

2005 No.112

LEGAL AID AND ADVICE

The Civil Legal Aid (Scotland) Amendment Regulations 2005

Made - - - - *2nd March 2005*

Laid before the Scottish Parliament *3rd March 2005*

Coming into force in accordance with regulation 2

The Scottish Ministers, in exercise of the powers conferred by section 36(1) and (2)(a) of the Legal Aid (Scotland) Act 1986(a) 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 Regulations 2005.

2. Regulations 3 and 4(b) shall come into force on 11th April 2005, and the remaining provisions shall come into force on 4th April 2005.

Application

3. Regulation 4(b) shall apply only in relation to any case where an application for civil legal aid is made on or after 11th April 2005.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

4. The Civil Legal Aid (Scotland) Regulations 2002(b) are amended as follows:—

(a) at the end of regulation 18(2) insert—

“(w) initiating an application to the Court of Session for review of a decision of the Asylum and Immigration Tribunal under section 103A of the Nationality, Immigration and Asylum Act 2002(c).”; and

(b) in regulation 33(b) for “£4,395” substitute “£4,531”.

Transitional provisions

5.—(1) Where any of the cases specified in paragraph (2) are pending immediately before 4th April 2005, regulation 4(a) shall apply as though the reference to section 103A of the

(a) 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).

(b) S.S.I. 2002/494 as relevantly amended by S.S.I. 2003/49 and 2004/50.

(c) 2002 c.41, as relevantly amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) section 26 and schedule 1.

Nationality, Immigration and Asylum Act 2002(a) were a reference to the relevant section of that Act referred to in paragraph (2).

(2) The cases are–

- (a) an application to the Court of Session under section 101(2);
- (b) where a party is entitled to make an application to the Court of Session under section 101(2);
- (c) an appeal to the Court of Session under section 103;
- (d) an application for leave to appeal to the Court of Session under section 103;
- (e) where a party has been granted leave to appeal to the Court of Session under section 103;
or
- (f) where a party is entitled to apply for leave to appeal to the Court of Session under section 103.

HUGH HENRY

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,
Edinburgh
2nd March 2005

(a) Section 103A and B were inserted by section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) ("the 2004 Act"). The 2004 Act, section 26 and Schedule 4 repealed sections 101 and 103 of the Nationality, Immigration and Asylum Act 2002, but sections 101 and 103 continue to have effect in relation to certain cases by virtue of Articles 7 and 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005 (S.I. 2005/).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) Regulations 2002 as follows:–

- (a) where the Scottish Legal Aid Board is satisfied that an application to the Court of Session for review of a decision of the Asylum and Immigration Tribunal (established by section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004) is initiated as a matter of special urgency, the Scottish Legal Aid Board may make legal aid available for the initiation of that application before an application for civil legal aid is made (regulation 4(a));
- (b) the requirement on the part of a person in receipt of civil legal aid to pay the amount of any net liability of the Scottish Legal Aid Fund shall not apply to the first £4,531 recovered or preserved by virtue of certain family proceedings (this sum is increased from £4,395) (regulation 4(b));
- (c) transitional provision is made for the application of regulation 4(a) to applications for review of a decision of the Immigration Appeal Tribunal which are preserved by Articles 7 and 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005. The Immigration Appeal Tribunal is replaced by the Asylum and Immigration Tribunal on 4th April 2005 (regulation 5).

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