

*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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**2023 No.**

**LEGAL AID AND ADVICE**

**The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023**

Made - - - - 2023  
Coming into force - - 23rd January 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9, 12(3), 17(2B), 36(2)(a) and 42 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(2).

**Citation and commencement**

1. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023 and come into force on 23 January 2023.

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

2.—(1) The Advice and Assistance (Scotland) Regulations 1996(3) are amended as follows.

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

(a) after the definition of “the 2021 Act”, insert—

““the 2022 Act” means the Social Security (Additional Payments) Act 2022(4);

“additional payment” has the meaning given in section 9(1)(interpretation) of the 2022 Act;”

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- (1) 1986 c. 47 (“the Act”). Section 17(2B) was inserted by paragraph 36(6) of schedule 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40). 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).
- (2) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.
- (3) S.I. 1996/2447 was renamed by S.I. 1997/726. Relevant amending instruments are S.S.I. 2020/424 and S.S.I. 2021/333.
- (4) 2022 c. 38.

- (b) after the definition of “Scottish child payment”, insert—
- ““Scottish Infected Blood Support Scheme” means the scheme of that name made by the Scottish Ministers in exercise of powers conferred by section 28 of the Smoking, Health and Social Care (Scotland) Act 2005<sup>(5)</sup>;
- “social fund winter fuel payment” means the winter fuel payment paid by virtue of the Social Fund Winter Fuel Payment Regulations 2000<sup>(6)</sup>.”
- (3) In regulation 16(2) (payment of fees and outlays from property recovered or preserved)—
- (a) after sub-paragraph (a)(xv), insert—
- “(xvi) by way of any payment made under the Scottish Infected Blood Support Scheme;
- (xvii) by way of any additional payment made under the 2022 Act; ”,
- (b) after sub-paragraph (m), insert—
- “(n) to any temporary additional amount to the social fund winter fuel payment paid by virtue of the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2022<sup>(7)</sup>.”
- (4) In schedule 2 (assessment of disposable capital and disposable income), after paragraph 5(bd), insert—
- “(be) there shall be left out of account any payment made under the Scottish Infected Blood Support Scheme;
- (bf) there shall be left out of account any additional payment;
- (bg) there shall be left out of account any temporary additional amount to the social fund winter fuel payment paid by virtue of the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2022 .”.

### **Amendment of the Civil Legal Aid (Scotland) Regulations 2002**

- 3.—**(1) The Civil Legal Aid (Scotland) Regulations 2002<sup>(8)</sup> are amended as follows.
- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “the 2021 Act”, insert—
- ““the 2022 Act” means the Social Security (Additional Payments) Act 2022,
- “additional payment” has the meaning given in section 9(1)(interpretation) of the 2022 Act;”,
- (b) after the definition of “Scottish child payment”, insert—
- ““Scottish Infected Blood Support Scheme” means the scheme of that name made by the Scottish Ministers in exercise of powers conferred by section 28 of the Smoking, Health and Social Care (Scotland) Act 2005;”,
- (c) after the definition of “senior counsel”, insert—
- ““social fund winter fuel payment” means the winter fuel payment paid by virtue of the Social Fund Winter Fuel Payment Regulations 2000;”.
- (3) In regulation 33 (payments out of property recovered or preserved: exceptions)—

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(5) 2005 asp 13. The Scottish Infected Blood Support Scheme came into force on 1 April 2017 and a consolidated version of the scheme can be found at Scottish Infected Blood Support Scheme 2017: April 2022 amendment - gov.scot ([www.gov.scot](http://www.gov.scot)).

(6) S.I. 2000/729 as modified by S.I. 2022/813 and amended by S.I. 2002/2660, S.I. 2003/1737, S.I. 2003/2192, S.I. 2004/2154, S.I. 2008/1554, S.I. 2009/1488, S.I. 2012/757, S.I. 2013/1509, S.I. 2014/3270, S.I. 2015/67 and S.I. 2021/811.

(7) S.I. 2022/813.

(8) S.S.I. 2002/494, relevant amending instruments are 2021 asp 15, S.S.I. 2011/134, S.S.I. 2013/137, S.S.I. 2020/424, S.S.I. 2021/333 and S.S.I. 2022/31.

- (a) after sub-paragraph (a)(xxii), insert—
  - “(xxiii) by way of any payment made under the Scottish Infected Blood Support Scheme;
  - (xxiv) by way of any additional payment;”
- (b) after sub-paragraph (d), insert—
  - “(e) to any temporary additional amount to the social fund winter fuel payment paid by virtue of the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2022.”
- (4) In schedule 2 (rules for computing disposable income)—
  - (a) after paragraph 5(g), insert—
    - “(h) any means-tested additional payment made under section 1 or 4 of the 2002 Act;”
  - (b) after paragraph 7(l), insert—
    - “(m) any disability additional payment made under section 5 of the 2022 Act.”
- (5) In schedule 3 (rules for computing disposable capital), after paragraph 8(g), insert—
  - “(h) any payment made under the Scottish Infected Blood Support Scheme;
  - (i) any additional payment made under the 2022 Act;
  - (j) any temporary additional amount to the social fund winter fuel payment paid by virtue of the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2022.”

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

4.—(1) The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003<sup>(9)</sup> are amended as follows.

(2) In regulation 1(2)(interpretation), for the definition of “pre-hearing panel meeting”, substitute—

““pre-hearing panel” has the meaning given in section 79 of the 2011 Act;”.

(3) In regulation 3A (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)—

- (a) for “pre-hearing panel meeting” in each place where it occurs, substitute “pre-hearing panel”;
- (b) after paragraphs (1)(a)(iiia) and (1)(b)(iiia) insert—
  - “(iiib) a pre-hearing panel at which a determination of the matter of whether the criteria specified in rules under section 177 of the 2011 Act to be afforded the rights mentioned in section 79(5ZA) of the 2011 Act are met as regards an individual to whom section 79(2)(a)(i) of the 2011 Act refers;”
- (c) after paragraph (1)(d), insert—
  - “(e) an individual who has been afforded the rights mentioned in section 79(5ZA) of the 2011 Act in relation to the children’s hearing;
  - (f) an individual to whom section 79(2)(ba) of the 2011 Act refers, in respect of a pre-hearing panel or children’s hearing at which a determination under section 80 of the 2011 Act is to be made as regards that individual.”

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<sup>(9)</sup> S.S.I. 2003/179 relevantly amended by S.S.I. 2013/200 (inserting the definition “pre-hearing panel meeting”), S.S.I. 2015/13, S.S.I. 2020/296 and S.S.I. 2021/368.

- (4) In regulation 13 (assistance by way of representation requiring approval of the Board) —
- (a) in sub-paragraph (1)—
    - (i) for “and (iiia)” in both places where it occurs, substitute “, (iiia) and (iiib)”,
    - (ii) for “(c) and (d)” substitute “(c) to (f)”,
  - (b) in sub-paragraph (3A)—
    - (i) for “and (iiia)” in both places where it occurs, substitute “, (iiia) and (iiib)”,
    - (ii) for “(c) and (d)” substitute “and (c) to (f)”.

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

**5.—(1)** The Children’s Legal Assistance (Scotland) Regulations 2013<sup>(10)</sup> are amended as follows.

- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “the 2021 Act”, insert—
    - ““the 2022 Act” means the Social Security (Additional Payments) Act 2022;
    - “additional payment” has the meaning given in section 9(1)(interpretation) of the Social Security (Additional Payments) Act 2022;”,
  - (b) after the definition of “Scottish child payment”, insert—
    - ““Scottish Infected Blood Support Scheme” means the scheme of that name made by the Scottish Ministers in exercise of powers conferred by section 28 of the Smoking, Health and Social Care (Scotland) Act 2005;”,
    - “social fund winter fuel payment” means the winter fuel payment paid by virtue of the Social Fund Winter Fuel Payment Regulations 2000;”.
- (3) In schedule 1 (assessment of disposable income for the purposes of children’s legal aid), after paragraph 5(l), insert—
- “(m) any means-tested additional payment made under section 1 or 4 of the 2002 Act;
  - (n) any disability additional payment made under section 5 of the 2022 Act.”.
- (4) In schedule 2 (assessment of disposable capital for the purposes of children’s legal aid), after paragraph 8(g), insert—
- “(h) any payment made under the Scottish Infected Blood Support Scheme;
  - (i) any additional payment made under the 2022 Act;
  - (j) any temporary additional amount to the social fund winter fuel payment paid by virtue of the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2022.”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

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<sup>(10)</sup> S.S.I. 2013/200, relevant amending instrument are S.S.I. 2020/424, S.S.I. 2021/333 and S.S.I. 2022/31.

## EXPLANATORY NOTE

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

These Regulations amend existing legal aid regulations in Scotland in consequence of the Social Security (Additional Payments) Act 2022 (“the 2022 Act”), the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2022 (“the 2022 Regulations”) and the Scottish Infected Blood Support Scheme. The Regulations also make provision for Assistance by Way of Representation to be available to siblings with rights to participate in Children’s hearings.

Regulation 2 amends the Advice and Assistance (Scotland) Regulations 1996 to provide that compensatory payments made under the Scottish Infected Blood Support Scheme, and additional payments introduced in response to increases in the cost of living under the 2022 Act and 2022 Regulations are to be disregarded by the Scottish Legal Aid Board (“SLAB”) in the assessment and computation of an applicant’s disposable capital and income. This regulation also excludes such payments from bearing fees and outlays when forming part of any recovered or preserved property in proceedings.

Regulation 3 amends the Civil Legal Aid (Scotland) Regulations 2002 to similar effect as regulation 2 in respect of payment of civil legal aid. Regulation 5 amends the Children’s Legal Assistance (Scotland) Regulations 2013 to similar effect in respect of payment of children’s legal assistance.

Regulation 4 amends the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 to provide for Assistance by Way of Representation to be available to siblings who have rights in terms of the Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 ([S.S.I. 2013/194](#)) to participate in Children’s hearings. Regulation 4 also corrects an incorrect reference to “pre-hearing panel meeting”.

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 Andrews House, Edinburgh EH1 3DG.