

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

2009 No.

LEGAL AID AND ADVICE

The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2009

Made - - - - 2009
Coming into force - - 7th April 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 11(2), 17(2)(a) and 36(2)(b) of the Legal Aid (Scotland) Act 1986(1) and 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. These Regulations may be cited as the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2009 and come into force on 7th April 2009.
2. In these Regulations “the Act” means the Legal Aid (Scotland) Act 1986.

Application

- 3.—(1) Paragraphs (2) to (4) of regulation 4 and regulations 6 and 7 apply only in relation to any case where an application for advice and assistance is made on or after 7th April 2009.
- (2) Paragraphs (5) to (8) of regulation 4 and regulation 5 apply only in relation to any case where an application for civil legal aid is made on or after 7th April 2009.

Amendment of the Act

- 4.—(1) The Act is amended in accordance with paragraphs (2) to (8).

(1) 1986 (c. 47); section 11(2) was amended, other than by a substitution of figures, by paragraph 61 of Schedule 10 to the Social Security Act 1986 (c. 50), paragraph 9 of Schedule 2 to the Jobseekers Act 1995 (c. 18), section 33 of the Access to Justice Act 1999 (c. 22), paragraph 12 of Schedule 3 to the Tax Credits Act 2002 (c. 21) and paragraph 4 of Schedule 3 to the Welfare Reform Act 2007 (c. 5). Section 36(2)(b) was amended by paragraph 6 of Schedule 4 to the Legal Aid Act 1988 (c. 34). 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) In section 8(a) (which specifies the weekly disposable income limit for advice and assistance), for “£223” substitute “£234”(2).

(3) In section 8 (which specifies the disposable capital limit for advice and assistance), for “£1,561” substitute “£1,639”(3).

(4) In section 11(2)(a) (which specifies the weekly disposable income threshold for payment in respect of advice and assistance), for “£95” substitute “£100”(4).

(5) In section 15(1) (which specifies the annual disposable income limit for civil legal aid), for “£10,306” substitute “£25,000”(5).

(6) In section 15(2)(a) (which specifies the disposable capital limit for civil legal aid), for “£11,847” substitute “£12,439”(6).

(7) In section 17(2)(a) (which, amongst other things, specifies the annual disposable income threshold for contributions in respect of civil legal aid), for “£3,156” substitute “£3,355”(7).

(8) In section 17(2)(b) (which specifies the disposable capital threshold for contributions in respect of civil legal aid), for “£7,147” substitute “£7,504”(8).

Liability to contribute to the Fund under section 17(2)(a) of the Act

5. For the purposes of section 17(2)(a) of the Act (which, amongst other things, specifies the proportion of disposable income which an income contribution in respect of civil legal aid cannot exceed), the proportion of the excess prescribed is 67.1%(9).

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

6. Unless regulation 7 applies, the maximum amount of fees or outlays which a client is liable to pay under section 11(2) of the Act(10) (under which clients are liable to pay fees and outlays in respect of advice and assistance), where that client’s weekly disposable income falls within a range specified in the first column of the following table, is the corresponding amount specified in the second column:–

<i>Weekly disposable income</i>	<i>Maximum contribution</i>
1. Exceeding £100 but not exceeding £107	£7
2. Exceeding £107 but not exceeding £114	£14
3. Exceeding £114 but not exceeding £121	£21
4. Exceeding £121 but not exceeding £128	£28
5. Exceeding £128 but not exceeding £135	£35
6. Exceeding £135 but not exceeding £142	£42
7. Exceeding £142 but not exceeding £149	£49
8. Exceeding £149 but not exceeding £156	£56

(2) The previous figure specified in section 8(a) was inserted by [S.S.I. 2008/137](#).

(3) The previous figure specified in section 8 was inserted by [S.S.I. 2008/137](#).

(4) The previous figure specified in section 11(2)(a) was inserted by [S.S.I. 2008/137](#).

(5) The previous figure specified in section 15(1) was inserted by [S.S.I. 2008/138](#).

(6) The previous figure specified in section 15(2)(a) was inserted by [S.S.I. 2008/138](#).

(7) The previous figure specified in section 17(2)(a) was inserted by [S.S.I. 2008/138](#).

(8) The previous figure specified in section 17(2)(b) was inserted by [S.S.I. 2008/138](#).

(9) The proportion of the excess for the purposes of section 17(2)(a) was previously prescribed as one-third by [S.I. 1993/970](#).

(10) The maximum contribution payable in accordance with section 11(2) was previously prescribed by [S.I. 2008/137](#).

<i>Weekly disposable income</i>	<i>Maximum contribution</i>
9. Exceeding £156 but not exceeding £163	£63
10. Exceeding £163 but not exceeding £170	£70
11. Exceeding £170 but not exceeding £177	£77
12. Exceeding £177 but not exceeding £184	£84
13. Exceeding £184 but not exceeding £191	£91
14. Exceeding £191 but not exceeding £198	£98
15. Exceeding £198 but not exceeding £205	£105
16. Exceeding £205 but not exceeding £212	£112
17. Exceeding £212 but not exceeding £219	£119
18. Exceeding £219 but not exceeding £226	£126
19. Exceeding £226 but not exceeding £234	£134

7.—(1) Subject to paragraph (2), this regulation applies 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.

(2) This regulation does not apply where, pursuant to the solicitor’s application, the Board determines that the subject matter of the diagnostic interview should be treated as if it were a distinct matter.

(3) In this regulation “diagnostic interview” has the meaning given in regulation 2(1) of the Advice and Assistance (Scotland) Regulations 1996⁽¹¹⁾ and “distinct matter” shall be construed in accordance with regulation 8A(2) of those Regulations.

(4) Where this regulation applies, 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 weekly disposable income falls within a range specified in the first column of the following table, is the corresponding amount specified in the second column:—

<i>Weekly disposable income</i>	<i>Maximum contribution</i>
1. Exceeding £100 but not exceeding £128	£7
2. Exceeding £128 but not exceeding £156	£14
3. Exceeding £156 but not exceeding £184	£21
4. Exceeding £184 but not exceeding £212	£28
5. Exceeding £212 but not exceeding £234	£35

Revocations

8. The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2008⁽¹²⁾ are revoked, except in relation to any case where an application for advice and assistance is made before 7th April 2009.

⁽¹¹⁾ S.I. 1996/2447; as relevantly amended by S.S.I. 2007/60.

⁽¹²⁾ S.S.I. 2008/137.

9. Except in relation to any case where an application for civil legal aid is made before 7th April 2009, the following Regulations are revoked:—

- (a) the Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2008**(13)**; and
- (b) the Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 1993**(14)**.

St Andrew's House,
Edinburgh
2009

A member of the Scottish Executive

(13) S.S.I. 2008/138.

(14) S.I. 1993/970; regulation 3(a) was revoked by S.I. 1994/998.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations—

- (a) amend the Legal Aid (Scotland) Act 1986 (“the Act”) to increase the financial limits of eligibility for advice and assistance and civil legal aid;
- (b) amend the Act to increase the financial thresholds beyond which a person may be required to make payments in respect of advice and assistance and contributions in respect of civil legal aid; and
- (c) prescribe the maximum amount of those payments and, in respect of income, contributions.

In particular, in relation to advice and assistance—

The disposable income limit for eligibility is increased from £223 a week to £234 a week and the disposable capital limit is increased from £1,561 to £1,639. The disposable income threshold, above which a person is liable to pay fees or outlays in respect of advice and assistance, is increased from £95 a week to £100 a week (paragraphs (2) to (4) of regulation 4).

The maximum liability of a person for fees and outlays in respect of advice and assistance, having regard to their disposable income, is prescribed in regulations 6 and 7. Regulation 7 applies where the advice and assistance provided in a civil matter is limited to a diagnostic interview and the Board have not made a determination under regulation 8B(3) of the Advice and Assistance (Scotland) Regulations 1996 that the subject matter of that diagnostic interview should be treated as if it were a distinct matter. The scale prescribed in regulation 6 applies in any other case.

The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2008, which dealt with the foregoing matters in relation to cases where advice and assistance was applied for on or after 7th April 2008, are revoked (regulation 8).

These changes only apply in relation to cases where an application for advice and assistance is made on or after 7th April 2009.

In relation to civil legal aid—

The disposable income limit is increased from £10,306 a year to £25,000 a year and the disposable capital limit from £11,847 to £12,439. The disposable income threshold, above which a person may be required to contribute to the Scottish Legal Aid Fund (“the Fund”) in respect of income, is increased from £3,156 a year to £3,355 a year. The disposable capital threshold, above which a person may be required to contribute to the Fund in respect of capital, is increased from £7,147 to £7,504 (paragraphs (5) to (8) of regulation 4).

The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2008, which dealt with the foregoing matters in relation to cases where civil legal aid was applied for on or after 7th April 2008, are revoked (regulation 9(a)).

Regulation 5 prescribes the maximum proportion of the excess of annual disposable income which a person may be required to contribute to the Fund in respect of civil legal aid. The excess is the amount by which a person’s annual disposable income exceeds the threshold specified in section 17(2)(a) of the Act (increased by regulation 4(7) to £3,355). The maximum contributable proportion of the excess previously prescribed was one third. The Scottish Ministers will be giving guidance to the Board on contributions.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2009 No. 143*

The Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 1993 which, amongst other things prescribed the previously applicable proportion of the excess, are revoked (regulation 9(b)).

These changes only apply in relation to cases where an application for civil legal aid is made on or after 7th April 2009.