

**2009 No. 49**

**LEGAL AID AND ADVICE**

**The Advice and Assistance and Civil Legal Aid (Priority of Debts) (Scotland) Regulations 2009**

*Made* - - - - - *12th February 2009*

*Laid before the Scottish Parliament* *13th February 2009*

*Coming into force* - - - *7th April 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12(3) and 17(2B) of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Advice and Assistance and Civil Legal Aid (Priority of Debts) (Scotland) Regulations 2009 and come into force on 7th April 2009.

**Application**

2.—(1) Regulation 3 applies only in relation to any case where an application for advice and assistance is made on or after 7th April 2009.

(2) Regulation 4 applies only in relation to any case where an application for civil legal is made on or after 7th April 2009.

**Amendment of the Advice and Assistance (Scotland) Regulations 1996**

3. In regulation 16(2)(b) of the Advice and Assistance (Scotland) Regulations 1996(b), for “£5,009” substitute “£5,259”(c).

**Amendment of the Civil Legal Aid (Scotland) Regulations 2002**

4. In regulation 33(b) of the Civil Legal Aid (Scotland) Regulations 2002(d), for “£5,009” substitute “£5,259”(e).

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(a) 1986 (c.47); section 12(3) was amended by paragraph 12 of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c.48) and section 67(5) of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5). Section 17(2B) was inserted by paragraph 36(6) of Schedule 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1996/2447; regulation 16(2)(b) was amended, other than by way of an increase to the specified figure, by S.S.I. 2002/495.

(c) The previous figure in regulation 16(2)(b) of the Advice and Assistance (Scotland) Regulations 1996 was inserted by S.S.I. 2008/47.

(d) S.S.I. 2002/494; regulation 33(b) has not been amended other than by way of increases to the specified figure.

(e) The previous figure in regulation 33(b) of the Civil Legal Aid (Scotland) Regulations 2002 was inserted by S.S.I. 2008/48.

## **Revocations**

5. Except in relation to a case where the application for advice and assistance is made before 7th April 2009, the Regulations specified in Part 1 of the Schedule are revoked to the extent specified in the corresponding entry in the third column of that Part.

6. Except in relation to a case where the application for civil legal aid is made before 7th April 2009, the Regulations specified in Part 2 of the Schedule are revoked to the extent specified in the corresponding entry in the third column of that Part.

St Andrew's House,  
Edinburgh  
12th February 2009

*KENNY MACASKILL*  
A member of the Scottish Executive

# SCHEDULE

Regulations 5 and 6

## Revocations

### PART 1

#### Revocation of Regulations relating to Advice and Assistance

The Advice and Assistance (Scotland) Amendment Regulations 2008	S.S.I. 2008/47	The whole Regulations
The Advice and Assistance (Scotland) Amendment Regulations 2007	S.S.I. 2007/60	Regulations 2(2) and 7
The Advice and Assistance (Scotland) Amendment Regulations 2006	S.S.I. 2006/60	The whole Regulations
The Advice and Assistance (Scotland) Amendment Regulations 2005	S.S.I. 2005/111	The whole Regulations
The Advice and Assistance (Scotland) Amendment Regulations 2004	S.S.I. 2004/49	The whole Regulations
The Advice and Assistance (Scotland) Amendment Regulations 2003	S.S.I. 2003/163	Regulation 5
The Advice and Assistance (Scotland) Amendment Regulations 2002	S.S.I. 2002/495	Regulation 2(a)

### PART 2

#### Revocation of Regulations relating to Civil Legal Aid

The Civil Legal Aid (Scotland) Amendment Regulations 2008	S.S.I. 2008/48	The whole Regulations
The Civil Legal Aid (Scotland) Amendment Regulations 2007	S.S.I. 2007/59	Regulation 4(b)
The Civil Legal Aid (Scotland) Amendment Regulations 2006	S.S.I. 2006/61	The whole Regulations
The Civil Legal Aid (Scotland) Amendment Regulations 2005	S.S.I. 2005/112	Regulations 3 and 4(b)
The Civil Legal Aid (Scotland) Amendment Regulations 2004	S.S.I. 2004/50	The whole Regulations
The Civil Legal Aid (Scotland) Amendment Regulations 2003	S.S.I. 2003/49	Regulation 5

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make the following changes:–

- Regulation 3 amends the Advice and Assistance (Scotland) Regulations 1996 to provide that a solicitor’s right to prior payment of fees and outlays out of any property recovered or preserved for a client in respect of advice and assistance shall not apply to the first £5,259 (increased from £5,009) recovered or preserved by virtue of certain family proceedings.
- Regulation 4 amends the Civil Legal Aid (Scotland) Regulations 2002 to provide that the requirement on a person in receipt of civil legal aid to pay the amount of any net liability of the Scottish Legal Aid Fund, shall not apply to the first £5,259 (increased from £5,009) recovered or preserved by virtue of certain family proceedings.
- Regulations 5 and 6 revoke the Regulations which previously amended the sum in regulation 16(2)(b) of the Advice and Assistance (Scotland) Regulations 1996 and regulation 33(b) of the Civil Legal Aid (Scotland) Regulations 2002 respectively.

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£4.00