

Legal Aid (Scotland) Act 1967

1967 CHAPTER 43

An Act to consolidate certain enactments relating to legal aid and advice in Scotland and connected matters.

[14th July 1967]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Legal Aid

Scope and general conditions of legal aid.

1.—(1) This and the three next following sections provide for, and (save as hereinafter mentioned) relate only to, legal aid in connection with proceedings before courts and tribunals in Scotland and before the House of Lords on appeal from the Court of Session.

(2) Unless and until regulations otherwise provide, the proceedings in connection with which legal aid may be given are any proceedings of a description mentioned in Part I of Schedule 1 to this Act, except proceedings mentioned in Part II of that Schedule.

(3) Subject to the provisions of this section, the proceedings in connection with which legal aid may be given may be varied by regulations, and the regulations may describe the proceedings to be included or excluded by reference to the court or tribunal, to the issues involved, to the capacity in which the person requiring legal aid is concerned, or otherwise.

(4) Regulations made for the purpose of the last foregoing subsection shall not provide for legal aid being given in connection with proceedings before any court or tribunal before which persons have no right and are not normally allowed to be heard by counsel or a solicitor.

(5) Legal aid shall consist of representation, on the terms provided for by this Act, by a solicitor and so far as necessary by counsel (including all such assistance as is usually given by solicitor or counsel in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a settlement to prevent or bring to an end any proceedings).

(6) A person shall not be given legal aid in connection with any civil proceedings unless he shows that he has a *probabilis causa litigandi*, and may also be refused legal aid in any such proceedings as aforesaid if it appears unreasonable that he should receive it in the particular circumstances of the case.

(7) In criminal proceedings, a person shall not be given legal aid in connection with—

(*a*) summary proceedings unless—

(i) he is entitled to receive such aid by virtue of subsection (5)(*b*) of the next following section, or

(ii) the court considers that in all the circumstances of the case it is in the interests of justice that legal aid should be available to the accused and grants a legal aid certificate;

(*b*) proceedings by way of appeal against conviction or sentence (whether in summary proceedings or in proceedings on indictment) unless it appears that he has substantial grounds for taking those proceedings, and that it is reasonable that he should receive legal aid in the particular circumstances of the case.

(8) Save as expressly provided by or under this Act, the fact that the services of counsel or a solicitor are given by way of legal aid shall not affect the relationship between or the rights of counsel, solicitor and client.

Financial conditions of legal aid.

2.—(1) Subject to the provisions of this Act, legal aid in connection with civil proceedings shall be available for any person whose disposable income does not exceed seven hundred pounds a year or such larger yearly figure as may be prescribed:

Provided that a person may be refused legal aid if he has a disposable capital of more than five hundred pounds or such larger figure as may be prescribed and it appears that he can afford to proceed without legal aid.

(2) Subject to the provisions of this Act, legal aid in connection with criminal proceedings shall be available to an accused person where the court is satisfied after consideration of his financial circumstances that he is unable without undue hardship to himself or his dependants to meet the expenses of the case.

(3) In the last foregoing subsection "court" means—

(*a*) in relation to summary proceedings the court before which the proceedings are being taken;

(*b*) in relation to proceedings on indictment, the sheriff before whom the accused is taken for judicial examination;

(*c*) in relation to an appeal by way of stated case from a court of summary jurisdiction, that court;

(*d*) in relation to any other form of appeal, the court to which the appeal is made.

(4) Where—

(*a*) in any case the court mentioned in paragraph (*a*) or paragraph (*b*) of the last foregoing subsection has made legal aid available to an accused person in pursuance of this section, that person shall continue to be regarded as financially eligible for legal aid in connection with any subsequent proceedings (including proceedings by way of appeal) arising from the case;

(*b*) legal aid has not been made available to an accused person and his case comes before the High Court of Justiciary, legal aid shall be available to him if that court is satisfied of his financial eligibility as aforesaid.

(5) Notwithstanding the provisions of subsection (2) of this section, legal aid shall be available in connection with criminal proceedings to an accused person without inquiry into his resources—

(*a*) where his case is being prosecuted under solemn procedure, and where no determination as to his eligibility for legal aid has been made for the purposes of that subsection, until, after being brought before the court for examination on declaration, he is admitted to bail or committed until liberated in due course of law; or

(*b*) where he is in custody and is being prosecuted summarily before the sheriff or in a juvenile court constituted in pursuance of section 51 of the Children and Young Persons (Scotland) Act 1937, until the conclusion of the first diet at which he is called upon to plead and of any application for liberation which may follow thereon or, where he has pleaded guilty at that diet, until the conclusion of the last subsequent diet fixed for the disposal of his case. 1937 c. 37.

(6) Where a person receives legal aid in connection with any proceedings—

(*a*) the expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the solicitor acting for him, shall be so paid;

(*b*) his solicitor and counsel shall not take any payment in respect of the legal aid except such payment as is directed by this Act to be made out of the legal aid fund;

(*c*) he may be required to make a contribution in accordance with the next two following sections to the legal aid fund in respect of the sums payable thereout on his account in connection with any civil proceedings;

(*d*) any sums recovered by virtue of an award of expenses or of an agreement as to expenses in his favour with respect to the proceedings shall be paid to the legal aid fund;

(*e*) his liability by virtue of an award of expenses against him with respect to the proceedings shall not exceed the amount (if any) which in the opinion of the court or tribunal making the award is a reasonable one for him to pay having regard to all the circumstances, including the means and the conduct in connection with the dispute of all parties.

(7) It shall be competent, at any time within such period as may be prescribed after the making of such an award of expenses as is mentioned in paragraph (*e*) of the last foregoing subsection, for any party concerned in such award to apply to the court or tribunal by which the award was made for a re-assessment of the amount of the award on the ground that since the award was made there has been a relevant change of circumstances, and on such application the court or tribunal may re-assess the amount of the award as seems to them proper.

(8) For the purposes of any inquiry under this section as to the means of a person who has been found liable in expenses, his dwelling-house, wearing apparel and household furniture and the tools and implements of his trade or profession shall be left out of account except to such extent as may be prescribed, and except as aforesaid, shall not, in any part of the United Kingdom, be subject to diligence or any corresponding process in execution of the award.

Contributions from assisted persons and payments out of property recovered.

3.—(1) A person's contribution to the legal aid fund in respect of any proceedings may include—

(*a*) a contribution in respect of income not greater than one-third of the amount (if any) by which his disposable income exceeds two hundred and fifty pounds a year or such larger yearly figure as may be prescribed; and

(*b*) a contribution in respect of capital not greater than the amount (if any) by which his disposable capital exceeds one hundred and twenty-five pounds or such larger figure as may be prescribed.

(2) A person may be required to make any contribution to the legal aid fund in one sum or by instalments.

(3) If the total contribution to the legal aid fund made by a person in respect of any proceedings is more than the net liability of that fund on his account, the excess shall be repaid to him.

(4) Except so far as regulations otherwise provide, any sums remaining unpaid on account of a person's contribution to the legal aid fund in respect of any proceedings and, if the total contribution is less than the net liability of that fund on his account, a sum equal to the deficiency shall be paid, in priority to any other debts, out of any property (wherever situate) which is recovered or preserved for him in the proceedings.

(5) The reference in the last foregoing subsection to property recovered or preserved for any person shall include his rights under any settlement arrived at to prevent or bring to an end the proceedings and any sums recovered by virtue of an award of expenses made in his favour in the proceedings (not being sums payable into the legal aid fund under the last foregoing section).

(6) Nothing in subsection (4) of this section shall prevent a court allowing any damages or expenses to be set off against other damages or expenses.

(7) References in this section to the net liability of the legal aid fund on any person's account in relation to any proceedings refer to the aggregate amount of the sums paid or payable out of that fund on his account in respect of those proceedings to any solicitor and not recouped to that fund by sums which are recovered by virtue of an award of expenses or of an agreement as to expenses in his favour with respect to those proceedings.

Assessment of disposable capital and income and of maximum contribution.

4.—(1) References in this Act to a person's disposable income or disposable capital shall be taken as referring to the rate of his income or the amount of his capital after making—

(*a*) such deductions as may be prescribed in respect of the maintenance of dependants, interest on loans, income tax, rates, rent and other matters for which the person in question must or reasonably may provide; and

(*b*) such further allowances as may be prescribed to take account of the nature of his resources.

(2) Regulations may make provision as to the manner in which the rate of a person's income and the amount of his capital are to be computed for the purposes of the foregoing subsection, and in particular for determining whether any resources are to be treated as income or capital and for taking into account fluctuations of income.

(3) The regulations shall include provision for securing that the resources of a person seeking or receiving legal aid shall be treated as not including the subject matter of the dispute.

(4) Except in so far as the regulations otherwise provide, any resources of a person's wife or husband shall be treated for the purposes of this section as that person's resources, and the regulations may also make provision, in relation to minors and pupils and other special cases, for taking into account the resources of other persons.

(5) The regulations shall also include provision for securing that in computing resources there shall be observed the rules set out in paragraphs 19, 20, 24 and 25 of Schedule 2 to the Ministry of Social Security Act 1966, except that regulations may provide that the references in the said paragraph 19 to borrowing money shall not apply in any prescribed circumstances.

1966 c. 20.

(6) Subject to the provisions of this section, a person's disposable income and disposable capital, and the maximum amount of his contribution to the legal aid fund in respect of any proceedings, shall be determined by the Supplementary Benefits Commission, and the Commission may call attention to any special circumstances affecting the maximum amount of the lump sum and periodical payments which he could reasonably make on account of any contribution.

(7) Regulations for the purposes of this section shall be made with the concurrence of the Treasury.

Legal aid in matters not involving litigation.

5.—(1) This section provides for, and (except for subsection (6)) relates only to, legal aid in taking steps to assert or dispute a claim where—

(*a*) the question of taking, defending or being a party to proceedings before a court or tribunal does not arise or has not yet arisen; but

(*b*) if it did arise, the proceedings would, or might properly, be such that legal aid could be given in connection therewith under section 1 of this Act.

(2) Legal aid under this section shall consist of the assistance of a solicitor on the terms provided for by this section, and (save as expressly provided by or under this Act) the fact that the assistance is given by way of legal aid shall not affect the relationship between or rights of solicitor and client.

(3) A person shall not be given legal aid under this section unless he shows that he has reasonable grounds for taking steps to assert or dispute the claim, and may also be refused such aid if it appears unreasonable that he should receive it in the particular circumstances of the case.

(4) Subject to the provisions of this section, sections 2, 3 and 4 of this Act shall apply for the purposes of this section with the necessary modifications of references to proceedings or to the subject matter of the dispute and with the following omissions, that is to say—

(*a*) so much of sections 2 and 3 as relates to awards of expenses,

(*b*) in section 4, subsections (5) and (6).

(5) Unless and until regulations otherwise provide, legal aid shall not be available under this section for any person whose disposable income or disposable capital is enough to permit under section 3(1) of this Act of his making a contribution to the legal aid fund in respect of legal aid to which that subsection relates; and provision may be made by regulations for restricting the nature and extent of the assistance which may be given by way of legal aid under this section.

(6) Where a person receives legal aid under this section in any matter and, on that matter giving rise or appearing likely to give rise to proceedings, he is given legal aid also in connection with those proceedings, then, except in so far as regulations otherwise provide, section 3 of this Act shall apply as if all the legal aid had been received in connection with the proceedings.

Solicitors and counsel.

6.—(1) Lists of solicitors and advocates willing to act for persons receiving legal aid shall be prepared and maintained, and there may be separate lists for different purposes, for different courts and for different districts.

(2) Any practising solicitor or advocate shall be entitled to have his name on the appropriate lists or any of them, unless the Law Society, in the case of a solicitor, or the Faculty of Advocates, in the case of an advocate, determine that there is good reason for excluding him arising out of his conduct when acting or selected to act for persons receiving legal aid or his professional conduct generally, or, in the case of a member of a firm of solicitors, out of that of any person who is for the time being a member of the firm;

Provided that any solicitor or advocate may appeal to the Court of Session against his exclusion from any list, and on such appeal the Court may make such order in the matter as it thinks fit.

(3) Where a person is entitled to receive legal aid, the solicitor to act for him and, if the case requires counsel, his counsel, shall be selected from the appropriate list, and he shall be entitled to make the selection himself:

Provided that—

(*a*) where in pursuance of arrangements made by the Law Society in accordance with any scheme for the time being in force under section 8 of this Act a solicitor is available in any court for the special purpose of giving legal aid in connection with criminal proceedings in that court, the scheme may specify proceedings in which an accused person shall not be entitled to legal aid in that court otherwise than by representation by that solicitor; and

(*b*) this subsection shall not prejudice the right of solicitor or counsel, where he has good reason, to refuse or give up a case or to entrust it to another.

(4) Subject to the provisions of this Act, a solicitor who has acted for a person receiving legal aid shall be paid for so acting out of the legal aid fund, and any fees due to counsel for so acting shall be paid to the solicitor instructing him out of that fund.

(5) Where, on an application for legal aid under section 1 of this Act in connection with any proceedings, the appropriate authority decide that the applicant is (subject to the issue and acceptance of a legal aid certificate) entitled to legal aid for the purpose of those proceedings, any solicitor who has acted for the applicant in preparing and submitting the application shall, for the purposes of the last foregoing subsection, be deemed, when so acting, to have been acting for a person receiving legal aid, notwithstanding that a legal aid certificate is not issued and accepted.

(6) No payment shall be made out of the legal aid fund by virtue of the last foregoing subsection in respect of any act in respect of which payment out of that fund has been, or could be, made by virtue of any provision of this Act other than subsection (4) of this section.

(7) The sums payable to a solicitor or counsel for acting for a person receiving legal aid shall not exceed those allowed under Schedule 2 to this Act.

(8) In the foregoing provisions of this section, references to acting for a person receiving legal aid shall, in relation to a solicitor, include references to acting for such a person on the instructions of another solicitor.

(9) Subsection (7) of this section shall not affect the sums recoverable by virtue of an award of expenses in favour of a person who has received legal aid or of an agreement as to expenses in favour of such a person which provides for taxation; and for the purposes of any such award or agreement, the solicitor who acted for the person in whose favour it is made shall be treated as having paid any counsel's fees.

(10) In this section " the appropriate authority ", in relation to any application for legal aid, means any committee or other body having jurisdiction to entertain the application (whether directly or on appeal) under any scheme having effect by virtue of section 8 of this Act.

Legal advice

Right to and nature of legal advice.

7.—(1) Subject to the provisions of this Act, legal advice shall be available in Scotland for any person.

(2) Legal advice shall consist of oral advice on legal questions given by a solicitor in accordance with the scheme made under section 8 of this Act and shall include help in preparing an application for legal aid and in supplying information required in connection therewith for determining disposable income and capital, but (subject to the following provisions of this section) shall not include advice on any law other than Scots law.

(3) Lists of solicitors willing to give legal advice shall be prepared and maintained, and there may be different lists for different districts; and the provisions of subsections (2) to (4) and subsection (7) of the last foregoing section shall, subject to the necessary modifications, apply for the purposes of this section.

(4) In the case of a member of the forces, legal advice shall include advice on the law—

(*a*) of any part of the United Kingdom; and

(*b*) where regulations so provide, of any other country or territory in which he has been resident whether in the course of his service or not.

(5) In the case of a person who has been a member of the forces at any time on or after 30th July 1949, the last foregoing subsection shall apply so as to authorise the giving of advice on matters arising in the course of his service furth of Scotland as it applies in the case of a person who is a member of the forces.

(6) If provision corresponding to the provisions of this Act is made for England, legal advice shall, in the case of any person, include—

(*a*) help for the purposes of that provision corresponding to the help mentioned in subsection (2) of this section; and

(*b*) where regulations so provide, advice on the law of England.

(7) If provision corresponding to the provisions of this Act is made for Northern Ireland, the last foregoing subsection shall apply in relation to Northern Ireland as it applies in relation to England.

(8) Provision may be made by regulations for further defining or restricting the questions (whether of Scots or any other law) on which legal advice may be given.

(9) A person seeking legal advice may be required—

(*a*) to satisfy such person as may be designated for the purpose under the scheme made under section 8 of this Act that he cannot afford to obtain it in the ordinary way; and

(*b*) to pay a fee of half a crown or such other fee as may be prescribed for each interview.

(10) Any fees paid under this section shall be paid into the legal aid fund.

(11) A person seeking legal advice shall have the same privilege for communications made for that purpose to the person giving it, and the same remedies against that person for any negligence, as if he had been consulting him as his solicitor in the ordinary way.

(12) The limitation of legal advice to oral advice shall not prevent the person giving it, where he thinks the person seeking it will need a written note of the advice given or any part of it, from giving him such a note.

Administration and finance

Functions of Law Society.

8.—(1) Subject to the provisions of this Act, it shall be the responsibility of the Law Society to make arrangements, in accordance with a scheme made by them with the approval of the Secretary of State and with the concurrence of the Treasury,

for securing that legal aid and legal advice are available as required by this Act and generally to administer this Act.

(2) Any scheme made as aforesaid may be varied or revoked by a subsequent scheme so made.

(3) For the purpose of making or varying any such scheme as aforesaid the Law Society shall appoint a committee consisting of members of the Law Society and of persons nominated by the Faculty of Advocates.

(4) Any scheme under this section shall provide for the establishment for the purpose of administering the scheme of a central committee consisting of members of the Law Society and of the Faculty of Advocates, and for the inclusion in such a committee, to an extent not exceeding one-third of the total membership thereof, of persons who are not members of the Law Society or of the Faculty of Advocates.

(5) Any scheme under this section shall also provide for the establishment of such local committees as may be specified in the scheme.

(6) Any scheme under this section shall define the constitution of any committee established as aforesaid, may regulate its quorum and procedure and the tenure of office of its members, and may provide for the payment to its members of fees and allowances; but any such committee shall have power to determine its own procedure so far as not regulated as aforesaid.

(7) Where a scheme under this section is submitted to the Secretary of State for his approval, any member of the committee who was present when the scheme or any provision thereof was considered by the committee, and who then objected to the scheme or to that provision, may inform the Secretary of State of his objection; and the Secretary of State shall not approve a scheme, where he has been informed of an objection under this subsection, without first giving the members of the committee an opportunity to make representations about the matter in dispute.

(8) Subject to the provisions of this Act, a scheme under this section may include provisions as to the persons by whom and the manner in which questions arising in the administration of this Act are to be determined and as to any other matters incidental to the administration thereof.

(9) Nothing done by the Law Society in securing in accordance with this Act that legal aid is available to any person in connection with any proceedings shall render them liable to be held to be *dominus litis* in relation to those proceedings.

(10) The Law Society shall, as soon as possible after the end of each financial year, make a report to the Secretary of State on the operation of this Act during that year.

(11) A copy of such report shall be laid before Parliament by the Secretary of State.

Legal Aid (Scotland) Fund.

9.—(1) The functions of the Law Society under this Act shall include the administration of the Legal Aid (Scotland) Fund (in this Act referred to as " the legal aid fund ").

(2) All receipts and expenses of the Law Society attributable to this Act shall be paid into and out of the legal aid fund, and the general funds of the Law Society shall be indemnified thereout against any liability in respect of those expenses.

(3) The said expenses shall include—

(*a*) any fees and allowances payable to members of a committee by virtue of the last foregoing section;

(*b*) a proper proportion of any expenses incurred partly in connection with functions under this Act and partly for other purposes;

(*c*) such sums as may be proper for the use wholly or partly in connection with those functions of property acquired for other purposes.

(4) The said receipts shall include such sums as may be proper for the use by the Law Society otherwise than in connection with their functions under this Act of property acquired at the expense of the legal aid fund.

(5) The proper proportion of any expenses, or the proper sum, for the purpose of any question arising under subsection (3) or subsection (4) of this section shall be determined by the Secretary of State.

(6) The sums required to meet payments out of the legal aid fund, after allowing for sums received apart from this provision, shall be paid into that fund by the Secretary of State at such times and in such manner as he may with the approval of the Treasury determine, and shall be so paid out of moneys provided by Parliament.

(7) Estimates of the sums required as aforesaid shall be submitted to the Secretary of State by the Law Society from time to time but at least once in every financial year at such time as the Secretary of State may with the approval of the Treasury direct.

(8) An estimate under the last foregoing subsection shall be in such form and shall give such particulars as may be so directed.

Explanation of references to payments.

10. For the removal of doubts it is hereby declared that any provision of this Act requiring anything to be paid into or out of the legal aid fund is not to be taken as requiring the making

of an actual payment, so as to prevent the obligation to make it being satisfied in whole or in part by an allowance in account or in any other way; and in this Act references to payments, to sums paid or payable or to receipts and similar references (whether in connection with that fund or not) shall be read accordingly.

Accounts and audit.

11.—(1) The Law Society shall keep such accounts with respect to the legal aid fund and shall prepare in respect of each financial year a statement of accounts in such form, as the Secretary of State may with the approval of the Treasury direct.

(2) The accounts shall be audited by persons to be appointed in respect of each financial year by the Secretary of State and in accordance with a scheme of audit approved by him, and the auditors shall be furnished by the Law Society with copies of the said statement and shall report to the Secretary of State on the accounts and the said statement.

(3) No person shall be qualified to be so appointed auditor unless he is a member of one or more of the following bodies:—

(*a*) the Institute of Chartered Accountants of Scotland;

(*b*) the Institute of Chartered Accountants in England and Wales;

(*c*) the Association of Certified and Corporate Accountants;

(*d*) the Institute of Chartered Accountants in Ireland.

(4) So soon as the accounts have been audited, the auditors shall send to the Secretary of State copies of the statement of accounts and of their report, and the Secretary of State shall send a copy of the statement and of the report to the Comptroller and Auditor General.

(5) The Comptroller and Auditor General shall examine every statement and report sent to him under the last foregoing subsection, and may inspect the accounts kept with respect to the legal aid fund and any records relating thereto, and shall certify every such statement and lay a copy of it together with his report thereon before Parliament.

Pension rights of employees.

12.—(1) Arrangements shall be made, in accordance with regulations, for providing pensions to or in respect of persons employed by the Law Society whole-time for the purpose of their functions under this Act.

(2) The regulations may require the arrangements to extend, with any necessary adjustments, to persons employed by the

Law Society part-time for that purpose or (whether whole-time or part-time) for that and other purposes.

(3) The arrangements may include the establishment and administration, by the Law Society or otherwise, of a pension scheme, with or without a pension fund.

(4) The regulations may direct that receipts and expenses of the Law Society attributable to their establishment and administration of a pension scheme under this section shall, notwithstanding anything in section 9 of this Act, be dealt with under the scheme instead of being paid into and out of the legal aid fund.

(5) Regulations for the purposes of this section shall be made with the concurrence of the Treasury.

Award of expenses to successful unassisted party in civil proceedings

Power to award expenses out of legal aid fund.

13.—(1) Where a party receives legal aid in connection with any civil proceedings between him and an unassisted party and those proceedings are finally decided in favour of the unassisted party, the court by which the proceedings are so decided may, subject to the provisions of this section, make an order for the payment to the unassisted party out of the legal aid fund of the whole or any part of the expenses incurred by him in those proceedings.

(2) An order may be made under this section in respect of any expenses if (and only if) the court is satisfied that it is just and equitable in all the circumstances that provision for those expenses should be made out of public funds; and before making such an order the court shall in every case (whether or not application is made in that behalf) consider what orders should be made for expenses against the party receiving legal aid and for determining his liability in respect of such expenses.

(3) Without prejudice to the last foregoing subsection, no order shall be made under this section in respect of expenses incurred in a court of first instance, whether by that court or by any appellate court, unless—

(*a*) the proceedings in the court of first instance were instituted by the party receiving legal aid; and

(*b*) the court is satisfied that the unassisted party will suffer severe financial hardship unless the order is made.

(4) An order under this section shall not be made by any court in respect of expenses incurred by the unassisted party in any proceedings in which, apart from this Act, no order would be made for the payment of his expenses.

(5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under this section, or a refusal to make such an order, except on a point of law.

(6) In this section "expenses" means expenses as between party and party; but the expenses in respect of which an order may be made under this section include the expenses of applying for that order.

Provisions supplementary to section 13.

14.—(1) For the purposes of section 13 of this Act civil proceedings shall be treated as finally decided in favour of the unassisted party—

(*a*) if no appeal lies against the decision in his favour;

(*b*) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted; or

(*c*) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal;

and where an appeal against the decision is brought out of time, the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the unassisted party to the legal aid fund of the whole or any part of any sum previously paid to him under the said section 13 in respect of those proceedings.

(2) Where a court decides any proceedings in favour of the unassisted party and an appeal lies (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under section 13 of this Act forthwith, but any order so made shall not take effect—

(*a*) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;

(*b*) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.

(3) Where a party begins to receive legal aid in connection with any civil proceedings after those proceedings have been instituted, or ceases to receive legal aid before they are finally decided, or otherwise receives legal aid in connection with part only of any proceedings, the reference in section 13(1) of this Act to the expenses incurred by the unassisted party in those proceedings shall be construed as a reference to so much of those expenses as is attributable to that part.

Supplementary

Regulations.

15.—(1) The Secretary of State may make such regulations as appear to him necessary or desirable for preventing abuses of this Act by persons seeking or receiving legal aid or advice.

(2) Regulations may make provision as to the information to be furnished by a person seeking or receiving legal aid or advice.

(3) Regulations may also modify any provision of this Act so far as appears to the Secretary of State necessary to meet the special circumstances where—

(*a*) a person seeking or receiving legal aid or advice—

(i) is not resident in Scotland; or

(ii) is concerned in a representative, fiduciary or official capacity; or

(iii) is concerned jointly with or has the same interest as other persons, whether receiving legal aid or advice or not; or

(iv) has available to him rights or facilities making it unnecessary for him to take advantage of the provisions of this Act, or has a reasonable expectation of receiving financial or other help from a body of which he is a member;

(*b*) a person seeks legal aid in a matter of special urgency;

(*c*) a person begins to receive legal aid after having consulted a solicitor in the ordinary way with respect to the same matter, or ceases to receive legal aid before the matter in question is finally settled;

(*d*) there is any relevant change of circumstances while a person is receiving legal aid.

(4) Regulations may also modify section 13(3)(*b*) of this Act in its application to an unassisted party who is concerned in proceedings only in a fiduciary, representative or official capacity.

(5) Without prejudice to the powers conferred by the foregoing provisions of this Act, regulations may make such provision (including provision modifying this Act) as appears to the Secretary of State, with the concurrence of the Treasury, to be expedient as to the application of this Act in relation to persons who have been admitted to take, defend or to be a party to any proceedings *in forma pauperis* or as poor persons, and to other persons concerned in proceedings commenced before or shortly after legal aid is made available.

(6) The power of the Secretary of State to make regulations shall be exercisable by statutory instrument.

(7) Any statutory instrument by which that power is exercised, other than one making regulations for the purposes of section 1(3), 2(1) or 3(1) of this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) Regulations made for the purposes of section 1(3) of this Act, or including any provision made by virtue of section 2(1) or 3(1) of this Act (not being a provision to the same effect as a provision revoked by the regulations) shall not come into force unless or until approved by a resolution of each House of Parliament.

Rules of Court.

16.—(1) The Court by act of adjournal or act of sederunt, as the case may be, may—

(*a*) make provision as to the proceedings which are or are not to be treated as distinct proceedings for the purposes of legal aid, and as to the apportionment of sums recovered or recoverable by virtue of any award of expenses made generally with respect to proceedings treated as distinct;

(*b*) regulate the procedure of any court or tribunal in relation to legal aid, and in particular may make provision—

(i) as to the taxation of expenses incurred in connection with proceedings not actually begun; and

(ii) as to the cases in which and the extent to which a person receiving legal aid may be required to find caution, and the manner in which caution in such cases may be found;

(*c*) make provision as to the cases in which a person may be treated as having disentitled himself to a continuance of legal aid by his conduct in connection therewith;

(*d*) make provision for the recovery of sums due to the legal aid fund and for making effective the priority conferred by this Act on the payment of such sums out of property recovered or preserved for a person receiving legal aid, including provision—

(i) for the enforcement for the benefit of that fund of any award of expenses or any agreement as to expenses in favour of a person who has received legal aid; and

(ii) making a solicitor's right to payment out of the legal aid fund dependent, in whole or in part, on his performance of any duties imposed on him by any act of sederunt or act of adjournal made for the purposes of this paragraph;

(*e*) make provision as to the proceedings which are or are not to be treated as separate proceedings for the purposes of section 13 of this Act, or as having been instituted by the party receiving legal aid for the purposes of subsection (3)(*a*) of that section;

(*f*) regulate the procedure to be followed in connection with orders under the said section 13, and may in particular enable the Law Society to be heard in connection with such an order.

(2) The High Court of Justiciary by act of adjournal may fix the fees to be paid in the High Court and in the inferior courts in respect of the representation of persons receiving legal aid in connection with criminal proceedings therein, and the Court of Session by act of sederunt may make provision for the like matters in connection with civil proceedings in any court or tribunal other than the Court of Session and the sheriff court.

(3) The Court may, by act of adjournal or act of sederunt, as the case may be, restrict to such proportion of the fees for the time being applicable as may be provided therein the fees to be paid to auditors of court, messengers-at-arms, sheriff officers and shorthand writers in any case where such fees are payable in the first instance by or on behalf of a person receiving legal aid:

Provided that the imposition of any restriction under this subsection shall not affect the sums recoverable by virtue of an award of expenses in favour of a person who has received legal aid, or of an agreement as to expenses in favour of such a person which provides for taxation.

(4) The Court may, by act of adjournal or act of sederunt, as the case may be, make provision for the taxation by the Auditor of the Court of Session or the auditor of the sheriff court of accounts of expenses incurred in connection with the giving of legal aid and with respect to the remuneration to be paid to auditors in respect of the taxation of such accounts.

(5) Before making rules of court regulating the procedure of any court or tribunal, the Court shall so far as practicable consult any rules council or similar body by whom or on whose advice rules of procedure for the court or tribunal may be made apart from this Act or whose consent or concurrence is required to any such rules so made.

(6) In this section the expression "the Court" means in relation to criminal proceedings, the High Court of Justiciary, and in relation to civil proceedings, the Court of Session.

Adaptation of rights to indemnity.

17.—(1) This section shall have effect for the purpose of adapting in relation to this Act any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of the provisions of this Act shall be disregarded.

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives legal aid in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contribution, if any, to the legal aid fund) the right shall enure also for the benefit of that fund as if the expenses incurred by that fund on behalf of the said person in connection with the proceedings had been incurred by him.

(4) Where—

(*a*) a person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of an agreement and is subject to any express condition conferring on those liable thereunder any right with respect to the bringing or conduct of the proceedings; and

(*b*) those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity;

the right to be indemnified shall be treated for the purposes of the last-foregoing subsection as not being subject to that condition.

(5) Where under subsection (3) of this section a person's right to be indemnified against expenses incurred in connection with any proceedings enures for the benefit of the legal aid fund, then, for the purposes of section 3 of this Act, the net liability of the fund on his account shall be treated as reduced by the amount of any sums recovered for the benefit of the fund by virtue of the said right.

(6) The three last foregoing subsections shall apply in relation to legal aid under section 5 of this Act with the necessary modifications of references to proceedings:

Provided that, where by virtue of subsection (6) of that section the legal aid is treated for the purposes of section 3 of this Act as given in connection with any proceedings, it shall also be so treated for the purposes of this section.

Offences.

18.—(1) If any person seeking or receiving legal aid or advice—

(*a*) wilfully fails to comply with any regulations as to the information to be furnished by him; or

(*b*) in furnishing any information required by the regulations or required for the purpose of establishing

whether he has a *probabilis causa litigandi* or whether he has substantial grounds for taking proceedings by way of appeal against conviction or sentence, knowingly makes any false statement or false representation;

he shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both.

(2) No information furnished for the purposes of this Act to the Law Society or to any committee or person on their behalf shall be disclosed—

(*a*) in the case of such information furnished by, or by any person acting for, a person seeking or receiving legal aid or advice, without the consent of the person seeking or receiving legal aid or advice; or

(*b*) in the case of such information furnished otherwise than as aforesaid, without the consent of the person who furnished it;

and any person who, in contravention of this subsection, discloses any information obtained by him when employed by or acting on behalf of the Law Society shall be liable on summary conviction to a fine not exceeding one hundred pounds:

Provided that this subsection shall not apply to the disclosure of information—

(i) for the purpose of facilitating the proper performance by any person or body of functions under this Act; or

(ii) for the purpose of any criminal proceedings for an offence thereunder or of any report of any such proceedings.

1954 c. 48.

(3) Notwithstanding anything in the Summary Jurisdiction (Scotland) Act 1954, proceedings for an offence against subsection (1) of this section may be commenced at any time within two years from the date of the commission of the offence or within six months from the date when evidence sufficient in the opinion of the Lord Advocate to justify proceedings comes to his knowledge, whichever period is the shorter; and for the purposes of this subsection a certificate by the Lord Advocate as to the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence thereof.

(4) For the avoidance of doubt it is hereby declared that information furnished to counsel or a solicitor as such by or on behalf of a person seeking or receiving legal aid or advice is not information furnished to the Law Society or a person on their behalf.

Application to Crown.

19. This Act shall bind the Crown.

Interpretation and construction. 1949 c. 63.

20.—(1) In this Act, unless the context otherwise requires—

the expression "Law Society" means the Law Society of Scotland established under the provisions of the Solicitors (Scotland) Act 1949, and any reference to the Council of the Law Society shall be taken as a reference to the council elected in accordance with the provisions of the said Act;

the expressions "legal aid" and "legal advice" mean respectively legal aid and legal advice under this Act;

the expression "legal aid certificate" means a certificate required, under any scheme having effect by virtue of section 8 of this Act, to be obtained as a condition of entitlement to legal aid;

the expression "legal aid fund" means the Legal Aid (Scotland) Fund administered in accordance with section 9 of this Act;

the expression "member of the forces" means a person serving on full pay as a member of any of the naval, military or air forces of the Crown raised in the United Kingdom (including any women's force administered by the Defence Council);

the expression "person" does not include a body of persons, corporate or unincorporate, so as to authorise legal aid or advice to be given to such a body;

the expression "prescribed" means prescribed by regulations;

the expression "regulations" means regulations made by the Secretary of State under this Act;

the expression "tribunal" includes an arbiter or oversman, however appointed, and whether the arbitration takes place under a reference by consent or otherwise;

the expression "unassisted party" means a party to any civil proceedings not in receipt of legal aid.

(2) A reference in this Act to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any other enactment including this Act.

(3) Any enactment passed before the passing of this Act referring to an enactment repealed by this Act shall, unless the contrary intention appears, be construed as referring to the corresponding provision of this Act.

Repeals and savings.

21.—(1) The enactments mentioned in Schedule 3 to this Act so far as relating to Scotland are hereby repealed to the extent specified in the third column of that Schedule.

(2) In so far as any act of adjournal, act of sederunt, regulations, order or scheme made under any enactment repealed by this Act, or any other thing done under any such enactment, could have been made or done under a corresponding provision of this Act, it shall not be invalidated by the repeals effected by this section but shall have effect as if made or done under that corresponding provision.

(3) Where any document refers, either expressly or by implication to an enactment repealed by this Act, the reference shall, except where the context otherwise requires, be construed as a reference to this Act or the corresponding enactment therein.

(4) Nothing in this section shall be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

1889 c. 63.

Short title and commencement.

22.—(1) This Act may be cited as the Legal Aid (Scotland) Act 1967.

(2) Except as provided in the following subsection, this Act shall come into operation on the passing thereof.

(3) The following provisions of this Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint, that is to say—

(*a*) subsections (4) to (7) of section 7;

(*b*) the provisions of this Act so far as they relate to legal aid in connection with civil proceedings in the Scottish Land Court or before any person to whom a case is referred in whole or in part by that Court;

(*c*) the provisions of this Act so far as they relate to legal aid in connection with criminal proceedings in any court of summary jurisdiction within the meaning of the Summary Jurisdiction (Scotland) Act 1954 (other than such proceedings in the sheriff court and in the juvenile courts constituted in pursuance of section 51 of the Children and Young Persons (Scotland) Act 1937);

1954 c. 48.

1937 c. 37.

and different days may be appointed for different purposes.

SCHEDULES

SCHEDULE 1

Section 1.

PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN

PART I

Description of Proceedings

1. Civil proceedings in any of the following courts—
   (*a*) the House of Lords in the exercise of its jurisdiction in relation to appeals from the Court of Session;
   (*b*) the Court of Session;
   (*c*) the Lands Valuation Appeal Court;
   (*d*) the Scottish Land Court;
   (*e*) the sheriff court.

2. Proceedings before any person to whom a case is referred in whole or in part by any of the said courts.

3. Criminal proceedings in any of the following courts—
   (*a*) the High Court of Justiciary;
   (*b*) the sheriff court;
   (*c*) any court of summary jurisdiction within the meaning of the Summary Jurisdiction (Scotland) Act 1954. 1954 c. 48.

PART II

Excepted Proceedings

1. Proceedings wholly or partly in respect of—
   (*a*) defamation or verbal injury;
   (*b*) breach of promise of marriage;
   (*c*) the inducement of one spouse to leave or remain apart from the other.

2. Election petitions under the Representation of the People Act 1949. 1949 c. 68.

3. Proceedings in the small debt court in which liability for the debt and the amount thereof are admitted.

4. Proceedings in the sheriff court for summary removing in which liability for the debt and the amount thereof are admitted.

SCHEDULE 2

Section 6.

REMUNERATION OF PERSONS GIVING LEGAL AID

1.—(1) The sums allowed by way of fees to counsel in connection with proceedings in the House of Lords or the Court of Session shall be eighty-five per cent. or such larger percentage as may be prescribed of the amount allowed on taxation.

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(2) The sums allowed by way of fees to counsel in connection with civil proceedings in the sheriff court shall, where the expenses are taxed on the higher scale, be eighty-five per cent. or such larger percentage as may be prescribed of the amount allowed on taxation, and where the expenses are taxed on any other scale, be the full amount allowed on taxation.

(3) The sums allowed by way of fees to counsel in connection with criminal proceedings shall be the full amount allowed on taxation of the fees fixed by act of adjournal under section 16(2) of this Act or, in connection with any criminal proceedings for the conduct of which an inclusive fee is so fixed, shall be that fee.

(4) The sums allowed by way of fees to counsel in any other case shall be the full amount allowed on taxation of the fees fixed by act of sederunt under the said section 16(2).

2.—(1) The sums allowed by way of remuneration to a solicitor in connection with proceedings in the House of Lords or the Court of Session shall be the full amount allowed on taxation on account of outlays and eighty-five per cent. or such larger percentage as may be prescribed of the amount so allowed on account of fees.

(2) The sums allowed by way of remuneration to a solicitor in connection with civil proceedings in the sheriff court shall, where the expenses are taxed on the higher scale, be the full amount allowed on taxation on account of outlays, and eighty-five per cent. or such larger percentage as may be prescribed of the amount so allowed on account of fees, and where the expenses are taxed on any other scale, be the full amount allowed on taxation, whether on account of outlays or of fees.

(3) The sums allowed by way of remuneration to a solicitor in connection with criminal proceedings shall be the full amount allowed on taxation on account of outlays and the full amount so allowed of the fees fixed by act of adjournal under the said section 16(2) or, in connection with any criminal proceedings for the conduct of which an inclusive fee is so fixed, shall be that fee.

(4) The sums allowed by way of remuneration to a solicitor in respect of his being available and of his giving legal aid in a court of summary jurisdiction in pursuance of such arrangements as are mentioned in paragraph (*a*) of the proviso to subsection (3) of section 6 of this Act shall be such as may be determined under the scheme made under section 8 of this Act.

(5) The sums allowed by way of remuneration to a solicitor in connection with any other proceedings in any court or tribunal shall be the full amount allowed on taxation on account of outlays and the full amount so allowed of the fees fixed by act of sederunt under the said section 16(2).

(6) The sums allowed by way of remuneration to a solicitor in connection with the giving of legal aid under section 5 of this Act or with the giving of legal advice shall be such as may be determined under the scheme made under section 8 of this Act.

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3. For the purposes of paragraph 1 of this Schedule counsel's fees shall be taxed as if they had been paid by the solicitor, and shall be treated as outlays for the purposes of the last foregoing paragraph.

4. The expenses incurred in connection with civil proceedings in the sheriff court shall, for the purposes of this Schedule, be taxed on the like scale as applies to the expenses awarded in those proceedings as between the parties thereto:

Provided that if no award of expenses is made, or expenses are awarded on a scale other than the scale which, apart from the special circumstances of the particular proceedings, would be applicable, the expenses shall, for the purposes aforesaid, be taxed on such scale as the sheriff, on application made to him, may direct.

5. Expenses shall be taxed for the purposes of this Schedule according to the ordinary rules and as between solicitor and client:

Provided that no question shall be raised as to the propriety of any act for which prior approval was obtained as required by regulations.

6. Where regulations so provide, an amount, whether on account of outlays or fees, fixed by agreement between the Law Society and the solicitor to whom such amount is payable in the first instance out of the legal aid fund shall for the purposes of this Schedule be treated as if it were an amount allowed on taxation:

Provided that this paragraph shall not have effect in relation to any amount if any person to or by whom such amount is payable in whole or in part requires it to be fixed by taxation.

SCHEDULE 3

Section 21.

ENACTMENTS REPEALED

Year or Session and Chapter	Short Title	Extent of Repeal
12 & 13 Geo. 6. c. 63.	The Legal Aid (Scotland) Act 1949.	The whole Act.
8 & 9 Eliz. 2. c. 28.	The Legal Aid Act 1960.	The whole Act.
1963 c. 39.	The Criminal Justice (Scotland) Act 1963.	Section 48. Schedule 4.
1964 c. 30.	The Legal Aid Act 1964.	The whole Act.
1966 c. 20.	The Ministry of Social Security Act 1966.	In Schedule 6, paragraph 13.