
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 191

The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020

Amendment of the Advice and Assistance (Scotland) Regulations 1996

4. After regulation 16 (payment of fees and outlays from property recovered or preserved) of the Advice and Assistance (Scotland) Regulations 1996⁽¹⁾ insert—

“Interim payment of fees and outlays during the emergency period

16A.—(1) This regulation applies where—

- (a) a claim is made for interim payment of fees or outlays in accordance with section 33(6)(a)(ii) and (b) of the Act, as modified by the Coronavirus (Scotland) Act 2020⁽²⁾;
- (b) the claim is made in such form and complying with such terms and containing such information as the Board may require for assessment purposes; and
- (b) the claim is made during the emergency period.

(2) For the purposes of this regulation “emergency period” means the period beginning on 5 August 2020 and ending on the date on which Part 9 of schedule 4 of the Coronavirus (Scotland) Act 2020⁽³⁾ expires in accordance with section 12 of that Act.

(3) In relation to a claim for interim payment made in accordance with this regulation, the Board may disapply the requirement created by section 12(3)(c) of the Act that, before recourse to the Fund, fees or outlays shall be paid to the solicitor out of any property which is recovered or preserved for the client, in relation to the whole or any part of any such property.

(4) For the avoidance of doubt, except where otherwise provided section 12 of the Act continues to apply to all other fees or outlays.

(5) Paragraph (6) applies where the Board has made an interim payment in accordance with this regulation to a solicitor who provided advice and assistance to a 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—

- (a) 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
- (b) 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.

(6) Where this paragraph applies, the Board may recover any sum paid out of the Fund to the solicitor in respect of the advice and assistance so given, from either—

(1) S.I. 1996/2447 relevantly amended by S.S.I. 2007/60.

(2) 2020 asp 7.

(3) 2020 asp 7.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) the solicitor to whom the interim payment from the Fund was made; or
- (b) the person to whom the advice and assistance was provided.

(7) In any case to which paragraph (6) applies the sum recoverable by the Board shall be the amount of the interim payment made, less any amount which would have been properly payable by way of fees and outlays under section 12(3)(d) of the Act, taking into account the expenses or property referred to in paragraph (5).”