

2006 No. 325

LEGAL AID AND ADVICE

**The Civil Legal Aid (Scotland) Amendment (No. 2) Regulations
2006**

<i>Made</i> - - - -	<i>8th June 2006</i>
<i>Laid before the Scottish Parliament</i>	<i>9th June 2006</i>
<i>Coming into force</i> - -	<i>1st August 2006</i>

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2006 and shall come into force on 1st August 2006.

(2) In these Regulations—

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

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000(b); and

“Fund” means the Scottish Legal Aid Fund.

Application

2. These Regulations shall apply only in relation to any case where an application for civil legal aid is made on or after 1st August 2006.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

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

4. Regulation 2(1) is amended as follows—

(a) after the definition of “the 1995 Act” insert—

““the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000;” and

(b) in the definition of “legal representative” for “the Adults with Incapacity (Scotland) Act 2000” substitute “the 2000 Act”.

(a) 1986 c.47; section 36(3)(bb) was inserted by the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 19. 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) 2000 asp 4, to which there are amendments not relevant to these Regulations.

(c) S.S.I. 2002/494, as relevantly amended by S.S.I. 2005/448.

5. In regulations 5(1)(a)(iii) and 36(2) for “the Adults with Incapacity (Scotland) Act 2000” substitute “the 2000 Act”.

6. After regulation 13, insert–

“13A. Assessment of disposable income, etc. in relation to adults with incapacity applications

(1) In this regulation “adults with incapacity application” means an application to the sheriff by a person concerned as claiming or having an interest in the property, financial affairs or personal welfare of an adult under the 2000 Act, other than the adult to whom the application relates, for–

- (a) an intervention order under section 53(1) of the 2000 Act; or
- (b) a guardianship order under section 57(1) of the 2000 Act,

relating to the personal welfare of an adult or to the property, financial affairs and personal welfare of an adult.

(2) Sections 15 and 17 of the Act and regulation 5 above shall be modified to the extent provided in the sub-paragraphs below in relation to adults with incapacity applications, namely–

- (a) section 15 shall be modified so as to provide that a person making such application 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, once in receipt of civil legal aid, shall not require to pay any contribution to the Fund in respect of income or capital; and
- (c) regulation 5 above shall be modified so as to provide that such application need not be accompanied by a statement in writing, itemising the applicant’s disposable income and disposable capital.”.

7. In regulation 14–

- (a) at paragraph (3), for “the Adults with Incapacity (Scotland) Act 2000 (in this regulation referred to as “the 2000 Act”)” substitute “the 2000 Act”; and
- (b) at paragraph (4), sub-paragraphs (k) and (l) after “application” insert “, other than one to which regulation 13A applies,”.

St Andrew’s House,
Edinburgh
8th June 2006

HUGH HENRY
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) Regulations 2002 to provide that civil legal aid is available in certain cases without reference to sections 15 and 17 of the Legal Aid (Scotland) Act 1986 which provide for the financial conditions as to the availability of civil legal aid. The cases in question are applications for intervention or guardianship orders under the Adults with Incapacity (Scotland) Act 2000 which concern the personal welfare of the adult and which are made by a person concerned as claiming or having an interest in the property, financial affairs or personal welfare of an adult under the 2000 Act (other than the adult himself or herself). Regulation 5 of the Civil Legal Aid (Scotland) Regulations 2002 is modified so that a written statement itemising an applicant's disposable income and disposable capital is not required in such applications (regulation 6).

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