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STATUTORY INSTRUMENTS

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**1994 No. 1049 (S.55)**

**LEGAL AID AND ADVICE, SCOTLAND**

**The Civil Legal Aid (Scotland) Amendment Regulations 1994**

<i>Made</i>	- - - -	<i>8th April 1994</i>
<i>Laid before Parliament</i>		<i>14th April 1994</i>
<i>Coming into force</i>	- -	<i>5th May 1994</i>

The Secretary of State, in exercise of the powers conferred on him by sections 17(2B), 36(1) and (2)(a), (d) and (h) and (3)(e) and 37(1) of the Legal Aid (Scotland) Act 1986((1)) and of all other powers enabling him in that behalf hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment Regulations 1994 and shall come into force on 5th May 1994.

(2) In these Regulations “the principal Regulations” means the Civil Legal Aid (Scotland) Regulations 1987((2)).

**Application**

2. These Regulations shall apply only in relation to any case where—
- (a) civil legal aid is made available on or after 5th May 1994; and
  - (b) all work in respect of which civil legal aid is made available was done on or after that date.

**Amendment of the principal Regulations**

3. In regulation 3 of the principal Regulations((3)) (interpretation)—
- (a) at the beginning there shall be inserted “— (1)”;
  - (b) for the definitions of “counsel” and of “junior counsel” there shall be substituted—  
““counsel” includes a solicitor-advocate, except in regulations 21(1)(c), 44 and 45 below;” and  
““junior counsel” includes a junior solicitor-advocate;” and

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(1) 1986 c. 47; section 17(2B) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, (c.40), Schedule 8, paragraph 36(6).  
(2) S.I. 1987/381; relevant amending instruments are S.I. 1988/1171 and 1891, 1990/631, 1991/1904, 1992/753 and 1993/535.  
(3) Regulation 3 was amended by S.I. 1988/1171, 1991/1904 and 1993/535.

- (c) for the definition of “rights of audience solicitor” to the end of Regulation 3 there shall be substituted the following provisions:—

““right of audience” means, in relation to a solicitor, a right of audience in the Court of Session, the House of Lords and the Judicial Committee of the Privy Council which a solicitor has by virtue of section 25A (rights of audience in specified courts) of the Solicitors (Scotland) Act 1980((4));

“senior counsel” includes a senior solicitor-advocate except in paragraph (2) below;

“solicitor-advocate” means a solicitor, whether instructed by another solicitor or not, when and only when he is exercising his right of audience or acting in connection with the exercise of such a right and “junior solicitor-advocate” and “senior solicitor-advocate” shall be construed in accordance with paragraph (2) below;

and, unless the context otherwise requires, any reference in these Regulations to a solicitor does not include a solicitor when acting as a solicitor-advocate.

- (2) For the purposes of these Regulations, a solicitor-advocate shall be

- (a) a senior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a senior counsel in a case in the House of Lords or where the Board has authorised the employment of senior counsel under regulation 21(1)(b) or (2) below; and
- (b) a junior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a junior counsel, irrespective of whether or not the Board has authorised the employment of senior counsel in the case.”.

4. In regulation 5(1)(d) of the principal Regulations((5)) (form of application) for “embodied in such form of intimation as the Board may require together with” there shall be substituted—

“together with such form of intimation as the Board may require in relation to each opponent and”.

5. In regulation 10 of the principal Regulations (determination of disposable income and disposable capital) there shall be deleted “, and in particular in Regulation 10A below”((6)).

6. For regulation 18 of the principal Regulations((7)) (legal aid in specified proceedings or matters of special urgency) there shall be substituted—

**“Legal aid in matters of special urgency**

**18. —**

(1) The Board may make legal aid available for specially urgent work undertaken before an application is determined, if it is satisfied that at the time such work was undertaken there was *probabilis causa litigandi* and it appears to the Board that it is reasonable in the particular circumstances of the case that the applicant should receive legal aid, in either of the following circumstances:—

- (a) where any step specified in paragraph (2) below has required to be taken as a matter of special urgency to protect the applicant’s position; or
- (b) in any other circumstances where the Board is satisfied on application that steps require to be taken as a matter of special urgency to protect the applicant’s position.

- (2) The steps referred to in paragraph (1)(a) above are—

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(4) 1980 c. 46; section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, section 24.

(5) Regulation 5(1)(d) was substituted by S.I. 1988/1171.

(6) The words were inserted by S.I. 1990/631.

(7) Regulation 18 was substituted by S.I. 1988/1171 and amended by S.I. 1988/1891 and 1992/753.

- (a) such steps as may be appropriate to intimate an intention to oppose proceedings;
  - (b) such steps as may be appropriate to state the basis upon which proceedings are opposed;
  - (c) such steps as may be appropriate to repone or otherwise recall a decree in absence;
  - (d) moving to sist further procedure or opposing the recall of a sist;
  - (e) moving to prorogate the time for compliance with any order or rule;
  - (f) moving or opposing a motion for discharge of any diet;
  - (g) moving for or opposing decree by default;
  - (h) moving for or opposing a motion for summary decree;
  - (i) initiating proceedings to avoid time-bar;
  - (j) moving for interim orders for custody or interdict, including (where not already done) initiating or entering proceedings in which such orders may be sought;
  - (k) opposing interim orders of any kind;
  - (l) moving for or opposition to an exclusion order;
  - (m) moving for or opposition to an order for a power of arrest;
  - (n) opposing a motion for variation of an order relating to parental rights;
  - (o) opposing a freeing order for adoption or an application by a local authority to assume parental rights;
  - (p) obtaining reports on custody or access when the court so orders;
  - (q) obtaining warrant for inhibition on the dependence or arrestment on the dependence, including (where not already done) initiating proceedings containing an application for such warrant, and taking steps to have the warrant executed;
  - (r) initiating proceedings for suspension or suspension and interdict;
  - (s) initiating or opposing appellate proceedings other than such proceedings in the House of Lords;
  - (t) initiating such proceedings as are necessary to enable an application to be made for interim liberation in an immigration matter; and
  - (u) initiating an application to the Court of Session which is certified by the Secretary of State to be a Convention application as defined in regulation 46 below.
- (3) Where a solicitor undertakes work under paragraphs (1)(a) and (2) above, the solicitor shall, within 28 days of commencement of the work, both notify the Board of such commencement and, if an application for legal aid has not already been submitted, submit an application for legal aid; failure so to do shall exclude that work from any legal aid that may be made available.
- (4) Where the Board is satisfied in accordance with paragraph (1)(b) above that steps require to be taken as a matter of special urgency to protect the applicant's position—
- (a) the Board shall so certify and may specify that the steps to be taken shall be limited to such work, or such purposes, or such period, or be subject to such conditions, all as it shall consider appropriate in the circumstances; and
  - (b) the solicitor shall, if an application for legal aid has not already been submitted, submit an application for legal aid within 28 days of commencement of the urgent work; failure so to do shall exclude that work from any legal aid that may be made available.”.

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**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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7. In regulation 28A(1)(b) of the principal Regulations((8)) (power of Board to suspend availability of legal aid) for “regulations 29(b) or 30” there shall be substituted–

“regulations 29(b), 30 or 31”.

8. In regulation 32(a) of the principal Regulations((9)) (payments out of property recovered or preserved: exceptions) there shall be inserted after (viii)–

“(ix) by way of child support maintenance under the Child Support Act 1991((10));”.

### **Revocation**

9. The regulations set out in column 1 of the Schedule to these Regulations are hereby revoked to the extent specified in column 3 of that Schedule.

St Andrew’s House,  
Edinburgh  
8th April 1994

*Fraser of Carmyllie*  
Minister of State, Scottish Office

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(8) Regulation 28A was inserted by S.I. [1988/1171](#) and amended by S.I. [1991/1904](#).

(9) Regulation 32 was substituted by S.I. [1991/1904](#) and amended by S.I. [1992/753](#).

(10) [1991 c. 48](#).

## SCHEDULE

Regulation 9

## REVOCATIONS

(1) <i>Regulations revoked</i>	(2) <i>References</i>	(3) <i>Extent of revocation</i>
The Civil Legal Aid (Scotland) Regulations 1987	S.I. <a href="#">1987/381</a> .	Regulation 10A.
The Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 1988	S.I. <a href="#">1988/1171</a> .	Regulation 6.
The Civil Legal Aid (Scotland) Amendment (No. 3) Regulations 1988	S.I. <a href="#">1988/1891</a> .	Regulation 3.
The Civil Legal Aid (Scotland) Amendment Regulations 1990	S.I. <a href="#">1990/631</a> .	Regulation 5.
The Civil Legal Aid (Scotland) Amendment Regulation 1992	S.I. <a href="#">1992/753</a> .	Regulations 2 and 3.
The Civil Legal Aid (Scotland) Amendment Regulations 1993	S.I. <a href="#">1993/535</a>	Regulation 3.

## EXPLANATORY NOTE

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

These Regulations amend the Civil Legal Aid (Scotland) Regulations 1987.

The regulations—

- (a) substitute new definitions relating to solicitors who have a right of audience in the Court of Session, the House of Lords and the Judicial Committee of the Privy Council and revoke regulation 3 of the Civil Legal Aid (Scotland) Amendment Regulations 1993 (S.I. [1993/535](#)) which inserted defective definitions relating to such solicitors (regulations 3 and 9 and the Schedule);
- (b) provide that a form of intimation for each opponent separate from the copy statement of case for that opponent is to accompany an application for civil legal aid (regulation 4);
- (c) substitute a revised provision in relation to the availability of civil legal aid for work undertaken in a matter of special urgency prior to the determination of an application which takes account of new rules of procedure in the Sheriff Court introduced by the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 (S.I. [1993/1956](#)) and makes consequential revocations (regulations 6 and 9 and the Schedule);
- (d) provide that the Board may suspend the availability of civil legal aid where it requires to consider whether information which it has received regarding a failure to supply information or the giving of false information merits termination of legal aid (regulation 7);

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- (e) provide that the prior right to payment of fees and outlays from property recovered or preserved does not apply to child support maintenance under the Child Support Act 1991 (regulation 8); and
- (f) revoke regulation 10A of the principal Regulations which made provision in relation to disposable income and capital limits in the case of personal injury claims and make consequential amendment (regulations 5 and 9 and the Schedule).