
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 86

**The Adults with Incapacity (Public
Guardian's Fees) (Scotland) Regulations 2018**

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018 and, subject to paragraphs (2) and (3), come into force on 25th April 2018.

(2) Regulation 2(b) and schedule 2 come into force, and regulation 2(a) and schedule 1 cease to have effect, on 1st April 2019.

(3) Regulation 2(c) and schedule 3 come into force, and regulation 2(b) and schedule 2 cease to have effect, on 1st April 2020.

(4) In these Regulations, “the Act” means the Adults with Incapacity (Scotland) Act 2000.

Fees payable to the Public Guardian

2. Subject to regulations 3 and 4—

- (a) the fees payable to the Public Guardian in respect of the matters specified in column 1 of the Table of Fees in schedule 1 (table of fees payable from 25th April 2018) are the fees prescribed in relation to those matters in column 2 of that Table;
- (b) the fees payable to the Public Guardian in respect of the matters specified in column 1 of the Table of Fees in schedule 2 (table of fees payable from 1st April 2019) are the fees prescribed in relation to those matters in column 2 of that Table; and
- (c) the fees payable to the Public Guardian in respect of the matters specified in column 1 of the Table of Fees in schedule 3 (table of fees payable from 1st April 2020) are the fees prescribed in relation to those matters in column 2 of that Table.

Exemption of certain persons from fees: legal aid

3. A fee prescribed by these Regulations is not payable by a person if—

- (a) the person is in receipt of civil legal aid within the meaning of section 13(2) of the Legal Aid (Scotland) Act 1986⁽¹⁾ in respect of the matter in the Table of Fees in schedule 1, 2 or 3 in connection with which the fee is payable;
- (b) the fee is payable in connection with a simplified divorce or dissolution of a civil partnership application and the person is in receipt of advice and assistance from a solicitor under the Legal Aid (Scotland) Act 1986 in respect of that application; or
- (c) the person's solicitor is undertaking work in relation to the matter in the Table of Fees in schedule 1, 2 or 3 in connection with which the fee is payable on the basis of any regulations made under section 36(1) of the Legal Aid (Scotland) Act 1986 providing for legal aid in a matter of special urgency.

(1) 1986 c.47. Section 13(2) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 74 and schedule 8, paragraph 36(3).

Exemption of certain persons from fees: social security

- 4.—(1) A fee prescribed by these Regulations is not payable by a person if—
- (a) the person or the person’s partner is in receipt of income support under the Social Security Contributions and Benefits Act 1992(2);
 - (b) the person is in receipt of an income-based jobseeker’s allowance under the Jobseekers Act 1995(3);
 - (c) the person or the person’s partner is in receipt of guarantee credit under the State Pension Credit Act 2002(4);
 - (d) the person or the person’s partner is in receipt of working tax credit, provided that—
 - (i) child tax credit is being paid to the party, or otherwise following a claim for child tax credit made jointly by the members of a couple (as defined in section 3(5A) of the Tax Credits Act 2002(5)) which includes the party; or
 - (ii) there is a disability element or severe disability element (or both) to the tax credit received by the party;
 and that the gross annual income taken into account for the calculation of the working tax credit is £18,000 or less;
 - (e) the person or the person’s partner is in receipt of income-related employment and support allowance under the Welfare Reform Act 2007(6);
 - (f) the person is in receipt of universal credit under Part 1 of the Welfare Reform Act 2012(7); or
 - (g) the person or the person’s partner has, within the period of 3 months prior to the date the prescribed fee would be payable but for this exemption, received financial or other assistance under the Welfare Funds (Scotland) Act 2015(8).
- (2) In this regulation, “partner” means a person to whom a person is married or with whom the person is in a civil partnership.

Revocation

5. The Adults with Incapacity (Public Guardian’s Fees) (Scotland) Regulations 2015(9) are revoked.

St Andrew’s House,
Edinburgh
23rd February 2018

ANNABELLE EWING
Authorised to sign by the Scottish Ministers

(2) 1992 c.4. Section 124, which provides for income support, was amended by the Jobseekers Act 1995 (c.18), section 41 and schedules 2 and 3; the Welfare Reform and Pensions Act 1999 (c.30), section 70 and schedule 8, Part IV, paragraph 28; the State Pension Credit Act 2002 (c.16), schedules 2 and 3; the Civil Partnership Act 2004 (c.33), schedule 24; the Welfare Reform Act 2007 (c.5), schedules 3 and 8; the Welfare Reform Act 2009 (c.24), section 3; and the Welfare Reform Act 2012 (c.5), schedule 14.

(3) 1995 c.18.

(4) 2002 c.16.

(5) 2002 c.21. Section 3(5A) was substituted for section 3(5) to (6) by the Civil Partnership Act 2004, schedule 24, paragraph 144(3).

(6) 2007 c.5.

(7) 2012 c.5.

(8) 2015 asp 5.

(9) S.S.I. 2015/260.