
STATUTORY INSTRUMENTS

1991 No. 1904 (S.158)

LEGAL AID AND ADVICE, SCOTLAND

The Civil Legal Aid (Scotland)
Amendment (No. 2) Regulations 1991

<i>Made</i>	- - - -	<i>22nd August 1991</i>
<i>Laid before Parliament</i>		<i>23rd August 1991</i>
<i>Coming into force</i>	- -	<i>26th August 1991</i>

The Secretary of State in exercise of the powers conferred on him by sections 17(2B), 36(1), (2)(a), (g) and (h) and (3) (f), and 37(1) of the Legal Aid (Scotland) Act 1986((1)), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 1991 and shall come into force on 26th August 1991.

Interpretation

2. In these Regulations, “the principal Regulations” means the Civil Legal Aid (Scotland) Regulations 1987((2)).

New definitions

3. In regulation 3 of the principal Regulations, there shall be inserted—

(a) after the definition of “child” the following definition:—

““Fund” means the Scottish Legal Aid Fund;” and

(b) after the definition of “income” the following definition:—

““interest in land” has the same meaning as in section 28(1) of the Land Registration (Scotland) Act 1979((3));”.

(1) 1986 c. 47; section 17(2B) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, (c.40) section 74 and Schedule 8, paragraph 36(6).
(2) S.I. 1987/381, amended by S.I. 1987/431, 1988/490, 1171 and 1891, 1989/505, 1990/631 and 1991/745.
(3) 1979 c. 33.

Contributions

4. After regulation 17 of the principal Regulations, there shall be inserted the following regulation:–

“17A. Where the Board grants the application, it shall make determinations as to the amount of the contribution to the Fund which the applicant is required to pay under section 17(1) of the Act, as to whether the contribution is payable in one sum or by instalments, as to the amount or amounts of the instalments and as to the date or dates on which the contribution or the instalments are payable.”.

Notification of decision

5. In paragraph (2) of regulation 19 of the principal Regulations, after the word “comply” to the end of that paragraph there shall be substituted the words “and as to its determinations under regulation 17A above.”.

Power of Board to suspend availability of legal aid

6. In paragraph (1)(a) of regulation 28A of the principal Regulations, for sub-paragraph (ii), there shall be substituted the following sub-paragraph:–

“(ii) to pay by the due date any contribution, or any instalment thereof, required in terms of regulation 17A above.”.

Termination of legal aid other than on change of circumstances

7. For paragraph (b) of regulation 30 of the principal Regulations, there shall be substituted the following paragraph:–

- “(b) it is satisfied that the assisted person has, without reasonable cause, failed–
- (i) to attend for an interview or to provide information or documents when so required under these Regulations; or
 - (ii) to pay by the due date any contribution, or any instalment thereof, required in terms of regulation 17A above and is more than one month in arrears.”.

Payments out of property recovered or preserved

8. For regulation 32 of the principal Regulations, there shall be substituted the following regulation:–

“Payments out of property recovered or preserved: Exceptions

32. Section 17(2B) of the Act (which requires the amount of the net liability of the Fund on account of any party to be paid by that party out of any property recovered or preserved for him) shall not apply–

- (a) in respect of any money payable–
 - (i) under a decree following on an action for aliment within the meaning of the Family Law (Scotland) Act 1985((4));

- (ii) under an order for the payment of a periodical allowance under section 5 of the Divorce (Scotland) Act 1976((5)), 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((6)), the Maintenance Orders (Reciprocal Enforcement) Act 1972((7)) or the Civil Jurisdiction and Judgments Act 1982((8)), may be enforced in Scotland;
- (iv) under an order made by the Employment Appeal Tribunal within the meaning of section 135 of the Employment Protection (Consolidation) Act 1978((9)) 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 income support and family credit under the Social Security Act 1986((10)), supplementary benefit under the Supplementary Benefits Act 1976((11)) or family income supplement under the Family Income Supplements Act 1970((12));
- (vi) by way of aliment or periodical allowance or periodical payment of sums 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;
- (vii) by way of any payment made out of the social fund under the Social Security Act 1986;
- (viii) by way of any housing benefit under the Social Security Act 1986;
- (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; or
 - (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; or
 - (iii) any settlement arrived at to prevent or bring to an end proceedings in which such an order may be granted;
- (c) in respect of any articles referred to in section 16 of the Debtors (Scotland) Act 1987((13)) recovered or preserved from the effects of a grant of warrant sale of poided goods, or any article released in terms of an order made by the sheriff following application made to him in terms of section 23 of said Act.”.

Recovery of sums due to the Fund

9. For regulations 39 and 40 of the principal Regulations, there shall be substituted the following regulations:—

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- (5) 1976 c. 39. Section 5 was repealed on 1st September 1986 by Schedule 2 to the Family Law (Scotland) Act 1985 (c. 37), subject to a saving in section 28(3) of that Act.
 - (6) 1950 c. 37.
 - (7) 1972 c. 18.
 - (8) 1982 c. 27.
 - (9) 1978 c. 44.
 - (10) 1986 c. 50.
 - (11) 1976 c. 71. The provisions about supplementary benefit in the 1976 Act were repealed by the Social Security Act 1986, subject to savings.
 - (12) 1970 c. 55. This Act was repealed by the Social Security Act 1986, subject to savings.
 - (13) 1987 c. 18.

“Recovery of expenses

39. –

- (1) This Regulation applies where–
 - (a) any sum of money is recoverable under any award of or agreement as to expenses in favour of any party in any proceedings in respect of which he is or has been in receipt of legal aid; and
 - (b) that sum of money is due to be paid to the Board in terms of section 17(2A) of the Act.
- (2) The Board may–
 - (a) take such proceedings in its own name or in the name of that party as may be necessary to ensure payment of any such sum to the Board, including proceedings to enforce or to give effect to any such award or agreement; and, for those purposes,
 - (b) do diligence in its own name or in the name of that party.
- (3) Where any such sum is paid directly to the Board, the receipt of the Board shall be a good discharge therefor.

Recovery of payments out of property recovered or preserved

40. –

- (1) This Regulation applies where–
 - (a) in any proceedings or under a settlement to avoid them or bring them to an end, any property is recovered or preserved for any party; and
 - (b) there is or may be an amount of net liability of the Fund on account of that party which is payable to the Board by that party, in priority to any other debt, out of any such property in terms of section 17(2B) of the Act, as read with regulation 32 above.
- (2) The Board may–
 - (a) take such proceedings in its own name or in the name of the party as may be necessary to ensure payment of the amount of the net liability of the Fund on account of that party out of such property, including proceedings to enforce or give effect to any decision in the proceedings or any settlement; and, for those purposes,
 - (b) do diligence in its own name or in the name of the party.
- (3) Where any such property is paid or made over to or held by the party or any solicitor acting for him in the proceedings–
 - (a) the party and his solicitor shall not, without the consent of the Board, deal in any way with, dispose or part with the possession of, or title to, such property unless and until the amount of the net liability of the fund on account of that party is paid to the Board and a discharge received therefor;
 - (b) without prejudice to paragraph (2) above, the Board may take such action as it considers necessary to ensure payment of the amount of the net liability of the Fund on account of that party out of such property and to make effective the priority conferred by section 17(2B) of the Act and, without prejudice to that generality–

- (i) where the property consists of or includes a sum of money, the Board may require the party or his solicitor to pay that sum of money, or any part of it, to the Board to be held and used by it in accordance with paragraph (4) below;
 - (ii) where the property consists of or includes a sum of money which has been paid to the party's solicitor, the Board may deduct an amount equal to that sum from any sum due from the Fund to that solicitor;
 - (iii) where the property consists of or includes corporeal moveables, the Board may require the party, at his own expense, either to sell them and pay the amount of the net liability of the Fund out of the proceeds or to deliver them to the Board to be held and used by it in accordance with paragraph (4) below; and
 - (iv) where the property consists of or includes an interest in land, the Board may require the party, at his own expense, either to sell that interest and pay the amount of the net liability of the Fund out of the proceeds or to grant a standard security over that interest in favour of the Board for the purpose of securing that amount, or any part of it, together with any interest thereon in terms of regulation 41 below.
- (4) Where any such property is paid to or made over to the Board, in pursuance of this regulation—
- (a) the receipt of the Board shall be a good discharge therefor;
 - (b) the Board shall, subject to the following provisions, hold such property on behalf of or to the account of the party;
 - (c) where the property consists of or includes corporeal moveables, the Board may sell them and, after deduction of the expenses of sale hold and use the net proceeds as if they had been properly paid to it; and
 - (d) the Board shall, as soon as practicable,
 - (i) pay on behalf of the party the amount of the net liability of the Fund on account of the party out of such property; and, where that amount is paid in full and subject to regulation 42(2) below;
 - (ii) pay and make over any surplus monies or corporeal moveables remaining in the possession of the Board to the party or to the person otherwise entitled thereto.”.

Interest on sums outstanding

10. In paragraph (2) of regulation 41 of the principal Regulations, for the words “the charging order”, there shall be substituted the words “the standard security”.

Payment to solicitor who acts before award of legal aid made

11. For paragraphs (2) and (3) of regulation 42 of the principal Regulations, there shall be substituted the following paragraph:—

“(2) Where, after paying the net liability of the Fund on account of the assisted person out of any property recovered or preserved for him, there are any surplus monies or corporeal moveables remaining in the possession of the Board in terms of regulation 40(4)(d) above, the Board shall pay and make over any such surplus monies or corporeal moveables to any such solicitor who has notified the Board as mentioned in paragraph (1) above.”.

Revocations

12. –

(1) Subject to paragraph (2) below, the following regulations are hereby revoked, namely:–

- (a) regulation 2 of the Civil Legal Aid (Scotland) Amendment Regulations 1988((**14**));
- (b) regulations 12, 13 and 14 of the Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 1988((**15**)); and
- (c) Schedule 4 to the principal Regulations (form of charging order and of discharge).

(2) Where the Board has made and recorded in the General Register of Sasines or, as appropriate, registered in accordance with the Land Registration (Scotland) Act 1979((**16**)), a charging order over an interest in land before the date of coming into force of these Regulations, the Board may, notwithstanding the revocation of Schedule 4 to the principal Regulations by these Regulations, grant a discharge of that charging order in, or as nearly as may be in, accordance with form 2 of that Schedule.

Scottish Office,
St Andrew's House,
Edinburgh
22nd August 1991

James Douglas-Hamilton
Parliamentary Under Secretary of State

(14) S.I. 1988/490.
(15) S.I. 1988/1171.
(16) 1979 c. 33.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) Regulations 1987 ([S.I. 1987/381](#)) (“the principal Regulations”) in consequence of –

- (a) the repeal of sections 17(3)-(8) of the Legal Aid (Scotland) Act 1986 (“the 1986 Act”); and
- (b) the insertion of section 17(2A) and (2B) of that Act by paragraph 36(6) of Schedule 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, which was commenced on 26th August 1991 by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (Commencement No. 7) Order 1991 ([S.I. 1991/1903](#)).

The Regulations make provision as to–

- (a) the determination and notification by the Board of the amount of contribution payable to the Fund by an assisted person, the amount of any instalment thereof and the date or dates by which they are payable (regulations 4 to 7);
- (b) the cases in which the new section 17(2B) of the 1986 Act (which requires the amount of the net liability of the Fund on account of any party to be payable out of property preserved or recovered for him) does not apply (regulation 8);
- (c) the recovery of expenses and of payments out of property recovered or preserved in terms of section 17(2A) and (2B) of the 1986 Act (regulations 9 and 10); and
- (d) the payment to solicitors who act before award of legal aid is made (regulation 11).

As a consequence, the Regulations revoke regulation 2 of the Civil Legal Aid (Scotland) Amendment Regulations 1988 ([S.I. 1988/490](#)), regulations 12, 13 and 14 of the Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 1988 ([S.I. 1988/1171](#)). They also revoke Schedule 4 to the principal Regulations (which prescribes forms of charging orders and discharges) subject to a saving provision (regulation 12).