

2020 No. 424

LEGAL AID AND ADVICE

The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020

Made - - - - *9th December 2020*
Laid before the Scottish Parliament *11th December 2020*
Coming into force - - *5th February 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12(3), 17(2B), 36(2)(a) and 42 of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020.

(2) These Regulations come into force on 5 February 2021.

Amendment of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996

2.—(1) The Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996(b) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “safeguarder”(c), insert—

““Scottish child payment” means any payment under Part 3 of the Scottish Child Payment Regulations 2020(d);”,

(b) after the definition of “Welfare Fund payment”(e), insert—

““Windrush Compensation Scheme” means the scheme of that name set out in the Windrush Compensation Scheme (Expenditure) Act 2020(f);

(a) 1986 c.47; section 12(3) was amended by the Crime and Punishment (Scotland) Act 1997 c.48, schedule 1, paragraph 12(4)(b), the Legal Profession and Legal Aid (Scotland) Act 2007 asp 5, section 67(5) and the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 asp 3, section 23(7)(a); section 17(2B) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 c.40, schedule 8, paragraph 36(6). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 c.46, section 53.

(b) S.I. 1996/2447; relevant amending instruments are S.I. 1997/726, S.I. 1998/724, S.S.I. 2000/399, S.S.I. 2002/495, S.S.I. 2008/1879, S.S.I. 2010/166, S.S.I. 2011/134, S.S.I. 2013/65, S.S.I. 2013/137, S.S.I. 2013/142, S.S.I. 2013/200, S.S.I. 2013/250 and S.S.I. 2014/90.

(c) Inserted by S.S.I. 2013/200, regulation 4(2)(c).

(d) S.S.I. 2020/351.

(e) Inserted by S.S.I. 2013/142, regulation 4(2).

(f) 2020 c.8.

“Windrush connected payment” means a payment where—

- (a) an individual has made a claim under the Windrush Compensation Scheme;
- (b) a request included in that claim has been referred by the Home Office to another person; and
- (c) the payment is made to the individual by that other person as a result of that referral.”.

(3) In regulation 16(2) (payment of fees and outlays from property recovered or preserved), after sub-paragraph (a)(xi), insert—

- “(xii) by way of any payment made under the Windrush Compensation Scheme;
- (xiii) by way of any Windrush connected payment;
- (xiv) by way of any Scottish child payment.”.

(4) In schedule 2 (assessment of disposable capital and disposable income), in paragraph 5—

- (a) omit “and” following sub-paragraph (ba),
- (b) after sub-paragraph (bb), insert—
 - “(bc) there shall be left out of account—
 - (i) any payment made under the Windrush Compensation Scheme;
 - (ii) any Windrush connected payment;”;
- (c) after sub-paragraph (d)(l), insert—
 - “(m) Scottish child payment.”.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

3.—(1) The Civil Legal Aid (Scotland) Regulations 2002(a) are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) after the definition of “right of audience” insert—
 - ““Scottish child payment” means any payment under Part 3 of the Scottish Child Payment Regulations 2020;”;
- (b) after the definition of “Welfare Fund payment”(b) insert—
 - ““Windrush Compensation Scheme” means the scheme of that name set out in the Windrush Compensation Scheme (Expenditure) Act 2020;
 - “Windrush connected payment” means a payment where—
 - (a) an individual has made a claim under the Windrush Compensation Scheme;
 - (b) a request included in that claim has been referred by the Home Office to another person; and
 - (c) the payment is made to the individual by that other person as a result of that referral;”.

(3) In regulation 33 (payments out of property recovered or preserved: exceptions), after sub-paragraph (a)(xiv), insert—

- “(xv) by way of any payment made under the Windrush Compensation Scheme;
- (xvi) by way of any Windrush connected payment;
- (xvii) by way of any Scottish child payment;”.

(a) S.S.I. 2002/494; relevant amending instruments are S.S.I. 2005/448, S.S.I. 2006/325, S.S.I. 2008/1879, S.S.I. 2009/312, S.S.I. 2010/461, S.S.I. 2013/142 and S.S.I. 2015/380.

(b) Inserted by S.S.I. 2013/142, regulation 7(2).

(4) In schedule 2 (rules for computing disposable income), in paragraph 7 after sub-paragraph (g), insert—

“(h) any Scottish child payment.”.

(5) In schedule 3 (rules for computing disposable capital), in paragraph 8 after sub-paragraph (c), insert—

“(d) any payment made under the Windrush Compensation Scheme;

(e) any Windrush connected payment;

(f) any Scottish child payment.”.

Amendment of the Children’s Legal Assistance (Scotland) Regulations 2013

4.—(1) The Children’s Legal Assistance (Scotland) Regulations 2013^(a) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) omit “and” following the definition of “relevant person”,

(b) after the definition of “safeguarder”, insert—

““Scottish child payment” means any payment under Part 3 of the Scottish Child Payment Regulations 2020;

“Windrush Compensation Scheme” means the scheme of that name set out in the Windrush Compensation Scheme (Expenditure) Act 2020; and

“Windrush connected payment” means a payment where—

(a) an individual has made a claim under the Windrush Compensation Scheme,

(b) a request included in that claim has been referred by the Home Office to another person, and

(c) the payment is made to the individual by that other person as a result of that referral.”.

(3) In schedule 1 (assessment of disposable income for the purposes of children’s legal aid), in paragraph 5, after paragraph (g), insert—

“(h) any Scottish child payment.”.

(4) In schedule 2 (assessment of disposable capital for the purposes of children’s legal aid), in paragraph 8 after paragraph (c), insert—

“(d) any payment made under the Windrush Compensation Scheme;

(e) any Windrush connected payment;

(f) any Scottish child payment.”.

HUMZA YOUSAF

A member of the Scottish Government

St Andrew’s House,
Edinburgh
9th December 2020

(a) S.S.I. 2013/200; the relevant amending instrument is S.S.I. 2014/90.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend existing legal aid regulations in Scotland in consequence of the Windrush Compensation Scheme (Expenditure) Act 2020 and the Scottish Child Payment Regulations 2020.

Regulation 2 amends the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996, to provide that payments made from or in connection with the Windrush Compensation Scheme and Scottish child payments are disregarded by the Scottish Legal Aid Board (“SLAB”) in the assessment and computation of an applicant’s disposable capital and income in respect of payment of advice and assistance. This regulation also excludes such payments from bearing fees and outlays when forming part of any recovered or preserved property in proceedings.

Regulation 3 amends the Civil Legal Aid (Scotland) Regulations 2002, to provide that payments made from or in connection with the Windrush Compensation Scheme and Scottish child payments are disregarded by SLAB in the assessment and computation of an applicant’s disposable capital in respect of payment of civil legal aid. This regulation also excludes such payments from bearing fees and outlays when forming part of any recovered or preserved property in proceedings. Scottish child payments are also disregarded in the assessment and computation of an applicant’s disposable income.

Regulation 4 amends the Children’s Legal Assistance (Scotland) Regulations 2013, to provide that payments made from or in connection with the Windrush Compensation Scheme and Scottish child payments are to be disregarded by SLAB in the assessment and computation of an applicant’s disposable capital in respect of payment of children’s legal assistance. Scottish child payments are also disregarded in assessment and computation of an applicant’s disposable income.

A partial Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh, EH1 3DG.

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