

2024 No. 178

LEGAL AID AND ADVICE

**The Legal Aid and Advice and Assistance (Miscellaneous
Amendment) (Scotland) Regulations 2024**

<i>Made</i>	- - - -	<i>18th June 2024</i>
<i>Laid before the Scottish Parliament</i>		<i>20th June 2024</i>
<i>Coming into force</i>	- -	<i>3rd October 2024</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12(3), 17(2B), 36(1) and (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. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2024 and come into force on 3 October 2024.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

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

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

“(xviii) by way of carer’s allowance supplement under section 81 of the Social Security (Scotland) Act 2018(c);

(xix) by way of an allowance known as a care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022(d).”.

(3) In schedule 2 (assessment of disposable capital and disposable income), after paragraph 5(d)(m), insert—

“(n) carer’s allowance supplement under section 81 of the Social Security (Scotland) Act 2018;

(a) 1986 c. 47 (“the Act”). Section 12(3) was amended by paragraph 12(4)(b) of schedule 1 of the Crime and Punishment (Scotland) Act 1997 (c. 48), section 67(5)(a) and (b) of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) and section 23(7)(a) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3). Section 17(2B) was inserted by paragraph 36(6) of schedule 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40). Section 42 was amended by paragraph 1(9) of schedule 5 of the Children’s Hearings (Scotland) Act 2011 (asp 1). The functions of the Secretary of State under the Act were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(b) S.I. 1996/2447. Paragraph 5(d) of schedule 2 was added by S.S.I. 2003/163. Other relevant amending instruments are S.S.I. 2020/424, S.S.I. 2021/333 and S.S.I. 2023/11.

(c) 2018 asp 9.

(d) S.S.I. 2022/157, to which there are no relevant amending instruments.

- (o) allowance known as care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022.”.

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 33 (payments out of property recovered or preserved: exceptions), after subparagraph (a)(xxv), insert—

“(xxvi) by way of carer’s allowance supplement under section 81 of the Social Security (Scotland) Act 2018;

(xxvii) by way of an allowance known as care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022.”.

(3) In schedule 2 (rules for computing disposable income), after paragraph 7(o), insert—

“(p) any carer’s allowance supplement paid under section 81 of the Social Security (Scotland) Act 2018;

(q) any payment made by way of an allowance known as a care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022.”.

(4) In schedule 3 (rules for computing disposable capital), after paragraph 8(k), insert—

“(l) any carer’s allowance supplement paid under section 81 of the Social Security (Scotland) Act 2018;

(m) any payment made by way of an allowance known as a care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022.”.

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

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

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

“(r) any carer’s allowance supplement under section 81 of the Social Security (Scotland) Act 2018;

(s) an allowance known as a care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022.”.

(a) S.S.I. 2002/494. Relevantly amended by S.S.I. 2007/59, S.S.I. 2013/65, S.S.I. 2013/137, S.S.I. 2013/142, S.S.I. 2020/424, S.S.I. 2021/73, S.S.I. 2021/333, S.S.I. 2022/31, S.S.I. 2023/11, S.S.I. 2023/178 and S.S.I. 2023/313.

(b) S.S.I. 2013/200. Relevantly amended by S.S.I. 2020/424, S.S.I. 2021/73, S.S.I. 2021/333, S.S.I. 2022/31, S.S.I. 2023/11, S.S.I. 2023/178, S.S.I. 2023/178 and S.S.I. 2023/313.

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

- “(l) any carer’s allowance supplement paid under section 81 of the Social Security (Scotland) Act 2018;
- (m) any payment made by way of an allowance known as a care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022.”.

SIOBHIAN BROWN

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
18th June 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend existing legal aid regulations so that payments made to a person by way of (a) carer's allowance supplement under section 81 of the Social Security (Scotland) Act 2018 and (b) a care experienced students bursary under regulation 3 of the Student Support (Scotland) Regulations 2022 ("the payments") are to be disregarded by the Scottish Legal Aid Board in the assessment and computation of that person's disposable capital and income.

Regulation 2 amends the Advice and Assistance (Scotland) Regulations 1996 to disregard the payments for the purposes of advice and assistance. It also excludes the 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 make equivalent provision for the purposes of civil legal aid.

Regulation 4 amends the Children's Legal Assistance (Scotland) Regulations 2013 to disregard the payments for the purposes of children's legal aid.

A 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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