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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 494**

**The Civil Legal Aid (Scotland) Regulations 2002**

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Regulations 2002 and shall come into force on 1st December 2002.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Legal Aid (Scotland) Act 1986;

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(1);

“the 1995 Act” means the Children (Scotland) Act 1995(2);

“assisted person” means a person in receipt of legal aid in the proceedings in question;

“child” means a person under the age of 16 years;

“counsel” includes a solicitor-advocate, except in regulations 21(1)(c) and 44 below;

“Employment Appeal Tribunal” means the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975(3);

“Fund” means the Scottish Legal Aid Fund;

“income” includes benefits and privileges, and the income of the person concerned includes any sum payable for the purpose of the maintenance of a child including any sum payable to that person under the order of a court or under any agreement for that purpose;

“interest in land” has the same meaning as in section 28(1) of the Land Registration (Scotland) Act 1979(4);

“junior counsel” includes a junior solicitor-advocate;

“legal aid” means “civil legal aid” within the meaning of section 13(2) of the Act(5);

“legal representative” means a person having parental responsibilities in relation to a child, a judicial factor or a person authorised to act on an adult’s behalf under the Adults with Incapacity (Scotland) Act 2000(6);

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(1) 1992 c. 4.

(2) 1995 c. 36.

(3) 1975 c. 71.

(4) 1979 c. 33; section 28(1) was amended by the Electricity Act 1989 (c. 29), Schedule 16, the Coal Industry Act 1994 (c. 21), Schedule 9 and the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), schedules 12 and 13.

(5) Section 13(2) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8.

(6) 2000 asp 4.

“maximum contribution” means the maximum amount of a person’s contribution to the Fund in respect of any proceedings;

“opponent”, in relation to an application for legal aid, means a party, other than the applicant, interested in the proceedings for which legal aid is sought;

“parental responsibilities” has the meaning given in section 1(3) of the 1995 Act;

“parental rights” has the meaning given in section 2(4) of the 1995 Act;

“period of computation” means the period of 12 months next ensuing from the date of the application for legal aid, or such other period of 12 months as in the particular circumstances of any case the Board may consider to be appropriate;

“person concerned” means the person whose disposable income, disposable capital, and maximum contribution are to be determined or redetermined or the person whose resources are to be treated as the resources of any other person, under these Regulations;

“right of audience” means, in relation to a solicitor, a right of audience in the Court of Session, the House of Lords and the Judicial Committee of the Privy Council which a solicitor has by virtue of section 25A (rights of audience in specified courts) of the Solicitors (Scotland) Act 1980(7);

“senior counsel” includes a senior solicitor-advocate, except in paragraph (2) below;

“solicitor-advocate” means a solicitor, whether instructed by another solicitor or not, when and only when exercising that solicitor’s right of audience or acting in connection with the exercise of such a right and “junior solicitor-advocate” and “senior solicitor-advocate” shall be construed in accordance with paragraph (2) below;

“in writing” includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(8), which has been recorded and is consequently capable of being reproduced; and

unless the context otherwise requires, any reference in these Regulations to a solicitor does not include a solicitor when acting as a solicitor-advocate.

- (2) For the purposes of these Regulations, a solicitor-advocate shall be—
- (a) a senior solicitor-advocate, where undertaking work equivalent to that which would be done by a senior counsel in a case in the House of Lords or the Judicial Committee of the Privy Council, or where the Board has authorised the employment of senior counsel under regulation 21(1)(b) or (2) below; or
  - (b) a junior solicitor-advocate, where undertaking work equivalent to that which would be done by a junior counsel, irrespective of whether or not the Board has authorised the employment of senior counsel in the case.

### **Revocations and savings**

**3.—**(1) Subject to paragraphs (2) and (3) below, the Regulations specified in Schedule 1 to these Regulations are hereby revoked.

- (2) The revocation by these Regulations of—
- (a) a transitional provision relating to the coming into force of, or
  - (b) an application provision which restricts the application of,

(7) 1980 c. 46. Section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, section 24, and was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 31.

(8) 2000 c. 7.

a provision, which is revoked and re-enacted by these Regulations, does not affect the operation of that transitional provision or, as the case may be, application provision, insofar as it remains capable of having effect in relation to the provision which is re-enacted in these Regulations.

(3) Where a period of time specified in any provision, which is revoked by these Regulations, is current at the date of coming into force of these Regulations, these Regulations have effect as if the provision which re-enacts that revoked provision in these Regulations had been in force when that period began to run.

#### **Distinct proceedings for purposes of legal aid**

4.—(1) For the purposes of legal aid the following proceedings shall, subject to paragraph (2) below, be treated as distinct proceedings:—

- (a) proceedings in the sheriff court insofar as they are proceedings in a court of first instance;
- (b) proceedings before the sheriff principal on appeal from the sheriff;
- (c) proceedings in the Court of Session, whether in the Inner House or before a Lord Ordinary, insofar as they are proceedings in a court of first instance;
- (d) proceedings in the Court of Session, insofar as they are proceedings in an appellate court;
- (e) proceedings in the House of Lords on appeal from the Court of Session;
- (f) proceedings in the Lands Valuation Appeal Court;
- (g) proceedings in the Scottish Land Court;
- (h) proceedings before the Lands Tribunal for Scotland;
- (i) proceedings before the Employment Appeal Tribunal;
- (j) proceedings in the Judicial Committee of the Privy Council on appeal from the Court of Session under paragraph 10, 12 or 13(b) of Schedule 6 to the Scotland Act 1998(9) including any application for special leave to appeal;
- (k) proceedings before the Social Security Commissioners and the Child Support Commissioners;
- (l) proceedings before the Proscribed Organisations Appeals Commission.

(2) Where proceedings are initiated in the sheriff court and are thereafter remitted to the Court of Session or are initiated in the Court of Session and remitted to the sheriff court, the proceedings in the court to which the case is remitted shall not be treated as distinct from the proceedings in the initial court.

(3) Where in any of the distinct proceedings specified in paragraph (1) above, any decree or order has been granted in favour of the assisted person, those proceedings shall be treated as including any step, other than the taking of proceedings for civil imprisonment or for sequestration or the raising of an action of furthcoming following arrestment, in the execution of diligence following such decree or order.

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(9) 1998 c. 46.