
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 494

The Civil Legal Aid (Scotland) Regulations 2002

PART VI

CHANGE OF CIRCUMSTANCES

Duty of applicant, assisted person, solicitor and counsel, and right of opponent, to report changes of circumstances

23.—(1) It shall be the duty of an applicant or assisted person immediately to inform the Board of—

- (a) any change in that applicant's or assisted person's circumstances, financial or otherwise; or
- (b) any change in the circumstances, financial or otherwise, so far as known to that applicant or assisted person, of any other person jointly concerned with, or having the same interest in, the matter.

(2) Where a solicitor or counsel acting for an applicant or assisted person has reason to believe that that applicant or assisted person has not complied with the duty under paragraph (1) above, the solicitor or counsel shall forthwith draw this matter to the attention of the Board.

(3) Any opponent who has reason to believe that there is any matter which might cause the Board to amend a determination under regulation 28, suspend legal aid under regulation 29 or cease to make legal aid available under regulations 30, 31 or 32, may draw that matter to the attention of the Board.

Duty to report abuse of legal aid

24.—(1) Where an assisted person's solicitor or counsel has reason to believe that the assisted person has—

- (a) required his or her case to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the case be continued; or
- (b) wilfully failed to comply with any requirement of the Act or of these Regulations as to the information to be furnished by that assisted person or, in furnishing such information, has knowingly made a false statement or false representation,

the solicitor or counsel shall forthwith draw this matter to the attention of the Board.

(2) No solicitor or counsel shall be precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client, from disclosing to the Board any information, or from giving any opinion, which that solicitor or counsel is required to disclose or give to the Board under the Act or these Regulations, or which may enable the Board to perform its functions thereunder.

Change of nominated solicitor

25.—(1) Where the solicitor nominated by an assisted person determines that he or she should cease to act for that person, the solicitor shall notify the assisted person and the Board accordingly, and shall supply to the Board a statement of reasons for ceasing to act.

(2) Where an assisted person has required the solicitor nominated by that person to cease to act, the solicitor shall notify the Board accordingly.

(3) Where an assisted person wishes to be represented by a solicitor other than the solicitor presently nominated by that person to act, the assisted person shall apply to the Board for authority to nominate another specified solicitor to act, and shall inform the Board of the reason for this application, and the Board, if it is satisfied that there is good reason for the application and that it is reasonable in the particular circumstances of the case for the assisted person to continue to receive legal aid, may grant the application.

Duty to report completion of proceedings

26. It shall be the duty of the solicitor acting for an assisted person to inform the Board of the conclusion and outcome of the proceedings in respect of which legal aid was made available to the assisted person at the time of submitting his or her account of fees and expenses.

Power of Board to modify or impose conditions

27. Where the Board has made legal aid available in relation to any proceedings, it may, at any time prior to the conclusion of the proceedings, if it considers it expedient, modify any conditions imposed by it under section 14(2) of the Act, or impose conditions (or as the case may be additional conditions) by virtue of that subsection.

Power of Board to amend determination

28.—(1) If the Board is satisfied that—

- (a) there has been some error or mistake in the determination of a person's disposable income, disposable capital or maximum contribution and that it would be just and equitable to correct that error or mistake; or
- (b) an assisted person has acted in the way described in regulation 12(1) above,

it may make an amended determination in accordance with the law applicable at the time of the original determination which shall have effect for all purposes as if it was the original determination.

(2) If the Board is satisfied—

- (a) that the assisted person's disposable income has increased by an amount greater than £750 or decreased by an amount greater than £300; or
- (b) that the assisted person's disposable capital has increased by an amount greater than £750,

it may redetermine that person's disposable income, disposable capital and maximum contribution in accordance with the law applicable at the time of the original determination, and in that event the amount or value of any resource of a capital nature shall be ascertained as at the date of the redetermination.

(3) Where the amount of the actual contribution required to be paid by the assisted person has been fixed at a sum less than the maximum contribution which that person could be required to contribute, and it appears to the Board that the cost of the proceedings is likely to exceed or has exceeded the amount of that actual contribution, it may increase the actual contribution which is required to be paid.

Power of Board to suspend availability of legal aid

29.—(1) The Board may suspend for a period of up to 90 days the availability of legal aid (and, in that event, must notify the assisted person in terms of regulation 19(3) above), where satisfied that—

- (a) the assisted person has without reasonable cause failed—
 - (i) to comply with any condition, whether a requirement of the grant of legal aid by virtue of section 14(2) of the Act and regulation 19(2) above, or whether modified or newly imposed in terms of said section and regulation 27 above, or
 - (ii) to pay by the due date any contribution, or any instalment thereof, required in terms of regulation 17 above;
- (b) it requires to consider whether in any case information which it has received regarding any of the grounds specified in regulations 30, 31 or 32 below merits termination of legal aid; or
- (c) the solicitor nominated to act for the assisted person has ceased so to act.

(2) At the end of the said period the Board shall—

- (a) make legal aid available again;
- (b) suspend the availability of legal aid for one further period of up to 90 days; or
- (c) cease to make such legal aid available in terms of regulations 30, 31 and 32 below.

Termination of legal aid on change of circumstances

30. The Board shall cease to make legal aid available to an assisted person if either—

- (a) it is satisfied, in consequence of an amended determination under regulation 28(1) above, or a redetermination under regulation 28(2) above, that either the assisted person has a disposable income which makes that person ineligible for legal aid or has disposable capital of an amount which makes that person liable to be refused legal aid, and in the latter case it appears to the Board that the assisted person can afford to proceed without legal aid; or
- (b) it is no longer satisfied that the assisted person has *probabilis causa litigandi*, or no longer considers that it is reasonable in the particular circumstances of the case that that person should continue to receive legal aid.

Termination of legal aid other than on change of circumstances

31. The Board may cease to make legal aid available to an assisted person—

- (a) if it appears to it that the assisted person—
 - (i) has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund;
 - (ii) has failed to comply with any condition imposed under section 14(2) of the Act;
 - (iii) has failed without reasonable excuse to attend for an interview or to provide information or documents when so required under these Regulations; or
 - (iv) having been required in terms of regulation 17 above to make a contribution or instalment thereof, is more than one month in arrears in making any payment in respect of that contribution or instalment; or
- (b) if it is satisfied that there has been an error or mistake in the assessment as to whether the assisted person has *probabilis causa litigandi*, or whether it is reasonable in the particular circumstances of the case that the assisted person should receive legal aid, and that legal aid should never have been made available.

Termination of legal aid and right of Board to recover sums paid out of the Fund in cases of false information, etc.

32.—(1) This regulation applies where after giving a person an opportunity of submitting representations, the Board is satisfied that that person has—

- (a) in relation to any application for legal aid, made an untrue statement as to that person's resources or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after legal aid was made available to that person;
- (b) wilfully failed to comply with these Regulations by not furnishing to the Board any material information concerning anything other than that person's resources; or
- (c) knowingly made an untrue statement in furnishing such information.

(2) The Board—

- (a) may cease to make legal aid available to that person in the matter or proceedings; and
- (b) shall have the right to recover from that person the amount paid out of the Fund in respect of the fees and outlays of that person's solicitors and counsel less any amount received from that person by way of contribution.

(3) The person—

- (a) shall be deemed, for the purposes of sections 18 and 19 of the Act⁽¹⁾, never to have been an assisted person;
- (b) shall not be entitled to avail himself or herself of the provisions of regulation 18 in respect of any later stages of the same proceedings in the same court or any court to which those proceedings may be remitted;
- (c) shall not be entitled to legal aid in relation to any later stages of the same proceedings in the same court or any court to which those proceedings may be remitted; and
- (d) shall not be entitled to legal aid in any appellate proceedings in relation to the same action, cause or matter, unless the Board considers that there is special reason to make legal aid available for such appellate proceedings.

(1) Section 18 was amended by the Legal Aid Act 1988 (c. 34), Schedule 4, Part II, paragraph 7; section 19 was amended by the Legal Aid Act 1988, Schedule 4, Part II, paragraph 8.