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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 163**

**LEGAL AID AND ADVICE**

**The Advice and Assistance (Scotland)  
Amendment Regulations 2003**

<i>Made</i>	- - - -	<i>10th March 2003</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>10th March 2003</i>
<i>Coming into force</i>	- -	<i>6th April 2003</i>

The Scottish Ministers, in exercise of the powers conferred by sections 12(3), 37(1) and 42 of the Legal Aid (Scotland) Act 1986(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Advice and Assistance (Scotland) Amendment Regulations 2003 and shall come into force on 6th April 2003.

**Application**

2. These Regulations shall apply only in relation to any case where an application for advice and assistance is made on or after 6th April 2003.

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

3. The Advice and Assistance (Scotland) Regulations 1996(2) are amended in accordance with the following regulations.

4. For regulation 7(2) substitute—

“(2) For the purposes of section 42 of the Act, two persons living together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex shall be treated as if they were spouses of each other.”.

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(1) 1986 c. 47. 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) S.I.1996/2447, as amended by S.I. 1997/726, 1998/724 and S.S.I. 2000/181 and 399 and 2002/495.

5. In regulation 16(2)(b), for “£4,200” substitute “£4,275”(3).
6. In Schedule 2, at the end of paragraph 5 insert–
- “(d) there shall be left out of account any payment made in accordance with the following:–
- (a) payments under the 1992 Act (except statutory sick pay)(4);
  - (b) tax credits under the Tax Credits Act 2002(5);
  - (c) child maintenance bonus(6);
  - (d) child support maintenance(7);
  - (e) contribution-based jobseeker’s allowance(8);
  - (f) severe disablement allowance(9);
  - (g) retirement pension(10);
  - (h) war widow’s and widower’s pension and war disablement pension(11);
  - (i) sums payable to holders of the Victoria Cross or George Cross”.

St Andrew’s House, Edinburgh  
10th March 2003

*JAMES WALLACE*  
A member of the Scottish Executive

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(3) The previous figure specified in regulation 16(2)(b) was inserted by [S.S.I. 2002/495](#).

(4) The Social Security Contributions and Benefits Act 1992 (c. 4) (“the 1992 Act”); statutory sick pay is payable in accordance with sections 151 to 163 of, and Schedules 11 and 12 to, that Act.

(5) [2002 c. 21](#).

(6) Child maintenance bonus is payable in accordance with the Social Security (Child Maintenance Bonus) Regulations 1996 (S.I. 1996/3195).

(7) Child support maintenance is payable under section 4 of the Child Support Act 1991 (c. 48).

(8) Contribution-based jobseeker’s allowance is payable under section 2 of the Jobseekers Act 1995 (c. 18).

(9) Severe disablement allowance was abolished by the 1992 Act but remains payable in certain circumstances; see the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000 (S.I. 2000/2958).

(10) Retirement pension is payable in accordance with Schedule 4 to the Pensions Act 1995 (c. 26).

(11) The enactments under which these pensions are paid are set out in the Social Security Administration Act 1992 (c. 5), section 139(11).

## EXPLANATORY NOTE

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

These Regulations amend the Advice and Assistance (Scotland) Regulations 1996 to provide that—

- (a) for the purposes of calculating financial eligibility for advice and assistance, resources of a person's partner of the same sex are taken into account (regulation 4);
- (b) a solicitor's right to prior payment of fees and outlays out of any property recovered or preserved for a client in respect of advice and assistance shall not apply to the first £4,275 recovered or preserved by virtue of certain family proceedings (this sum is increased from £4,200) (regulation 5); and
- (c) for the purposes of assessing a person's disposable capital and income no account is taken of payments made in connection with certain benefits, allowances and tax credits (regulation 6).