
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 494

The Civil Legal Aid (Scotland) Regulations 2002

PART VIII

PARTICULAR COURTS, TRIBUNALS AND PROCEEDINGS

Convention applications

45.—(1) In this regulation “Convention application” means an application under—

- (a) the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980, as given the force of law in the United Kingdom by Part I of the Child Abduction and Custody Act 1985(1); or
- (b) the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of Custody of Children which was signed at Luxembourg on 20th May 1980, as given the force of law in the United Kingdom by Part II of the Child Abduction and Custody Act 1985.

(2) Sections 14, 15 and 17 of the Act and regulations 5 and 7 above shall be modified to the extent provided in the following sub-paragraphs in the case of a person resident outside the United Kingdom who applies for legal aid for the purpose of pursuing by way of proceedings at first instance in the Court of Session an application which is certified by the Scottish Ministers to be a Convention application, namely—

- (a) section 14 shall be modified so as to provide that legal aid shall be available to such person on an application to the Board without the Board requiring to be satisfied that that person has *probabilis causa litigandi* or to consider whether it is reasonable in the particular circumstances of the case that that person should receive legal aid;
- (b) section 15 shall be modified so as to provide that such person shall be eligible for legal aid without regard to that person’s income or capital;
- (c) section 17 shall be modified so as to provide that such person shall not require to pay any contribution to the Fund in respect of income or capital nor shall that person require, where there is a net liability to the Fund on that person’s account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for that person;
- (d) regulation 5 above shall be modified so as to provide that such application for legal aid—
 - (i) may be signed by either the applicant or the applicant’s solicitor and where it is signed by the applicant such signature shall not be subject to any additional formal requirement; and
 - (ii) requires to be accompanied only by—
 - (aa) a statement signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and

(bb) a certificate of the Scottish Ministers that the application for legal aid relates to a Convention application; and

(e) regulation 7(2) shall be modified so as to provide that paragraph (1) of that regulation shall not apply in the case of such application for legal aid.

(3) Sections 15 and 17 of the Act and regulation 5 above shall be modified to the extent provided in the following sub-paragraphs in the case of a person resident outside the United Kingdom who applied for legal aid for the purposes of an appeal whether to the Inner House of the Court of Session, the House of Lords or the Judicial Committee of the Privy Council in relation to a Convention application, namely—

(a) section 15 shall be modified so as to provide that such person shall be eligible for legal aid without regard to that person's income or capital;

(b) section 17 shall be modified so as to provide that such person shall not require to pay any contribution to the Fund in respect of income or capital nor shall that person require, where there is a net liability to the Fund on that person's account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for that person; and

(c) regulation 5 above shall be modified so as to provide that the application for legal aid—

(i) may be signed by either the applicant or that applicant's solicitor and where it is signed by the applicant such signature shall not be subject to any additional formal requirement; and

(ii) subject to paragraph (4), requires to be accompanied only by—

(aa) a statement signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and

(bb) a copy for each opponent of the statement.

(4) Where a person resident outside the United Kingdom applies for legal aid for the purposes of an appeal as mentioned in paragraph (3) and has not applied for legal aid in relation to an earlier stage of the proceedings, the application for legal aid for the purposes of such appeal shall be accompanied, in addition to the documents specified in paragraph (3)(c)(ii), by a certificate of the Scottish Ministers that the application relates to a Convention application.