
STATUTORY INSTRUMENTS

1993 No. 3187 (S.309)

LEGAL AID AND ADVICE, SCOTLAND

**The Advice and Assistance (Financial
Limit) (Scotland) Regulations 1993**

Made - - - - 14th December 1993

Coming into force - - 10th January 1994

The Secretary of State, in exercise of the powers conferred on him by sections 9(1), 9(2)(e), 36(2) (b) and 37(1) of the Legal Aid (Scotland) Act 1986⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations, of which a draft has, in accordance with section 37(2) of that Act, been laid before, and approved by a resolution of, each House of Parliament:

Citation and commencement

1. These Regulations may be cited as the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 and shall come into force on 10th January 1994.

Interpretation

2. In these Regulations—

“the Act” means the Legal Aid (Scotland) Act 1986;

“a Parole Board case” means a case of a prisoner to which Part IV of the Parole Board (Scotland) Rules 1993⁽²⁾ applies;

“prisoner” has the meaning assigned to it by rule 2(1) of the Parole Board (Scotland) Rules 1993.

Financial Limit

3. There is substituted in the place of the sum of £50 specified in section 10(2) of the Act as originally enacted—

- (a) in any case to which regulation 4 of these Regulations applies, the sum of £150; and
- (b) in any other case, the sum of £80.

(1) 1986 c. 47; section 36(2)(b) was amended by the Legal Aid Act 1988 (c. 34), Schedule 4, paragraph 6.
(2) S.I. 1993/2225.

Special cases

4. This Regulation applies to the following cases:–
- (a) where assistance by way of representation is provided–
 - (i) when a second or subsequent diet has been ordered by the court; or
 - (ii) in relation to a petition by a debtor for the sequestration of his estate under section 5(2)(a) of the Bankruptcy (Scotland) Act 1985(3); or
 - (iii) in proceedings in a Parole Board case; or
 - (b) where advice and assistance is provided and the solicitor is satisfied that–
 - (i) the matter on which advice and assistance is provided is likely to be resolved only by preparing for proceedings in a civil court for which legal aid is available; and
 - (ii) it is likely, on the information provided to him, that the applicant will qualify on financial grounds for civil legal aid; and
 - (iii) it is reasonable in the circumstances of the case.

Revocations

5. The following Regulations are hereby revoked:–
- (a) the Advice and Assistance (Scotland) (Prospective Cost) (No.3) Regulations 1988(4);
 - (b) the Advice and Assistance (Scotland) (Prospective Cost) Regulations 1991(5);
 - (c) the Advice and Assistance (Scotland) (Prospective Cost) Amendment Regulations 1993(6).

St Andrew's House,
Edinburgh
14th December 1993

Fraser of Carmyllie
Minister of State, Scottish Office

(3) 1985 c. 66; section 5(2)(a) of the 1985 Act was amended by section 3(2) of the Bankruptcy (Scotland) Act 1993 (c. 6).
(4) S.I. 1988/2288.
(5) S.I. 1991/1096.
(6) S.I. 1993/973.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the financial limits upon the cost of providing advice and assistance including assistance by way of representation (ABWOR), without the prior approval of the Scottish Legal Aid Board.

These Regulations consolidate, with amendments, the Advice and Assistance (Scotland) (Prospective Cost) (No.3) Regulations 1988 (S.I. 1988/2288), the Advice and Assistance (Scotland) (Prospective Cost) Regulations 1991 (S.I. 1991/1096) and the Advice and Assistance (Scotland) (Prospective Cost) Amendment Regulations 1993 (S.I. 1993/973) (“the previous Regulations”), which are revoked (regulation 5).

These Regulations re-enact the provisions of the previous Regulations which amended section 10(2) of the Legal Aid (Scotland) Act 1986 to provide that the cost of providing advice and assistance (including ABWOR) must not exceed, in the special cases to which regulation 4 applies, £150 and in any other case, £80, without the prior approval of the Scottish Legal Aid Board (regulation 3).

The special cases to which regulation 4 applies are those contained in the previous Regulations namely—

- (d) where ABWOR is provided when a second or subsequent diet has been ordered by the court or in relation to a petition by a debtor for the sequestration of his estate; and
- (e) where advice and assistance is provided and the solicitor is satisfied of various matters.

There is also added, as a new special case, a case where ABWOR is provided in proceedings in a Parole Board case. A Parole Board case is one referred to the Parole Board under the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) which involves a discretionary life prisoner or a prisoner who is treated as if he were a discretionary life prisoner.