

Scottish Civil Justice Council and Criminal Legal Assistance Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Role of Council

9, 10, 12

Group 2: Preparation of rules by Council

11

Group 3: Composition of Council

13, 14, 15, 16, 17, 18, 19, 20, 21

Group 4: Council proceedings in public

22

Debate to end no later than 40 minutes after proceedings begin

Group 5: Determining liability for contributions

1, 2, 24

Group 6: Collection and treatment of contributions

3, 4, 5, 6, 7, 7A, 8

Group 7: Refund of contributions

23, 25

Group 8: Reports on effects of Part 2

26, 27

Debate to end no later than 1 hour 40 minutes after proceedings begin

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Amendments in debating order

Group 1: Role of Council

Jenny Marra

- 9 In section 2, page 1, line 18, at end insert—
- <() to provide advice and make recommendations to the Scottish Ministers on the development of, and changes to, the civil justice system,
 - () to provide such advice on matters relating to the civil justice system as may be requested by the Scottish Ministers, and
 - () to consider how to make the civil justice system more accessible, fair and efficient.>

Jenny Marra

- 10 In section 2, page 1, leave out line 23

Jenny Marra

- 12 In section 3, page 2, leave out lines 33 and 34

Group 2: Preparation of rules

Jenny Marra

- 11 In section 2, page 2, line 6, at end insert—
- <() Before preparing draft rules under subsection (1)(c) the Council must consult such persons as it considers appropriate.>

Group 3: Composition of Council

Jenny Marra

- 13 In section 6, page 3, line 25, after <least> insert <2 and not more than>

Jenny Marra

- 14 In section 6, page 3, line 28, leave out <at least>

Jenny Marra

- 15 In section 6, page 3, line 29, leave out <at least>

Jenny Marra

- 16 In section 6, page 3, leave out lines 30 to 36 and insert—
- <() at least 8 and not more than 10 persons (“LP members”) who are not judges, practising advocates or practising solicitors, and who include—

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- (i) at least 2 persons with experience and knowledge of consumer affairs,
- (ii) persons with knowledge of the non-commercial legal advice sector, and
- (iii) persons able to represent the interests of different categories of litigant.>

Jenny Marra

17 In section 7, page 4, line 18, at end insert—

<() In appointing persons to be members of the Council, the Lord President must ensure that the proportion of both men and women appointed is at least 40 per cent of the membership.>

Jenny Marra

18 In section 7, page 4, leave out line 23

Jenny Marra

19 In section 7, page 4, leave out line 36

Jenny Marra

20 In section 9, page 5, leave out line 38

Jenny Marra

21 In section 10, page 6, leave out line 9

Group 4: Proceedings in public

Jenny Marra

22 In section 12, page 6, line 34, at end insert—

<(3A) The Council must ensure that its proceedings and those of any committees and sub-committees established by it are held in public.

(3B) Despite sub-section (3A), the Council or, as the case may be, any of its committees or sub-committees may decide to hold all or part of any proceedings in private.

(3C) The Council must publish—

- (a) agendas for its proceedings and those of its committees and sub-committees,
- (b) the papers relating to those proceedings,
- (c) such reports of those proceedings as it thinks fit.

(3D) Despite sub-section (3C), the Council may decide that all or part of any agenda, paper or report need not be published.

(3E) The Council must publish a statement setting out—

- (a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and
- (b) the circumstances in which agendas, papers and reports need not be published.>

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Group 5: Determining liability for contributions

Kenny MacAskill

- 1 In section 19, page 10, line 5, leave out <£68> and insert <£82>

Kenny MacAskill

- 2 In section 20, page 10, line 34, leave out <£68> and insert <£82>

Margaret Mitchell

- 24 In section 22, page 12, line 36, at end insert—

<(3A) Where regulations under subsection (1) include provision relating to the assessment of disposable income for the purpose of determining the amount of any contribution of a person who is in receipt of criminal legal assistance and who is a member of a couple, the regulations must not provide for—

- (a) the resources of the other member of the couple to be taken into account,
- (b) essential expenses incurred by the couple to be disregarded except to the extent that those expenses are met by the person.

(3B) For the purposes of subsection (3A)(a), where the members of a couple each have a beneficial interest in a capital asset, those members are to be treated, in the absence of any evidence to the contrary, as if they were each entitled to an equal share in the whole of that beneficial interest.

(3C) In this section “couple” means—

- (a) a man and woman who are married to each other and are members of the same household,
- (b) a man and woman who are not married to each other but are living together as husband and wife,
- (c) two people of the same sex who are civil partners of each other and are members of the same household,
- (d) two people of the same sex who are not civil partners of each other but are living together as civil partners.>

Group 6: Collection and treatment of contributions

Kenny MacAskill

- 3 In section 20, page 11, line 22, leave out <section 25AA(5) or>

Kenny MacAskill

- 4 In section 20, page 11, line 33, at end insert—

<(b) the reference to a contribution payable by the person receiving criminal legal aid does not include a contribution which it is for the Board to collect (whether under section 25AC(4)(a) or any regulations made under section 33ZA(1)).>

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Kenny MacAskill

5 In section 21, page 12, line 10, at end insert—

<(9) It is for the Board to collect any contribution payable under subsection (5).>

Kenny MacAskill

6 In section 22, page 12, line 26, at beginning insert <except in relation to section 25AA,>

Kenny MacAskill

7 In section 22, page 12, line 34, at end insert—

<(f) make provision requiring the Board to make arrangements to provide to solicitors a service of collecting contributions payable to solicitors on their behalf.

(2A) Regulations made under subsection (1) containing provision made in pursuance of subsection (2)(f) may include provision about the operation of the service, including provision—

(a) regulating the arrangements for remitting to a solicitor the amount of a contribution (or an instalment of a contribution) following its collection,

(b) enabling or requiring, or, where enabled or required, regulating, the imposition by the Board of charges for the recovery of any reasonable costs the Board incurs in connection with the provision of the service to a solicitor.>

Lewis Macdonald

7A As an amendment to amendment 7, line 11, leave out from <charges> to end of line 13 and insert <a fee in connection with the provision of the service to solicitors.

(2B) Regulations made under subsection (1) containing provisions made in pursuance of subsection (2)(f) must not enable or require the Board to impose a fee which exceeds an amount which would recover to the Board the reasonable costs the Board incurs in connection with the provision of the service to solicitors.>

Kenny MacAskill

8 In section 23, page 13, line 21, leave out subsections (7) and (8) and insert—

<() In section 12 (payment of fees and outlays otherwise than through clients' contributions)—

(a) in subsection (3)(a), after “11(2)” insert “or, as the case may be, section 11A(2)”, and

(b) after subsection (3), insert—

“(4) In subsection (3), the reference to an amount payable by the client does not include an amount which it is for the Board to collect (whether under section 11A(3) or any regulations made under section 33ZA(1)).”.

() In section 33A (contracts for the provision of criminal legal assistance)—

(a) in subsection (5)(a), after “11(2)” insert “, 11A(2) or 25AC(3)”, and

(b) after subsection (5), insert—

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“(5A) In subsection (5), the reference to an amount payable by the client does not include an amount which it is for the Board to collect (whether under section 11A(3), section 25AC(4)(a), or any regulations made under section 33ZA(1)).”.>

Group 7: Refund of contributions

Graeme Pearson

23 After section 21, insert—

<Refund of contributions for criminal legal assistance in certain circumstances

Refund of contributions for criminal legal assistance in certain circumstances

After section 25AD of the 1986 Act, inserted by section 20, insert—

“25AE Refund of contributions for criminal legal assistance in certain circumstances

At the conclusion of the proceedings, the court in which those proceedings are concluded may order any contribution for criminal legal assistance due or paid by virtue of this Act to be remitted or refunded to the person from or by whom, or in respect of whom, the contribution was due or paid if—

- (a) the person has been acquitted of an offence, and
- (b) the court considers that it is in the interests of justice for the contribution to be refunded.”.>

Margaret Mitchell

25 In section 22, page 12, line 39, at end insert—

<33ZB Regulations about refunding contributions in certain circumstances

The Scottish Ministers must by regulations make arrangements for any contribution for criminal legal assistance due or paid by virtue of this Act to be remitted or refunded in a case where proceedings are concluded without the person from whom, or in respect of whom, the contribution was due or paid, being convicted.”.>

Group 8: Reports on effects of Part 2

Margaret Mitchell

26 After section 22, insert—

<Reports on arrangements for collection of contributions

After section 33ZA of the 1986 Act, inserted by section 22, insert—

“33ZB Reports on arrangements for collection of contributions

- (1) In accordance with this section, the Scottish Ministers must lay before the Parliament reports about the impact on solicitors of provisions made by regulations under section 33ZA for the collection of contributions.

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- (2) The first report is to be laid no later than 1 year after the date on which such regulations come into force.
- (3) A second report is to be laid no later than 3 years after the date on which such regulations come into force.
- (4) A report must, in particular, contain an assessment of the effects of the arrangements on—
 - (a) collection rates of contributions during the reporting period, and
 - (b) the income of solicitors during the reporting period.
- (5) In preparing reports under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (6) The Scottish Ministers must, as soon as practicable after a report has been laid before the Parliament, publish the report in such manner as they consider appropriate.
- (7) In this section “reporting period” means—
 - (a) in the case of the first report, the period of time from the date on which the relevant regulations under section 33ZA come into force until the time on which the report is laid,
 - (b) in the case of the second report, the period of time from the date on which the first report is laid until the date on which the second report is laid.”.>

Margaret Mitchell

27 After section 23, insert—

<Reports on Part 2: general

- (1) In accordance with this section, the Scottish Ministers must lay before the Parliament reports about the operation and effect of Part 2 of this Act.
- (2) The first report is to be laid no later than 3 years after the date on which the provisions in Part 2 come into force.
- (3) Each subsequent report is to be laid no later than 3 years after the previous report is laid.
- (4) A report must, in particular, contain information about the effect that the operation of Part 2 has had on—
 - (a) the efficient and effective functioning of the criminal justice system during the reporting period, and
 - (b) access to justice, having particular regard to access to justice for persons living in rural areas, during the reporting period.
- (5) The Scottish Ministers must, as soon as practicable after a report has been laid before the Parliament, publish the report in such manner as they consider appropriate.
- (6) In this section “reporting period” means—
 - (a) in the case of the first report, the period of time from the date on which the provisions of Part 2 come into force until the time on which the report is laid,
 - (b) in the case of a subsequent report, the period of time from the date on which the previous report was laid until the date on which the subsequent report is laid.>