

2004 No. 493

LEGAL AID AND ADVICE

**The Legal Aid (Scotland) Act 1986 Amendment
Regulations 2004**

Made - - - - - *11th November 2004*

Laid before the Scottish Parliament *12th November 2004*

Coming into force - - - *4th December 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and by section 36(1), (2)(h) and (3)(d) of the Legal Aid (Scotland) Act 1986(b) 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 Legal Aid (Scotland) Act 1986 Amendment Regulations 2004 and shall come into force on 4th December 2004.

Modification of the Legal Aid (Scotland) Act 1986

2. After paragraph (ab) of section 4(3) insert—

“(ac) any sums recovered from a person who is receiving or has been in receipt of advice and assistance, civil legal aid or criminal legal aid under section 24, but who has available to him rights and facilities making it unnecessary for him to take advantage of the provisions of this Act.”.

(a) 1972 c.68; section 2(2) was amended by the Scotland Act (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1986 c.47; section 36 was amended for purposes not relevant to these regulations. The functions of the Secretary of State were transferred to Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).

3. At the end of section 15 add–

“(4) The provisions of this section are subject to Article 5 of Council Directive 2003/8/EC of the European Council on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, and the provisions of this section shall be construed accordingly^(a)”.

HUGH HENRY

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
11th November 2004

^(a) O.J. No. L 26, 31.1.2003, p.41 as corrected by a corrigendum published on 7th February 2003 (O.J. No. L 32, 7.2.2003, p.15).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify the Legal Aid (Scotland) Act 1986 to provide the following:—

- (a) section 4 is modified to allow the Scottish Legal Aid Board to pay into the Scottish Legal Aid Fund sums recovered from persons who have received financial or other assistance from a body of which they are a member, where they have also been in receipt of advice and assistance, civil legal aid or criminal legal aid under section 24 of the Legal Aid (Scotland) Act 1986; and
- (b) section 15 is modified to implement Council Directive 2003/8/EC (O.J. No. L 26, 31.1.2003, p.41) as corrected by a corrigendum published on 7th February 2003 (O.J. No. L 32, 7.2.2003, p.15) which establishes common rules for legal aid in relation to cross-border disputes. Section 15 is modified where it would otherwise be inconsistent with that Council Directive.

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