
STATUTORY INSTRUMENTS

1998 No. 724 (S.38)

LEGAL AID AND ADVICE, SCOTLAND

**The Advice and Assistance (Scotland)
Amendment Regulations 1998**

<i>Made</i>	- - - -	<i>11th March 1998</i>
<i>Laid before Parliament</i>		<i>16th March 1998</i>
<i>Coming into force</i>	- -	<i>6th April 1998</i>

The Secretary of State, in exercise of the powers conferred on him by sections 12(3), 33(2)(b) and (3)(b) and (f), 36(1), 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 1998 and shall come into force on 6th April 1998.

(2) In these Regulations, “the principal Regulations” means the Advice and Assistance (Scotland) Regulations 1996⁽²⁾.

Application

2. These Regulations shall only apply in relation to any case where an application for advice and assistance is made on or after 6th April 1998.

Amendment of principal Regulations

3. In Regulation 16(2)(a) of the principal Regulations (payment of fees and outlays from property recovered or preserved) at the end there shall be inserted—

“(x) by way of any council tax benefit under section 131⁽³⁾”.

4. For regulation 21 of the principal Regulations (right of Board to recover sums paid out of the Fund) there shall be substituted—

(1) 1986 c. 47.

(2) S.I. 1996/2447, as amended by S.I. 1997/726.

(3) Section 131 was substituted by the Local Government Finance Act 1992 c. 14.

“**21.**—(1) This regulation applies where after giving a person an opportunity of submitting representations, the Board is satisfied that that person has—

- (a) wilfully failed to comply with 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.

(2) Where this regulation applies, the Board shall have the right to recover from that person any sum paid out of the Fund to the solicitor in respect of the advice and assistance so given.”.

5. In Schedule 2 to the principal Regulations (assessment of disposable capital and disposable income)—

- (a) in paragraph 1 after the definition of “capital” there shall be inserted—
 - ““dependent person” means a person wholly or substantially maintained by the person concerned”;
- (b) in paragraph 6(d) for the words “, a dependent child, or a dependent relative wholly or substantially maintained by him” there shall be substituted the words “or a dependent person”;
- (c) for paragraph 7(c) there shall be substituted—
 - (c) there shall be a deduction in respect of the maintenance of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent person, being a member of his or her household, at the following rates:—
 - (i) in the case of a spouse, at a rate equivalent to the difference, as at the date when the application for advice and assistance is made, between the income support allowance for a couple where both members are aged not less than 18 (which is specified in column (2) of paragraph 1(3)(d) of Part I of Schedule 2 to the Income Support (General) Regulations 1987⁽⁴⁾), and the allowance for a single person aged not less than 25 (which is specified in column (2) of paragraph 1(1)(e) of Part I of Schedule 2 to those Regulations⁽⁵⁾);
 - (ii) in the case of a dependent person aged under 19, at a rate equivalent to the amount specified in, column 2 of paragraph 2(1) of Part I of Schedule 2 to the Income Support (General) Regulations 1987⁽⁶⁾ appropriate to that person as at the date when the application for advice and assistance is made;
 - (iii) in the case of a dependent person aged 19 or over, at a rate equivalent to the amount specified in column 2 of paragraph 2(1)(c) of Part I of Schedule 2 to the Income Support (General) Regulations 1987;”.
- (d) for paragraph 10(2) there shall be substituted “In this Schedule “pensionable age” means the age of 60”.

⁽⁴⁾ S.I. 1987/1967, as relatively amended by S.I. 1996/2545 and S.I. 1997/543.

⁽⁵⁾ The amount specified was substituted by S.I. 1997/543.

⁽⁶⁾ The allowances specified were amended by S.I. 1997/2545 and the amounts specified were substituted by S.I. 1997/543.

St Andrew's House,
Edinburgh
6th March 1998

Henry McLeish
Minister of State, Scottish Office

We concur,

11th March 1998

John Owen Jones
Graham Allen
Two of the Lords Commissioners of Her
Majesty's Treasury

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 Advice and Assistance (Scotland) Regulations 1996 (the principal Regulations) so as to—

- (a) provide that the right to prior payment of fees and outlays from property recovered or preserved shall not apply to any council tax benefit (regulation 3);
- (b) provide for a person to be entitled to make representations to the Scottish Legal Aid Board before it recovers any sum paid out of the Fund in respect of advice and assistance (regulation 4);
- (c) make provision for a deduction to be made for a dependent person when computing the income of a person during the assessment of his resources in respect of an application for advice and assistance. Previously deductions could only be made for a dependent child or relative (regulation 5(a)); and
- (d) provide that the definition of pensionable age in Schedule 2 to the principal Regulations is 60. Previously the age was 65 for men and 60 for women. Persons of pensionable age who are on low incomes are entitled in terms of paragraph 10(1) of Schedule 2 to the principal Regulations to specified capital disregards (regulation 5(b)).

By virtue of regulation 2, the Regulations apply only in relation to any case where an application for legal aid is made to the Scottish Legal Aid Board on or after 6th April 1998.