
STATUTORY INSTRUMENTS

1994 No. 1061 (S.57)

LEGAL AID AND ADVICE, SCOTLAND

**The Advice and Assistance (Scotland)
Amendment Regulations 1994**

<i>Made</i>	- - - -	<i>12th 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 12(3), 36(1) and 2(a), 37(1) and (3) and 42 of the Legal Aid (Scotland) Act 1986⁽¹⁾ and of all other powers enabling him in that behalf, and with the concurrence of the Treasury, hereby makes the following Regulations:

Citation, commencement and interpretation

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

(2) In these Regulations “the principal Regulations” means the Advice and Assistance (Scotland) Regulations 1987⁽²⁾.

Application

2. These Regulations shall apply only in relation to any case where an application for advice and assistance is granted on or after 5th May 1994.

Amendment of the principal Regulations

3. In regulation 15 of the principal Regulations (payment of fees and outlays from property recovered or preserved)–

(a) in paragraph (1)(a) after (viii) there shall be inserted–

“(ix) by way of child support maintenance under the Child Support Act 1991⁽³⁾”;

(b) for paragraph (2) there shall be substituted–

(1) 1986 c. 47.

(2) S.I.1987/382; relevant amending instruments are S.I. 1987/883, 1988/489 and 1131 and 1992/752.

(3) 1991 c. 48.

Status: This is the original version (as it was originally made).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

“(2) The Board may authorise that the requirement created by section 12(3)(c) of the Act that, before recourse to the Fund, fees or outlays shall be paid to the solicitor out of any property which is recovered or preserved for the client shall not apply in relation to the whole or any part of any such property in any case where on application by the solicitor the Board are satisfied that—

- (a) payment out of the property to which the requirement would otherwise apply would cause grave hardship or distress to the client; or
- (b) (i) the solicitor has taken all reasonable steps to obtain payment out of the property to which the requirement would otherwise apply; and
(ii) payment to the solicitor out of that property could only be effected with unreasonable difficulty or after unreasonable delay.”.

4. In Schedule 2 to the principal Regulations (assessment of disposable capital and disposable income) in paragraph 8(a)(ii) there shall be inserted after “paid” the words “by way of contributions to the National Insurance Fund”.

St Andrew’s House,
Edinburgh
31st March 1994

Fraser of Carmyllie
Minister of State, Scottish Office

We concur,

12th April 1994

T J R Wood
Timothy Kirkhope
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advice and Assistance (Scotland) Regulations 1987.

The regulations—

- (a) provide that the prior right to payment of fees and outlays from property recovered or preserved does not apply to money paid by way of child support maintenance under the Child Support Act 1991 (regulation 3(a));
- (b) provide that where the Scottish Legal Aid Board are satisfied that specified conditions are met they may on application by the solicitor authorise that payment of fees or outlays need not be made out of property recovered or preserved (regulation 3(b)); and
- (c) clarify that the amount referred to paragraph 8(a)(ii) of Schedule 2 to the principal Regulations which is to be left out of account is the amount paid by way of National Insurance contributions (regulation 4).