

**2003 No. 421**

**LEGAL AID AND ADVICE**

**The Advice and Assistance (Scotland) Amendment (No. 2)  
Regulations 2003**

*Made* - - - - - *9th September 2003*

*Laid before the Scottish Parliament* *10th September 2003*

*Coming into force* - - - *1st October 2003*

The Scottish Ministers in exercise of the powers conferred by sections 12(3), 36(1) and (2)(d) and 42 of the Legal Aid (Scotland) Act 1986(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Advice and Assistance (Scotland) Amendment (No. 2) Regulations 2003 and shall come into force on 1st October 2003.

**Application**

2. These Regulations shall apply only in relation to any case where an application for advice and assistance is made on or after 1st October 2003.

**Amendment of the Advice and Assistance (Scotland) Regulations 1996**

3. The Advice and Assistance (Scotland) Regulations 1996(b) are amended in accordance with the following regulations.

4. In regulation 2(1), at the end insert—

““legal representative” means a judicial factor or a person authorised to act on an adult’s behalf under the Adults With Incapacity (Scotland) Act 2000(c).”.

5. For regulation 6(1), substitute—

“(1) Persons who may make an application in accordance with regulation 4 on behalf of a client are—

(a) where the client on cause shown cannot make an application in accordance with regulation 4, a person authorised by the client; or

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(a) 1986 c.47. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1996/2447, as amended by S.I. 1997/726, 1998/724, and S.S.I. 2000/181 and 399, 2002/495, and 2003/163.

(c) 2000 asp 4.

(b) where the client is mentally disordered in terms of section 1(2) of the Mental Health (Scotland) Act 1984<sup>(a)</sup>, or is an incapable adult in terms of section 1(6) of the Adults With Incapacity (Scotland) Act 2000, the client's legal representative.”.

6. In regulation 7, at the end insert–

“(3) For the purpose of determining a client's disposable income and disposable capital, and the amount of any contribution required under section 11 of the Act, the personal resources of a person making an application for advice and assistance on behalf of a client under regulation 6 are to be disregarded.”.

7. In Schedule 2, at the end of paragraph 5(d), insert–

“(j) state pension credit under the State Pension Credit Act 2002<sup>(b)</sup>.”.

*HUGH HENRY*

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,  
Edinburgh  
9th September 2003

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<sup>(a)</sup> 1984 c.36.  
<sup>(b)</sup> 2002 c.16.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Advice and Assistance (Scotland) Regulations 1996, to include a definition for the purposes of these Regulations of the term “legal representative”, and also to specify–

- (a) who may apply for advice and assistance on behalf of other persons (regulation 5);
- (b) for the purposes of assessing a person’s disposable income and capital and any contribution payable, that no account is taken of the personal resources of any legal representative or other person authorised to act on their behalf (regulation 6);
- (c) for the purposes of assessing a person’s disposable income and capital, that no account is taken of payments made in connection with state pension credit (regulation 7).

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