
STATUTORY INSTRUMENTS

1998 No. 725 (S.39)

LEGAL AID AND ADVICE, SCOTLAND

The Civil Legal Aid (Scotland) Amendment Regulations 1998

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| <i>Made</i> | - - - - | <i>11th March 1998</i> |
| <i>Laid before Parliament</i> | | <i>16th March 1998</i> |
| <i>Coming into force</i> | - - | <i>6th April 1998</i> |

The Secretary of State, in exercise of the powers conferred on him by sections 36(1), (2)(a) and (g), 37(1) and (3) and 42 of the Legal Aid (Scotland) Act 1986(1) and of all other powers enabling him in that behalf, and with the concurrence of the Treasury, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment Regulations 1998 and shall come into force on 6th April 1998.

(2) In these Regulations, “the principal Regulations” means the Civil Legal Aid (Scotland) Regulations 1996(2).

Application

2. These Regulations shall apply only in relation to any case where an application for legal aid is made to the Scottish Legal Aid Board on or after 6th April 1998.

Amendment of principal Regulations

3. In Schedule 2 to the principal Regulations (rules for computing disposable income) for rule 13 there shall be substituted—

“13.—(1) There shall be a deduction in respect of the maintenance of the spouse of the person concerned, if the spouses are living together and in respect of the maintenance of any person wholly or substantially maintained by the person concerned, being a member of his or her household, (“a dependent person”) at the following rates:—

(a) in the case of a spouse, at a rate equivalent to the difference, as at the date when the computation period began, between the income support allowance for a couple where

(1) 1986 c. 47; subsection (2B) was inserted in section 17 by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36(6).
(2) S.I. 1996/2444, as amended by S.I. 1997/727.

both members are aged not less than 18 (which is specified in column (2) of paragraph 1(3)(d) of Part I of Schedule 2 to the Income Support (General) Regulations 1987(3)), and the allowance for a single person aged not less than 25 (which is specified in column (2) of paragraph 1(1)(e) of Part I of Schedule 2 to those Regulations(4));

- (b) in the case of a dependent person aged under 19, at a rate equivalent to the amount specified in column 2 of paragraph 2(1) of Part I of Schedule 2 to the Income Support (General) Regulations 1987(5) appropriate to that person;
- (c) in the case of a dependent person aged 19 or over at a rate equivalent to the amount specified in column 2 of paragraph 2(1)(c) of Part I of Schedule 2 to the Income Support (General) Regulations 1987.

Provided that the Board may reduce such rate by taking into account the income and other resources of the dependent person to such extent as appears to the Board to be just and equitable.

(2) In ascertaining whether a person is a dependent person regard shall be had to their income and other resources.”.

4. In Schedule 3 to the principal Regulations (rules for computing disposable capital)–

- (a) rule 5(b) shall be amended by adding the word “substantially” after the word “without”.
- (b) for rule 15(2) there shall be substituted “In this Schedule pensionable age means the age of 60”.

St Andrew’s House,
Edinburgh
6th March 1998

Henry McLeish
Minister of State, Scottish Office

We concur,

11th March 1998

John Owen Jones
Graham Allen
Two of the Lords Commissioners of Her
Majesty’s Treasury

(3) [S.I. 1987/1967](#), as relatively amended by [S.I. 1996/2545](#) and [S.I. 1997/543](#).

(4) The amount specified was substituted by [S.I. 1997/543](#).

(5) The allowances specified were amended by [S.I. 1996/2545](#) and the amounts specified were substituted by [S.I. 1997/543](#).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) Regulations 1996 (“the principal Regulations”) so as to—

- (a) make further provision for a deduction to be made for a dependent person aged 19 or over when computing the income of a person during the assessment of his resources in respect of an application for legal aid. Previously deductions could only be made for a dependent child or relative (regulation 3);
- (b) provide that the definition of pensionable age in Schedule 3 to the principal Regulations is 60. Previously the age was 65 for men and 60 for women. Persons of pensionable age who are on low incomes are entitled in terms of Rule 15 of Schedule 3 to the principal Regulations to specified capital disregards (regulation 4(b)); and
- (c) make an amendment in the rules for computing capital in respect of the calculation of the value of a business (regulation 4).

By virtue of regulation 2, the Regulations apply only in relation to any case where an application for legal aid is made to the Scottish Legal Aid Board on or after 6th April 1998.