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STATUTORY INSTRUMENTS

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**1996 No. 2444**

**The Civil Legal Aid (Scotland) Regulations 1996**

**PART VII**

**EXPENSES**

**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 33 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
- (b) for those purposes 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 movables, 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 movables, 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;
  - (d) the Board shall deposit money paid to it in one general account with a bank or building society; and
  - (e) the Board shall, as soon as practicable, 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—
    - (i) pay and make over any surplus monies or corporeal movables remaining in the possession of the Board to the party or to the person otherwise entitled thereto;
    - (ii) subject to paragraph (5) below, pay to the party or to such person a sum representing the gross interest earned on the money held for the party in accordance with this paragraph.
- (5) The Board shall not be required to pay interest where the money held for the party does not exceed £500 or where the period during which it is held by the Board is less than 28 days.
- (6) In this regulation “general account” means an interest bearing account opened in the name of the Board, the title of which does not identify any assisted person.