
STATUTORY INSTRUMENTS

1987 No. 381

The Civil Legal Aid (Scotland) Regulations 1987

Part VII

Expenses

Payments out of property recovered or preserved

32. The right to prior payment of certain sums out of any property recovered or preserved which is created by section 17(5) of the Act shall not apply—

- (a) in respect of any money payable—
 - (i) under a decree following on an action for aliment within the meaning of the Family Law (Scotland) Act 1985(1);
 - (ii) under an order for the payment of a periodical allowance under section 5 of the Divorce (Scotland) Act 1976(2), or for the making of a periodical allowance under section 8 of the Family Law (Scotland) Act 1985;
 - (iii) under any order for the periodical payment of sums for the maintenance of any person which, by virtue of the Maintenance Orders Act 1950(3), the Maintenance Orders (Reciprocal Enforcement) Act 1972(4) or the Civil Jurisdiction and Judgments Act 1982(5), may be enforced in Scotland;
 - (iv) under an order made by the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975(6) or under any settlement arrived at to prevent or bring to an end proceedings in which such an order may be made;
 - (v) by way of supplementary benefit under the Supplementary Benefits Act 1976(7) or family income supplement under the Family Income Supplements Act 1970(8);
 - (vi) by way of aliment or periodical allowance by virtue of any settlement arrived at to prevent or bring to an end proceedings in which such a decree or order as is mentioned in sub-paragraphs (i) to (iii) above may be granted;
- (b) to the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of:—
 - (i) an order for the payment of a capital sum under section 5 of the Divorce (Scotland) Act 1976; or
 - (ii) an order for payment of a capital sum or transfer of property, or an incidental order, under section 8 of the Family Law (Scotland) Act 1985; or

(1) 1985 c. 37.
(2) 1976 c. 39.
(3) 1950 c. 37.
(4) 1972 c. 18.
(5) 1982 c. 27.
(6) 1975 c. 71.
(7) 1976 c. 71.
(8) 1970 c. 55.

- (iii) any settlement arrived at to prevent or bring to an end proceedings in which such an order may be granted.

Liability of assisted person where legal aid received in part of matter

33. Where, after proceedings have been instituted in any court, a party thereto becomes an assisted person, the provisions of section 18(2) of the Act shall apply to so much of the expenses of the proceedings as were incurred while he was an assisted person.

Liability of assisted person where legal aid ceases in part of matter

34. Subject to regulation 31 above, where at any stage in the proceedings, a party ceases to receive legal aid, he shall be deemed to be an assisted person for the purpose of any award of expenses made against him to the extent that those expenses were incurred before he ceased to receive legal aid.

Liability for expenses of assisted person acting in a fiduciary, representative or official capacity

35. Where an order for expenses is made against an assisted person who is concerned in proceedings in a fiduciary, representative or official capacity, he shall have the benefit of section 18(2) of the Act and his personal resources shall not be taken into account for that purpose, but regard shall be had to the value of the property or estate, or the amount of the fund out of which he is entitled to be indemnified.

Liability for expenses of assisted person who is a child

36. Where a child is an assisted person, his means for the purpose of determining his liability for expenses under section 18(2) of the Act shall be taken as including the means of any person whose resources have been taken into account in determining his disposable income and disposable capital.

Unassisted party acting in a fiduciary, representative or official capacity

37. Where an unassisted party is concerned in proceedings only in a fiduciary, representative, or official capacity, then for the purposes of section 19(3)(b) of the Act, the court shall not take into account his personal resources but shall have regard to the value of the property, estate or fund out of which the unassisted party is entitled to be indemnified, and may in its discretion also have regard to the resources of the persons, if any, who are beneficially interested in that property, estate or fund.

Application for revision of award of expenses against assisted person

38. Where an award of expenses has been made by a court or tribunal under section 18(2) of the Act, the period within which it shall be competent for any party concerned in the award to apply to the court for reassessment of the amount of the award, on the grounds that since the award was made there has been a relevant change of circumstances, shall be one year after the date of the award.

Recovery of sums due to Fund

39.—(1) This regulation applies where—

- (a) in consequence of any decision in proceedings to which an assisted person is a party, or of a settlement to avoid or bring to an end such proceedings, any property is recovered or preserved for him; or
- (b) in consequence of an award of a court or an agreement as to expenses in favour of an assisted person any sum is recoverable.

- (2) Where this regulation applies, the Board may—
- (a) take such proceedings in its own name or in the name of the assisted person as may be necessary to enforce or give effect to such decision, settlement, award or agreement;
 - (b) do diligence either in the name of the assisted person or in its own name.
- (3) Where this regulation applies—
- (a) any money payable to or preserved for the assisted person shall be paid to the Board, and only the Board's receipt shall be a good discharge to the person paying the money of a liability to make payment to the assisted person or to a clerk of court or otherwise on behalf of the assisted person;
 - (b) the Board may require any corporeal moveables which are deliverable to, or preserved for, the assisted person to be delivered to the Board and in the event of such a requirement being made—
 - (i) only the receipt of the Board shall be a good discharge to the person delivering such corporeal moveables; and
 - (ii) the Board shall have power to sell such corporeal moveables.
- (4) Any free moneys or corporeal moveables remaining in the possession of the Board after payment into the Fund of the sums specified in section 17(5) of the Act shall, subject to any requirement of law whereby they fall to be paid, or as the case may be delivered, to a person other than the assisted person, be paid or delivered to the assisted person.

Right of Board to security over heritable property

40.—(1) Where—

- (a) any sum remains unpaid in respect of an assisted person's contribution to the Fund, or there is a deficiency by reason of his total contribution being less than the net liability of the Fund on his account; and
- (b) any property recovered or preserved for the assisted person in consequence of a decision in proceedings to which he is a party, or of a settlement to avoid or bring to an end such proceedings, comprises an interest in land (as defined in section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970⁽⁹⁾),

the Board may make in its favour and record in the General Register of Sasines or, as appropriate, register in accordance with the Land Registration (Scotland) Act 1979⁽¹⁰⁾, a charging order over that interest in land, or over any other interest in land subsequently acquired by the assisted person in substitution therefor, in respect of the amount of the sum remaining unpaid or, as the case may be, of the deficiency.

(2) On being so recorded, or, as the case may be, registered, a charging order over an interest in land shall create a right which shall be deemed to have been granted by the assisted person in favour of the Board over that interest for the purpose of securing the sum, or, as the case may be, the deficiency, referred to in paragraph (1)(a) above, together with interest thereon as specified in regulation 41 below; and the Board shall intimate to the assisted person in writing that it has made and recorded or registered the charging order and inform him of its effect.

(3) Where the charging order is over an interest in land in which the debtor is uninfert, it shall be as valid as if he was infert in that interest.

(4) Charging orders and the discharge thereof shall be in, or as near as may be in, accordance with Forms 1 and 2 in Schedule 4 to these Regulations.

⁽⁹⁾ 1970 c. 35.

⁽¹⁰⁾ 1979 c. 33.

(5) The provisions of Part II of the said Act of 1970, other than sections 9(1) and (2), 12 and 14, shall apply to a charging order under this regulation as if it were a standard security in a form prescribed in Schedule 2 to the said Act of 1970, and as if for the forms referred to in sections 9(2) and 17 of that Act there were substituted the forms set out in Schedule 4 to these Regulations.

Interest on sums outstanding

41.—(1) Any sum remaining unpaid in respect of an assisted person's contribution to the Fund shall bear interest from 3 months after the day on which it was due to be paid to the Board.

(2) Any sum secured over an interest in land under regulation 40 above (other than a sum to which paragraph (1) above applies) shall bear interest from the day on which the charging order over that interest in land is recorded or, as the case may be, registered.

(3) The rate of interest under paragraphs (1) and (2) above shall be that which would apply (in the absence of any such statement as is provided for in Rule 66 of the Act of Sederunt (Rules of Court, consolidation and amendment) 1965⁽¹¹⁾) in the case of a decree pronounced or extracted in an action in the Court of Session on the day on which the sum begins to bear interest, if interest were included in, or exigible under, that decree.

Payment to solicitor who acts before award of legal aid made

42.—(1) Any solicitor who has acted on behalf of the assisted person in the proceedings for which legal aid is made available before the date on which the application for legal aid was granted, and any solicitor who has by law a right of retention in respect of any documents necessary for the proceedings, and who has delivered them up subject to this, may give notice of the fact to the Board.

(2) Subject to paragraph (3) below, the Board shall pay to any such solicitor as is mentioned in paragraph (1), out of any expenses paid to the Fund under section 16 of the Act and any property recovered or preserved for the assisted person, the fees and outlays to which, following a taxation as between solicitor and own client, he is entitled.

(3) In any case where such expenses and property recovered or preserved are insufficient to pay the fees and outlays of the solicitor in full in accordance with paragraph (2) and also to meet the net liability of the Fund on account of the assisted person, payment shall be made to the Fund and to the solicitor in proportion to the amount owing to each, and the provisions of section 17(5) of the Act with respect to the priority of payments to the Fund shall have effect accordingly.

⁽¹¹⁾ S.I.1965/321; the present rate of interest in the Court of Session is specified in S.I. 1985/1178.