
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 178

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 3) Regulations 2023

Amendment of the Advice and Assistance (Scotland) Regulations 1996

5.—(1) The Advice and Assistance (Scotland) Regulations 1996(1) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the 2022 Act”, insert—

““the 2023 Act” means the Social Security (Additional Payments) Act 2023(2);

“the Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007;”

(b) for the definition of “additional payment” substitute—

““additional payment” means a payment within the meaning given in section 9(1) (interpretation) of the 2022 Act or that given in section 10(1) (interpretation) of the 2023 Act;”.

(3) In regulation 5—

(a) in the heading, after “1982”, insert “or the Hague Convention”,

(b) in paragraph (1)—

(i) for “the following sub-paragraphs” substitute “paragraph (1A)”,

(ii) for “of” where it third occurs substitute “or”,

(iii) for the words from “section 5” to “namely:—” substitute—

“—

(a) section 5 of the Civil Jurisdiction and Judgments Act 1982 by an applicant to whom paragraph (2) applies, or

(b) the Hague Convention by an applicant to whom paragraph (3) applies.”,

(iv) omit sub-paragraphs (a) to (c),

(c) after paragraph (1), insert—

“(1A) The modifications mentioned in paragraph (1) are that—

(a) section 8 shall be modified so as to provide that such advice and assistance shall be made available whether within or furth of Scotland without regard to the income or capital of an applicant to whom this regulation applies,

(b) section 11 shall be modified so as to provide that such applicant shall, irrespective of their disposable income, not require to pay any fees or outlays in respect of such advice and assistance, and

(1) [S.I. 1996/2447](#) was renamed by [S.I. 1997/726](#) and relevantly amended by [S.S.I. 2023/11](#).

(2) [2023 c. 7](#).

- (c) section 12(3) shall be modified so as to provide that fees or outlays to which section 12 applies shall be paid to the solicitor in respect of such advice and assistance provided to such applicant—
 - (i) firstly, in priority to all other debts, out of any expenses which (by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the advice and assistance is provided, and
 - (ii) secondly, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor.”
- (d) in paragraph (2), for “regulation” substitute “paragraph”,
- (e) after paragraph (2), insert—
 - “(3) This paragraph applies to—
 - (a) an applicant who is entitled to free legal assistance by virtue of Article 15(1) of the Hague Convention; and,
 - (b) an applicant who has, in a State bound by the Hague Convention, benefited from complete or partial legal aid or exemption from costs or expenses.”
- (4) In regulation 16(2) (payment of fees and outlays from property recovered or preserved)—
 - (a) in sub-paragraph (a)(xvii), after “2022 Act”, insert “or the 2023 Act, at any time since the coming into force of those Acts”,
 - (b) in sub-paragraph (n), after “2022” insert, “ or the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023**(3)**”.
- (5) In schedule 2 (assessment of disposable capital and disposable income), in paragraph 5(bg) after “2022” insert “or the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023”.