

2010 No. 461

LEGAL AID AND ADVICE

The Civil Legal Aid (Scotland) Amendment Regulations 2010

Made - - - - *17th December 2010*

Laid before the Scottish Parliament *21st December 2010*

Coming into force - - *31st January 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 42 of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment Regulations 2010 and come into force on 31st January 2011.

Application

2. Regulation 3 applies only in relation to applications for civil legal aid received by the Scottish Legal Aid Board on or after 31st January 2011.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

3. In the Civil Legal Aid (Scotland) Regulations 2002(b)—

- (a) in regulation 2(1) (interpretation), in the definition of “child”, after “years”, insert “, except in regulation 11A”; and
- (b) after regulation 11, insert—

“Assessment of child’s resources

11A.—(1) Subject to paragraph (3), for the purposes of determining the disposable income and disposable capital of a child, the resources of any person who owes an obligation of aliment to the child under section 1(1)(c) or (d) of the Family Law (Scotland) Act 1985(c) are to be treated as part of the child’s own resources.

(2) In paragraph (1), “child” has the meaning given in section 1(5) of the Family Law (Scotland) Act 1985.

(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; amended by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) schedule 3, paragraph 38 and S.S.I. 2003/49 and 486, 2004/491, 2005/112 and 448, 2006/325, 2007/59 and 425 and 2008/50, S.I. 2008/1879 and S.S.I. 2009/49, 312 and 429 and 2010/57 and 166.

(c) 1985 c.37.

(3) Paragraph (1) does not apply if its application in the particular circumstances would be unjust or inequitable.”.

St Andrew's House,
Edinburgh
17th December 2010

KENNY MACASKILL
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) Regulations 2002 to require the resources of any person who owes an obligation of aliment to a child to be taken into account when assessing the child's financial eligibility for civil legal aid. The requirement is not to apply where its application would produce an unjust or inequitable result in the circumstances.

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