

**2012 No. 64**

**LEGAL AID AND ADVICE**

**The Civil Legal Aid (Scotland) Amendment Regulations 2012**

*Made* - - - - *28th February 2012*

*Laid before the Scottish Parliament* *1st March 2012*

*Coming into force* - - *30th March 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 36(1) and (2)(g) of the Legal Aid (Scotland) Act 1986(a) and of all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment Regulations 2012 and come into force on 30th March 2012.

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

2. In the Civil Legal Aid (Scotland) Regulations 2002(b) after regulation 40(5) (recovery of payments out of property recovered or preserved) insert—

“(5A) Where the Board has not paid—

- (a) the surplus monies referred to in paragraph (4)(e)(i); and
- (b) any interest referred to in paragraph (4)(e)(ii),

to the party, or to the person otherwise entitled to them, within five years of first making endeavours to do so paragraph (4)(e)(i) and (ii) ceases to apply in respect of those monies and that interest.”.

*KENNY MACASKILL*

A member of the Scottish Executive

St Andrew's House,  
Edinburgh  
28th February 2012

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(a) 1986 c.47. 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.S.I. 2002/494, to which there are amendments not relevant to these Regulations.

## EXPLANATORY NOTE

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

These Regulations insert a new regulation 40(5A) into the Civil Legal Aid (Scotland) Regulations 2002 (“the 2002 Regulations”).

Regulation 40 of the 2002 Regulations concerns the handling of property recovered or preserved as a result of a civil claim or proceedings. Once the net liability to the Scottish Legal Aid Fund has been paid out of the property, there may be surplus monies. Regulation 40(4) places certain duties on the Scottish Legal Aid Board (“the Board”) in relation to holding the surplus monies and paying them to the party entitled to them. Regulation 40(5A) provides that where the Board has not been able to pay the surplus monies and interest under regulation 40(4)(e) within 5 years of first trying to do so, regulation 40(4)(e)(i) and (ii) ceases to apply to these monies and interest. A separate determination has been made by Scottish Ministers under section 4(3)(e) of the Legal Aid (Scotland) Act 1986 which enables the Board to pay the surplus monies and interest into the Scottish Legal Aid Fund when regulation 40(4)(e)(i) and (ii) has ceased to apply. The determination is available at [www.slab.org.uk](http://www.slab.org.uk).

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