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STATUTORY INSTRUMENTS

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**1997 No. 690 (S.50)**

**LEGAL AID AND ADVICE, SCOTLAND**

**The Legal Aid (Scotland) (Children) Regulations 1997**

*Made* - - - - *7th March 1997*  
*Laid before Parliament* *11th March 1997*  
*Coming into force* - - *1st April 1997*

The Secretary of State, in exercise of the powers conferred upon him by sections 36(1), (2)(a) and (c) to (g) 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 Legal Aid (Scotland) (Children) Regulations 1997 and shall come into force on 1st April 1997.

**Interpretation**

- 2.—(1) In these Regulations, unless the context otherwise requires—
- “the Act” means the Legal Aid (Scotland) Act 1986;
  - “the 1995 Act” means the Children (Scotland) Act 1995(2);
  - “assisted person” means a person who has been granted legal aid under section 29 of the Act(3);
  - “child” and “relevant person” have the meanings given by section 29(12)(a) of the 1986 Act;
  - “child protection order”, “child assessment order” and “exclusion order” have the meanings given by section 29(12)(b) of the 1986 Act;
  - “counsel” includes a solicitor-advocate;
  - “junior counsel” includes a junior solicitor-advocate;
  - “legal aid” means legal aid under section 29 of the Act;
  - “right of audience” means in relation to a solicitor, a right of audience in the Court of Session, the House of Lords and the Judicial Committee of the Privy Council, which a solicitor has

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(1) 1986 c. 47.

(2) 1995 c. 36.

(3) Section 29 was substituted by the Children (Scotland) Act 1995, (section 92).

by virtue of section 25A (rights of audience in specified courts) of the Solicitors (Scotland) Act 1980(4);

“senior counsel” includes a senior solicitor-advocate, except in paragraph (2) below;

“solicitor-advocate” means a solicitor, whether instructed by another solicitor or not, when and only when he is exercising his right of audience or acting in connection with the exercise of such a right and “junior solicitor-advocate” and “senior solicitor-advocate” shall be construed in accordance with paragraph (2) below;

and, unless the context otherwise requires, any reference in these Regulations to a solicitor shall not include a solicitor when acting as solicitor-advocate.

(2) For the purposes of these Regulations, a solicitor-advocate shall be—

- (a) a senior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a senior counsel in a case where the Board has authorised the employment of senior counsel under regulation 10(1)(a) or (2) below; and
- (b) a junior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a junior counsel, whether or not the Board has authorised the employment of senior counsel in the case.

### **Distinct proceedings**

**3.—**(1) In this regulation any reference to a numbered section is to a section bearing that number in the 1995 Act.

(2) For the purpose of legal aid the following shall be treated as distinct proceedings:—

- (a) an application to the sheriff for a child assessment order under section 55;
- (b) an application to the sheriff for a child protection order under section 57;
- (c) an application to the sheriff to vary or recall a child assessment order;
- (d) an application to the sheriff to vary, recall or set aside a child protection order under section 60;
- (e) an application to the sheriff for a finding under section 65(7) or (9);
- (f) an application to the sheriff for a review of a finding under section 85;
- (g) an application to the sheriff for an exclusion order under section 76;
- (h) an application to the sheriff to vary or recall an exclusion order under section 79;
- (i) an appeal to the sheriff under section 51(1) against a decision of a children’s hearing to grant a warrant as mentioned in section 51(5)(a);
- (j) an appeal to the sheriff under section 51(1) against a decision of a children’s hearing, other than an appeal to which sub-paragraph (i) above applies;
- (k) an appeal to the sheriff principal under section 51(11)(a) (including proceedings following a remit to the sheriff under subsection (14) of that section, which proceedings shall accordingly not be treated as distinct proceedings);
- (l) an appeal to the Court of Session under section 51(11)(b) (including proceedings following a remit to the sheriff under subsection (14) of that section, which proceedings shall accordingly not be treated as distinct proceedings);
- (m) an appeal to the sheriff principal from a decision of the sheriff on an application for an exclusion order or for the variation or recall of an exclusion order;

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(4) 1980 c. 46; section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 24.

- (n) an appeal to the Court of Session from a decision of the sheriff or the sheriff principal on an application for an exclusion order or for the variation or recall of an exclusion order.

#### **Applications to the sheriff for legal aid**

4.—(1) An application for legal aid under section 29(2)(b)(i) of the Act may be made orally or otherwise to the sheriff.

(2) An application for legal aid under section 29(2)(a), (b)(ii), (c) or (7) of the Act shall be in such form, being in writing, as the sheriff may require.

#### **Applications to the Board for legal aid**

5.—(1) An application for legal aid under section 29(2)(d) or (9) of the Act shall—

- (a) be in writing in such form as the Board may require and be signed by the applicant;
- (b) include a statement signed by or on behalf of the solicitor nominated by the applicant as to his willingness to act for the applicant; and
- (c) include, where the solicitor nominated by the applicant is of the opinion that in all the circumstances there are substantial grounds for making or responding to the appeal, a statement as to the nature of these grounds.

(2) Without prejudice to any right of a child under the age of 16 years to apply under paragraph (1) of this regulation, an application on behalf of a child may be made by any relevant person, by a person acting for the purpose of any proceedings as his tutor or curator ad litem, or by a person appointed by the sheriff under section 41 of the 1995 Act to act for the purpose of safeguarding the interests of the child.

#### **Attendance for interview and supply of information to the Board**

6. An applicant for legal aid under section 29(2)(d) or (9) of the Act (including, where the applicant is a child, any person who has made an application on behalf of the child) shall, if required by the Board to do so, attend for interview by a representative of the Board or supply such further information and such documents as the Board may require to enable it to determine the application.

#### **Provision as to applicant having rights and facilities in relation to proceedings**

7.—(1) Where it appears to the sheriff or, as the case may be, to the Board that an applicant for legal aid under section 29 of the Act (other than legal aid under subsection (2)(b)(i) of that section) has available to him rights and facilities making it unnecessary for him to obtain legal aid, or has a reasonable expectation of receiving financial or other help from a body of which he or (if a child) any relevant person is a member, the sheriff or the Board shall not, unless he, or as the case may be, it, is satisfied that there are special reasons for doing so, make legal aid available.

(2) The sheriff or the Board, before making legal aid available to a person who is a member, or (if a child) where a relevant person is a member, of a body which might reasonably have been expected to give financial help towards the cost of the proceedings, shall require him or, as the case may be, the relevant person to undertake in writing to pay to the Board any sum received from that body on account of the expenses of the proceedings.

#### **Matters of special urgency**

8.—(1) Where an applicant seeks legal aid under section 29(2)(d) or (9) of the Act on a matter of special urgency, the Board may, if it thinks fit, make legal aid available to him notwithstanding that it has not been satisfied as to the matters specified in section 29(5) or, as the case may be section, 29(9) of the Act.

- (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 as the Board thinks appropriate in the circumstances;
  - (b) require the applicant as soon as practicable to satisfy it that the requirements of section 29(5) or, as the case may be, section 29(9) of the Act are met;
  - (c) in the case of the applicant not so satisfying it, cease to make legal aid available to him.

### **Notification of decision**

9. The Board shall inform an applicant for legal aid, and the solicitor nominated by him, of its decision in regard to the application.

### **Employment of counsel and expert witnesses and prior approval of the Board in cases of work of an unusual nature or likely to involve unusually large expenditure**

10.—(1) Where legal aid is granted and subject to paragraph (2) below, the prior approval of the Board shall be required—

- (a) where the proceedings are in the Court of Session, for the employment of senior counsel or of more than one junior counsel;
- (b) where the proceedings are in the sheriff court, for the employment of counsel;
- (c) for the employment of an expert witness; and
- (d) for work of an unusual nature or likely to involve unusually large expenditure.

(2) Paragraph (1) above shall not apply where the Board, on an application made to it for retrospective approval of the employment of counsel or, as the case may be, of an expert witness, considers that the employment would have been approved by it and that there was special reason why prior approval was not applied for.

### **Duty of Board to cease to make legal aid available and right to recover sums paid out of the Fund**

11.—(1) The Board shall cease to make legal aid available under section 29(2)(d) or (9) of the Act if it is satisfied that the assisted person 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.

- (2) Where the Board, in accordance with paragraph (1) above, ceases to make legal aid available—
- (a) the Board shall have the right to recover from that person the amount paid out of the Fund in respect of the fees and outlays of his solicitor and counsel; and
  - (b) the solicitor who acted for the assisted person shall have the right to receive from him the difference between the amount payable out of the Fund and the full amount which would be payable to him on a solicitor and client basis in respect of fees and outlays.

### **Revocations and savings**

12.—(1) Subject to paragraphs (2) and (3) below, the Legal Aid (Scotland) (Children) Regulations 1987<sup>(5)</sup>, the Legal Aid (Scotland) (Children) Amendment Regulations 1993<sup>(6)</sup> and the Legal Aid (Scotland) (Children) Amendment Regulations 1994<sup>(7)</sup> are hereby revoked.

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(5) [S.I. 1987/384](#).  
(6) [S.I. 1993/534](#).  
(7) [S.I. 1994/1017](#).

(2) The revocation by these Regulations of an application provision which restricts the application of a provision which is revoked and re-enacted by these Regulations does not affect the operation of that application provision, insofar as it remains capable of having effect in relation to the provision which is re-enacted in these Regulations.

(3) Where a period of time specified in any provision, which is revoked by these Regulations, is current at the date of coming into force of these Regulations, these Regulations have effect as if the provision which re-enacts that revoked provision in these Regulations had been in force when that period began to run.

St Andrew's House Edinburgh  
7th March 1997

*James Douglas-Hamilton*  
Minister of State, Scottish Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations consolidate with amendments and revoke the Legal Aid (Scotland) (Children) Regulations 1987 and the Regulations amending those Regulations.

The main changes which have been made are in consequence of the provisions of the Children (Scotland) Act 1995 (“the 1995 Act”) and are as follows:–

- (a) in regulation 3–
  - (i) the previous references to proceedings under Part III of the Social Work (Scotland) Act 1968 (c. 49) (“the 1968 Act”) are replaced with references to the equivalent proceedings under Part II of the 1995 Act;
  - (ii) provision is made for the new proceedings under Chapter 2 or 3 of Part II of the 1995 Act for which legal aid is available under section 29 of the 1986 Act, namely child assessment orders, child protection orders, exclusion orders, applications for review of a finding under section 85 of the 1995 Act and appeals to the Sheriff Principal, to be treated as distinct for the purposes of legal aid. None of these proceedings have an equivalent in the 1968 Act;
- (b) the previous references in regulations 5, 6 and 7 to “parent or guardian” have been substituted with a reference to a “relevant person”.