

*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.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2021 No.**

**CHILDREN AND YOUNG PERSONS  
LEGAL AID AND ADVICE**

**The Children's Legal Assistance (Miscellaneous Amendments  
and Consequential Provisions) (Scotland) Regulations 2021**

*Made* - - - - *2021*  
*Coming into force* - - *8th November 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9(2)(a), 28LB(1), 33(2) and 36(1) and (2)(c) of the Legal Aid (Scotland) Act 1986<sup>(1)</sup> and section 83 of the Age of Criminal Responsibility (Scotland) Act 2019<sup>(2)</sup>, and all other powers enabling them to do so.

In accordance with section 37(2) of the Legal Aid (Scotland) Act 1986 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 Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 and come into force on 8th November 2021.

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

**Amendment of the Legal Aid (Scotland) Act 1986**

2.—(1) The 1986 Act is amended in accordance with paragraphs (2) and (3).

(2) In section 28C<sup>(3)</sup> (circumstances where children's legal aid automatically available)—

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(1) 1986 c. 47 (“the Act”). Section 28LB was inserted by section 73(3) of the Age of Criminal Responsibility (Scotland) Act 2019 (asp 7). The functions of the Secretary of State under the Act were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). The powers to make these Regulations are exercised by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) 2019 asp 7.

(3) Section 28C was inserted by section 191 of the Children's Hearings (Scotland) Act 2011 (asp 1).

- (a) at the end of subsection (1)(c) omit “or”,
- (b) in subsection (1), after paragraph (d) insert—
  - “(e) an application in relation to a child is made under section 34 (application for order authorising search in relation to child under 12), 42 (application for child interview order) or 61 (application for order authorising taking of prints and samples from child) of the 2019 Act, or
  - (f) an order is made in relation to a child under section 36 (search in relation to child under 12), 44 (child interview) or 63 (taking of prints and samples from child) of the 2019 Act”,
- (c) at the end of subsection (2)(b) omit “and”, and
- (d) after (2)(c) insert—
  - “(d) representations in respect of an application mentioned in subsection (1)(e), and
  - (e) proceedings before the sheriff under section 38 (appeal against decision under section 36), 46 (appeal against decision under section 44) or 67 (appeal against decision under section 63) of the 2019 Act in respect of permission to appeal a decision and, where such permission is given, proceedings before the Sheriff Appeal Court in respect of such an appeal”.
- (3) In section 41 (interpretation)—
  - (a) after the definition of “the 2011 Act” insert—
    - ““the 2019 Act” means the Age of Criminal Responsibility (Scotland) Act 2019 (asp 7),”, and
  - (b) in the definition of “children’s legal assistance” insert at the end—
    - “or in relation to proceedings under Part 4 of the 2019 Act”.

#### **Amendment of the Civil Legal Aid (Scotland) (Fees) Regulations 1989**

**3.—(1)** The Civil Legal Aid (Scotland) (Fees) Regulations 1989(4) are amended in accordance with paragraph (2).

(2) In schedule 7 (Sheriff Court proceedings for which fees for work done shall only be payable under schedule 5), after the entry relating to proceedings under the 2011 Act insert—

“proceedings under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, other than those subject to regulation 3(7) of these Regulations”.

#### **Amendment of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993**

**4.** In regulation 3(c) (financial limit) of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993(5) after sub-paragraph (xvi) insert—

“(xvii) where the advice by way of representation relates to proceedings under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, the sum of £500”.

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(4) S.I. 1989/1490; relevant amending instruments are S.S.I. 2003/178 and S.S.I. 2013/144.

(5) S.I. 1993/3187; relevant amending instruments are S.S.I. 2007/248, S.S.I. 2008/251 and S.S.I. 2021/55.

### **Amendment of the Advice and Assistance (Scotland) Regulations 1996**

5.—(1) The Advice and Assistance (Scotland) Regulations 1996<sup>(6)</sup> are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(1) (interpretation)—

(a) for the definition of “child” substitute—

““child” means a person under the age of 16 years, except in relation to—

- (a) any hearings or proceedings under the 2011 Act, where “child” has the meaning in section 199 of that Act, or
- (b) proceedings under Chapter 3 of Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, where “child” has the meaning in section 39(3) of that Act.”.

(3) In paragraph 1 of the Table of Fees in Part 1 of schedule 3 (table of fees allowable to solicitors for assistance by way of representation)<sup>(7)</sup> after “Children’s Hearings (Scotland) Act 2011” insert “or Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019”.

### **Amendment of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003**

6.—(1) The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003<sup>(8)</sup> are amended in accordance with paragraphs (2) and (3).

(2) The heading of regulation 3A becomes “Application of Part II of the Act to assistance by way of representation: hearings or proceedings under the Children’s Hearings (Scotland) Act 2011 and proceedings under the Age of Criminal Responsibility (Scotland) Act 2019”

(3) In regulation 3A(1)(b)(i) and (ii) for “section 28C(1) and (2)” substitute “section 28C(1)(a)-(d) and (2)(a)-(c)”.

### **Amendment of the Children’s Legal Assistance (Scotland) Regulations 2013**

7.—(1) The Children’s Legal Assistance (Scotland) Regulations 2013<sup>(9)</sup> are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the 2011 Act” insert—

““the 2019 Act” means the Age of Criminal Responsibility (Scotland) Act 2019,”

(b) for the definition of “child” substitute—

““child”—

- (a) in relation to proceedings under the 2011 Act has the meaning given in section 199 of that Act,
- (b) in relation to proceedings under the 2019 Act has the meaning given in section 80 of that Act,”

(c) after the definition of “children’s hearing”, insert—

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(6) S.I. 1996/2447; relevant amending instruments are S.S.I. 2000/399, S.S.I. 2003/421, S.S.I. 2005/445, S.S.I. 2010/462 and S.S.I. 2013/200.

(7) Paragraph 1 was amended by S.S.I. 2005/171, S.S.I. 2008/240, S.S.I. 2011/162, S.S.I. 2013/144, S.S.I. 2014/366, S.S.I. 2017/466, S.S.I. 2019/78 and S.S.I. 2021/56.

(8) S.S.I. 2003/179, relevantly amended by S.S.I. 2013/200.

(9) S.S.I. 2013/200. Relevantly amended by S.S.I. 2016/387.

““interested person”, in relation to proceedings relating to an application for an order under section 34 (application for order authorising search in relation to child under 12), 42 (application for child interview order) or 61 (application for order authorising taking of prints and samples from child) of the 2019 Act means any other person the sheriff considers to have an interest in the application,

“parent”, in respect of proceedings under Part 4 of the 2019 Act has the meaning given in section 76 of that Act.”.

(3) In regulation 5 (children's legal aid: individual), for paragraph (1) substitute—

“(1) Children's legal aid is available to—

- (a) an individual to whom section 126 of the 2011 Act refers in respect of any proceedings before a sheriff, sheriff principal or in the Sheriff Appeal Court or the Court of Session in connection with a hearing under that section, where the conditions in paragraph (2) are met,
- (b) an individual who is a parent or interested person in respect of proceedings under Part 4 of the 2019 Act, where the conditions in paragraph (2)(c) are met.”.

(4) In regulation 6 (distinct proceedings)—

- (a) in paragraph (1) after “regulation” insert “, except where otherwise specified”,
- (b) after paragraph (3) insert—

“(4) For the purposes of children's legal aid each of the following (or one or more part of them) is to be treated as a single set of proceedings—

- (a) proceedings relating to an application under section 34 of the 2019 Act for an order authorising a search in relation to a child under 12 years of age, an application to appeal to the Sheriff Appeal Court against a decision taken by a sheriff under section 36 of the 2019 Act in respect of that application, and where permission is given the proceedings relating to such an appeal,
- (b) proceedings relating to an application under section 42 of the 2019 Act for a child interview order, an application to appeal to the Sheriff Appeal Court against a decision taken by a sheriff under section 44 of the 2019 Act in respect of that application, and where permission is given the proceedings relating to such an appeal,
- (c) proceedings relating to an application under section 61 of the 2019 Act for an order authorising the taking of prints and samples from a child, an application to appeal to the Sheriff Appeal Court against a decision taken by a sheriff under section 63 of the 2019 Act in respect of that application, and where permission is given the proceedings relating to such an appeal.”.

(5) In regulation 18 (matters of special urgency),

(a) for paragraph (1) substitute—

“(1) The Board may make children's legal aid available for specially urgent work undertaken before an application for children's legal aid is determined, if it appears to the Board that it is reasonable in the particular circumstances of the case that the applicant should receive children's legal aid, in either of the following circumstances—

- (a) where the application is made by a parent or interested person in relation to proceedings under Part 4 of the 2019 Act and any of the steps specified in paragraph (1A) has required to be taken as a matter of special urgency to protect the applicant's position, or

- (b) in any other circumstances the Board is satisfied on application that participation in proceedings is required as a matter of special urgency to protect the applicant's position.”,
- (b) after paragraph (1) insert—
  - “(1A) The steps referred to in paragraph (1)(a) are—
    - (a) such steps as may be appropriate to intimate an intention to make representations in respect of an application for an order,
    - (b) such steps as may be appropriate to make representations in respect of an application for an order,
    - (c) moving to prorogate the time for compliance with any order or rule in relation to the proceedings,
    - (d) moving for permission to appeal a decision,
    - (e) such steps as may be appropriate to initiate an appeal of a decision in relation to an order, and
    - (f) conducting an appeal of a decision in relation to an order.”, and
- (c) in paragraphs (2) and (3) in all the places where “paragraph (1)” appears substitute “paragraph (1)(b)”.

St Andrew's House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

## EXPLANATORY NOTE

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

These Regulations amend the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) and the following instruments made under that Act, in relation to proceedings under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”):

- the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (“the 1989 Regulations”),
- the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 (“the 1993 Regulations”),
- the Advice and Assistance (Scotland) Regulations 1996 (“the 1996 Regulations”),
- the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 (“the 2003 Regulations”), and
- the Children’s Legal Assistance (Scotland) Regulations 2013 (“the 2013 Regulations”).

Regulation 2 amends section 28C of the 1986 Act to make children’s legal aid automatically available to a child in relation to whom an application is made for any of the orders under Part 4 of the 2019 Act. Legal aid is made available for representations by the child when a sheriff is considering an application for an order, as well as for applying for permission to appeal the subsequent decision and for any resultant appeal proceedings.

Regulation 2 also makes consequential amendments to section 41 of the 1986 Act (interpretation), adding a definition of the 2019 Act and amending the definition of children’s legal assistance to include proceedings under Part 4 of the 2019 Act.

Regulation 3 amends schedule 7 of the 1989 Regulations to provide that fees for proceedings under Part 4 of the 2019 Act, other than children’s legal aid provided automatically under section 28C of the Legal Aid (to which regulation 2 of these Regulations relates), are payable under schedule 5 of the 1989 Regulations.

Regulation 4 amends regulation 3 of the 1993 Regulations to provide that the financial limit applicable to advice by way of representation provided in relation to proceedings under Part 4 of the 2019 Act is £500.

Regulation 5 amends the definition of “child” in regulation 2 of the 1996 Regulations (interpretation) to include the different meaning that applies in proceedings under Chapter 3 of Part 4 of the 2019 Act. For the purposes of the other proceedings under the 2019 Act, the meaning of “child” is included in the current definition in regulation 2 of the 1996 Regulations.

Regulation 5 also amends part 1 of schedule 3 of the 1996 Regulations to provide that the fees allowable to solicitors for providing assistance by way of representation in relation to proceedings under Part 4 of the 2019 Act are those set out in the table of fees in that part.

Regulation 6 amends regulation 3A of the 2003 Regulations, which includes provision for assistance by way of representation in relation to section 28C of the 1986 Act. As a result of the amendments made by regulation 2 of these Regulations, regulation 3A applies to proceedings under Part 4 of the 2019 Act. Regulation 6 amends the heading of the regulation to include reference to the 2019 Act, and restricts the effect of the amendments made by regulation 2 to ensure that they apply only to the child in proceedings under Part 4 of the 2019 Act.

Regulation 7 makes several amendments to the 2013 Regulations—

- regulation 7(2) amends regulation 2 (interpretation) to add definitions of “child”, “interested person” and “parent” in respect of proceedings under part 4 of the 2019 Act,
- regulation 7(3) amends regulation 5 (children’s legal aid: individual) to provide for children’s legal aid for an individual who is a parent or interested person in respect of proceedings under Part 4 of the 2019 Act, subject to the means test in paragraph (2)(c) of that regulation,
- regulation 7(4) amends regulation 6 (distinct proceedings) to provide that proceedings relating to an application for any of the orders under Part 4 of the 2019 Act, permission to appeal a decision made in respect of such an application, and where permission is granted the appeal of that decision itself are to be treated as a single set of proceedings for the purposes of children’s legal aid,
- regulation 7(5) amends regulation 18 (matters of special urgency) to provide that, if it appears to the Scottish Legal Aid Board that it is reasonable in the particular circumstances of the case, it may make children’s legal aid available where an application is made by a parent or interested person in relation to proceedings under Part 4 of the 2019 Act and any of the steps specified has required to be taken as a matter of special urgency to protect the applicant’s position.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrew’s House, Edinburgh EH1 3DG, and online at [www.legislation.gov.uk](http://www.legislation.gov.uk).