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STATUTORY INSTRUMENTS

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**1992 No. 1227 (S.121)**

**LEGAL AID AND ADVICE, SCOTLAND**

The Legal Aid in Contempt of Court  
Proceedings (Scotland) Regulations 1992

<i>Made</i>	- - - -	<i>13th May 1992</i>
<i>Laid before Parliament</i>		<i>5th June 1992</i>
<i>Coming into force</i>	- -	<i>1st July 1992</i>

The Secretary of State, in exercise of the powers conferred on him by sections 36(1) and (2)(a), (c), (d), (e), (f) and (g) and 37(1) of the Legal Aid (Scotland) Act 1986<sup>(1)</sup>, and of all other powers enabling in that behalf, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Legal Aid in contempt of Court Proceedings (Scotland) Regulations 1992 and shall come into force on 1st July 1992.

**Interpretation**

2. In these Regulations unless the context otherwise requires—
- “the Act” means the Legal Aid (Scotland) Act 1986;
  - “assisted person” means a person receiving Legal Aid under section 30 of the Act;
  - “Board” means the Scottish Legal Aid Board;
  - “High Court” means the High Court of Justiciary;
  - “legal aid” means legal aid given under section 30 of the Act in connection with proceedings for contempt of court;
  - “legal representative” means curator bonis, judicial factor or guardian.

**Distinct proceedings**

3.—(1) For the purposes of legal aid under section 30 of the Act the following shall, subject to paragraph (2) below, each be treated as distinct proceedings:—

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(1) 1986 c. 47.

- (a) any proceedings for contempt of court which arise during the course of or in connection with any other proceedings;
- (b) any appeal against the decision of a court in the proceedings for contempt of court referred to in sub-paragraph (a) above.

(2) Proceedings under sub-paragraph (a) above shall include any remit of the person in contempt from the district court to the sheriff court under section 15(5) of the Contempt of Court Act 1981((2)).

### **Applications for legal aid**

4.—(1) An application for legal aid in connection with proceedings to which the provisions of section 30(1) of the Act apply shall be made to the court dealing with the alleged contempt in writing and in such form as the court may require, or in such manner as the court may accept as sufficient in any particular case.

(2) The court's decision on an application for an award for legal aid under section 30(1) shall be intimated forthwith to the Board and the applicant or his solicitor or counsel.

(3) An application to the Board for legal aid in connection with the proceedings to which the provisions of section 30(3) of the Act apply shall—

- (a) be in writing in such form and giving such information as the Board may require;
- (b) include the name and address of the solicitor nominated by the applicant to act for him;
- (c) be signed by the applicant or where the applicant on cause shown is unable to sign the application, by a person authorised by the applicant, or, where the applicant is mentally disordered in terms of section 1(2) of the Mental Health (Scotland) Act 1984((3)), by the applicant's legal representative; and
- (d) include a certificate by the solicitor nominated by the applicant that he is of the opinion that in all circumstances there are substantial grounds for making an appeal together with a statement of the nature of the grounds for the appeal.

(4) An applicant for legal aid under section 30(3) of the Act shall, if required by the Board to do so, attend for interview by a representative of the Board or supply such further information or documents as the Board may require to enable it to determine the application.

### **Matters of special urgency**

5.—(1) Where an applicant seeks legal aid under section 30(3) of the Act, in a matter of special urgency, the Board may, if it thinks fit, make legal aid available to him notwithstanding that it has not been satisfied as to the matters specified in section 25(2) as read with section 30(3) of the Act.

(2) Where legal aid is made available under paragraph (1) above, the Board shall—

- (a) specify that it is available only for such limited purposes as the Board thinks appropriate in the circumstances;
- (b) require the applicant as soon as practicable to satisfy it that the requirements of section 25(2) as read with section 30(3) of the Act are met;
- (c) in the event of the applicant not so satisfying it, cease to make legal aid available to him.

### **Notification of decision**

6. The Board's decision on an application for an award of legal aid under section 30(3) shall be intimated forthwith by the Board to the applicant and his solicitor.

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(2) 1981 c. 49.  
(3) 1984 c. 36.

### **Employment of counsel and expert witnesses in proceedings on appeal**

7.—(1) Subject to paragraph (2) below, the prior approval of the Board shall be required in proceedings on appeal—

- (a) where the proceedings are in the Court of Session or High Court, for the employment of senior counsel or of more than one junior counsel;
- (b) where the proceedings are in the sheriff court for the employment of counsel;
- (c) for the employment of an expert witness.

(2) Paragraph (1) above shall not apply where the Board, on an application made to it for retrospective sanction of the employment of counsel, or as the case may be, of an expert witness, considers that the employment would have been approved by it and that there were special reasons why prior approval was not applied for.

### **Duty of Board to cease to make legal aid available and right to recover sums paid out of the Fund**

8.—(1) The Board shall cease to make legal aid available under section 30(3) of the Act if it is satisfied, after taking account of any explanation offered by the assisted person in respect of sub-paragraphs (a) to (d) below, that he—

- (a) has wilfully failed to comply with the provisions of these Regulations as to the information to be furnished by him; or
- (b) knowingly made a false statement or false representation in furnishing such information; or
- (c) has conducted himself in connection with the proceedings in such a way as to make it appear to the Board unreasonable that he should continue to receive legal aid; or
- (d) has wilfully or deliberately given false information for the purpose of misleading the Board in considering his financial circumstances under section 24 of the Act.

(2) Where the Board, in accordance with paragraph (1) above, ceases to make legal aid available—

- (a) 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 his solicitor and counsel;
- (b) the solicitor who acted for the assisted person shall have the right to receive from him the difference between the amount payable out of the Fund and the full amount which would be payable to him on a solicitor and client basis in respect of fees and outlays; and
- (c) the Board may direct that the assisted person shall cease to be entitled to legal aid in connection with those proceedings.

St Andrew's House,  
Edinburgh  
13th May 1992

*Fraser of Carmyllie*  
Minister of State, Scottish Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the availability of legal aid to those against whom proceedings for contempt of court have been instituted.

In particular they make provision as to—

- (a) what constitutes distinct contempt of court proceedings (regulation 3);
- (b) how applications for legal aid for contempt proceedings are to be made (regulation 4);
- (c) matters of special urgency in connection with applications for legal aid (regulation 5);
- (d) intimation of the Scottish Legal Aid Board's decisions (regulation 6);
- (e) employment of counsel and expert witnesses in proceedings on appeal (regulation 7); and
- (f) the duty of the Scottish Legal Aid Board to cease to provide legal aid in case of either a false statement or false representation, and the right to recover sums paid in legal aid (regulation 8).