

2004 No. 491

LEGAL AID AND ADVICE

**The Civil Legal Aid (Scotland) Amendment (No. 2)
Regulations 2004**

Made - - - - - *11th November 2004*

Laid before the Scottish Parliament *12th November 2004*

Coming into force - - - *4th December 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and by sections 36(1),(2)(a), (e), (f) and (g), and 42 of the Legal Aid (Scotland) Act 1986(b), 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 Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2004 and shall come into force on 4th December 2004.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

2. The Civil Legal Aid (Scotland) Regulations 2002(c) are amended in accordance with the following regulations.

3.—(1) Regulation 9(1) is amended as follows—

- (a) after “such” insert “information or”; and
- (b) after “application” insert “or to make determination as to the amount of contribution to the Fund”.

(2) For Regulation 9(2) substitute—

“(2) Where an applicant for legal aid fails to comply with a requirement under paragraph (1) above;

- (a) the Board may treat the application as having been abandoned, and where it does so it shall give intimation of the abandonment to the applicant and any opponent; and
- (b) the Board shall have the right to recover from the applicant the amount paid out of the Fund in respect of the fees and outlays of the applicant’s solicitors and counsel, less any amount received from that person by way of contribution.”.

(a) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1986 c.47. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(c) S.S.I. 2002/494, as relevantly amended by S.S.I. 2003/486. These Regulations revoked S.I. 1996/2444, S.I. 1997/727, S.I. 1998/725, S.S.I. 2000/182, S.S.I. 2001/82, S.S.I. 2002/88, S.S.I. 2002/254.

4.—(1) After Regulation 23, insert—

“**23A.**—(1) The Board from time to time may directly request from the applicant or assisted person, or a solicitor or counsel acting for the applicant or assisted person, information relating to any change in circumstances, financial or otherwise.

(2) No solicitor or counsel shall be precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client from informing the Board of or drawing the Board’s attention to, any matter specified in paragraph (1) above.”.

(2) In Regulation 29, after (1)(a)(ii), insert—

“(iii) to comply with any request for information made by the Board under regulation 23A above;”.

(3) In Regulation 31 after (a)(iv) insert—

“(v) has failed without reasonable excuse to comply with any request for information made by the Board under regulation 23A above; or”.

(4) After Regulation 31 insert—

“Right of Board to recover sums paid out of the Fund

31A. If an applicant or assisted person fails to provide information requested by the Board under regulation 23A, the Board 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.”.

5. After regulation 47 insert—

“Cross-border disputes

48.—(1) In this regulation—

“the Council Directive” means Council Directive 2003/8/EC(**a**) of the European Council on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, as corrected by a corrigendum published on 7th February 2003(**b**); and

“cross-border dispute” has the same meaning given by Article 2 of the Council Directive.

(2) These Regulations are modified to the extent provided in the following sub-paragraphs in the case of a person resident outwith the United Kingdom in a Member State to which Article 1 of the Council Directive applies, who applies for legal aid for the purpose of pursuing by way of proceedings a cross-border dispute, namely—

(a) regulation 5 above is modified so as to provide that such an application for legal aid shall be in such form and completed and signed in such manner as is specified in terms of Article 16 of the Council Directive;

(b) paragraphs (1) and (4) of regulation 19 above are modified so as to provide that the Board is not required to notify its decision to grant, or as the case may be, refuse legal aid, or its grounds for refusing legal aid to that person’s solicitor; and

(a) O.J. No. L 26, 31.1.2003, p.41.

(b) O.J. No. L 32, 7.2.2003, p.15.

- (c) paragraph (2) of regulation 20 above is modified so as to provide that that person, or any solicitor acting for that person, is not required to intimate to any opponent an application for review of a decision by the Board to refuse legal aid.”.

HUGH HENRY

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,
Edinburgh
11th November 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) Regulations 2002 so as to provide the following:–

- (a) that the Scottish Legal Aid Board may request directly from any applicant or assisted person, or a solicitor or counsel acting on behalf of an assisted person, any information, financial or otherwise, relating to a change in circumstances. If such request is not complied with the Board may suspend or withdraw legal aid, and further may recover any funds paid to the assisted person (regulations 3 and 4); and
- (b) to implement Council Directive 2003/8/EC (O.J. No. L 26, 31.1.2003, p.41) (“the Council Directive”), as corrected by a corrigendum published on 7th February 2003 (O.J. No. L 32, 7.2.2003, p.15). The Council Directive establishes common rules for legal aid in relation to cross-border disputes. These Regulations disapply certain of the regulations in the Civil Legal Aid (Scotland) Regulations 2002 where a person is applying for legal aid for the purposes of pursuing a cross-border dispute defined in the Council Directive (regulation 5).

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