
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 494

The Civil Legal Aid (Scotland) Regulations 2002

PART IV

DETERMINATION OF APPLICATIONS

Applicant having joint interest, etc. with other persons

15. Where it appears to the Board that a person making an application for legal aid is jointly concerned with or has the same interest in the matter in connection with which the application is made as other persons, whether receiving legal aid or not, the Board shall not grant legal aid if it is satisfied that—

- (a) the person making the application would not be seriously prejudiced in his or her own right if legal aid were not granted; or
- (b) it would be reasonable and proper for the other persons concerned with or having the same interest in the matter as the applicant to defray so much of the expenses as would be payable from the Fund in respect of the proceedings if legal aid was granted.

Applicant having rights and facilities in relation to litigation

16.—(1) Where it appears to the Board that an applicant has available rights and facilities making it unnecessary for that applicant to obtain legal aid or has a reasonable expectation of obtaining financial or other help from a body of which that applicant is a member, the Board shall not approve the application unless the applicant has not succeeded in enforcing or obtaining such rights, facilities or help, after having taken, in the opinion of the Board, all reasonable steps to enforce or obtain them:

Provided that where it appears that the applicant has a right to assistance in the conduct of the proceedings in question, that applicant shall not, for the purpose of this regulation, be deemed to have failed to take all reasonable steps by reason only that the applicant has not taken proceedings by way of declarator or otherwise to enforce that right.

(2) Where the Board approves an application by a person who is a member of a body which might reasonably have been expected to give that person financial help towards the expenses of the proceedings, the Board shall require that person to sign an undertaking to pay to the Board, in addition to a contribution if any, any sum received from that body on account of the expenses of the proceedings.

Contributions

17. Where the Board grants the application, it shall make determinations as to the amount of the contribution to the Fund which the applicant is required to pay under section 17(1) of the Act, as to whether the contribution is payable in one sum or by instalments, as to the amount or amounts of the instalments and as to the date or dates on which the contribution or the instalments are payable.

Legal aid in matters of special urgency

18.—(1) The Board may make legal aid available for specially urgent work undertaken before an application is determined, if it is satisfied that at the time such work was undertaken there was *probabilis causa litigandi* and it appears to the Board that it is reasonable in the particular circumstances of the case that the applicant should receive legal aid, in either of the following circumstances:—

- (a) where any step specified in paragraph (2) below has required to be taken as a matter of special urgency to protect the applicant's position; or
 - (b) in any other circumstances where the Board is satisfied on application that steps require to be taken as a matter of special urgency to protect the applicant's position.
- (2) The steps referred to in paragraph (1)(a) above are—
- (a) such steps as may be appropriate to intimate an intention to oppose proceedings;
 - (b) such steps as may be appropriate to state the basis upon which proceedings are opposed;
 - (c) such steps as may be appropriate to repon or otherwise recall a decree in absence;
 - (d) moving to sist further procedure or opposing the recall of a sist;
 - (e) moving to prorogate the time for compliance with any order or rule;
 - (f) moving or opposing a motion for discharge of any diet;
 - (g) moving for or opposing decree by default;
 - (h) moving for or opposing a motion for summary decree;
 - (i) initiating proceedings to avoid time-bar;
 - (j) moving for interim orders for residence or interdict or interim orders under section 11 of the 1995 Act, including (where not already done) initiating or entering proceedings in which such orders may be sought;
 - (k) opposing interim orders of any kind;
 - (l) moving for or opposing an exclusion order;
 - (m) moving for or opposing an order for a power of arrest;
 - (n) moving for or opposing a motion for variation of an order relating to parental responsibilities or parental rights under section 11 of the 1995 Act⁽¹⁾;
 - (o) opposing a freeing order for adoption or an application by a local authority for a parental responsibilities order under section 86 of the 1995 Act;
 - (p) obtaining reports on residence orders or contact orders within the meaning of section 11(2) (c) and (d) of the 1995 Act when the court so orders;
 - (q) appearing at a Child Welfare Hearing which has been fixed under rule 33.22A of the Ordinary Cause Rules 1993⁽²⁾;
 - (r) obtaining warrant for inhibition on the dependence or arrestment on the dependence, including (where not already done) initiating proceedings containing an application for such warrant, and taking steps to have the warrant executed;
 - (s) initiating proceedings for suspension or suspension and interdict;
 - (t) initiating or opposing appellate proceedings other than such proceedings in the House of Lords or the Judicial Committee of the Privy Council;

(1) Section 11 was amended by the [European Communities Act \(Matrimonial Jurisdiction and Judgments\) \(Scotland\) Regulations 2001 \(S.S.I. 2001/ 36\)](#).

(2) The Ordinary Cause Rules 1993 are contained in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c. 51); Schedule 1 was substituted by S.I.1993/1956 and rule 33.22A was inserted by S.I. 1996/2167.

- (u) initiating such proceedings as are necessary to enable an application to be made for interim liberation in an immigration matter; and
 - (v) initiating an application to the Court of Session which is certified by the Scottish Ministers to be a Convention application as defined in regulation 45 below.
- (3) Where a solicitor undertakes work under paragraphs (1)(a) and (2) above, the solicitor shall, within 28 days of commencement of the work, both notify the Board of such commencement and, if an application for legal aid has not already been submitted, submit an application for legal aid; and failure to do so shall exclude that work from any legal aid that may be made available.
- (4) Where the Board is satisfied in accordance with paragraph (1)(b) above that steps require to be taken as a matter of special urgency to protect the applicant's position—
- (a) the Board shall so certify and may specify that the steps to be taken shall be limited to such work, or such purposes, or such period, or be subject to such conditions, all as it shall consider appropriate in the circumstances; and
 - (b) the solicitor shall, if an application for legal aid has not already been submitted, submit an application for legal aid within 28 days of commencement of the urgent work and failure to do so shall exclude that work from any legal aid that may be made available.
- (5) Where work is carried out by a solicitor in the circumstances described in paragraph (1) above—
- (a) Section 17 (contributions and payments out of property recovered) of the Act shall be modified so that —
 - (i) a legally assisted person for the purposes of that section includes a person for whom such work is carried out; and
 - (ii) the requirements of that section apply in respect of specially urgent work undertaken before an application for legal aid made in terms of section 14 of the Act is determined;
 - (b) regulation 5(1)(b)(statement to accompany application) above shall be modified so that the statement for the purpose of that sub-paragraph shall be —
 - (i) signed by the applicant; or
 - (ii) where the Board is satisfied that there is a good reason why the applicant has not signed the statement, by the solicitor; and
 - (c) regulations 21 (prior approval of the Board required for employment of counsel etc.), 39 (recovery of expenses) and 40 (recovery of payments out of property recovered or preserved) below shall be modified so that a person in receipt of legal aid for the purposes of those regulations includes a person for whom such work is carried out.
- (6) Where work is carried out by a solicitor in the circumstances described in paragraph (1), and an application for legal aid made in terms of section 14 of the Act is subsequently refused—
- (a) section 4(2)(a) of the Act shall be modified so that there shall be paid out of the Fund—
 - (i) where the Board is satisfied as to the factors in paragraph (7), payments to meet such sums as the Board approves; or
 - (ii) where the Board is not satisfied as to the factors in paragraph (7), any contribution paid by, or expenses awarded to, a person for whom a solicitor has undertaken specially urgent work; and
 - (b) section 4(3)(b) of the Act shall be modified so that there shall be paid into the Fund any sum recovered under an award of a court or an agreement as to expenses in any proceedings in favour of the person for whom that work is carried out.
- (7) The factors referred to in paragraph (6)(a) above are that the Board shall be satisfied that—

- (a) the solicitor had reasonable grounds for believing, on the information available at the time the work was done, that the applicant would be eligible for legal aid in terms of section 15 of the Act; and
- (b) the work was actually, necessarily and reasonably done, due regard being had to economy.

Notification of decision

19.—(1) The Board shall give notice in writing of its decision to grant or, as the case may be, refuse, legal aid—

- (a) to the applicant and the applicant’s solicitor; and
- (b) unless it has determined under regulation 7(2)(b) above that notification of the application should be dispensed with or postponed, to any opponent whose address is known to it, and to any solicitor whom it knows to be acting for an opponent.

(2) Where the Board grants the application it shall give notice to the applicant of any conditions with which, by virtue of section 14(2) of the Act, that applicant is required to comply and as to its determinations under regulation 17 above.

(3) Where the Board, in terms of regulation 29 below, suspends the availability of legal aid, it shall inform the assisted person and that person’s solicitor of the grounds of such suspension.

(4) Where the Board refuses an application it shall inform the applicant and the applicant’s solicitor that the application has been refused on one or more of the following grounds:—

- (a) the Board has determined that the applicant has disposable income which makes the applicant ineligible for legal aid;
- (b) the Board has determined that the applicant has disposable capital of an amount which renders the applicant liable to be refused legal aid and that it appears to the Board that the applicant can afford to proceed without legal aid;
- (c) the proceedings to which the application relates are not proceedings for which legal aid may be given;
- (d) it appears to the Board by virtue of the provisions of regulation 14(2), regulation 15 or, as the case may be, regulation 16 above, that legal aid should not be granted;
- (e) the Board is not satisfied that the applicant has *probabilis causa litigandi*;
- (f) it does not appear to the Board that it is reasonable in the particular circumstances of the case that the applicant should receive legal aid,

and (unless the decision follows a review of the application under section 14(3)(3) of the Act) that the applicant may apply for such a review.

(5) If no application for review is received in accordance with regulation 20 below the Board may treat the application as having been abandoned, and where it does so it shall give intimation of the abandonment to the applicant and any opponent.

Application for review

20.—(1) An application for a review under section 14(3) of the Act shall—

- (a) be signed by the applicant;
- (b) be lodged with the Board within 15 days of the time when notice of refusal of the application was given to the applicant (or such longer time as the Board may in the circumstances allow);

(3) Section 14(3) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36(4).

- (c) include a statement of any matters which the applicant wishes the Board to take into account in reviewing the application; and
 - (d) be accompanied by such additional precognitions and other documents as the applicant considers to be relevant to the review.
- (2) The applicant or the applicant's solicitor, unless the Board has determined under regulation 7(2)(b) above that notification of the application for legal aid should be dispensed with or postponed, shall give notice of any application under paragraph (1) above to any opponent whose address is known to the applicant, and to any solicitor whom the applicant knows to be acting for an opponent.