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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 462**

**The Advice and Assistance (Scotland)  
Amendment Regulations 2010**

**Citation and commencement**

1. These Regulations may be cited as the Advice and Assistance (Scotland) Amendment Regulations 2010 and come into force on 31st January 2011.

**Application**

2.—(1) Regulations 4 and 6 apply only in relation to advice and assistance made available on or after 31st January 2011.

(2) Regulation 5 applies only in relation to applications for advice and assistance made on or after 31st January 2011.

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

3. The Advice and Assistance (Scotland) Regulations 1996(1) are amended as follows.
4. After regulation 21 insert—

**“Right of Board to withhold payment or recover sums paid out of the Fund in relation to non-criminal matters**

22.—(1) Paragraph (3) applies where the Board finds that the provision of advice and assistance (other than advice and assistance in relation to criminal matters)—

- (a) was not (wholly or partly) in accordance with the relevant rules applying by virtue of the Legal Aid (Scotland) Act 1986; or
- (b) was otherwise unjustified in the circumstances of the case (including by reason of inadequate assessment or verification of any relevant factor).

(2) In considering whether or not the provision of advice and assistance was in accordance with the relevant rules, the Board may have regard to any guidance it has issued in relation to the application of those rules.

(3) The Board may—

- (a) withhold (wholly) payment from the Fund in respect of the advice and assistance provided; or
- (b) if such payment has been made, fully recover it.”.

5. In Schedule 2 (assessment of disposable capital and disposable income)—
- (a) omit paragraph 2;
- (b) in paragraph 2A(1) omit “in relation to a criminal matter”; and

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(1) S.I. 1996/2447; amended by S.I. 1997/726, 1998/724, S.S.I. 2000/181, 2002/495, 2003/163 and 421, 2004/262 and 492, 2005/171 and 339, 2006/233, 2007/60, 2008/240, S.I. 2008/1879, S.S.I. 2009/59 and 2010/57 and 166.

(c) after paragraph 4 insert—

“**4A.**—(1) Subject to sub-paragraph (3), if the person concerned is a child the resources of any person who owes an obligation of aliment to the child under section 1(1)(c) or (d) of the Family Law (Scotland) Act 1985<sup>(2)</sup> are to be treated as part of the child’s own resources.

(2) In sub-paragraph (1), “child” has the meaning given in section 1(5) of the Family Law (Scotland) Act 1985.

(3) Sub-paragraph (1) applies only—

- (i) in respect of advice and assistance in relation to non-criminal matters;  
and
- (ii) if its application in the particular circumstances would not be unjust or inequitable.”.

### **Revocations**

**6.** Regulation 3 of the Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 1) (Scotland) Regulations 2010<sup>(3)</sup> is revoked.

St Andrew’s House,  
Edinburgh  
17th December 2010

*KENNY MACASKILL*  
A member of the Scottish Executive

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(2) 1985 c. 37.  
(3) S.S.I. 2010/166.