

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

2008 No.

LEGAL AID AND ADVICE

**The Advice and Assistance (Financial
Conditions) (Scotland) Regulations 2008**

Made - - - - 2008
Coming into force - - 7th April 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 11(2) and 36(2)(b) of the Legal Aid (Scotland) Act 1986(1) and of all other powers enabling them to do so.

In accordance with section 37(2) of that Act, a draft of this instrument has 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 2008 and shall come into force on 7th April 2008.

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

Application

2. These Regulations shall apply only in relation to any case where an application for advice and assistance is made on or after 7th April 2008.

Amendment of the Legal Aid (Scotland) Act 1986

3. In section 8(a) of the Act(2) for “£215” substitute “£223”.

4. In section 8 of the Act(3) for “£1,502” substitute “£1,561”.

(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).

(2) The previous figure specified in section 8(a) was inserted by S.S.I. 2007/247, regulation 3.

(3) The previous figure specified in section 8 was inserted by S.S.I. 2007/247, regulation 4.

5. In section 11(2)(a) of the Act(4) for “£91” substitute “£95”.

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 £95 but not exceeding £102 a week	£7
2. Exceeding £102 but not exceeding £109 a week	£14
3. Exceeding £109 but not exceeding £116 a week	£21
4. Exceeding £116 but not exceeding £123 a week	£28
5. Exceeding £123 but not exceeding £130 a week	£35
6. Exceeding £130 but not exceeding £137 a week	£42
7. Exceeding £137 but not exceeding £144 a week	£49
8. Exceeding £144 but not exceeding £151 a week	£56
9. Exceeding £151 but not exceeding £158 a week	£63
10. Exceeding £158 but not exceeding £165 a week	£70
11. Exceeding £165 but not exceeding £172 a week	£77
12. Exceeding £172 but not exceeding £179 a week	£84
13. Exceeding £179 but not exceeding £186 a week	£91
14. Exceeding £186 but not exceeding £193 a week	£98
15. Exceeding £193 but not exceeding £200 a week	£105
16. Exceeding £200 but not exceeding £207 a week	£112

(4) The previous figure specified in section 11(2)(a) was inserted by S.S.I. 2007/247, regulation 5.

(5) The previous maximum amounts were specified in S.S.I. 2007/247, regulation 6.

<i>Disposable income range</i>	<i>Maximum contribution</i>
17. Exceeding £207 but not exceeding £214 a week	£119
18. Exceeding £214 but not exceeding £223 a week	£124

7.—(1) 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—

<i>Disposable income range</i>	<i>Maximum contribution</i>
1. Exceeding £95 but not exceeding £123 a week	£7
2. Exceeding £123 but not exceeding £151 a week	£14
3. Exceeding £151 but not exceeding £179 a week	£21
4. Exceeding £179 but not exceeding £200 a week	£28
5. Exceeding £200 but not exceeding £223 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 it 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.

Revocation

8. The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007⁽⁷⁾ are revoked except in relation to any case where an application for advice and assistance is made before 7th April 2008.

St Andrew’s House, Edinburgh
2008

A member of the Scottish Executive

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

(7) S.S.I. 2007/247.

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 £215 per week to £223 per week (regulation 3);
- (b) increase the disposable capital limit for advice and assistance from £1,502 to £1,561 (regulation 4);
- (c) increase the weekly disposable income above which a person is required to pay a contribution from £91 to £95 (regulation 5);
- (d) prescribe the scale of contributions to be paid where the weekly disposable income exceeds £95 but does not exceed £223 (regulation 6).

These changes apply in relation to any case where an application for advice and assistance is made on or after 7th April 2008 (regulation 2).

In relation to applications for advice and assistance in civil matters only, where the work undertaken by the solicitor is made up solely of a diagnostic interview, the Regulations prescribe a separate scale of contributions to be paid where a person's weekly disposable income exceeds £95 but does not exceed £223. 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 7).

The Regulations also revoke the Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007 except in relation to any case where an application for advice and assistance is made before 7th April 2008 (regulation 8).