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Criminal legal assistance if you are in custody



Criminal legal assistance helps people who have been charged with a criminal offence to get legal advice and “representation”, which means a solicitor to put their case in court.

[1] What is criminal legal assistance?

Criminal legal assistance helps people who have been charged with a criminal offence to get legal advice and “representation,” which means a solicitor or advocate to put their case in court. The cost of this is met from public funds through the Scottish Legal Aid Board, apart from any amount you may pay in contributions under advice and assistance. You may be able to get two kinds of help:

- **Advice and assistance** helps to pay a solicitor to give you advice on any matter of Scots law. In some special circumstances, it may also cover your solicitor representing you in court – this is called ABWOR – “assistance by way of representation”. Depending on your financial circumstances, you may have to pay towards your advice and assistance.
- **Criminal legal aid** pays for you to get legal advice and representation in criminal court proceedings. In some circumstances criminal legal aid may automatically be available, immediately and without having to make an application. This may be through the duty solicitor – we explain more about the duty solicitor below.

In certain circumstances, you will have to prove that you are eligible to receive these kinds of assistance. There’s more on this in the leaflet.

[2] What will happen when I am in custody at a police station?

If you are taken into police custody, you will be booked in by the duty police officer who will take all your details. In doing so, they will ask if you would like to contact a solicitor. If you already know of a solicitor you wish to use, the duty police officer will arrange for that solicitor to be contacted. If you do not have a solicitor, the duty police officer can arrange for one to be contacted.

If you are in custody at a police station and you have been asked to take part in an identification parade or have been charged with murder, attempted murder or culpable homicide, you have the right, if you wish, to use the **duty solicitor**. You can do this regardless of your financial circumstances. You won't have to apply for legal aid for this, or pay for using the duty solicitor. In either of these circumstances you also have the right to use a different solicitor, and you won't have to apply for legal aid or pay for using that solicitor.

If, on the other hand, you are in custody at the police station for some other reason, you do not have the right to use the duty solicitor. If asked, the duty solicitor may agree to attend, or you may ask a different solicitor to attend. In either case, if you are eligible, that solicitor may be able to give you "advice and assistance" – see paragraph 4 "Using your own solicitor". Depending on your financial circumstances you may have to pay towards your advice and assistance.

[3] What will happen when I go to court?

If the police keep you in custody (that is, in the police station or in prison), you will appear before a sheriff or magistrate in court on the first court day after your arrest. You can, if you wish, use the duty solicitor. A duty solicitor is always available at every sheriff and district court in Scotland. You have the right to use the duty solicitor, regardless of your financial circumstances. He or she can represent you at your first appearance in court and, if you plead guilty, deal with any follow-up hearings until the end of the case. You won't have to apply for legal aid for this, and you won't have to pay for using the duty solicitor.

On the other hand, if you want a solicitor other than the duty solicitor to represent you at your first appearance in court, you have the right to ask one to do so but you may have to pay for this yourself. Any solicitor who acts for you and is to be paid from public funds must be on the Criminal Legal Assistance Register. If you choose a solicitor rather than using the duty solicitor, they will be able to tell you whether they are registered to provide criminal legal assistance. All duty solicitors are registered.

If no solicitor in your area will take on your case, you should contact us – we have the power in certain circumstances to appoint a solicitor for you.

Your solicitor may be able to give you “advice and assistance” to help you prepare for your court appearance. (See paragraph 4, “Using your own solicitor”)

What happens then will depend on:

- whether you plead guilty or not guilty; and
- whether the charges against you are “summary” or “solemn”.

[4] Pleading guilty

The duty solicitor

If you decide to plead guilty, the duty solicitor will continue to act for you until the case is finished. You will not have to pay anything for this.

Using your own solicitor

If you plead guilty, you cannot get full criminal legal aid to use your own solicitor to represent you. But your solicitor may be able to use “advice and assistance” to give you help and advice about the case. He or she can also help by writing to the court on your behalf, but cannot represent you in court under advice and assistance.

Because this is advice and assistance and not legal aid, your solicitor may sometimes have to ask you for a contribution towards this work, depending on your financial circumstances. (In April 2003 this contribution was from £7 to £111. Parliament changes the amounts from time to time.)

Example of this type of assistance

You work as an assistant in a small business. You have been charged with shoplifting. This is the first time you have been charged with a criminal offence, and you intend to plead guilty. You qualify financially for advice and assistance, but your earnings take you above the limit where this is free.

Your solicitor can use “advice and assistance” to write to the court on your behalf, making that plea.

You would have to pay your solicitor a contribution towards the case.

[5] Pleading not guilty

If you decide to plead not guilty, you can apply for criminal legal aid. How you do this depends on the seriousness of the charges. Your solicitor can tell you whether you have to apply to the Board for legal aid or whether the court will decide. Your solicitor will apply for you.

If the charges against you are less serious (summary cases)

For summary (non-jury) cases, you should apply to the Board for legal aid within 14 days of pleading not guilty. (In some cases you may be able to apply later – see paragraph 7.) Your solicitor will have to do this for you. Our decision will depend on whether:

- (a) we consider that you could pay your own legal costs without undue hardship to you or your dependants – this will depend on your financial circumstances, and on the likely cost of the case;
- (b) you might be able to get help with the costs of the case from someone else – for example, from insurance or your union;
- (c) it is in the interests of justice for you to be granted legal aid. This includes questions such as –
 - are you likely to go to prison or lose your job if you are found guilty?
 - will the case be complicated to argue in court because the evidence is difficult?
 - can you understand the proceedings?
 - is it in someone else's interests for you to be represented in court?
 - do you have a defence?

Examples of when we might or might not grant legal aid

These are only examples, and we have to consider all the factors in each individual case.

We are not likely to give legal aid to fight your case if you are charged with speeding, your defence is straightforward and the consequences of being found guilty are not very serious.

But we are more likely to give legal aid for the same case if:

- the case is complicated in some way (say, you want to blame someone else); or
- being found guilty is likely to have serious consequences (say, you could lose your driving licence and it is essential to your job); or
- there is some other factor making it important for you to have a solicitor to defend the case.

If the charges are more serious (solemn cases)

If you are charged and brought before the sheriff in a solemn (jury) case, you are automatically entitled to legal aid while you are in custody, until:

- a decision is made about whether to grant you legal aid; or
- you are given bail.

You can choose to use the duty solicitor or your own solicitor. You won't have to apply for legal aid for this, and you won't have to pay for using the solicitor.

Automatic legal aid only lasts until the legal aid application is decided or bail is granted, so you should apply straight away for criminal legal aid. Your solicitor will help you complete the form.

The court decides whether to grant legal aid. This normally happens at your first court appearance. The judge (sheriff) only has to consider whether you could pay your own legal costs without undue hardship to you or your dependants.

[6] What is the difference between “summary” and “solemn” cases?

Summary cases

Summary cases normally result in a fine or, at worst, a prison sentence of up to six months if you are found guilty – for example:

- most road traffic offences;
- breach of the peace;
- minor theft.

Summary cases are heard by a sheriff or magistrate sitting without a jury.

Solemn cases

Solemn cases normally result in a prison sentence of more than six months if you are found guilty – for example:

- murder, rape, robbery;
- most cases of supplying drugs;
- large thefts;
- serious assault.

Solemn cases, if they go to trial, take place before a sheriff or judge and jury.

[7] What if I only realise later in the case that I should have applied for legal aid?

In summary cases, you should apply for criminal legal aid within 14 days of pleading not guilty. But if there is a good reason why you did not, you may still be able to apply. Ask your solicitor for advice about this.

[8] Can I have legal aid to appeal?

You can apply for criminal legal aid to cover the cost of an appeal against the verdict or the sentence, or both, or against the final disposal, or for you to oppose an appeal by the Crown. Your solicitor will help you apply.

[9] Will I have to pay for legal aid?

If you are granted criminal legal aid, you will not have to pay anything towards it. Legal aid will cover all your legal costs – your solicitor and advocate, if used, and any other expenses such as expert witnesses. (But your solicitor may have to ask our permission to employ advocates and experts.)

However, you may have to pay your solicitor a set contribution if you receive “advice and assistance” from him or her before criminal legal aid is granted (for example, to help you write a letter to the court).

Apart from this, you should not pay anything to your solicitor or to any other person.

[10] **What if the Board refuses to give me legal aid?**

If we refuse your application, we will tell you and your solicitor the reasons for this decision.

You or your solicitor can ask us to reconsider our decision – you have 10 days to do so from the date we refuse the application. If you ask us to reconsider the decision, make sure you tell us the reasons why we should.

[11] **Can I change solicitor?**

Yes, but you will have to show us that you have good reasons for this, such as:

- the ill health or death of the solicitor;
- the solicitor is acting on behalf of you and another accused person, and a conflict of interest arises;
- you move from the area where your solicitor works, making it more convenient for you to visit another.

We are not likely to agree to a change of solicitor if, for example, you just changed your mind about who you wanted to act for you.

[12] **Can children get criminal legal aid?**

Yes – legal aid will be available in the same way as for an adult.

But please contact the Board for more information if:

- the child is referred to a children's panel;
- the court refers a case involving a child to the children's panel; or
- a case is referred to a court from the children's panel.

[13] **What will happen if I do not tell my solicitor everything about my finances?**

You must be truthful and complete when giving details of your financial circumstances to your solicitor.

We have a duty to spend public money properly. We check with the Benefits Agency and employers to make sure the information we get from applicants is accurate.

It is a criminal offence to give false information deliberately. If you make an untrue statement or hold back information, we or the court may stop any legal aid given to you, and you may have to pay back the costs of your case. In some past cases, people found guilty of giving false information to get legal aid have been fined or sent to prison. This is also the case if you make an untrue statement or hold back information about something other than your finances.

If criminal legal aid is made available, but you then conduct yourself in connection with the proceedings in a way that makes it appear unreasonable that you should continue to receive legal aid, we or the court may also stop your legal aid and you may have to pay back the costs of your case.

[14] **How will the information I give you be used?**

By applying for legal aid, you give us permission to discuss some of the information within the Board and, on occasion, with other people outwith the Board – for example, to check your earnings with your employer.

By law, we have to be careful how we use the information. We will only pass on information you give us in connection with your application if the law allows us to do so or we have your permission. We also comply with the Data Protection Act and the Scottish Executive's Code of Practice on Open Government.

If you want more information about any of these matters, please ask us.

If you contact us at any stage about an application for legal aid, we may have to ask you questions to check your identity. This protects you and anyone else involved in your case.

[15] **What if I am unhappy with how the Board or my solicitor has acted?**

Our separate leaflet, "*Complaints about the Scottish Legal Aid Board*", explains the Board's complaints procedure. You can get this from the Board, at the address on the back of this leaflet, or you can find it on our web site at www.slab.org.uk.

To complain about your solicitor, you should first speak to him or her. If you are still not satisfied, you should speak to the person in the firm who deals with complaints. If you remain unhappy about the situation, you can contact the Law Society of Scotland at 26 Drumsheugh Gardens, Edinburgh EH3 7YR, telephone 0131 226 7411.

To complain about your advocate, contact the Faculty of Advocates, Advocates Library, Parliament House, Edinburgh, EH1 1RF, telephone 0131 226 5071.

To complain about the court that dealt with your case, contact the Scottish Court Service, Hayweight House, 23 Lauriston Street, Edinburgh, ED3 9DQ, telephone 0131 229 9200.

The Scottish Legal Aid Board's service standards

Our service standards for applicants for criminal legal assistance and assisted persons tell you the level of service you can expect from us, including how long it will take us to do things.

We work hard to meet our service standards, but accept that sometimes we fall short. If this happens with your case, we will tell you why and when you can expect us to do the work.

If you feel that we have not done something within the time we have set *and* we have not written to you to explain why, please contact our Criminal Applications Department on 0131 226 7061, extension 684.

If you feel that we have failed to meet any of our other standards or not given the level of service you are entitled to expect, please contact our Secretariat Department on extension 426. It will provide details of our complaints procedure.

Our commitment to you

We will deal with your application in a timely, accurate and fair manner.

We will treat you with courtesy and respect your right to confidentiality.

- If we receive a summary case application with all the information we need, we will decide whether to grant it within 12 days of receiving the application.
- If we refuse your application, we will tell you and your solicitor why, and you can ask us to review that decision.
- We will acknowledge your letters within 7 days of receiving them and give you a full written reply within 28 days. If we cannot reply fully in 28 days, we will tell you why and say when we will do so.
- We will answer your phone calls promptly. If you ask for information that we cannot give you immediately, we will call you back no later than close of business on the next working day.
- If you complain about our service, we will investigate and reply within 28 days.
- If the matter is very urgent and you tell us, we will make sure we respond as soon as we can and that we use the most appropriate method of communication (such as phone or fax).
- Whether you write, telephone or visit our offices, you will always be treated with courtesy and respect. We will tell you our names so that you know who you have been dealing with.



يمكنك الحصول على هذا الكراسة " المساعدة القانونية الجنائية إذا كنت مسجوناً " باللغة العربية بالاتصال "بمجلس المساعدة القانونية الاسكتلندي" على العنوان أدناه .

আপনি নীচের স্কটিশ লিগাল এইড বোর্ডের সঙ্গে যোগাযোগ করে "আপনি হাজতে থাকলে আপনার সংক্রান্ত বিষয়ে আইনি সাহায্য" নামের এই বাংলায় লেখা প্রচারপত্রটি পপতে পারবেন।

आप नीचे दिए गए पते पर स्काटिश कानूनी सहायता बोर्ड से सम्पर्क करके हिन्दी में यह पुस्तिका प्राप्त कर सकते हैं – "आपके हिरासत में होने पर आपराधिक कानूनी सहायता"।

你若想取得這份『你在被收押時的犯罪法律協助』的廣東版傳單，請聯繫蘇格蘭法律顧問協助委員會，地址如下：

Tha a' bhileag seo "Cuideachadh laghail eucorach a tha ann an grèim" ri faighinn ann an Gàidhlig tro Bhòrd Taic Laghail na h-Alba aig an t-seòladh gu h-ìosal.

ਤੁਹਾਨੂੰ ਇਹ ਲੀਡਲੈਟ "ਅਪਰਾਧਕ ਕਾਨੂੰਨੀ ਸਹਾਇਤਾ ਜੇਕਰ ਤੁਸੀਂ ਹਿਰਾਸਤ ਵਿਚ ਹੋ" ਪੰਜਾਬੀ ਵਿਚ ਪ੍ਰਾਪਤ ਕਰਨ ਲਈ ਸਕਾਟਿਸ਼ ਕਾਨੂੰਨੀ ਸਹਾਇਤਾ ਬੋਰਡ (Scottish Legal Aid Board) ਨਾਲ ਹੇਠ ਲਿਖੇ ਪਤੇ 'ਤੇ ਸੰਪਰਕ ਕਰਨਾ ਚਾਹੀਦਾ ਹੈ।

"Tutuklanma halinde cezaî hukuk yardımını" adlı bu broşürün Türkçe versiyonunu edinmek için İskoç Hukukî Yardım Kurulu'nun (Scottish Legal Aid Board) aşağıdaki adresine başvurunuz.

"اگر آپ زہر حراست نہ بھی ہوں تو مجرمانہ قانونی مدد" کے حصول کے بارے میں اردو میں یہ لیفٹ (کنپور) آپ "سٹائل لیگل ایڈیٹرز" سے درج ذیل پتے پر رابطہ کر کے حاصل کر سکتے ہیں۔

You can get this leaflet in some other languages, or in Braille, large print or audio tape by contacting the Scottish Legal Aid Board at the address below.

The Board's address is:
44 Drumsheugh Gardens
Edinburgh
EH3 7SW

Our telephone number is **0131 226 7061**.
Calls by BT Text Direct are welcome.
Our web site address is www.slab.org.uk
Our email address is general@slab.org.uk

We are open from 9am to 5pm on weekdays and you can phone us from 8.30am.

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