

2011 No. 134

LEGAL AID AND ADVICE

The Advice and Assistance and Civil Legal Aid (Special Urgency and Property Recovered or Preserved) (Scotland) Regulations 2011

Made - - - - *21st February 2011*

Laid before the Scottish Parliament *23rd February 2011*

Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12(3), 17(2B), 33(3) and 36(1), (2)(a) and (2)(e) of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Advice and Assistance and Civil Legal Aid (Special Urgency and Property Recovered or Preserved) (Scotland) Regulations 2011 and come into force on 1st April 2011.

Application

2. These Regulations apply—

- (a) as regards regulation 3, only in respect of advice and assistance provided pursuant to an application approved after the coming into force of these Regulations;
- (b) as regards regulation 5(b), only in respect of steps commenced after the coming into force of these Regulations; and
- (c) as regards regulation 6, only when the liability of the Fund arises in relation to legal aid granted after the coming into force of these Regulations.

(a) 1986 c.47. Section 12(3) was amended by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 1, paragraph 12(4)(a), and by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) (“the 2007 Act”), section 67(5). Section 17(2B) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40). Section 36(2) was amended by the Legal Aid Act 1988 (c.34), Schedule 4, Part I, paragraph 6, and by the 2007 Act, section 76(2). The functions of the Secretary of State were transferred to the Scottish Ministers, insofar as they are within devolved competence, by section 53 of the Scotland Act 1998 (c.46).

Amendment of the Advice and Assistance (Scotland) Regulations 1996

3. Regulation 16 of the Advice and Assistance (Scotland) Regulations 1996(a) is amended as follows—

- (a) in paragraph (2) omit sub-paragraphs (a)(iv), (b), (g) and (k);
- (b) in paragraph (2)(h) omit “dwelling.”.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

4. The Civil Legal Aid (Scotland) Regulations 2002(b) are amended in accordance with regulations 5 and 6.

5. In regulation 18—

(a) for paragraph (1)(b) substitute—

“(b) in any other circumstances where—

(i) the Board is satisfied on application that steps require to be taken as a matter of special urgency to protect the applicant’s position; and

(ii) paragraphs (3A) and (3B) do not apply.”;

(b) in paragraph (2) omit sub-paragraphs (j), (n) and (p);

(c) after paragraph (3) insert—

“(3A) This paragraph applies where—

(a) at the time the Board receives an application under paragraph (1)(b)—

(i) an application for legal aid by the applicant in relation to the same proceedings has been refused or treated as abandoned; or

(ii) the Board has ceased to make legal aid in respect of the same proceedings available to the applicant;

(b) the Board has given the applicant an opportunity to show that there is a realistic prospect that legal aid will be granted following an application for review or a further application; and

(c) the Board is not satisfied that the applicant has so shown.

(3B) This paragraph applies where—

(a) the Board, on receipt of an application under paragraph (1)(b), has called on the applicant to provide the Board with sufficient information to enable the Board to determine whether *prima facie* the conditions mentioned in section 14(1) of the Act are met;

(b) the Board is satisfied either—

(i) that the applicant has had sufficient opportunity to provide the information called for; or

(ii) that the applicant would have had sufficient opportunity to provide the information called for but for undue delay on the part of the solicitor in submitting the application under paragraph (1)(b); and

(c) the Board is not satisfied that *prima facie* the conditions mentioned in section 14(1) of the Act are met.”;

(a) S.I. 1996/2447 as amended by S.I. 1997/726, 1998 c.8, S.I. 1998/724, S.S.I. 2000/399, 2003/163, 2003/421, 2004/49, 2004/262, 2004/492, 2005/111, 2005/339, 2005/445, 2006/60, 2006/233, 2007/60, S.I. 2008/1879, S.S.I. 2008/240, 2010/57, 2010/166, 2010/312 and 2010/462.

(b) S.S.I. 2002/494 as amended by 2002 asp 17, S.S.I. 2003/49, 2003/486, 2004/491, 2005/112, 2005/448, 2006/61, 2006/325, 2007/59, 2007/425, S.I. 2008/1879, S.S.I. 2008/50, 2009/49, 2009/312, 2009/429, 2010/166, and 2010/461.

(d) in paragraph (4) after “position” insert—
“and that paragraphs (3A) and (3B) do not apply”.

6. In regulation 33 omit paragraphs (a)(iv) and (b).

St Andrew’s House,
Edinburgh
21st February 2011

KENNY MACASKILL
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advice and Assistance (Scotland) Regulations 1996 (“the 1996 Regulations”) and the Civil Legal Aid (Scotland) Regulations 2002 (“the 2002 Regulations”).

Regulation 3 amends regulation 16(2) of the 1996 Regulations. Regulation 16 prescribes exceptions to the rule in section 12(3) of the Legal Aid (Scotland) Act 1986 (“the Act”) that the fees and outlays payable to a solicitor providing Advice and Assistance should be paid out of any property recovered or preserved before any call is made on the Fund. The effect of regulation 3 is to remove certain categories of property recovered or preserved from the exceptions provided for in regulation 16(2).

Regulation 5 amends the provisions in regulation 18 of the 2002 Regulations, which deal with the availability of legal aid for specially urgent steps undertaken before an application for legal aid is determined. The changes restrict the range of steps for which legal aid may be made available without prior application. The changes also prevent legal aid being made available in various circumstances where an application to the Board to certify urgent steps relates to the same proceedings where an application for legal aid has already been refused, or treated as abandoned, or the Board has ceased to make legal aid available.

Regulation 6 amends regulation 33 of the 2002 Regulations. Regulation 33 prescribes exceptions to the rule in section 17(2B) of the Act that any net liability of the Fund should be paid to the Board out of any property recovered or preserved in the proceedings in question or under any associated settlement. The effect of regulation 6 is to remove certain categories of property recovered or preserved from the exceptions provided for in regulation 33.

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