

1987 No. 382 (S. 32)

LEGAL AID AND ADVICE, SCOTLAND

The Advice and Assistance (Scotland) Regulations 1987

Made - - - - - *9th March 1987*

Laid before Parliament *11th March 1987*

Coming into force *1st April 1987*

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The Secretary of State, in exercise of the powers conferred on him by sections 12(3), 33(2) and (3), 36 and 42 of the Legal Aid (Scotland) Act 1986(a), and of all other powers enabling

him in that behalf, and with the concurrence of the Treasury in respect of regulation 6 and Schedule 2, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Advice and Assistance (Scotland) Regulations 1987 and shall come into force on 1st April 1987.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires:—

“the Act” means the Legal Aid (Scotland) Act 1986;

“advice and assistance” means advice and assistance given under Part II of the Act;

“auditor” in relation to the taxation of accounts means the auditor of a sheriff court;

“child” means a person under 16 years.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is to one of these Regulations and any reference to a numbered Schedule is to a Schedule to these Regulations.

Revocations

3. Without prejudice to their continuation in effect for certain purposes by virtue of paragraph 3 of Schedule 4 to the Act, the Regulations specified in Schedule 1 are hereby revoked.

Applications for advice and assistance

4. An application for advice and assistance, which shall be in such form as the Board may require, shall be signed by the client, or by a person who may apply on his behalf by virtue of regulation 5, and shall include such information as is necessary to enable the solicitor—

(a) to determine the client's disposable capital and either his disposable income or, where appropriate, whether he is in receipt of supplementary benefit or family income supplement; and

(b) otherwise to satisfy himself as to the client's eligibility to receive advice and assistance.

Applications on behalf of others

5.—(1) A client who for good reason cannot himself make application in accordance with regulation 4 may authorise another person to apply on his behalf and to furnish such information as is required by regulation 4.

(2) Without prejudice to the right of a minor to apply under regulation 4 or to authorise application on his behalf under paragraph (1) of this regulation, application for advice and assistance on behalf of a child may be made by his parent or guardian or by any person in whose care he is, or by a person acting for the purpose of any proceedings as his tutor or curator.

Determination of disposable income or disposable capital

6. Insofar as the Act requires a client's disposable income or disposable capital to be determined for purposes of an application for advice and assistance, they shall be determined by the solicitor to whom application is made in accordance with the provisions of Schedule 2.

Giving of advice and assistance by solicitor

7. A solicitor shall give advice and assistance in pursuance of Part II of the Act only if he has satisfied himself that the client is eligible to receive advice and assistance under the provisions of the Act and of these Regulations.

Determination and collection of contributions

8.—(1) Where a client is liable by virtue of section 11 of the Act to pay a contribution towards the cost of the advice and assistance, a solicitor shall determine the maximum amount

which the client is, by virtue of that section, liable to pay, and may collect that contribution in full or in such instalments as may be agreed between him and the applicant.

(2) Where by agreement the client's contribution is payable by instalments and the client defaults in making payment of any instalment, the solicitor shall be entitled to cease to act, without prejudice to his right to require payment of any deficiency in respect of work done and outlays incurred, or to the right of the client to demand an accounting from the solicitor for sums already paid.

(3) Where the total contribution payable is likely to exceed the cost of giving advice or assistance, the solicitor shall require the client to pay a sum sufficient only to meet the expected cost.

Applicant for assistance by way of representation having other rights and facilities

9.—(1) Where it appears to the solicitor that an applicant for assistance by way of representation has available rights and facilities making it unnecessary for him to obtain advice or assistance or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, the solicitor 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 solicitor, all reasonable steps to enforce or obtain them:

Provided that the applicant 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 or obtain such rights, facilities or help.

(2) Where the solicitor approves an application for assistance by way of representation 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 advice and assistance, the solicitor shall require him to sign an undertaking to pay to the Board any sum received from that body on account of the expenses of the advice and assistance.

Notice to the Board on acceptance of application

10. The solicitor shall, within 14 days of his having begun to give advice and assistance, send to the Board a copy of the client's application.

Authority to exceed financial limit

11.—(1) Where at any time it appears to the solicitor that the cost of giving the advice and assistance is likely to exceed the limit applicable under section 10 of the Act or under paragraph (2) below he shall apply to the Board for its approval to an increased limit, stating the reasons for the excess, the likely amount, and giving such other information as may enable the Board to consider and determine that application.

(2) The Board, if it approves an application made under paragraph (1) above,—

(a) shall authorise such increased limit as it thinks fit; and

(b) may require that the advice and assistance be subject to such conditions, and limited to such subject matter, or, in the case of assistance by way of representation, such proceedings (or stages of proceedings), as it thinks fit.

(3) The Board shall inform the solicitor of its decision in regard to an application under paragraph (1) above.

Giving of advice and assistance on the same matter

12.—(1) A client shall not be given advice or assistance in respect of the same matter by more than one solicitor without the prior authority of the Board, and such authority shall be given only on such terms and conditions as the Board may see fit to impose.

(2) Application for authority under paragraph (1) above shall be made by the client and shall include a statement of the reasons for the application.

Procedure on withdrawal from giving advice and assistance

13. Where the solicitor declines to continue giving advice and assistance to a client in respect of a particular matter, he shall—

- (a) give notice to the Board of his withdrawal and of his reasons for withdrawing; and
- (b) inform the client of the provisions of regulation 12.

Supply of information by solicitors

14. A solicitor who gives advice and assistance shall supply the Board with such information as the Board may require for the purposes of performing its functions under the Act, and shall not be precluded by reason of any privilege arising out of the relationship between solicitor and client from disclosing such information to the Board.

Payment of fees and outlays from property recovered or preserved

15.—(1) The right to prior payment of fees or outlays out of any property recovered or preserved which is created by section 12(3)(c) of the Act shall not apply—

- (a) to any money paid—
 - (i) under a decree following on an action for aliment within the meaning of the Family Law (Scotland) Act 1985(a);
 - (ii) under an order for the payment of a periodical allowance under section 5 of the Divorce (Scotland) Act 1976(b), or for the making of a periodical allowance under section 8 of the Family Law (Scotland) Act 1985;
 - (iii) under any order for the periodical payment of sums for the maintenance of any person which, by virtue of the Maintenance Orders Act 1950(c), the Maintenance Orders (Reciprocal Enforcement) Act 1972(d) or the Civil Jurisdiction and Judgments Act 1982(e), may be enforced in Scotland;
 - (iv) under an order made by the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975(f) or under any settlement arrived at to prevent or bring to an end proceedings in which such an order may be made;
 - (v) by way of supplementary benefit under the Supplementary Benefits Act 1976(g) or family income supplement under the Family Income Supplements Act 1970(h);
 - (vi) by way of aliment or periodical allowance by virtue of any settlement arrived at to prevent or bring to an end proceedings in which such a decree or order as is mentioned in sub-paragraphs (i) to (iii) above may be granted;
- (b) to the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of—
 - (i) an order for the payment of a capital sum under section 5 of the Divorce (Scotland) Act 1976;
 - (ii) an order for payment of a capital sum or transfer of property, or an incidental order, under section 8 of the Family Law (Scotland) Act 1985;
 - (iii) any settlement arrived at to prevent or bring to an end proceedings in which such an order may be granted.

(2) Where in the opinion of the solicitor the payment of his fees or outlays in priority to all other debts out of any such property as is mentioned in section 12(3)(c) of the Act—

- (a) would cause grave hardship or distress to the client; or
- (b) could only be effected with unreasonable difficulty because of the nature of the property;

the solicitor may apply to the Board for authority not to enforce, either wholly or partly, such payment and, if the Board so authorises, any deficiency in the solicitor's charges or fees shall be calculated as if, to the extent so authorised by the Board, section 12(3)(c) of the Act did not apply to that property.

(a) 1985 c.37.
(b) 1976 c.39.
(c) 1950 c.37.
(d) 1972 c.18.
(e) 1982 c.27.
(f) 1975 c.71.
(g) 1976 c.71.
(h) 1970 c.55.

Fees and outlays of solicitors

16.—(1) Subject to paragraph (2) below, fees and outlays allowable to the solicitor upon any assessment or taxation mentioned in regulations 17 and 18 in respect of advice or assistance shall, and shall only, be—

- (a) fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, calculated, in the case of assistance by way of representation, in accordance with the table of fees in Part I of Schedule 3 and, in any other case, in accordance with the table of fees in Part II of Schedule 3; and
- (b) outlays actually, necessarily and reasonably incurred in connection with that matter.

(2) The fees and outlays allowable to the solicitor under paragraph (1) above shall not exceed the limit applicable under section 10 of the Act as read with regulation 11.

Assessment and taxation of fees and outlays

17.—(1) Where the solicitor considers that the fees and outlays properly chargeable for the advice or assistance exceed any contribution payable by the client under the provisions of section 11 of the Act together with any expenses or property recovered or preserved under the provisions of section 12 of the Act as read with regulation 15, he shall, within 6 months of the date when the giving of advice and assistance was completed, submit an account to the Board.

(2) Where the Board receives an account in accordance with paragraph (1) above, it shall assess the fees and outlays allowable to the solicitor for the advice or assistance in accordance with regulation 16 and shall determine accordingly any sum payable out of the Fund and pay it to the solicitor.

(3) If the solicitor is dissatisfied with any assessment of fees and outlays by the Board under paragraph (2) above, he may require taxation of his account by the auditor; the auditor shall tax the fees and outlays allowable to the solicitor for the advice or assistance in accordance with regulation 16, and such taxation shall be conclusive of the fees and outlays so allowable.

Client's right to require taxation

18.—(1) In any case where there is no such excess as is mentioned in regulation 17(1) and any fees and outlays in respect of the advice or assistance are payable by the client under the provisions of section 11 of the Act or are payable out of any expenses payable to the client or any property recovered or preserved for the client under the provisions of section 12 of the Act, the client may, if he is dissatisfied with the amount of those fees and outlays, require taxation of those fees and outlays by the auditor; the auditor shall tax the fees and outlays allowable to the solicitor in respect of the advice or assistance in accordance with regulation 16, and such taxation shall be conclusive of the amount of the fees and outlays so allowable.

(2) In any case where the fees and outlays allowable to a solicitor in respect of advice or assistance in accordance with regulation 16 are less than any contribution paid by the client under section 11 of the Act, the solicitor shall refund the excess contribution.

Fees and outlays recoverable from a third party

19. Regulations 16, 17 and 18 shall not apply to fees and outlays recoverable in respect of advice or assistance to a client from a third party and, where such fees and outlays are to be taxed, they shall be taxed as if the advice or assistance were not advice or assistance under the Act.

Right of Board to recover sums paid out of the Fund

20. Where it appears to the Board that a client has wilfully failed to comply with the provisions of these Regulations as to the information to be furnished by him or, in furnishing such information, has knowingly made a false statement or false representation, the Board shall be entitled to recover from the applicant any sums paid out of the Fund to the solicitor in respect of the advice or assistance so given.

New St. Andrew's House, Edinburgh
6th March 1987

Ian Lang
Parliamentary Under Secretary of State,
Scottish Office

We concur,

Michael Neubert
Peter Lloyd

9th March 1987

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1
REGULATIONS REVOKED

Regulation 3

<i>Title</i>	<i>Reference</i>
The Legal Advice and Assistance (Scotland) Regulations 1973	S.I. 1973/390
The Legal Advice and Assistance (Scotland) Amendment Regulations 1977	S.I. 1977/1762
The Legal Advice and Assistance (Scotland) Amendment Regulations 1978	S.I. 1978/1565
The Legal Advice and Assistance (Scotland) Amendment Regulations 1980	S.I. 1980/1792
The Legal Advice and Assistance (Scotland) Amendment Regulations 1984	S.I. 1984/210
The Legal Advice and Assistance (Scotland) Amendment Regulations 1985	S.I. 1985/337
The Legal Advice and Assistance (Scotland) Amendment Regulations 1986	S.I. 1986/254
The Legal Advice and Assistance (Scotland) Amendment (No. 2) Regulations 1986	S.I. 1986/673
The Legal Advice and Assistance (Scotland) Amendment (No. 3) Regulations 1986	S.I. 1986/1359

SCHEDULE 2

Regulation 6

ASSESSMENT OF DISPOSABLE CAPITAL AND DISPOSABLE INCOME

1. In this Schedule, unless the context otherwise requires—
“capital” means the amount or value of every resource of a capital nature;
“income” means the total income from all sources which the person concerned received or became entitled to during or in respect of the seven days up to and including the date of his application;
“the person concerned” means the person whose disposable capital and disposable income are to be determined.
2. Any question arising under this Schedule shall be decided by the solicitor, and the solicitor, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Board as to the application of this Schedule.
3. The disposable capital and disposable income of the person concerned shall be the capital and income as determined by the solicitor after making such deductions as are to be made under the provisions of this Schedule.
4. The resources of any person who, under section 17 of the Supplementary Benefits Act 1976(a) is liable to maintain a child or who usually contributes substantially to a child's maintenance, or who has care and control of the child, not being a person who has such care and control by reason of any contract for some temporary purpose, may be treated as the resources of the child, if, having regard to all the circumstances, including the age and resources of the child and to any conflict of interest, it appears just and equitable to do so.

(a) 1976 c.71; section 17 was amended by the Social Security Act 1980 (c.30), Schedule 2, Part I, paragraph 16.

5. If it appears to the solicitor that the person concerned has, with intent to reduce his disposable capital or disposable income or maximum contribution, directly or indirectly deprived himself of any resource or has converted any part of his resources into resources which are to be left out of account wholly or partly, the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted, as the case may be.

6. In computing the capital and income of the person concerned—

- (a) there shall be left out of account the value of the subject matter of any claim in respect of which the person concerned is applying for advice or assistance;
- (b) the resources of any spouse of the person concerned shall be treated as that person's resources unless—
 - (i) the spouse has a contrary interest in the matter in respect of which the person concerned is applying for advice or assistance, or
 - (ii) the person concerned and spouse are living separate and apart, or
 - (iii) in all the circumstances of the case it would be inequitable or impracticable to do so.

7. In computing the capital of the person concerned—

- (a) the value of his household furniture and effects, of articles of personal clothing and of the tools and implements of his trade shall be left out of account;
- (b) there shall be left out of account the value of the main or only dwelling in which he resides;
- (c) where the applicant has an interest in a dwelling other than the main one in which he resides, there shall be taken into account any sum which may be obtained by borrowing money on the security thereof;
- (d) where the person concerned is living with one or more of the following persons, namely, a spouse whose resources are required to be aggregated with his, a dependent child, or a dependent relative wholly or substantially maintained by him, a deduction shall be made of £200 in respect of the first person, £120 in respect of the second person and £60 in respect of each further person.

8. In computing the income of the person concerned—

- (a) there shall be left out of account—
 - (i) any income tax paid or payable on income treated under the provisions of this Schedule as his income;
 - (ii) the amount estimated to have been paid under the Social Security Acts 1975-1986 or any scheme made under those Acts in respect of the seven days up to and including the date of the application for advice or assistance;
- (b) there shall be a deduction in respect of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent child and in respect of the maintenance of any dependent relative of the person concerned, being, in either of such cases, a member of his household, at the following rates:—
 - (i) in the case of a spouse at a rate equivalent to 25 per cent above the amount specified for the time being in column (3) of paragraph 6 of Part IV of Schedule 4 to the Social Security Act 1975 (increase for adult dependent of category A retirement pensioner)(a);
 - (ii) in the case of a dependent child or a dependent relative, at a rate equivalent to 25 per cent above the amount specified for the time being in paragraph 3 of Schedule 1 to the Supplementary Benefit (Requirements) Regulations 1983(b) appropriate to the age of the child or relative.

9. If the person concerned is making *bona fide* payments for the maintenance of a spouse who is living apart, of a former spouse, of a child or relative who is not (in any such case) a member of the household of the person concerned, there shall be a deduction of such payment as was made during or in respect of the seven days up to and including the date of the application for advice or assistance.

10. Where it appears to the solicitor that there has been some error or mistake in the determination of the disposable income, disposable capital or maximum contribution of the person concerned, he may redetermine the disposable income or disposable capital or maximum contribution or, as the case may be, amend the determination, and in the latter case the amended determination shall for all purposes be substituted for the original determination.

(a) 1975 c.14; relevant amendments to Schedule 4 were made by S.I. 1986/1117; Schedule 4 will be further amended (as from 6th April 1987) by S.I. 1987/45.

(b) S.I. 1983/1399; relevant amendments to Schedule 1 were made by S.I. 1986/1173; Schedule 1 will be further amended (as from 6th April 1987) by S.I. 1987/49.

TABLES OF FEES ALLOWABLE TO SOLICITORS

PART I

TABLE OF FEES ALLOWABLE TO SOLICITORS FOR ASSISTANCE BY WAY OF REPRESENTATION

The fees allowable to a solicitor for providing assistance by way of representation shall be—

- (a) for attendance at, and all work preliminary to,—
 - (i) any diet at which a plea to the competency or relevancy of the complaint or proceedings, or a plea in bar of trial, is tendered;
 - (ii) any diet at which a question within the meaning of the Act of Adjournal (References to the European Court) 1973(a) is raised;
 - (iii) any diet at which there is tendered a plea of guilty, a fee of £50.00;
- (b) where, following a plea of guilty, one or more adjournments are ordered by the court, for all work subsequent to the diet at which the plea of guilty was tendered, such fee, not exceeding £75.75, as shall be reasonable remuneration having regard to the additional work and time involved;
- (c) for all other work, fees calculated on the basis of the fees set out in Schedule 1 or, as the case may be, Schedule 2 to the Criminal Legal Aid (Scotland) (Fees) Regulations 1987(b).

PART II

TABLE OF FEES ALLOWABLE TO SOLICITORS FOR ADVICE AND ASSISTANCE OTHER THAN ASSISTANCE BY WAY OF REPRESENTATION

1. Subject to paragraph 2 of this Part, the fees allowable to a solicitor shall be calculated as follows:—

- (a) For formal letters or formal telephone calls £ 2.20
- (b) For taking and drawing precognitions:
 - for the first sheet of 250 words or less £14.10
 - for each subsequent sheet of 250 words £14.10
 - for each subsequent sheet of less than 250 words £ 7.05
- (c) For all other work, a fee calculated at a rate of £28.20 per hour (the fee for any part of an hour being the proportionate part of the hourly rate)

2. Where the fees which would be allowable to a solicitor in respect of the matter in respect of which advice and assistance was given, calculated in accordance with paragraph 1 above, would amount to less than £15.00 or where a solicitor elects to claim only the fee provided for in this paragraph, a fee of £15.00 shall be allowable in place of the fees so calculated.

(a) S.I. 1973/450.

(b) S.I. 1987/365.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the administration of advice and assistance under the Legal Aid (Scotland) Act 1986 in Scotland following the coming into force on 1st April 1987 of that Act which transferred from the Law Society of Scotland to the Scottish Legal Aid Board responsibility for the general oversight of awards of advice and assistance by solicitors. The 1986 Act also extended advice and assistance to include representation in certain summary criminal proceedings. The Regulations make provisions for all types of advice and assistance, including assistance by way of representation. They supersede in relation to applications for advice and assistance granted after 1st April 1987 the Legal Advice and Assistance (Scotland) Regulations 1973 (as amended), which are revoked, and the Legal Advice and Assistance (Scotland) Scheme 1973.

The Regulations make provision as to—

- (i) how to apply for advice and assistance, including applications on behalf of someone else (regulations 4 and 5);
- (ii) the assessment of a client's financial resources by the solicitor and the collection of any contributions due from the client (regulations 6, 7 and 8 and Schedule 2);
- (iii) the availability of assistance by way of representation where other rights and facilities are available (regulation 9);
- (iv) the duty of solicitors to notify the Board when accepting an application or withdrawing from a case, and to provide other information to the Board (regulations 10, 13 and 14);
- (v) authorisation to exceed the financial limit for advice and assistance (regulation 11);
- (vi) the circumstances in which advice and assistance can be given on the same matter (regulation 12);
- (vii) the assessment and payment of solicitors' fees and outlays (regulations 15 to 19 and Schedule 3);
- (viii) the Board's power in certain circumstances to recover sums paid out of the Fund (regulation 20).