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STATUTORY INSTRUMENTS

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**1987 No. 381**

**The Civil Legal Aid (Scotland) Regulations 1987**

**Part IV**

**Determination of Applications**

**Applicant having joint interest, etc. with other persons**

**16.** Where it appears to the Board that a person making application for legal aid is jointly concerned with or has the same interest in the matter in connection with which the application is made as other persons, whether receiving legal aid or not, the Board shall not grant legal aid if it is satisfied that—

- (a) the person making the application would not be seriously prejudiced in his own right if legal aid were not granted; or
- (b) it would be reasonable and proper for the other persons concerned with or having the same interest in the matter as the applicant to defray so much of the expenses as would be payable from the Fund in respect of the proceedings if legal aid was granted.

**Applicant having rights and facilities in relation to litigation**

**17.—(1)** Where it appears to the Board that an applicant has available rights and facilities making it unnecessary for him to obtain legal aid or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, the Board shall not approve the application unless the applicant has not succeeded in enforcing or obtaining such rights, facilities or help, after having taken, in the opinion of the Board, all reasonable steps to enforce or obtain them:

Provided that where it appears that the applicant has a right to assistance in the conduct of the proceedings in question, he shall not, for the purpose of this regulation, be deemed to have failed to take all reasonable steps by reason only that he has not taken proceedings by way of declarator or otherwise to enforce that right.

(2) Where the Board approve an application by a person who is a member of a body which might reasonably have been expected to give him financial help towards the expenses of the proceedings, the Board shall require him to sign an undertaking to pay to the Board, in addition to his contribution if any, any sum received from that body on account of the expenses of the proceedings.

**Legal aid in matters of special urgency**

**18.—(1)** Where an applicant seeks legal aid in a matter of special urgency the Board may make legal aid available to him notwithstanding that it has not been satisfied that he has *aprobabilis causa litigandi* or that it has not determined that the financial conditions specified in section 15 of the Act are satisfied.

- (2) Where legal aid is made available under paragraph (1) above, the Board shall—
  - (a) specify that it is available only for such limited purposes, or such limited period, or both, as it considers appropriate in the circumstances;

- (b) require the applicant as soon as practicable to satisfy it that the requirements of section 14(1) of the Act are fulfilled, that his disposable income is such that he is eligible for legal aid, and that he should not be refused legal aid by virtue of section 15(2) of the Act; and
- (c) if the applicant does not so satisfy it, cease to make legal aid available to him.

### **Notification of decision**

**19.**—(1) The Board shall give notice in writing of its decision to grant or, as the case may be, refuse, legal aid—

- (a) to the applicant and his solicitor;
- (b) unless it has determined under regulation 7(2)(b) above that notification of the application should be dispensed with or postponed, to any opponent whose address is known to it, and to any solicitor whom it knows to be acting for an opponent.

(2) Where the Board grants the application it shall give notice to the applicant of any conditions with which, by virtue of section 14(2) of the Act, he is required to comply, of the maximum sum which he may be required to contribute, and of its determination as to his actual contribution.

(3) Where the Board refuses an application it shall inform the applicant and his solicitor that the application has been refused on one or more of the following grounds, that—

- (i) the Board has determined that the applicant has disposable income which makes him ineligible for legal aid;
- (ii) the Board has determined that the application has disposable capital of an amount which renders him liable to be refused legal aid and that it appears to the Board that he can afford to proceed without legal aid;
- (iii) the proceedings to which the application relates are not proceedings for which legal aid may be given;
- (iv) it appears to the Board by virtue of the provisions of regulation 15(2), regulation 16 or, as the case may be, regulation 17 above, that legal aid should not be granted;
- (v) the board is not satisfied that he has *probabilis causa litigandi*;
- (vi) it does not appear to the Board that it is reasonable in the particular circumstances of the case that he should receive legal aid,

and (unless the decision follows a review of the application under section 14(3) of the Act) that the applicant may, if he so wishes, apply for such a review.

### **Application for review**

**20.**—(1) An application for a review under section 14(3) of the Act shall—

- (a) be signed by the applicant;
- (b) subject to paragraph (2) below, be lodged with the Board within 15 days of the time when notice of refusal of his application was given to the applicant;
- (c) include a statement of any matters which the applicant wishes the Board to take into account in reviewing his application; and
- (d) be accompanied by such additional precognitions and other documents as the applicant considers to be relevant to the review.

(2) Paragraph (1)(b) above shall not apply where the Board considers that there is special reason for it to consider a late application for review.

(3) The applicant or his solicitor, unless the Board has determined under regulation 7(2)(b) above that notification of the application for legal aid should be dispensed with or postponed, shall give notice of any application under paragraph (1) above to any opponent whose address is known to him, and to any solicitor whom he knows to be acting for an opponent.