

1990 No. 631 (S.79)

LEGAL AID AND ADVICE, SCOTLAND

The Civil Legal Aid (Scotland) Amendment Regulations
1990

<i>Made</i> - - - -	<i>15th March 1990</i>
<i>Laid before Parliament</i>	<i>19th March 1990</i>
<i>Coming into force</i>	<i>9th April 1990</i>

The Secretary of State, in exercise of the powers conferred on him by sections 36(1) and 42 of the Legal Aid (Scotland) Act 1986(a), and all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment Regulations 1990 and shall come into force on 9th April 1990.

Interpretation

2. In these Regulations, "the principal Regulations" means the Civil Legal Aid (Scotland) Regulations 1987(b).

Transitional provisions

3.—(1) These Regulations shall apply to applications for legal aid where the period of computation as defined in regulation 3 of the principal Regulations begins on or after 9th April 1990.

(2) Determinations and redeterminations made in respect of applications where the period of computation begins before 9th April 1990 shall be made as if these Regulations had not come into force.

Application on behalf of children

4. After regulation 6 of the principal Regulations there shall be inserted the following:—

"6A. An application by or on behalf of a child under the upper age limit of compulsory school age in terms of regulation 6 above shall be determined in terms of Part III below."

Computation of disposable capital, disposable income and maximum contribution

5.—(1) After the word "Regulations" where it first appears in regulation 10 of the principal Regulations, there shall be inserted the words ", and in particular in Regulation 10A below".

(2) After regulation 10 of the principal Regulations, there shall be inserted the following:—

"10A.—(1) Where the subject matter of the dispute, in respect of which the application for legal aid has been made, consists of a claim in respect of personal injuries, legal aid

(a) 1986 c.47.

(b) S.I. 1987/381, amended by S.I. 1987/431, and 1988/490, 1171, 1891 and 1989/505.

shall be available to a person whose disposable income does not exceed £7,000 a year, but a person may be refused legal aid where –

- (a) his disposable capital exceeds £8,000; and
- (b) it appears to the Board that he could afford to proceed without legal aid.

(2) In this regulation “personal injuries” includes any death and any disease or other impairment of a person’s physical or mental condition.”.

Resources of an applicant who is a child

6. Regulation 12 of the principal Regulations shall be omitted.

Deprivation or conversion of resources

7. In regulation 13 of the principal Regulations there shall be deleted the words “for the purposes of civil legal aid,” and, after the words “disposable capital”, there shall be inserted the words “, whether for the purpose of making himself eligible for civil legal aid, reducing his liability to pay a contribution towards civil legal aid or otherwise.”.

Power of Board to amend determination

8. In regulation 28 of the principal Regulations there shall be added at the end the following:–

“(4) Where prior to the commencement of these Regulations, the Board has made a determination of the disposable income, disposable capital or maximum contribution of a child under the upper age limit of compulsory school age, and a contribution is still payable, the Board shall amend that determination taking account of regulation 6 above.”.

Preservation of dependents’ allowances

9.—(1) In paragraph 11(1)(a) of Schedule 2 to the principal Regulations–

- (a) there shall be omitted the words “for the time being”;
- (b) there shall be inserted at the end the words “at the date when the computation period began”.

(2) In paragraph 11(1)(b) of Schedule 2 to the principal Regulations –

- (a) there shall be omitted the words “for the time being”;
- (b) there shall be inserted at the end the words “at the date when the computation period began”.

Resources of pensioners

10. After paragraph 13 of Schedule 3 to the principal Regulations there shall be inserted the following:–

“13A.—(1) Where the person concerned is of pensionable age and his annual disposable income (excluding any net income derived from capital) is less than the figure prescribed in Section 17(2)(a) of the Legal Aid (Scotland) Act 1986(a) there shall be disregarded the amount of capital as specified in the following table:–

<i>Annual disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregard</i>
Up to £400	£25,000
£401 – £900	£20,000
£901 – £1,400	£15,000
£1,401 – £1,900	£10,000
£1,901 and above	£ 5,000

(2) In this Schedule “pensionable age” means–

- (a) in the case of a man, the age of 65; and
- (b) in the case of a woman, the age of 60.”.

(a) 1986 c.47, as amended by S.I. 1989/720.

Capital payments made in relation to proceedings

11. After paragraph 13A of Schedule 3 to the principal Regulations there shall be inserted the following:—

“13B. In computing the amount of capital of the person concerned there shall be wholly disregarded any capital payment received from any source which is made in relation to the subject matter of the dispute in respect of which the application for legal aid has been made.”.

St Andrew's House, Edinburgh
14th March 1990

James Douglas-Hamilton
Parliamentary Under Secretary of State,
Scottish Office

We concur,

15th March 1990

John Taylor
David Lightbown
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) Regulations 1987 by—

- (1) introducing a provision whereby a person whose application for legal aid is in respect of a claim for personal injuries, shall be eligible for legal aid if the applicant's disposable income does not exceed £7,000 and legal aid may be available if his disposable capital does not exceed £8,000 (regulation 5);
- (2) omitting regulation 12 of the 1987 Regulations so that a child's resources are separately assessed and are no longer taken to include sums payable for his maintenance (regulation 6);
- (3) amending regulation 13 of the 1987 Regulations to allow account to be taken of resources of which an applicant has deprived himself for whatever reason (regulation 7);
- (4) introducing a provision for the redetermination of a child's disposable income, disposable capital or maximum contribution where a determination resulting in a contribution has been made prior to the commencement of these regulations (regulation 8);
- (5) preserving the dependants' allowances applicable at the beginning of the computation period (regulation 9);
- (6) allowing an additional disregard of capital on a sliding scale in respect of persons of pensionable age where their disposable income (excluding investment income) is below the free income limit (regulation 10);
- (7) allowing a disregard in respect of capital payments made in relation to the incident which has led to the litigation (eg disaster fund payments) (regulation 11).

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