
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend existing Regulations made under the Legal Aid (Scotland) Act 1986 (“the 1986 Act”).

Regulations 2 and 3 make minor amendments and corrections to the Civil Legal Aid (Scotland) (Fees) Regulations 1989 and the Criminal Legal Aid (Scotland) (Fees) Regulations 1989.

Regulation 4 amends the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 to specify the financial limit for advice and assistance provided by a solicitor to a person detained under section 27 of the National Security Act 2023 (“the 2023 Act”). A solicitor requires approval from the Scottish Legal Aid Board before giving advice and assistance where it appears that the cost of doing so will exceed this limit.

Regulation 5 makes amendments to the Advice and Assistance (Scotland) Regulations 1996:

- regulation 4A is amended to exclude applications for advice and assistance in respect of detention under section 27 of the 2023 Act from the requirement that the application be signed by the client, or another person on their behalf.
- regulation 14A is amended to provide that the requirements in the event of a change of solicitor set out in that regulation do not apply in respect of proceedings under paragraphs 37 or 44 of schedule 6 of the 2023 Act (relating to warrants for further detention or extension of further extension)
- regulation 17 is amended to specify which tables of fees are to apply in the calculation of fees and outlays in relation to detention under section 27 of the 2023 Act.
- fee tables are inserted into schedule 3 setting out fees for advice and assistance in relation to detention under section 27 and schedule 6 of the 2023 Act, and assistance by way of representation (“ABWOR”) for proceedings under paragraphs 37 or 44 of schedule 6 of that Act, and simplifying the fees table for schedule 8 of the Terrorism Act 2000.

Regulation 6 amends the Civil Legal Aid (Scotland) Regulations 2002. Regulation 33 is amended to provide that carer’s assistance given in accordance with the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023 (“the 2023 Regulations”) is excluded from bearing fees and outlays when forming part of any recovered or preserved property in proceedings. Schedules 2 and 3 are amended so such assistance is to be disregarded by the Board in the assessment and computation of the disposable capital and income of an applicant for civil legal aid.

Regulation 7 amends the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003. Regulation 3 is amended to provide that ABWOR is available for proceedings under paragraph 37 or 44 of schedule 6 of the 2023 Act. Regulation 9 is amended to provide that ABWOR in such proceedings is available without reference to the financial limits under section 8 (availability of advice and assistance), and that section 11(2) of the 1986 Act (client’s contributions) does not apply to such assistance.

Regulation 8 amends regulation 7 of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008 to provide that the restrictions on entitlement to payment in that regulation do not apply to separate payments in respect of advice and assistance provided to a person entitled to consult a solicitor under paragraph 15(6) of schedule 6 of the 2023 Act.

Regulation 9 amends regulation 3 of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 to provide that where the Board has arranged for a duty solicitor to be available

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 4) Regulations 2023 No. 313

to a person entitled to consult a solicitor under paragraph 15(6) of schedule 6 of the 2023 Act, that person is not entitled to select a solicitor themselves, and the advice and assistance must only be provided by the duty solicitor provided.

Regulation 10 amends the Children's Legal Assistance (Scotland) Regulations 2013 to make similar provision to regulation 6 to disregard carer's assistance given in accordance with the 2023 Regulations from the computation of the disposable capital and income of an applicant for children's legal aid.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh EH1 3DG.