

2007 No. 60

LEGAL AID AND ADVICE

**The Advice and Assistance (Scotland) Amendment
Regulations 2007**

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| <i>Made</i> | - - - - | <i>8th February 2007</i> |
| <i>Laid before the Scottish Parliament</i> | | <i>9th February 2007</i> |
| <i>Coming into force</i> | | |
| <i>Regulations 1, 2 and 7</i> | | <i>9th April 2007</i> |
| <i>Remainder</i> | | <i>1st May 2007</i> |

The Scottish Ministers, in exercise of the powers conferred by sections 12(3), 33(2)(b), (3)(a), (c) and (f) and 36(1), (2)(a), (c), (ca) and (d) 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.—(1) These Regulations may be cited as the Advice and Assistance (Scotland) Amendment Regulations 2007.
- (2) Subject to paragraph (3), the Regulations shall come into force on 1st May 2007.
- (3) This regulation and regulations 2 and 7 shall come into force on 9th April 2007.

Application

- 2.—(1) Subject to paragraph (2), these Regulations shall apply only in relation to any case where an application for advice and assistance in relation to a civil matter is made on or after 1st May 2007.
- (2) Regulation 7 shall apply only in relation to any case where an application for advice and assistance is made on or after 9th April 2007.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

3. The Advice and Assistance (Scotland) Regulations 1996^(b) are amended in accordance with the following Regulations.
4. In regulation 2(1), at the appropriate places, insert—

““diagnostic interview” means a meeting or meetings between a solicitor and a client, or as the case may be a person acting on behalf of a client in accordance with regulation 6, and any work reasonably and necessarily following on from any such

(a) 1986 c.47. Section 36(2)(ca) was inserted by the Legal Profession and Legal Aid (Scotland) Act 2007 asp 5, section 76. 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.I. 1996/2447; relevant amending instruments are S.S.I. 2004/492, 2005/171 and S.S.I. 2006/60.

meeting to include any further work which for the purpose of the provision of advice and assistance relates to a matter, or a range of matters, which are not distinct; and “distinct matter”, in relation to advice and assistance concerning civil matters only, shall be construed in accordance with regulation 8A(2);”.

5. After regulation 8, insert–

“Civil Advice and Assistance

8A.—(1) Where a solicitor approves an application for advice and assistance in relation to a civil matter under Part II of the Act, the solicitor shall determine whether or not the advice and assistance relates to a distinct matter.

(2) Subject to paragraphs (3) and (4), an application for advice and assistance relates to a distinct matter if the subject matter of the application is determined by the Board, in accordance with guidance issued by it, to be treated as distinct.

(3) Any determination by the Board as to the matters which are or are not to be treated as distinct matters may only be made following consultation with the Law Society(a).

(4) Where a matter has been determined by the Board to be treated as a distinct matter, the Board may not determine that the matter is no longer to be so treated unless the Scottish Ministers consent(a).

(5) Where the subject matter to which the advice and assistance relates is a distinct matter the solicitor may approve one application for advice and assistance which shall include–

- (a) all distinct matters reasonably ancillary thereto; and
- (b) all matters reasonably ancillary thereto which are not distinct.

8B.—(1) Where the subject matter to which the advice and assistance relates is not distinct, the solicitor shall give advice and assistance to the client by way of a diagnostic interview.

(2) Where a client has more than one subject matter upon which he seeks advice and assistance, none of which is distinct, the solicitor may approve one application for advice and assistance for all such matters.

(3) Where a solicitor, having approved and proceeded to provide advice and assistance by way of a diagnostic interview, considers that a subject matter which is not distinct should be treated as if it were so, then he may make application to the Board for the subject matter to be so treated.

(4) On receipt of an application under paragraph (3), the Board shall–

- (a) determine that the subject matter should be so treated; or
- (b) reject the application,

as the Board thinks fit.

(5) Where a client has more than one subject matter upon which he seeks advice and assistance and the advice and assistance relates to both distinct matters and matters which are not distinct and which are not reasonably ancillary to the distinct matters then the solicitor shall keep a separate record of the advice and assistance given by way of a diagnostic interview.”.

(a) These provisions must be included in the Regulations in accordance with section 36(2A) of the Legal Aid (Scotland) Act 1986 (c.47) which was inserted by the Legal Profession and Legal Aid (Scotland) Act 2007 asp 5, section 76.

6. In regulation 13, at the end, insert–

“(3) Subject to paragraph (4), no second or further diagnostic interview is allowable during the period of 3 months immediately following the approval of advice and assistance by way of a diagnostic interview.

(4) In exceptional circumstances and on cause shown a second or further diagnostic interview may be allowable during said period of 3 months, upon application to, and approval by, the Board.

(5) The Board shall approve or refuse any such application, as it thinks fit.”.

7. In regulation 16(2)(b), for “£4,653”, substitute “£4,821”(a).

8. In regulation 18, after paragraph 3, insert–

“(3A) Where the solicitor has given advice and assistance by way of a diagnostic interview then he shall, within 3 months of the date when the giving of the advice and assistance was completed, submit an account to the Board separate from any account or accounts submitted under paragraph (1). No account supplementary to that provided for in this paragraph may be submitted.”.

9. In Part II of Schedule 3, in paragraph 2, insert–

(a) at the beginning “(1) Subject to sub-paragraph (2),”; and

(b) at the end “(2) No fee shall be allowable under sub-paragraph (1) in respect of advice and assistance given in relation to civil matters.”.

JOHANN MLAMONT

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
8th February 2007

(a) The previous figure in regulation 16(2)(b) was inserted by S.S.I. 2006/60.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advice and Assistance (Scotland) Regulations 1996 (“the principal Regulations”) as regards the advice and assistance scheme in relation to civil matters and the procedure by which such applications are made. They provide as follows:–

- (a) with the exception of regulation 7, they apply only in relation to applications for advice and assistance in connection with civil matters made on or after 1st May 2007. Regulation 7 applies only in relation to any case where an application for advice and assistance is made on or after 9th April 2007 (regulation 2);
- (b) the Scottish Legal Aid Board (“the Board”) shall determine in accordance with guidance issued by it the subject matters of advice and assistance which shall be treated as distinct matters (regulation 5);
- (c) the Board shall only be able to determine the matters which are or are not to be treated as distinct matters following consultation with the Law Society. Matters which are determined as being distinct may not be treated by the Board as no longer being distinct without the Scottish Ministers’ consent (regulation 5);
- (d) an approval of advice and assistance for a matter which is a distinct matter shall include all matters reasonably ancillary thereto. Such ancillary matters may comprise distinct matters or matters which are not distinct (regulation 5);
- (e) where the subject matter of a case is not determined to be distinct a diagnostic interview is introduced as a stage in the application process for the solicitor to identify the subject matter in question and to provide advice as appropriate. Where an applicant seeks advice and assistance for more than one subject matter, none of which are determined to be distinct, the solicitor shall approve one grant of advice and assistance for all such matters (regulation 5);
- (f) where a solicitor considers that a case, the subject matter of which is not determined to be distinct, should be treated as if it were then application may be made to the Board for the subject matter to be so treated (regulation 5);
- (g) where an applicant seeks advice and assistance for more than one subject matter relating to distinct matters and to matters which are neither distinct nor reasonably ancillary to the distinct matters, then a separate record of the advice and assistance provided by way of a diagnostic interview is required to be kept by the solicitor (regulation 5);
- (h) no second or further diagnostic interview is allowable during the period of three months immediately following the approval of advice and assistance for the purpose of a diagnostic interview unless exceptional circumstances exist and on cause shown in which case application may be made to the Board for consideration (regulation 6);
- (i) where a diagnostic interview has taken place, a separate account for this work must be submitted to the Board within three months of the date when the giving of the advice and assistance was completed. No supplementary account for advice and assistance given in connection with diagnostic interviews is allowable (regulation 8);
- (j) the minimum fee under paragraph 2 of Part II of the Table of Fees in Schedule 3 to the principal Regulations shall not be allowable in respect of advice and assistance given for civil matters (regulation 9); and
- (k) 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 £4,821 recovered or preserved by virtue of certain family proceedings (this sum is increased from £4,653) (regulation 7).

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