal by, respectively, accused or prosecutor in case involving insanity) of that Act of 1995;”
- (4) In subsection (2) of section 23, for the words from “section 41(2)(b)” to the end there shall be substituted the words “section 204(4)(b) of the Criminal Procedure (Scotland) Act 1995”.
- (5) In subsection (1) of section 25 (legal aid in criminal appeals)—
- (a) after the word “sentence” there shall be inserted the words “, other disposal”; and
 - (b) at the end there shall be inserted the words “other than an appeal in relation to which section 22(1)(dc) of this Act applies”.
- (6) In subsection (2) of that section—
- (a) in paragraph (a) after the word “below,” there shall be inserted the words “the Board is satisfied”; and
 - (b) for paragraph (b) and the preceding “and” there shall be substituted the following paragraphs—
 - “(b) in the case of an appeal under section 106(1) or 175(2) of the Criminal Procedure (Scotland) Act 1995, leave to appeal is granted; and
 - (c) in the case of an appeal under any other provision of that Act, where the applicant is the appellant, the Board is

Status: This is the original version (as it was originally enacted).

satisfied that in all the circumstances of the case it is in the interests of justice that the applicant should receive criminal legal aid.”

(7) After the said subsection (2) there shall be inserted the following subsection—

“(2A) Where the Board has refused an application for criminal legal aid on the ground that it is not satisfied as mentioned in subsection (2)(c) above the High Court may, at any time prior to the disposal of an appeal, whether or not on application made to it, notwithstanding such refusal determine that it is in the interests of justice that the applicant should receive criminal legal aid in connection with the appeal, and the Board shall forthwith make such legal aid available to him.”

(8) For subsection (5) there shall be substituted the following subsections—

“(5) Subsections (2)(a), (3) and (4) above shall apply to an application for criminal legal aid in connection with consideration under section 107, 180 or 187 of the Criminal Procedure (Scotland) Act 1995 whether to grant leave to appeal as if—

- (a) in subsection (2)(a), for the words “of the appeal” there were substituted the words “in connection with consideration whether to grant leave to appeal”; and
- (b) in subsection (4), after the word “is” there were inserted the words “subject to leave being granted,

(6) Subsections (2)(a) and (c) and (2A) to (4) above shall apply to an application for criminal legal aid in connection with a petition to the *nobile officium* of the High Court of Justiciary (whether arising in the course of any proceedings or otherwise) as they apply for the purposes of subsection (1) above.

(7) Subsections (2)(a), (3) and (4) above shall apply to an application for criminal legal aid in connection with a reference by the Secretary of State under section 124 of the Criminal Procedure (Scotland) Act 1995 as they apply for the purposes of subsection (1) above.”

(9) In subsection (3) of section 30 (application of section 25 to legal aid in contempt proceedings),—

- (a) before the words “Section 25” there shall be inserted the words “Subsections (2)(a) and (c), (2A) to (4) and (6) of”;
- (b) for the words “it applies” there shall be substituted the words “they apply”;
- (c) after the word “sentence” there shall be substituted the words “, other disposal”;
- (d) after the word “application” there shall be inserted the following paragraph—
 - “(za) in subsection (2a) of that section, the reference to the High Court shall include a reference to the Court of Session;”;
- (e) in paragraph (b) for the word “(5)” there shall be substituted the word “(6)”.

(10) In subsection (2) of section 35, for the words “section 331 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “section 136 of the Criminal Procedure (Scotland) Act 1995”.