
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 494

The Civil Legal Aid (Scotland) Regulations 2002

PART VII

EXPENSES

Payments out of property recovered or preserved: exceptions

33. Section 17(2B) of the Act (which requires the amount of the net liability of the Fund on account of any party to be paid by that party out of any property recovered or preserved for that party) shall not apply—

- (a) in respect of any money payable—
 - (i) under a decree following on an action for aliment within the meaning of the Family Law (Scotland) Act 1985(1);
 - (ii) under an order for the payment of a periodical allowance under section 5 of the Divorce (Scotland) Act 1976(2), or for the making of a periodical allowance under section 8 of the Family Law (Scotland) Act 1985(3);
 - (iii) under any order for the periodical payment of sums for the maintenance of any person which, by virtue of the Maintenance Orders Act 1950(4), the Maintenance Orders (Reciprocal Enforcement) Act 1972(5) or the Civil Jurisdiction and Judgments Act 1982(6), may be enforced in Scotland;
 - (iv) under an order made by the Employment Appeal Tribunal or under any settlement arrived at to prevent or bring to an end proceedings in which such an order may be made;
 - (v) by way of disabled person's tax credit, income support or working families' tax credit under section 124(7), 128(8), or 129(9) of the 1992 Act, or an income-based jobseeker's allowance or a back to work bonus (payable under the Jobseekers Act 1995(10));

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- (1) 1985 c. 37.
 - (2) 1976 c. 39; section 5 was repealed on 1st September 1986 by Schedule 2 to the Family Law (Scotland) Act 1985 (c. 37) subject to a saving in section 28(3) of that Act.
 - (3) Section 8 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, the Pensions Act 1995 (c. 26), section 167 and the Welfare Reform and Pensions Act 1999 (c. 30), section 20 and Schedule 12.
 - (4) 1950 c. 37.
 - (5) 1972 c. 18.
 - (6) 1982 c. 27.
 - (7) Section 124 was amended by the Jobseekers Act 1995 (c. 18), Schedule 2, paragraph 30 and Schedule 3 and the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 8, paragraph 28.
 - (8) Section 128 was amended by the Jobseekers Act 1995, Schedule 2, paragraph 33 and the Tax Credits Act 1999 (c. 10), section 1 and Schedule 1, paragraph 2.
 - (9) Section 129 was amended by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 2, the Social Security (Incapacity for Work) Act 1994 (c. 18), section 10 and Schedule 1, paragraph 32, the Jobseekers Act 1995 (c. 18), Schedule 2, paragraph 33 and the Tax Credits Act 1999, sections 1 and 14 and Schedule 1.
 - (10) 1995 c. 18.

- (vi) by way of aliment or periodical allowance or periodical payment of sums by virtue of any settlement arrived at to prevent or bring to an end proceedings in which such a decree or order as is mentioned in sub-paragraphs (i) to (iii) above may be granted;
 - (vii) by way of any payment made out of the social fund under section 138 of the 1992 Act⁽¹¹⁾;
 - (viii) by way of any housing benefit under section 130 of the 1992 Act⁽¹²⁾;
 - (ix) by way of child support maintenance under the Child Support Act 1991⁽¹³⁾;
 - (x) by way of any payment made under the Community Care (Direct Payments) Act 1996⁽¹⁴⁾ or under section 12B of the Social Work (Scotland) Act 1968⁽¹⁵⁾;
 - (xi) under an order made by the Social Security Commissioners or the Child Support Commissioners or under any settlement arrived at to prevent or bring to an end proceedings in which such an order may be made;
- (b) to the first £4,200 of any money, or of the value of any property, recovered or preserved by virtue of—
- (i) an order for the payment of a capital sum under section 5 of the Divorce (Scotland) Act 1976⁽¹⁶⁾; or
 - (ii) an order for payment of a capital sum or transfer of property or an incidental order, under section 8 of the Family Law (Scotland) Act 1985⁽¹⁷⁾; or
 - (iii) any settlement arrived at to prevent or bring to an end proceedings in which such an order may be granted;
- (c) in respect of any articles referred to in section 16 of the Debtors (Scotland) Act 1987⁽¹⁸⁾ recovered or preserved from the effects of a grant of warrant sale of poided goods, or any article released in terms of an order made by the sheriff following application made to him in terms of section 23 of the said Act.

Liability of assisted person where legal aid received in part of matter

34. Where, after proceedings have been instituted in any court, a party thereto becomes an assisted person, the provisions of section 18(2) of the Act shall apply to so much of the expenses of the proceedings as were incurred while that party was an assisted person.

Liability of assisted person where legal aid ceases in part of matter

35. Subject to regulation 33 above, where at any stage in the proceedings a party ceases to receive legal aid, that party shall be deemed to be an assisted person for the purpose of any award of expenses made against that party to the extent that those expenses were incurred before the party ceased to receive legal aid.

⁽¹¹⁾ Section 138 was amended by the Social Security Act 1998 (c. 14), section 70.

⁽¹²⁾ Section 130 was amended by the Local Government Finance Act 1992 (c. 14), Schedule 9, the Local Government etc. (Scotland) Act 1994, Schedule 13, the Local Government Act 2000 (c. 22), section 96 and the Housing Act 1996 (c. 52), Schedule 19.

⁽¹³⁾ 1991 c. 48.

⁽¹⁴⁾ 1996 c. 30.

⁽¹⁵⁾ 1968 c. 49; section 12B was inserted by the Community Care (Direct Payments) Act 1996, section 4 and amended by the Regulation of Care (Scotland) Act 2001 (asp 8), section 70.

⁽¹⁶⁾ 1976 c. 39.

⁽¹⁷⁾ Section 8 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 34, the Pensions Act 1995 (c. 26), section 167 and the Welfare Reform and Pensions Act 1999, section 20 and Schedule 12.

⁽¹⁸⁾ 1987 c. 18; section 16 was amended by the Debtors (Scotland) Act 1987 (Amendment) Regulations 2000 (S.S.I. 2000/189), regulation 3.

Liability for expenses of assisted person acting in a fiduciary, representative, official or other capacity

36.—(1) Where an order for expenses is made against an assisted person who is concerned in proceedings in a fiduciary, representative or official capacity, that person shall have the benefit of section 18(2) of the Act and that person's personal resources shall not be taken into account for that purpose, but regard shall be had to the value of the property or estate, or the amount of the fund out of which that person is entitled to be indemnified.

(2) Where an order for expenses is made against an assisted person who is concerned in proceedings only as claiming or having an interest in the property, financial affairs or personal welfare of an incapable adult under the Adults with Incapacity (Scotland) Act 2000⁽¹⁹⁾, that person shall have the benefit of section 18(2) of the Act and that person's personal resources shall not be taken into account for that purpose, but regard shall be had to the personal resources of the incapable adult.

Unassisted party acting in a fiduciary, representative or official capacity

37. Where an unassisted party is concerned in proceedings only in a fiduciary, representative, or official capacity, then for the purposes of section 19(3)(b) of the Act, the court shall not take into account that party's personal resources but shall have regard to the value of the property, estate or fund out of which the unassisted party is entitled to be indemnified, and may in its discretion also have regard to the resources of the persons, if any, who are beneficially interested in that property, estate or fund.

Application for revision of award of expenses against assisted person

38. Where an award of expenses has been made by a court or tribunal under section 18(2) of the Act, the period within which it shall be competent for any party concerned in the award to apply to the court for reassessment of the amount of the award, on the grounds that since the award was made there has been a relevant change of circumstances, shall be one year after the date of the award.

Recovery of expenses

39.—(1) This regulation applies where—

- (a) any sum of money is recoverable under any award of or agreement as to expenses in favour of any party in any proceedings in respect of which that party is or has been in receipt of legal aid; and
- (b) that sum of money is due to be paid to the Board in terms of section 17(2A) of the Act⁽²⁰⁾.

(2) The Board may—

- (a) take such proceedings in its own name or in the name of that party as may be necessary to ensure payment of any such sum to the Board, including proceedings to enforce or to give effect to any such award or agreement; and
- (b) for those purposes do diligence in its own name or in the name of that party.

(3) Where any such sum is paid directly to the Board, the receipt of the Board shall be a good discharge therefor.

⁽¹⁹⁾ 2000 asp 4.

⁽²⁰⁾ Section 17(2A) and (2B) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Schedule 8, paragraph 36(6).

Recovery of payments out of property recovered or preserved

- 40.**—(1) This regulation applies where—
- (a) in any proceedings or under a settlement to avoid them or bring them to an end, any property is recovered or preserved for any party; and
 - (b) there is or may be an amount of net liability of the Fund on account of that party which is payable to the Board by that party, in priority to any other debt, out of any such property in terms of section 17(2B) of the Act, as read with regulation 33 above.
- (2) The Board may—
- (a) take such proceedings in its own name or in the name of the party as may be necessary to ensure payment of the amount of the net liability of the Fund on account of that party out of such property, including proceedings to enforce or give effect to any decision in the proceedings or any settlement; and
 - (b) for those purposes do diligence in its own name or in the name of the party.
- (3) Where any such property is paid or made over to or held by the party or any solicitor acting for the party in the proceedings—
- (a) the party and the party’s solicitor shall not, without the consent of the Board, deal in any way with, dispose or part with the possession of, or title to, such property unless and until the amount of the net liability of the Fund on account of that party is paid to the Board and a discharge received therefor;
 - (b) without prejudice to paragraph (2) above, the Board may take such action as it considers necessary to ensure payment of the amount of the net liability of the Fund on account of that party out of such property and to make effective the priority conferred by section 17(2B) of the Act and, without prejudice to that generality—
 - (i) where the property consists of or includes a sum of money, the Board may require the party or the party’s solicitor to pay that sum of money, or any part of it, to the Board to be held and used by it in accordance with paragraph (4) below;
 - (ii) where the property consists of or includes a sum of money which has been paid to the party’s solicitor, the Board may deduct an amount equal to that sum from any sum due from the Fund to that solicitor;
 - (iii) where the property consists of or includes corporeal moveables, the Board may require the party, at the party’s own expense, either to sell them and pay the amount of the net liability of the Fund out of the proceeds or to deliver them to the Board to be held and used by it in accordance with paragraph (4) below; and
 - (iv) where the property consists of or includes an interest in land, the Board may require the party, at that party’s own expense, either to sell that interest and pay the amount of the net liability of the Fund out of the proceeds or to grant a standard security over that interest in favour of the Board for the purpose of securing that amount, or any part of it, together with any interest thereon in terms of regulation 41 below.
- (4) Where any such property is paid to or made over to the Board, in pursuance of this regulation—
- (a) the receipt of the Board shall be a good discharge therefor;
 - (b) the Board shall, subject to the following provisions, hold such property on behalf of or to the account of the party;
 - (c) where the property consists of or includes corporeal moveables, the Board may sell them and, after deduction of the expenses of sale, hold and use the net proceeds as if they had been properly paid to it;
 - (d) the Board shall deposit money paid to it in one general account with a bank or building society; and

(e) the Board shall, as soon as practicable, pay on behalf of the party the amount of the net liability of the Fund on account of the party out of such property and, where that amount is paid in full and subject to regulation 42(2) below—

- (i) pay and make over any surplus monies or corporeal moveables remaining in the possession of the Board to the party or to the person otherwise entitled thereto; and
- (ii) subject to paragraph (5) below, pay to the party or to such person a sum representing the gross interest earned on the money held for the party in accordance with this paragraph.

(5) The Board shall not be required to pay interest where the money held for the party does not exceed £500 or where the period during which it is held by the Board is less than 28 days.

(6) In this regulation “general account” means an interest bearing account opened in the name of the Board, the title of which does not identify any assisted person.

Interest on sums outstanding

41.—(1) Any sum secured over an interest in land under regulation 40 above shall bear interest from the day on which the standard security over that interest in land is recorded or, as the case may be, registered.

(2) The rate of interest under paragraph (1) above shall be that which would apply (in the absence of any such statement as is provided for in Rule 7.7 of the Act of Sederunt (Rules of the Court of Session 1994) 1994(21)) in the case of a decree pronounced or extracted in an action in the Court of Session on the day on which the sum begins to bear interest, if interest were included in, or exigible under, that decree.

Payment to solicitor who acts before award of legal aid made

42.—(1) Any solicitor who has acted on behalf of the assisted person in the proceedings for which legal aid is made available before the date on which the application for legal aid was granted, and any solicitor who has by law a right of retention in respect of any documents necessary for the proceedings, and who has delivered them up subject to this, may give notice of the fact to the Board.

(2) Where, after paying the net liability of the Fund on account of the assisted person out of any property recovered or preserved for that assisted person, there are any surplus monies or corporeal moveables remaining in the possession of the Board in terms of regulation 40(4)(e) above, the Board shall pay and make over any such surplus monies or corporeal moveables to any such solicitor who has notified the Board as mentioned in paragraph (1) above.