

2004 No. 492

LEGAL AID AND ADVICE

**The Advice and Assistance (Scotland) Amendment (No. 3)
Regulations 2004**

<i>Made</i>	- - - -	<i>11th November 2004</i>
<i>Laid before the Scottish Parliament</i>		<i>12th November 2004</i>
<i>Coming into force</i>	- -	<i>4th December 2004</i>

The Scottish Ministers, in exercise of the powers conferred by section 36(1) and (2)(a), (c), (d), and (e) of the Legal Aid (Scotland) Act 1986(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Advice and Assistance (Scotland) Amendment (No. 3) Regulations 2004 and shall come into force on 4th December 2004.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

2. The Advice and Assistance (Scotland) Regulations 1996(b) are amended in accordance with the following regulations.

3. For regulation 8 substitute—

“8.—(1) A solicitor shall give advice and assistance in pursuance of Part II of the Act only if he has satisfied himself that the client is eligible to receive advice and assistance under the provisions of the Act and of these Regulations.

(2) Where a solicitor approves an application for advice and assistance under Part II of the Act, for the purposes of the tables of fees in Schedule 3, the solicitor shall determine—

- (a) that the subject matter to which the advice and assistance relates is a civil, criminal or children’s matter; and
- (b) that the advice and assistance relates to one or more distinct matters,

in accordance with any guidance issued from time to time by the Board.”.

(a) 1986 c.47; section 36 was amended for purposes not relevant to these Regulations. The functions of the Secretary of State were transferred to Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
(b) S.I. 1996/2447, as relevantly amended by S.I. 1998/724.

4. For regulation 10 substitute–

“Applicant for advice and assistance having other rights and facilities

10.—(1) Where it appears to the solicitor that an applicant for advice and assistance under Part II of the Act has available rights and facilities making it unnecessary for him to obtain such advice and assistance or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, the solicitor shall not approve the application unless the applicant has not succeeded in enforcing or obtaining such rights, facilities or help, after having taken in the opinion of the solicitor, all reasonable steps to enforce or obtain them:

Provided that the applicant shall not, for the purpose of this regulation, be deemed to have failed to take all reasonable steps by reason only that he has not taken proceedings by way of declarator or otherwise to enforce or obtain such rights, facilities or help.

(2) Where the solicitor approves an application for advice and assistance under Part II of the Act by a person who is a member of a body which might reasonably have been expected to give that person financial help towards the expenses of such advice and assistance, the solicitor shall require that person to sign an undertaking to pay to the Board any sum received from that body on account of the expenses of the advice and assistance.”.

5. After regulation 15 insert–

“Supply of information by clients

15A.—(1) A client who is receiving or has been in receipt of advice and assistance shall supply to the Board such information or documents as the Board may require for the purposes of performing its functions under the Act.

(2) Where a client who is receiving or has been in receipt of advice and assistance fails to comply with a requirement under paragraph (1) above the Board shall have the right to recover from that client any amount paid out of the Fund in respect of the fees and outlays of any solicitor who has provided advice and assistance to that client.”.

6. In regulation 21–

(a) for paragraph (1) substitute–

“(1) This regulation applies where after giving a person an opportunity of submitting representations, the Board is satisfied–

- (a) that the person has wilfully failed to comply with these Regulations as to the information to be furnished by that person;
- (b) that the person has knowingly made a false statement or false representation in furnishing such information; or
- (c) that the Board has paid fees and outlays to a solicitor who provided advice and assistance to that person, and at any time prior to or after such payment that person or any solicitor acting on that person’s behalf has, in respect of the same matter for which advice and assistance was provided–
 - (i) received any expenses which (by virtue of a judgment or order of a court or an agreement or otherwise) are payable to that person; or
 - (ii) recovered or preserved any property (of whatever nature and wherever situated), including that person’s rights under any settlement arrived at in connection with the matter in order to avoid or bring to an end any proceedings,

such expenses or property not having been declared to the Board by either that person or any solicitor acting on that person’s behalf.”; and

(b) at the end of regulation 21 insert–

“(3) In any case to which paragraph (1)(c) above applies the sum recoverable by the Board under paragraph (2) above shall be the amount of fees and outlays paid, less any amount which would have been properly payable by way of fees and outlays under section 12(3)(d) of the Act had the expenses or property been declared to the Board.”.

St Andrew’s House,
Edinburgh
11th November 2004

HUGH HENRY
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advice and Assistance (Scotland) Regulations 1996 to provide the following:–

- (a) solicitors are required to determine whether the subject matter or matters of an application for advice and assistance relates to civil, criminal or children’s matters, and whether the application relates to a single matter or multiple matters in accordance with guidance issued by the Scottish Legal Aid Board (“the Board”) (regulation 3);
- (b) the provision that a solicitor to whom an application for assistance by way of representation is made is required not to approve it where the applicant for assistance by way of representation has available rights and facilities which make it unnecessary for that person to receive assistance by way of representation is amended to include all forms of advice and assistance under Part II of the Legal Aid (Scotland) Act 1986 (regulation 4);
- (c) any person who receives advice and assistance is required to submit to the Board any information requested by the Board, and failure to do so entitles the Board to recover from that person any sum paid out of the Scottish Legal Aid Fund in respect of the fees and outlays of that person’s solicitors (regulation 5); and
- (d) where the Board has paid a solicitor’s account for fees and outlays for advice and assistance given to a person and, either before or after such payment, the person or any solicitor acting on their behalf obtains expenses or recovers or preserves property in connection with the same matter which is not disclosed to the Board, the Board shall be entitled to recover from the person the sum paid in respect of fees and outlays (regulation 6).

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