

**2003 No. 486**

**LEGAL AID AND ADVICE**

**The Civil Legal Aid (Scotland) Amendment (No. 2) Regulations  
2003**

<i>Made</i>	- - - -	<i>2nd October 2003</i>
<i>Laid before the Scottish Parliament</i>		<i>3rd October 2003</i>
<i>Coming into force</i>	- -	<i>9th November 2003</i>

The Scottish Ministers in exercise of the powers conferred by section 36(1) and (2)(e) 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 Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2003 and shall come into force on 9th November 2003.

**Amendment of the Civil Legal Aid (Scotland) Regulations 2002**

2. The Civil Legal Aid (Scotland) Regulations 2002(b) are amended in accordance with the following regulations.

3. For regulation 23(1) substitute—

“(1) It shall be the duty of an applicant or assisted person, and a solicitor or counsel acting on behalf of an applicant or assisted person where the facts are within the solicitor’s or counsel’s knowledge, immediately to inform the Board of—

- (a) any change in that applicant’s or assisted person’s circumstances, financial or otherwise;
- (b) any change in the circumstances, financial or otherwise, so far as known to that applicant or assisted person, of any other person with whom that applicant or assisted person is jointly concerned, or who has the same interest in, the matter; or
- (c) any circumstance, financial or otherwise, which may affect the Board’s determination that the applicant or assisted person has *probabilis causa litigandi*, or that it is reasonable in the particular circumstances of the case that that person should receive, or continue to receive, legal aid.”.

4. In regulation 23 insert after paragraph (3)—

“(4) No solicitor or counsel shall be precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client from informing the Board of, or drawing the Board’s attention to, any matter specified in paragraphs (1) and (2) above.”.

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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.S.I. 2002/494, as amended by S.S.I. 2003/49.

5. For regulation 26 substitute—

**“Duty to report**

**26.**—(1) It shall be the duty of the solicitor acting for an applicant or assisted person to report to the Board in writing on such matters and in such form as the Board may require, and in accordance with any guidance issued from time to time by the Board.

(2) No solicitor shall be precluded, by reason of any privilege arising out of the relationship between solicitor and client, from making such report as is referred to in paragraph (1) above.”.

*HUGH HENRY*

Authorised to sign on behalf of the Scottish Ministers

St Andrew’s House,  
Edinburgh  
2nd October 2003

## **EXPLANATORY NOTE**

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

These Regulations amend the Civil Legal Aid (Scotland) Regulations 2002 (“the 2002 Regulations”) to provide that–

- (a) applicants for civil legal aid, assisted persons and solicitors and counsel will be subject to a duty to inform the Board of any circumstance which may affect the Board’s decision to make civil legal aid available (regulation 3);
- (b) the duty on a solicitor or counsel under regulation 23(1) of the 2002 Regulations to report to the Board any change in circumstances, and the duty under regulation 23(2) to report to the Board any failure by an applicant or assisted person to report a change of circumstances, overrides any privilege that arises out of the relationship between counsel, solicitor and client (regulation 4);
- (c) solicitors will have a duty to provide the Board with such information, and in such form, as may be required by the Board. The Regulations expressly provide that this duty overrides any privilege that arises out of the relationship between solicitor and client (regulation 5).

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