

Draft Regulations laid before the Scottish Parliament under section 37(2) of the Legal Aid (Scotland) Act 1986 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2007 No.

LEGAL AID AND ADVICE

**The Advice and Assistance (Financial
Conditions) (Scotland) Regulations 2007**

Made - - - - *2007*
Coming into force

The Scottish Ministers, in exercise of the powers conferred by sections 11(2) and 36(1) and (2)(b) of the Legal Aid (Scotland) Act 1986(1), and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 37(2) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007 and shall, subject to paragraph (2), come into force on 9th April 2007.

(2) Regulation 7 shall come into force on 1st May 2007.

(3) In these Regulations “the Act” means the Legal Aid (Scotland) Act 1986.

Application

2.—(1) Subject to paragraph (2), these Regulations shall apply only in relation to any case where an application for advice and assistance is made on or after 9th April 2007.

(2) Regulation 7 shall apply only in relation to any case where an application for advice and assistance in relation to a civil matter is made on or after 1st May 2007.

(1) 1986 c. 47. Section 11(2) was amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraph 61, the Jobseekers Act 1995 (c. 18), Schedule 2, paragraph 9 and the Access to Justice Act 1999 (c. 22), section 33. Section 36(2)(b) was amended by the Legal Aid Act 1988 (c. 34), Schedule 4, paragraph 6. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

Amendment of the Legal Aid (Scotland) Act 1986

3. For the weekly sum of £208 specified in section 8(a) of the Act(2) substitute the weekly sum of £215.

4. For the capital sum of £1,450 specified in section 8 of the Act(3) substitute the capital sum of £1,502.

5. For the weekly sum of £88 specified in section 11(2)(a) of the Act(4) substitute the weekly sum of £91.

Liability to pay fees or outlays under section 11(2) of the Act

6. Subject to regulation 7, the maximum amount of fees or outlays which a client is liable to pay under section 11(2) of the Act(5), where that client's disposable income falls within a range specified in the first column of the following table, is the amount specified in relation to that range in the second column:–

<i>Disposable income range</i>	<i>Maximum contribution</i>
1. Exceeding £91 but not exceeding £98 a week	£7
2. Exceeding £98 but not exceeding £105 a week	£14
3. Exceeding £105 but not exceeding £112 a week	£21
4. Exceeding £112 but not exceeding £119 a week	£28
5. Exceeding £119 but not exceeding £126 a week	£35
6. Exceeding £126 but not exceeding £133 a week	£42
7. Exceeding £133 but not exceeding £140 a week	£49
8. Exceeding £140 but not exceeding £147 a week	£56
9. Exceeding £147 but not exceeding £154 a week	£63
10. Exceeding £154 but not exceeding £161 a week	£70
11. Exceeding £161 but not exceeding £168 a week	£77
12. Exceeding £168 but not exceeding £175 a week	£84

(2) The previous figure specified in section 8(a) was inserted by S.S.I. 2006/179, regulation 3.

(3) The previous figure specified in section 8 was inserted by S.S.I. 2006/179, regulation 4.

(4) The previous figure specified in section 11(2)(a) was inserted by S.S.I. 2006/179, regulation 5.

(5) The previous maximum amounts were specified in S.S.I. 2006/179, regulation 6.

<i>Disposable income range</i>	<i>Maximum contribution</i>
13. Exceeding £175 but not exceeding £182 a week	£91
14. Exceeding £182 but not exceeding £189 a week	£98
15. Exceeding £189 but not exceeding £196 a week	£105
16. Exceeding £196 but not exceeding £203 a week	£112
17. Exceeding £203 but not exceeding £210 a week	£119
18. Exceeding £210 but not exceeding £215 a week	£124

7.—(1) Subject to paragraph (2), where a solicitor has approved and proceeded to provide advice and assistance by way of a diagnostic interview and the work undertaken is made up solely of a diagnostic interview, the maximum amount of fees or outlays which a client is liable to pay under section 11(2) of the Act, where that client's disposable income falls within a range specified in the first column of the following table, is the amount specified in relation to that range in the second column:—

Disposable income range	Maximum contribution
1. Exceeding £91 but not exceeding £119 a week	£7
2. Exceeding £119 but not exceeding £147 a week	£14
3. Exceeding £147 but not exceeding £175 a week	£21
4. Exceeding £175 but not exceeding £196 a week	£28
5. Exceeding £196 but not exceeding £215 a week	£35

(2) Paragraph (1) shall not apply where a solicitor has approved and proceeded to provide advice and assistance by way of a diagnostic interview for a matter which, upon application to the Board under regulation 8B(3) of the Advice and Assistance (Scotland) Regulations 1996⁽⁶⁾, is determined by it to be treated as if did relate to one or more distinct matters.

(3) In this regulation “diagnostic interview” has the meaning given in regulation 2(1), and “distinct matter” shall be construed in accordance with regulation 8A(2), of those Regulations.

(6) S.I.1996/2447 as relevantly amended by S.S.I. 2007/60.

Revocation

8. The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006(7) are hereby revoked except in relation to any case where an application for advice and assistance is made before 9th April 2007.

St Andrew's House,
Edinburgh
2007

Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations—

- (a) increase the disposable income limit for eligibility for advice and assistance under the Legal Aid (Scotland) Act 1986 from £208 per week to £215 per week (regulation 3);
- (b) increase the disposable capital limit for advice and assistance from £1,450 to £1,502 (regulation 4);
- (c) increase the weekly disposable income above which a person is required to pay a contribution from £88 to £91 (regulation 5);
- (d) prescribe the scale of contributions to be paid where the weekly disposable income exceeds £91 but does not exceed £215 (regulation 6).

These changes apply in relation to any case where an application for advice and assistance is made on or after 9th April 2007 (regulation 2(1)).

In relation to any case where an application for advice and assistance is made on or after 1st May 2007, the Regulations prescribe the scale of contributions to be paid where a person's weekly disposable income exceeds £91 but does not exceed £215 in respect of applications for advice and assistance in relation to civil matters only where the work undertaken by the solicitor is made up solely of a diagnostic interview. The separate scale of contributions is, however, disapplied where the Scottish Legal Aid Board determines that the subject matter of the advice and assistance should be treated as if it were distinct (regulation 2(2) and 7).

The Regulations also revoke the Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006 except in relation to any case where an application for advice and assistance is made before 9th April 2007 (regulation 8).