
STATUTORY INSTRUMENTS

1996 No. 811 (S.91)

LEGAL AID AND ADVICE, SCOTLAND

The Advice and Assistance (Scotland)
Amendment Regulations 1996

<i>Made</i>	- - - -	<i>15th March 1996</i>
<i>Laid before Parliament</i>		<i>18th March 1996</i>
<i>Coming into force</i>	- -	<i>8th April 1996</i>

The Secretary of State, in exercise of the powers conferred on him by sections 33(2)(b) and (3)(a) and 36(1), (2)(a),(d) and (e) and (4) 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 Advice and Assistance (Scotland) Amendment Regulations 1996 and shall come into force on 8th April 1996.

(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 made on or after 8th April 1996.

Amendment of the principal Regulations

3. In regulation 4 of the principal Regulations (applications for advice and assistance) before “include” there shall be inserted “, subject to regulation 4A,”.

4. After regulation 4 of the principal Regulations there shall be inserted—

“4A.—(1) Sections 8, 11 and 12(3) of the Act⁽³⁾ shall be modified to the extent provided in the following sub-paragraphs in the case of an application for advice and assistance

(1) 1986 c. 47.

(2) S.I. 1987/382 as amended by 1987/883, 1988/489 and 1131, 1989/506, 1990/632, 1992/373 and 752, 1993/533 and 819, 1994/1061 and 1995/1066.

(3) Sections 8 and 11 of the Legal Aid (Scotland) Act 1986 were amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraph 61.

in relation to the recognition or enforcement of a judgment under section 5 of the Civil Jurisdiction and Judgments Act 1982(4) by an applicant to whom this regulation applies, namely—

- (a) section 8 shall be modified so as to provide that such advice and assistance shall be made available whether within or furth of Scotland without regard to the income or capital of an applicant to whom this regulation applies;
- (b) section 11 shall be modified so as to provide that such applicant shall, irrespective of his disposable income, not require to pay any fees or outlays in respect of such advice and assistance; and
- (c) section 12(3) shall be modified so as to provide that fees or outlays to which section 12 applies shall be paid to the solicitor in respect of such advice and assistance provided to such applicant—
 - (i) firstly, in priority to all other debts, out of any expenses which (by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the advice and assistance is provided; and
 - (ii) secondly, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor.

(2) This regulation applies to—

- (a) an applicant who seeks advice and assistance in relation to the enforcement of a decision given by an administrative authority in Denmark or Iceland and who presents a statement from, respectively, the Danish Ministry of Justice or the Icelandic Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses; and
- (b) an applicant who, in the State of origin of the judgment, has benefited from complete or partial legal aid or exemption from costs or expenses.”.

5. At the end of regulation 5 of the principal Regulations (applications on behalf of others) there shall be added—

“(3) An application for advice and assistance in relation to the recognition or enforcement of a judgment under section 5 of the Civil Jurisdiction and Judgments Act 1982 may be signed on behalf of the client by the solicitor to whom the application is made.”.

6. In Part I of Schedule 3 to the principal Regulations(5) (table of fees allowable to solicitors for assistance by way of representation) in paragraph (a)(v) the words “, provided that the accused has intimated in writing his intention to change his plea to one of guilty to the prosecutor within 14 days of the diet at which the plea of not guilty was tendered,” shall be omitted.

St Andrew’s House,
Edinburgh
15th March 1996

James Douglas-Hamilton
Minister of State, Scottish Office

(4) 1982 c. 27; section 5 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraph 2.

(5) Schedule 3 was substituted by S.I. 1992/373 and amended by S.I. 1993/533.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

They provide—

- (a) that advice and assistance in relation to the recognition or enforcement of a judgment under section 5 of the Civil Jurisdiction and Judgments Act 1982 shall be made available free without regard to the income or capital of the applicant where the applicant benefited from complete or partial legal aid or exemption from costs or expenses in the State of origin or, in the case of Denmark or Iceland, fulfilled the economic requirements to qualify for such grant or exemption (regulation 4);
- (b) that any application for such advice and assistance may be signed on behalf of the applicant by the solicitor to whom the application is made (regulation 5).
- (c) for the table of fees allowable to solicitors for assistance by way of representation to be amended to take account of amendment made to the conditions applicable to the provision of assistance by way of representation in summary criminal proceedings made by the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 1996 (S.I.1996/1011), (regulation 6).