
STATUTORY INSTRUMENTS

1996 No. 812 (S.92)

LEGAL AID AND ADVICE, SCOTLAND

The Civil Legal Aid (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 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 Civil Legal Aid (Scotland) Amendment Regulations 1996 and shall come into force on 8th April 1996.

(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 an application for civil legal aid is made to the Scottish Legal Aid Board on or after 8th April 1996.

Amendment of the principal Regulations

3. In regulation 23 of the principal Regulations (duty to report changes in circumstances) the words from “, which he has reason to believe” to the end shall be omitted.

4. For regulation 46(2) of the principal Regulations (convention applications) there shall be substituted—

“(2) Sections 14, 15 and 17 of the Act(3) and regulations 5 and 7 above shall be modified to the extent provided in the following sub-paragraphs in the case of a person resident outside the United Kingdom who applies for legal aid for the purpose of pursuing by way

(1) 1986 c. 47.

(2) S.I.1987/381 as amended by 1988/490, 1171 and 1891, 1989/505, 1990/631, 1991/745 and 1904, 1992/753, 1993/535 and 818, 1994/1049 and 1995/1065.

(3) Section 17 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36(6).

of proceedings at first instance in the Court of Session an application which is certified by the Secretary of State to be a Convention application, namely—

- (a) section 14 shall be modified so as to provide that legal aid shall be available to such person on an application to the Board without the Board requiring to be satisfied that he has *probabilis causa litigandi* or to consider whether it is reasonable in the particular circumstances of the case that he should receive legal aid;
- (b) section 15 shall be modified so as to provide that such person shall be eligible for legal aid without regard to his income or capital;
- (c) section 17 shall be modified so as to provide that such person shall not require to pay any contribution to the Fund in respect of income or capital nor shall he require, where there is a net liability to the Fund on his account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for him; and
- (d) regulation 5 above shall be modified so as to provide that such application for legal aid—
 - (i) may be signed by either the applicant or his solicitor and where it is signed by the applicant such signature shall not be subject to any additional formal requirement; and
 - (ii) requires to be accompanied only by—
 - (aa) a statement signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and
 - (bb) a certificate of the Secretary of State that the application for legal aid relates to a Convention application;
- (e) regulation 7(2) shall be modified so as to provide that paragraph (1) of that regulation shall not apply in the case of such application for legal aid.

(3) Sections 15 and 17 of the Act and regulation 5 above shall be modified to the extent provided in the following sub-paragraphs in the case of a person resident outside the United Kingdom who applies for legal aid for the purposes of an appeal whether to the Inner House of the Court of Session or to the House of Lords in relation to a Convention application, namely—

- (a) section 15 shall be modified so as to provide that such person shall be eligible for legal aid without regard to his income or capital;
- (b) section 17 shall be modified so as to provide that such person shall not require to pay any contribution to the Fund in respect of income or capital nor shall he require, where there is a net liability to the Fund on his account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for him; and
- (c) regulation 5 above shall be modified so as to provide that the application for legal aid—
 - (i) may be signed by either the applicant or his solicitor and where it is signed by the applicant such signature shall not be subject to any additional formal requirement; and
 - (ii) subject to paragraph (4), requires to be accompanied only by—
 - (aa) a statement signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and
 - (bb) a copy for each opponent of the statement.

(4) Where a person resident outside the United Kingdom applies for legal aid for the purposes of an appeal as mentioned in paragraph (3) and has not applied for legal aid in relation to an earlier stage of the proceedings, the application for legal aid for the purposes of such appeal shall be accompanied, in addition to the documents specified in paragraph (3)(c) (ii), also by a certificate of the Secretary of State that the application relates to a Convention application.”.

5. For regulation 47(2) (applications under the European Judgments Convention) there shall be substituted—

“(2) In the case of an application to which this regulation applies—

- (a) section 15 of the Act shall be modified so as to provide that a person making such application shall be eligible for legal aid without regard to his income or capital;
- (b) section 17 of the Act shall be modified so as to provide that a person making such application shall not require to pay any contribution to the Fund in respect of income or capital nor shall he require, where there is a net liability to the Fund on his account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for him;
- (c) regulation 5 above shall be modified so as to provide that the application for legal aid—
 - (i) may be signed by either the applicant or his solicitor and where it is signed by the applicant such signature shall not be subject to any additional formal requirements; and
 - (ii) requires to be accompanied by a statement signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and
- (d) regulation 7(2) above shall be modified so as to provide that paragraph (1) of that regulation shall not apply in the case of an application for legal aid to which regulation 47 applies.”.

St Andrew’s House,
Edinburgh
15th March 1996

James Douglas-Hamilton
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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

They—

- (a) require an applicant or assisted person immediately to inform the Board of any change in his circumstances or, so far as known, those of any person jointly concerned with, or having the same interest in, the matter (regulation 3);
- (b) clarify the power of the Board to make legal aid available in relation to applications under the Convention on the Civil Aspects of International Child Abduction and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of the Custody of Children and modify the provisions of the Legal Aid (Scotland) Act 1986 in relation to the availability of civil legal aid for appeals to the Inner House of the Court of Session or the House of Lords arising from such applications (regulation 4);
- (c) clarify the power of the Board to make legal aid available in relation to applications under the European Conventions on jurisdiction and the enforcement of judgments in civil and commercial matters (regulation 5).