
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 494

The Civil Legal Aid (Scotland) Regulations 2002

PART VIII

PARTICULAR COURTS, TRIBUNALS AND PROCEEDINGS

Convention applications

45.—(1) In this regulation “Convention application” means an application under—

- (a) the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980, as given the force of law in the United Kingdom by Part I of the Child Abduction and Custody Act 1985^{M1}; or
- (b) the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of Custody of Children which was signed at Luxembourg on 20th May 1980, as given the force of law in the United Kingdom by Part II of the Child Abduction and Custody Act 1985.

(2) Sections 14, 15 and 17 of the Act 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 of proceedings at first instance in the Court of Session an application which is certified by the Scottish Ministers 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 that person has *probabilis causa litigandi* or to consider whether it is reasonable in the particular circumstances of the case that that person 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 that person’s 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 that person require, where there is a net liability to the Fund on that person’s account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for that person;
- (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 the applicant’s 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 Scottish Ministers that the application for legal aid relates to a Convention application; and

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(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 applied for legal aid for the purposes of an appeal whether to the Inner House of the Court of Session, the House of Lords or the Judicial Committee of the Privy Council 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 that person's 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 that person require, where there is a net liability to the Fund on that person's account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for that person; 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 that applicant's 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), by a certificate of the Scottish Ministers that the application relates to a Convention application.

Marginal Citations

M1 1985 c.60.

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Changes and effects yet to be applied to :

- Regulations applied (with modifications) by [S.I. 2018/1125 reg. 8](#) (This amendment not applied to legislation.gov.uk. S.I. 2018/1125, reg. 8 omitted (31.12.2020) by virtue of Private International Law (Implementation of Agreements) Act 2020 (c. 24), s. 4(3), Sch. 5 para. 4(4))
- [reg 45 am by S.S.I. 2009/312 reg 8](#)
- [reg. 45\(2\)\(d\)\(i\) omitted by S.S.I. 2011/161 reg. 7\(8\)\(a\)](#)
- [reg. 45\(3\)\(c\)\(i\) omitted by S.S.I. 2011/161 reg. 7\(8\)\(a\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 3-68-10](#)

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- [Sch. 2 para. 5\(f\) added by S.I. 2008/1879 reg. 38\(4\)](#)
- [Sch. 2 para. 5\(g\) inserted by S.S.I. 2013/137 reg. 13\(3\)](#)
- [Sch. 2 para. 7\(g\) inserted by S.S.I. 2013/142 reg. 7\(4\)\(c\)](#)
- [Sch. 2 para. 7\(f\) inserted by S.S.I. 2013/65 reg. 7](#)
- [sch. 2 para. 7\(h\) inserted by S.S.I. 2020/424 reg. 3\(4\)](#)
- [sch. 2 para. 7\(i\)\(j\) inserted by S.S.I. 2021/73 reg. 8](#)
- [sch. 2 para. 7\(k\)\(l\) inserted by S.S.I. 2022/31 reg. 8\(3\)](#)
- [sch. 2 para. 5\(h\) inserted by S.S.I. 2023/11 reg. 3\(4\)\(a\)](#)
- [sch. 2 para. 7\(m\) inserted by S.S.I. 2023/11 reg. 3\(4\)\(b\)](#)
- [Sch. 2 para. 5\(i\) inserted by S.S.I. 2023/178 reg. 6\(4\)\(b\)](#)
- [Sch. 2 para. 5\(n\) inserted by S.S.I. 2023/178 reg. 6\(4\)\(c\)](#)
- [Sch. 2 para. 7\(o\) inserted by S.S.I. 2023/313 reg. 6\(4\)](#)
- [Sch. 2 para. 7\(f\) words omitted by S.S.I. 2013/142 reg. 7\(4\)\(b\)](#)
- [Sch. 2 para. 5\(h\) words substituted by S.S.I. 2023/178 reg. 6\(4\)\(a\)](#)
- [sch. 3 para. 8\(d\)-\(f\) inserted by S.S.I. 2020/424 reg. 3\(5\)](#)
- [Sch. 3 para. 8\(g\) inserted by S.S.I. 2021/333 reg. 3\(4\)](#)
- [sch. 3 para. 8\(h\)-\(j\) inserted by S.S.I. 2023/11 reg. 3\(5\)](#)
- [Sch. 3 para. 8\(k\) inserted by S.S.I. 2023/313 reg. 6\(5\)](#)
- [Sch. 3 para. 8\(j\) words inserted by S.S.I. 2023/178 reg. 6\(5\)\(b\)](#)
- [Sch. 3 para. 8\(i\) words substituted by S.S.I. 2023/178 reg. 6\(5\)\(a\)](#)
- [reg. 2A inserted by S.S.I. 2011/161 reg. 7\(2\)](#)
- [reg. 4\(1\)\(m\) inserted by S.S.I. 2016/257 reg. 3\(2\)](#)
- [reg. 4\(1\)\(n\) inserted by S.S.I. 2017/310 reg. 3\(2\)](#)
- [reg 11A added by S.I. 2010/461 reg 3](#)
- [reg 13A added by S.S.I. 2006/325 reg 6](#)
- [reg 13A am by S.S.I. 2007/425 regs 34](#)
- [reg. 13A\(2\)\(c\) words omitted by S.S.I. 2011/161 reg. 7\(4\)](#)
- [reg. 18\(2\)\(w\) omitted by S.S.I. 2010/166 reg. 6\(3\)](#)
- [reg. 18\(3A\)\(3B\) omitted by S.S.I. 2011/134 reg. 5\(c\)](#)
- [reg. 21\(1\)\(ca\) inserted by S.S.I. 2015/380 reg. 3\(4\)](#)
- [reg 23A added by S.S.I. 2004/491 regs 24\(1\)](#)
- [reg 31A added by S.S.I. 2004/491 regs 24\(4\)](#)
- [reg. 33\(a\)\(xiv\) inserted by S.S.I. 2013/142 reg. 7\(3\)\(b\)](#)
- [reg. 33\(a\)\(xix\)-\(xxii\) inserted by S.S.I. 2022/31 reg. 8\(2\)](#)
- [reg. 33\(a\)\(xiii\) inserted by S.S.I. 2013/137 reg. 13\(2\)](#)

- reg. 33(a)(xviii) inserted by S.S.I. 2021/333 reg. 3(3)
- reg. 33(a)(xxiii)(xxiv) inserted by S.S.I. 2023/11 reg. 3(3)(a)
- reg. 33(a)(xv)-(xvii) inserted by S.S.I. 2020/424 reg. 3(3)
- reg. 33(c)(d) substituted for reg. 33(c) by 2002 asp 17 Sch. 3 para. 38
- reg. 33(e) inserted by S.S.I. 2023/11 reg. 3(3)(b)
- reg. 33(e) words inserted by S.S.I. 2023/178 reg. 6(3)
- reg. 33(xxv) inserted by S.S.I. 2023/313 reg. 6(3)
- reg. 40(5A) inserted by S.S.I. 2012/64 reg. 2
- reg. 45(3)(c)(ii)(aa) words omitted by S.S.I. 2011/161 reg. 7(8)(b)
- reg. 46(1)(c) inserted by S.I. 2011/1484 Sch. 7 para. 30(a)
- reg. 46(1)(c) omitted by S.I. 2019/519 Sch. para. 34(a)
- reg. 46(1)(d) inserted by S.S.I. 2012/301 Sch. para. 4(2)(a)
- reg. 46(1)(d)(ii) words omitted by S.S.I. 2020/441 reg. 9(2)
- reg. 46(3)(4) inserted by S.I. 2011/1484 Sch. 7 para. 30(b)
- reg. 46(3) words inserted by S.S.I. 2012/301 Sch. para. 4(2)(b)
- reg. 46(4) omitted by S.I. 2019/519 Sch. para. 34(b)
- reg. 46(5) inserted by S.S.I. 2012/301 Sch. para. 4(2)(c)
- reg 48 added by S.S.I. 2004/491 regs 25
- reg. 48 omitted by S.S.I. 2020/441 reg. 9(3)