
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations—

- (a) amend the Legal Aid (Scotland) Act 1986 (“the Act”) to increase the financial limits of eligibility for advice and assistance and civil legal aid;
- (b) amend the Act to increase the financial thresholds beyond which a person may be required to make payments in respect of advice and assistance and contributions in respect of civil legal aid; and
- (c) prescribe the maximum amount of those payments and, in respect of income, contributions.

In particular, in relation to advice and assistance—

The disposable income limit for eligibility is increased from £234 a week to £238 a week and the disposable capital limit is increased from £1,639 to £1,664. The disposable income threshold, above which a person is liable to pay fees or outlays in respect of advice and assistance received, is increased from £100 a week to £102 a week (paragraphs (2) to (4) of regulation 4).

The maximum liability of a person for fees and outlays in respect of advice and assistance, having regard to their disposable income, is prescribed by regulations 6 and 7. Regulation 7 applies where the advice and assistance provided in a civil matter is limited to a diagnostic interview and the Board have not made a determination under regulation 8B(3) of the Advice and Assistance (Scotland) Regulations 1996 that the subject matter of that diagnostic interview should be treated as if it were a distinct matter. The scale prescribed in regulation 6 applies in any other case.

In relation to civil legal aid—

The disposable income limit is increased from £25,000 a year to £25,450 and the disposable capital limit from £12,439 to £12,626. The disposable income threshold, above which a person may be required to contribute to the Scottish Legal Aid Fund (“the Fund”) in respect of income, is increased from £3,355 a year to £3,415 a year. The disposable capital threshold, above which a person may be required to contribute to the Fund in respect of capital, is increased from £7,504 to £7,617 (paragraphs (5) to (8) of regulation 4).

Regulation 5 prescribes the maximum proportion of the excess of annual disposable income which a person may be required to contribute to the Fund in respect of civil legal aid. The excess is the amount by which a person’s annual disposable income exceeds the threshold specified in section 17(2)(a) of the Act (increased by regulation 4(7) to £3,415). The maximum contributable proportion of income prescribed remains 67.1%, as previously prescribed in the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2009.

The changes described in relation to advice and assistance and civil legal aid only apply in relation to advice and assistance and civil legal aid applied for on or after 12th April 2010 (regulation 3).

The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2009, which dealt with the foregoing matters in relation to cases where advice and assistance, or as the case may be civil legal aid, was applied for on or after 7th April 2009, are revoked. That revocation does not have effect in relation to advice and assistance and civil legal aid applied for before 12th April 2010 (regulation 8).