
STATUTORY INSTRUMENTS

1987 No. 381 (S. 31)

LEGAL AID AND ADVICE, SCOTLAND

The Civil Legal Aid (Scotland) Regulations 1987

<i>Made</i>	- - - -	<i>9th March 1987</i>
<i>Laid before Parliament</i>		<i>11th March 1987</i>
<i>Coming into force</i>	- -	<i>1st April 1987</i>

The Secretary of State, in exercise of the powers conferred on him by sections 17(5), 19(4), 20(4), 36 and 42 of the Legal Aid (Scotland) Act 1986(1), and of all other powers enabling him in that behalf, and with the concurrence of the Treasury to Part III and Regulation 28 and to Schedules 2 and 3, hereby makes the following Regulations:

Part I

General

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Regulations 1987 and shall come into force on 1st April 1987.

Revocations

2. Without prejudice to their continuation in effect for certain purposes by virtue of paragraph 3 of Schedule 4 to the Act, the Regulations specified in Schedule 1 to these Regulations are hereby revoked.

Interpretation

3. In these Regulations, unless the context otherwise requires—
- “the Act” means the Legal Aid (Scotland) Act 1986;
 - “assisted person” means a person in receipt of legal aid in the proceedings in question;
 - “child” means a person under the age of 16 years;

“income” includes benefits and privileges, and the income of the person concerned includes any sum payable for the purpose of the maintenance of a child including any sum payable to him under the order of a court or under any agreement for that purpose;

“legal aid” means “civil legal aid” within the meaning of section 13(2) of the Act;

“maximum contribution” means the maximum amount of a person’s contribution to the Fund in respect of any proceedings;

“opponent”, in relation to an application for legal aid, means a party, other than the applicant, interested in the proceedings for which legal aid is sought;

“period of computation” means the period of 12 months next ensuing from the date of the application for legal aid, or such other period of 12 months as in the particular circumstances of any case the Board may consider to be appropriate;

“person concerned” means the person whose disposable income, disposable capital, and maximum contribution are to be determined or redetermined or the person whose resources are to be treated as the resources of any other person, under these Regulations.

Distinct proceedings for purposes of legal aid

4.—(1) For purposes of legal aid the following proceedings shall, subject to paragraph (2) below, be treated as distinct proceedings—

- (a) proceedings in the sheriff court insofar as they are proceedings in a court of first instance;
- (b) proceedings before the sheriff principal on appeal from the sheriff;
- (c) proceedings in the Court of Session, whether in the Inner House or before a Lord Ordinary, insofar as they are proceedings in a court of first instance;
- (d) proceedings in the Court of Session, insofar as they are proceedings in an appellate court;
- (e) proceedings in the House of Lords on appeal from the Court of Session;
- (f) proceedings in the Lands Valuation Appeal Court;
- (g) proceedings in the Scottish Land Court;
- (h) proceedings before the Lands Tribunal for Scotland;
- (i) proceedings before the Employment Appeal Tribunal;
- (j) proceedings in the Restrictive Practices Court under Part III of the Fair Trading Act 1973⁽²⁾ and any proceedings in that court in consequence of an offer made, or undertaking given to the court, under that Part of that Act.

(2) Where proceedings are initiated in the sheriff court and are thereafter remitted to the Court of Session or are initiated in the Court of Session and remitted to the sheriff court, the proceedings in the court to which the case is remitted shall not be treated as distinct from the proceedings in the initial court.

(3) Where in any of the distinct proceedings specified in paragraph (1) above, any decree or order has been granted in favour of the assisted person, those proceedings shall be treated as including any step, other than the taking of proceedings for civil imprisonment or for sequestration or the raising of an action of furthcoming following arrestment, in the execution of diligence following such decree or order.

(2) 1973 c. 41.

Part II

Applications for Legal Aid

Form of Application

5.—(1) Subject to regulations 6 and 18 below, an application for legal aid under section 14 of the Act shall be—

- (a) in writing, in such form as the Board may require, and signed by the applicant;
- (b) accompanied by a statement, signed by the applicant and by or on behalf of the solicitor acting for the applicant, as to the nature of the case and the interest of the applicant therein;
- (c) accompanied, so far as possible, by such precognitions and other documents as may be requisite to enable the Board to determine the application; and
- (d) endorsed with a certificate by or on behalf of the solicitor either that notification of the application has been made to the opponent or his solicitor in accordance with regulation 7 below or, as the case may be, that the whereabouts of the opponent are unknown, or that the Board has determined that notification should be dispensed with or postponed.

(2) Where the applicant resides outside the United Kingdom and is not able to be present in the United Kingdom when his application is being considered, the application, which shall be in English or in French, shall, subject to paragraph (3) below, be sworn—

- (a) if the applicant resides within the Commonwealth or the Republic of Ireland, before any Justice of the Peace or Magistrate, or any person for the time being authorised by law, in the place where he is, to administer an oath for any judicial or other legal purpose, or
- (b) if the applicant resides elsewhere, before a consular officer in the service of Her Majesty's Government in the United Kingdom, or any other person for the time being authorised to exercise the functions of such an officer or having authority to administer an oath in that place for any judicial or other legal purpose,

and shall be accompanied by a statement in writing, signed by some responsible person who has knowledge of the facts, certifying that part of the application which relates to the applicant's disposable income and disposable capital.

(3) The requirements of paragraph (2) above may be waived in whole or in part by the Board where it is satisfied that compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the requirements of paragraph (1) above.

Applications on behalf of children

6. Without prejudice to the right of a minor to apply under regulation 5 above, application on behalf of a child may be made by his parent or guardian or by any person in whose care he is, or by a person acting for the purpose of any proceedings as his tutor or curator.

Notification to opponent

7.—(1) Subject to paragraph (2) below, it shall be the duty of the solicitor acting for the applicant to send to any opponent, or to the solicitor acting for any opponent—

- (a) a copy of the application (other than any part containing information as to the means of the applicant);
- (b) a copy of the statement referred to in regulation 5(1)(b) above; and
- (c) notice of the opponent's right, under regulation 8 below, to make representations to the Board.

- (2) Paragraph (1) above shall not apply if—
- (a) the address of the opponent and his solicitor is not known to and could not reasonably be ascertained by the solicitor acting for the applicant; or
 - (b) the Board, on the application of the solicitor acting for the applicant, determine that notification should be dispensed with or postponed.

Right of opponent to make representations

8. Any opponent may, within 14 days (or, in the case of an opponent resident outside the United Kingdom, 28 days) of the making of the application, or such longer time as the Board may in the particular circumstances allow, make to the Board representations in writing as to the application, and the Board shall, except where they make legal aid available under regulation 18 below, consider any such representations before determining the application.

Attendance for interview and supply of information

9. An applicant for legal aid shall, if required by the Board to do so, attend for interview by a representative of the Board or supply such further information or documents as the Board may require to enable it to determine the application.

Part III

Assessment of Resources

Determination of disposable income and disposable capital

10. Save as otherwise provided by these Regulations, the disposable income and disposable capital of a person shall respectively be determined at amounts calculated in accordance with the rules set out in Schedules 2 and 3 to these Regulations.

Circumstances in which resources of spouse not to be taken into account

11. The resources of a person's spouse shall not be treated as his or her resources if—
- (a) the spouse has a contrary interest in the dispute in respect of which application for legal aid is made; or
 - (b) the Board is satisfied that the person and the spouse are living separate and apart.

Resources of applicant who is a child

12. Where an application for an award of legal aid is made by or on behalf of a child—
- (a) there shall, unless the Board considers that it would be inequitable in all the circumstances to do so, be determined and taken into account in addition to the child's resources the resources of any person (other than a person who has a contrary interest in the proceedings in respect of which the application is made) by whom an obligation of aliment within the meaning of the Family Law (Scotland) Act 1985(3) is owed to the child and with whom the child is living; and
 - (b) the resources of the child shall include any sum payable under the order of a court or under any agreement to any person for the purpose of the maintenance of the child.

(3) 1985 c. 37.

Deprivation or conversion of resources

13. If it appears to the Board that a person has, with intent to reduce his disposable income or disposable capital for the purposes of civil legal aid,—

- (a) directly or indirectly deprived himself of any resources; or
- (b) converted any part of his resources into resources which under these Regulations are to be wholly or partly disregarded or in respect of which nothing is to be included in determining the resources of that person,

the resources of which he has so deprived himself or which he has so converted, shall be treated as part of his resources or as not so converted, as the case may be.

Assessment of disposable income, etc. in relation to appellate proceedings

14.—(1) Subject to paragraph (2) below, where an application relates to any of the proceedings specified in regulation 4(1)(b), (d) or (e) above, and the applicant was previously an assisted person in relation to that action, cause or matter, the Board shall not redetermine the applicant's disposable income and disposable capital but shall assess the amount of the maximum contribution, if any, payable in respect of the proceedings at an amount not greater than the maximum contribution assessed in relation to the earlier proceedings, less any amount assessed by the Board to be paid in respect of those proceedings.

(2) If since the last occasion on which the disposable income and disposable capital of the person concerned was determined in relation to that action, cause or matter, his circumstances have altered otherwise than as a result of the payment of a contribution in respect of the earlier proceedings, the Board may redetermine his disposable income and disposable capital and shall take into account—

- (a) any increase in the amount of his disposable income by an amount greater than £500;
- (b) any decrease in the amount of his disposable income by an amount greater than £250; and
- (c) any increase in the amount of his disposable capital by an amount greater than £120.

Assessment of resources, etc. of person making application in a representative, fiduciary or official capacity

15.—(1) Where the applicant is a person who is concerned in the proceedings only in a representative, fiduciary or official capacity, then for the purpose of determining his disposable income and disposable capital, and the amount of any contribution required under section 17 of the Act, the personal resources of the applicant shall be disregarded, but regard shall be had to the value of any property or the amount of any fund out of which he is entitled to be indemnified and to the disposable income and disposable capital of any persons (including the applicant if appropriate) who might benefit from the outcome of the proceedings.

(2) Where a person applies for legal aid in connection with any proceedings in which he is concerned in a representative, fiduciary or official capacity and it appears to the Board that the applicant is entitled, whether by an order of the court or otherwise, to be indemnified in respect of his expenses in connection with the proceedings out of a fund or by a third party, it shall not grant legal aid unless it is satisfied that the fund cannot reasonably be expected to bear the expense of the proceedings or, as the case may be, that the third party would himself, if he were a party to the proceedings, be entitled to legal aid.

Part IV

Determination of Applications

Applicant having joint interest, etc. with other persons

16. Where it appears to the Board that a person making application for legal aid is jointly concerned with or has the same interest in the matter in connection with which the application is made as other persons, whether receiving legal aid or not, the Board shall not grant legal aid if it is satisfied that—

- (a) the person making the application would not be seriously prejudiced in his own right if legal aid were not granted; or
- (b) it would be reasonable and proper for the other persons concerned with or having the same interest in the matter as the applicant to defray so much of the expenses as would be payable from the Fund in respect of the proceedings if legal aid was granted.

Applicant having rights and facilities in relation to litigation

17.—(1) Where it appears to the Board that an applicant has available rights and facilities making it unnecessary for him to obtain legal aid or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, the Board 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 Board, all reasonable steps to enforce or obtain them:

Provided that where it appears that the applicant has a right to assistance in the conduct of the proceedings in question, he 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 that right.

(2) Where the Board approve an application by a person who is a member of a body which might reasonably have been expected to give him financial help towards the expenses of the proceedings, the Board shall require him to sign an undertaking to pay to the Board, in addition to his contribution if any, any sum received from that body on account of the expenses of the proceedings.

Legal aid in matters of special urgency

18.—(1) Where an applicant seeks legal aid in a matter of special urgency the Board may make legal aid available to him notwithstanding that it has not been satisfied that he has *aprobabilis causa litigandi* or that it has not determined that the financial conditions specified in section 15 of the Act are satisfied.

- (2) Where legal aid is made available under paragraph (1) above, the Board shall—
 - (a) specify that it is available only for such limited purposes, or such limited period, or both, as it considers appropriate in the circumstances;
 - (b) require the applicant as soon as practicable to satisfy it that the requirements of section 14(1) of the Act are fulfilled, that his disposable income is such that he is eligible for legal aid, and that he should not be refused legal aid by virtue of section 15(2) of the Act; and
 - (c) if the applicant does not so satisfy it, cease to make legal aid available to him.

Notification of decision

19.—(1) The Board shall give notice in writing of its decision to grant or, as the case may be, refuse, legal aid—

- (a) to the applicant and his solicitor;
- (b) unless it has determined under regulation 7(2)(b) above that notification of the application should be dispensed with or postponed, to any opponent whose address is known to it, and to any solicitor whom it knows to be acting for an opponent.

(2) Where the Board grants the application it shall give notice to the applicant of any conditions with which, by virtue of section 14(2) of the Act, he is required to comply, of the maximum sum which he may be required to contribute, and of its determination as to his actual contribution.

(3) Where the Board refuses an application it shall inform the applicant and his solicitor that the application has been refused on one or more of the following grounds, that—

- (i) the Board has determined that the applicant has disposable income which makes him ineligible for legal aid;
- (ii) the Board has determined that the application has disposable capital of an amount which renders him liable to be refused legal aid and that it appears to the Board that he can afford to proceed without legal aid;
- (iii) the proceedings to which the application relates are not proceedings for which legal aid may be given;
- (iv) it appears to the Board by virtue of the provisions of regulation 15(2), regulation 16 or, as the case may be, regulation 17 above, that legal aid should not be granted;
- (v) the board is not satisfied that he has *probabilis causa litigandi*;
- (vi) it does not appear to the Board that it is reasonable in the particular circumstances of the case that he should receive legal aid,

and (unless the decision follows a review of the application under section 14(3) of the Act) that the applicant may, if he so wishes, apply for such a review.

Application for review

20.—(1) An application for a review under section 14(3) of the Act shall—

- (a) be signed by the applicant;
- (b) subject to paragraph (2) below, be lodged with the Board within 15 days of the time when notice of refusal of his application was given to the applicant;
- (c) include a statement of any matters which the applicant wishes the Board to take into account in reviewing his application; and
- (d) be accompanied by such additional precognitions and other documents as the applicant considers to be relevant to the review.

(2) Paragraph (1)(b) above shall not apply where the Board considers that there is special reason for it to consider a late application for review.

(3) The applicant or his solicitor, unless the Board has determined under regulation 7(2)(b) above that notification of the application for legal aid should be dispensed with or postponed, shall give notice of any application under paragraph (1) above to any opponent whose address is known to him, and to any solicitor whom he knows to be acting for an opponent.

Part V

Conduct of Proceedings

Employment of counsel and expert witnesses

- 21.**—(1) Subject to paragraph (2) below, the prior approval of the Board shall be required—
- (a) for the employment in the House of Lords of counsel other than Scottish counsel;
 - (b) for the employment in the Court of Session of senior counsel or of more than one junior counsel;
 - (c) for the employment of counsel in the sheriff court, the Scottish Land Court, the Lands Tribunal for Scotland or the Employment Appeal Tribunal; and
 - (d) for the employment of any expert witness.

(2) Paragraph (1) above shall not apply where the Board, on an application made to it for retrospective approval for the employment of counsel or, as the case may be, of an expert witness, considers that that employment would have been approved by them and that there was special reason why prior approval was not applied for.

Execution of diligence

22.—(1) Subject to paragraph (2) below, the prior approval of the Board shall be required for any step in the execution of diligence.

(2) The prior approval of the Board shall not be required for any arrestment in execution of a decree or order specified in regulation 32(a)(i) to (iii) below, where such arrestment is carried out within 18 months from the date of that decree or order.

Part VI

Changes of Circumstances

Duty to report changes of circumstances

- 23.** It shall be the duty of an applicant or assisted person immediately to inform the Board of—
- (a) any change in his circumstances, financial or otherwise; or
 - (b) any change in the circumstances, financial or otherwise, so far as known to him, of any other person jointly concerned with, or having the same interest in the matter,

which he has reason to believe might affect the availability, or continuing availability, to him of legal aid or the terms on which it would be or is available.

Duty to report abuse of legal aid

24.—(1) Where an assisted person's solicitor or counsel has reason to believe that the assisted person has—

- (a) required his case to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the case be continued; or
- (b) wilfully failed to comply with any requirement of the Act or of these Regulations as to the information to be furnished by him or, in furnishing such information, has knowingly made a false statement or false representation,

the solicitor or counsel shall forthwith draw this matter to the attention of the Board.

(2) No solicitor or counsel shall be precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client, from disclosing to the Board any information, or from giving any opinion, which he is required to disclose or give to the Board under the Act or these Regulations, or which may enable the Board to perform its functions thereunder.

Change of nominated solicitor

25.—(1) Where the solicitor nominated by an assisted person determines that he should cease to act for that person, the solicitor shall notify the assisted person and the Board accordingly, and shall supply to the Board a statement of his reasons for ceasing to act.

(2) Where an assisted person has required the solicitor nominated by him to cease to act for him, the solicitor shall notify the Board accordingly.

(3) Where an assisted person desires that a solicitor other than the solicitor presently nominated by him shall act for him, he shall apply to the Board for authority to nominate another specified solicitor to act for him, and shall inform the Board of the reason for his application, and the Board, if it is satisfied that there is good reason for the application and that it is reasonable in the particular circumstances of the case for the assisted person to continue to receive legal aid, may grant the application.

Duty to report completion of proceedings

26. It shall be the duty of the solicitor acting for an assisted person within one month to inform the Board of the conclusion and outcome of the proceedings in respect of which legal aid was made available to the assisted person.

Power of Board to modify or impose conditions

27. Where the Board has made legal aid available in relation to any proceedings, it may, at any time prior to the conclusion of the proceedings, if it considers it expedient, modify any conditions imposed by it under section 14(2) of the Act, or impose conditions (or as the case may be additional conditions) by virtue of that subsection.

Power of Board to amend determination

28.—(1) If the Board is satisfied that there has been some error or mistake in the determination of a person's disposable income, disposable capital or maximum contribution and that it would be just and equitable to correct that error or mistake, it may make an amended determination which shall have effect for all purposes as if it was the original determination.

(2) If the Board is satisfied—

- (a) that the assisted person's disposable income has increased by an amount greater than £500 or decreased by an amount greater than £250; or
- (b) that his disposable capital has increased by an amount greater than £120,

it may redetermine his disposable income, disposable capital and maximum contribution, and in that event the amount or value of any resource of a capital nature shall be ascertained as at the date of the redetermination.

(3) Where the amount of the actual contribution required to be paid by the assisted person has been fixed at a sum less than the maximum contribution which he could be required to contribute, and it appears to the Board that the cost of the proceedings is likely to exceed or has exceeded the amount of that actual contribution, it may increase the actual contribution which is required to be paid.

Termination of legal aid on change of circumstances

- 29.** The Board shall cease to make legal aid available to an assisted person if either—
- (a) it is satisfied, in consequence of an amended determination under regulation 28(1) above, or a redetermination under regulation 28(2) above, that either the assisted person has a disposable income which makes him ineligible for legal aid or that he has disposable capital of an amount which makes him liable to be refused legal aid, and in the latter case it appears to the Board that he can afford to proceed without legal aid; or
 - (b) it is no longer satisfied that the assisted person has *probabilis causa litigandi*, or no longer considers that it is reasonable in the particular circumstances of the case that he should continue to receive legal aid.

Termination of legal aid other than on change of circumstances

- 30.** The Board may cease to make legal aid available to an assisted person if—
- (a) it appears to it that the assisted person has—
 - (i) required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund;
 - (ii) failed to comply with any condition imposed under section 14(2) of the Act;
 - (iii) in relation to any application for legal aid, made an untrue statement as to his resources or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after legal aid was made available to him;
 - (iv) wilfully failed to comply with these Regulations by not furnishing to the Board any material information concerning anything other than his resources; or
 - (v) knowingly made an untrue statement in furnishing such information; or
 - (b) it is satisfied that the assisted person—
 - (i) has failed without reasonable excuse to attend for an interview or to provide information or documents when so required under these Regulations; or
 - (ii) having been required to make a contribution, is more than one month in arrears in making any payment in respect of that contribution.

Right to recover amounts paid from the Fund and effect of ceasing to make legal aid available

- 31.** Where the Board ceases to make legal aid available to an assisted person by virtue of regulation 18(2)(c) above, regulation 29(a) above, or regulation 30(a)(iii), (iv) or (v) above—
- (a) the Board shall have the right to recover from that person the amount paid out of the Fund in respect of the fees and outlays of his solicitor and counsel less any amount received from him by way of contribution;
 - (b) the assisted person shall be deemed, for purposes of sections 18 and 19 of the Act, never to have been an assisted person.

Part VII

Expenses

Payments out of property recovered or preserved

32. The right to prior payment of certain sums out of any property recovered or preserved which is created by section 17(5) of the Act 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(4);
 - (ii) under an order for the payment of a periodical allowance under section 5 of the Divorce (Scotland) Act 1976(5), or for the making of a periodical allowance under section 8 of the Family Law (Scotland) Act 1985;
 - (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(6), the Maintenance Orders (Reciprocal Enforcement) Act 1972(7) or the Civil Jurisdiction and Judgments Act 1982(8), may be enforced in Scotland;
 - (iv) under an order made by the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975(9) 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 supplementary benefit under the Supplementary Benefits Act 1976(10) or family income supplement under the Family Income Supplements Act 1970(11);
 - (vi) by way of aliment or periodical allowance 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;
- (b) to the first £2,500 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; 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; or
 - (iii) any settlement arrived at to prevent or bring to an end proceedings in which such an order may be granted.

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

33. 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 he was an assisted person.

(4) 1985 c. 37.
(5) 1976 c. 39.
(6) 1950 c. 37.
(7) 1972 c. 18.
(8) 1982 c. 27.
(9) 1975 c. 71.
(10) 1976 c. 71.
(11) 1970 c. 55.

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

34. Subject to regulation 31 above, where at any stage in the proceedings, a party ceases to receive legal aid, he shall be deemed to be an assisted person for the purpose of any award of expenses made against him to the extent that those expenses were incurred before he ceased to receive legal aid.

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

35. Where an order for expenses is made against an assisted person who is concerned in proceedings in a fiduciary, representative or official capacity, he shall have the benefit of section 18(2) of the Act and his 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 he is entitled to be indemnified.

Liability for expenses of assisted person who is a child

36. Where a child is an assisted person, his means for the purpose of determining his liability for expenses under section 18(2) of the Act shall be taken as including the means of any person whose resources have been taken into account in determining his disposable income and disposable capital.

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 his 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 sums due to Fund

39.—(1) This regulation applies where—

- (a) in consequence of any decision in proceedings to which an assisted person is a party, or of a settlement to avoid or bring to an end such proceedings, any property is recovered or preserved for him; or
- (b) in consequence of an award of a court or an agreement as to expenses in favour of an assisted person any sum is recoverable.

(2) Where this regulation applies, the Board may—

- (a) take such proceedings in its own name or in the name of the assisted person as may be necessary to enforce or give effect to such decision, settlement, award or agreement;
- (b) do diligence either in the name of the assisted person or in its own name.

(3) Where this regulation applies—

- (a) any money payable to or preserved for the assisted person shall be paid to the Board, and only the Board's receipt shall be a good discharge to the person paying the money of a

liability to make payment to the assisted person or to a clerk of court or otherwise on behalf of the assisted person;

- (b) the Board may require any corporeal moveables which are deliverable to, or pre served for, the assisted person to be delivered to the Board and in the event of such a requirement being made—
 - (i) only the receipt of the Board shall be a good discharge to the person delivering such corporeal moveables; and
 - (ii) the Board shall have power to sell such corporeal moveables.

(4) Any free moneys or corporeal moveables remaining in the possession of the Board after payment into the Fund of the sums specified in section 17(5) of the Act shall, subject to any requirement of law whereby they fall to be paid, or as the case may be delivered, to a person other than the assisted person, be paid or delivered to the assisted person.

Right of Board to security over heritable property

40.—(1) Where—

- (a) any sum remains unpaid in respect of an assisted person’s contribution to the Fund, or there is a deficiency by reason of his total contribution being less than the net liability of the Fund on his account; and
- (b) any property recovered or preserved for the assisted person in consequence of a decision in proceedings to which he is a party, or of a settlement to avoid or bring to an end such proceedings, comprises an interest in land (as defined in section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970(**12**)),

the Board may make in its favour and record in the General Register of Sasines or, as appropriate, register in accordance with the Land Registration (Scotland) Act 1979(**13**), a charging order over that interest in land, or over any other interest in land subsequently acquired by the assisted person in substitution therefor, in respect of the amount of the sum remaining unpaid or, as the case may be, of the deficiency.

(2) On being so recorded, or, as the case may be, registered, a charging order over an interest in land shall create a right which shall be deemed to have been granted by the assisted person in favour of the Board over that interest for the purpose of securing the sum, or, as the case may be, the deficiency, referred to in paragraph (1)(a) above, together with interest thereon as specified in regulation 41 below; and the Board shall intimate to the assisted person in writing that it has made and recorded or registered the charging order and inform him of its effect.

(3) Where the charging order is over an interest in land in which the debtor is uninfert, it shall be as valid as if he was infert in that interest.

(4) Charging orders and the discharge thereof shall be in, or as near as may be in, accordance with Forms 1 and 2 in Schedule 4 to these Regulations.

(5) The provisions of Part II of the said Act of 1970, other than sections 9(1) and (2), 12 and 14, shall apply to a charging order under this regulation as if it were a standard security in a form prescribed in Schedule 2 to the said Act of 1970, and as if for the forms referred to in sections 9(2) and 17 of that Act there were substituted the forms set out in Schedule 4 to these Regulations.

Interest on sums outstanding

41.—(1) Any sum remaining unpaid in respect of an assisted person’s contribution to the Fund shall bear interest from 3 months after the day on which it was due to be paid to the Board.

(12) 1970 c. 35.

(13) 1979 c. 33.

(2) Any sum secured over an interest in land under regulation 40 above (other than a sum to which paragraph (1) above applies) shall bear interest from the day on which the charging order over that interest in land is recorded or, as the case may be, registered.

(3) The rate of interest under paragraphs (1) and (2) above shall be that which would apply (in the absence of any such statement as is provided for in Rule 66 of the Act of Sederunt (Rules of Court, consolidation and amendment) 1965(14)) 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) Subject to paragraph (3) below, the Board shall pay to any such solicitor as is mentioned in paragraph (1), out of any expenses paid to the Fund under section 16 of the Act and any property recovered or preserved for the assisted person, the fees and outlays to which, following a taxation as between solicitor and own client, he is entitled.

(3) In any case where such expenses and property recovered or preserved are insufficient to pay the fees and outlays of the solicitor in full in accordance with paragraph (2) and also to meet the net liability of the Fund on account of the assisted person, payment shall be made to the Fund and to the solicitor in proportion to the amount owing to each, and the provisions of section 17(5) of the Act with respect to the priority of payments to the Fund shall have effect accordingly.

Part VIII

Particular Courts, Tribunals and Proceedings

Appeals to the House of Lords

43.—(1) Where an application for legal aid relates to an appeal to the House of Lords, the solicitor for the applicant at the time of lodging the application shall send to the Clerk of Parliaments a copy of the application other than that part relating to the means of the applicant.

(2) Where under the terms of these Regulations the Board is required to notify the applicant of its decisions, the Board shall, in addition, notify the Clerk of Parliaments.

Restrictive Practices Court

44.—(1) In this regulation the expression “the proper officer of the court” has the same meaning as in the Restrictive Practices Court Rules 1976(15).

(2) Where it appears to the Board that an application for legal aid relates to proceedings in the Restrictive Practices Court which are likely to be conducted in England and Wales or Northern Ireland, it shall transmit the application forthwith to the Law Society in England and Wales or to the Incorporated Law Society of Northern Ireland, as the case may be, and shall notify the applicant and his solicitor that it has done so.

(3) Where it appears to the Board doubtful whether the proceedings to which an application for a certificate relates will be conducted in the Restrictive Practices Court when sitting in Scotland, or in

(14) S.I. 1965/321; the present rate of interest in the Court of Session is specified in S.I. 1985/1178.

(15) S.I. 1976/1897.

England and Wales or Northern Ireland, it shall request the proper officer of the court to determine that question and that determination shall be binding upon the Board.

(4) Where legal aid has been made available for proceedings in the Restrictive Practices Court, and there is a change of circumstances regarding the conduct of proceedings in that, by direction of the Court, they will be wholly or partly conducted in England and Wales or Northern Ireland—

- (a) legal aid shall continue to be available;
- (b) for any proceedings in England and Wales, the assisted person shall continue to be represented by the solicitor and counsel, if any, who represented him in Scotland; and any counsel subsequently appointed to represent him may be selected from either Scotland or England and Wales;
- (c) for any proceedings in Northern Ireland, the assisted person may continue to be represented for the proceedings in Northern Ireland by the solicitor who represented him in Scotland, and that solicitor shall instruct as his agent a solicitor on the panel maintained by the Incorporated Law Society of Northern Ireland of solicitors willing to act for assisted persons before the Restrictive Practices Court.

Employment Appeal Tribunal

45.—(1) In this regulation the expression “the Employment Appeal Tribunal” means the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975 and the expression “the Registrar of the Tribunal” means the person appointed to be Registrar of the Employment Appeal Tribunal and includes any officer of the Employment Appeal Tribunal authorised to act on behalf of the Registrar.

(2) Where it appears to the Board that an application for legal aid relates to proceedings in the Employment Appeal Tribunal which are likely to be conducted in England and Wales, it shall transmit the application forthwith to the Law Society in England and Wales and shall notify the applicant and his solicitor that it has done so.

(3) Where it appears to the Board doubtful whether proceedings to which an application for legal aid relates will be conducted in Scotland or in England and Wales, it shall request the Registrar of the Tribunal to determine that question and that determination shall be binding upon the Board.

(4) Where legal aid has been made available in relation to proceedings in the Employment Appeal Tribunal and there is a change of circumstances regarding the conduct of proceedings in that, by direction of the Employment Appeal Tribunal, they will be wholly or partly conducted in England and Wales, the assisted person’s award shall remain in force and he may continue to be represented for the proceedings in England and Wales by the solicitor and counsel, if any, who represented him in Scotland; and any counsel subsequently appointed to represent him may be selected from either Scotland or England and Wales.

Convention applications

46.—(1) In this regulation “Convention application” means an application under—

- (a) the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25th October 1980, as given the force of law in the United Kingdom by Part I of the Child Abduction and Custody Act 1985(16);
- (b) the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on the Restoration of Custody of Children which was signed at Luxembourg on 20th May 1980, as given the force of Law in the United Kingdom by Part II of the Child Abduction and Custody Act 1985.

(16) 1985 c. 60.

(2) Where a person resident outside the United Kingdom applies for legal aid for the purpose of pursuing an application to the Court of Session which is certified by the Secretary of State to be a Convention application—

- (a) sections 15 and 17 of the Act shall not apply and legal aid shall be made available without enquiry into the resources of the applicant and without requiring him to contribute to the Fund;
- (b) section 14 of the Act shall not apply and it shall not be necessary for the applicant to show that he has *probabilis causa litigandi* or that it is reasonable for him to receive legal aid; and
- (c) regulation 5 above shall not apply, but the application for legal aid shall be signed by either the applicant or his solicitor, and shall be accompanied by—
 - (i) a memorandum signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and
 - (ii) a certificate of the Secretary of State that the application for legal aid relates to a Convention application.

Applications under the European Judgments Convention

47.—(1) This regulation applies where—

- (a) application is made for legal aid for the purpose of applying to the Court of Session in accordance with section 4 of the Civil Jurisdiction and Judgments Act 1982⁽¹⁷⁾ for the registration for enforcement of a judgment other than a maintenance order; and
- (b) where application for legal aid is made by or on behalf of a person who wishes to enforce a maintenance order in Scotland —
 - (i) for the purpose of an application to the sheriff court in accordance with section 5 of the Civil Jurisdiction and Judgments Act 1982; or
 - (ii) for the purpose of any proceedings following on such an application.

(2) Where this regulation applies—

- (a) sections 15 and 17 of the Act shall not apply, legal aid shall be made available without enquiry into the resources of the applicant and without requiring him to contribute to the Fund and no payment shall be due to the Fund out of any property recovered or preserved for him;
- (b) regulation 5 above shall not apply, but the application for legal aid shall be signed by the applicant or his solicitor, and shall be accompanied by a memorandum signed by the solicitor explaining the nature of the application and the applicant's interest therein.

New St Andrew's House,
Edinburgh
6th March 1987

Ian Lang
Parliamentary Under Secretary of State, Scottish
Office

(17) 1982 c. 27.

We concur,

9th March 1987

Michael Neubert
Peter Lloyd
Two of the Lords Commissioners of Her
Majesty's Treasury

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SCHEDULE 1

Regulation 2

REGULATIONS REVOKED

Title	Reference
The Legal Aid (Scotland) (General) Regulations 1960	S.I. 1960/2195
The Legal Aid (Scotland) (Expenses of Successful Unassisted Parties) Regulations 1964	S.I. 1964/1513
The Legal Aid (Extension of Proceedings) (Scotland) Regulations 1969	S.I. 1969/955
Legal Aid (Scotland) (General) Amendment Regulations	S.I. 1971/194
The Legal Aid (Scotland) (Extension of Proceedings) Regulations 1971	S.I. 1971/317
The Legal Aid (Scotland) (Extension of Proceedings) (No. 2) Regulations 1971	S.I. 1971/1912
The Legal Aid (Scotland) (General) Amendment (No. 2) Regulations 1971	S.I. 1971/1914
The Legal Aid (Scotland) (General) Amendment Regulations 1973	S.I. 1973/2125
The Legal Aid (Scotland) (General) Amendment Regulations 1976	S.I. 1976/333
The Legal Aid (Scotland) (Extension of Proceedings) Regulations 1976	S.I. 1976/512
The Legal Aid (Scotland) (General) Amendment Regulations 1978	S.I. 1978/622
The Legal Aid (Scotland) (General) Amendment Regulations 1980	S.I. 1980/1791
The Legal Aid (Scotland) (Assessment of Resources) Regulations 1980	S.I. 1980/1793
The Legal Aid (Scotland) (Exclusion of Proceedings) Regulations 1982	S.I. 1982/1877
The Legal Aid (Scotland) (Child Abduction and Custody Act 1985) Regulations 1986	S.I. 1986/1154
The Legal Aid (Scotland) (General) Amendment Regulations 1986	S.I. 1986/1358

SCHEDULE 2

Regulation 10

RULES FOR COMPUTING DISPOSABLE INCOME

1. The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of computation, that income in the absence of other means of ascertaining it being taken to be the income received during the preceding year.

2 The income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such a sum as in all the circumstances is just and equitable.

3.—(1) The income from a trade, business or gainful occupation other than an employment at a wage or salary shall be deemed to be the profits therefrom which have accrued or will accrue to the person concerned in respect of the period of computation and, in computing such profits, the Board may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been made up.

(2) In ascertaining the profits for the purpose of the last foregoing paragraph there shall be deducted all sums necessarily expended to earn those profits, provided that no deduction shall be made in respect of the living expenses of that person or any member of his family or household, except in so far as such member of his family or household shall be wholly or mainly employed in such trade or business and such living expenses form part of his remuneration.

4.—(1) In computing the disposable income of the person concerned there shall be deducted the total amount of tax which it is estimated would be payable by the person concerned if his income, as computed in accordance with the foregoing rules of this Schedule (but without taking into account the operation of regulation 11 of these Regulations), were his income for a fiscal year and his liability for tax in that year were to be ascertained by reference to that income and not by reference to his income in any other year or period.

(2) For the purposes of this rule the tax shall be estimated at the rate provided by and after making all appropriate allowances, deductions or reliefs in accordance with the provisions of the Income Tax Acts in force for the fiscal year current at the date of the application.

5. There shall be disregarded £4 a week of the income taken into account in so far as it consists of interest or dividends payable on a loan or investment where that loan or investment forms part of the disposable capital of the person concerned.

6. There shall be disregarded—

- (a) attendance allowance paid under the Social Security Acts 1975-1986;
- (b) mobility allowance paid under the Social Security Acts 1975-1986;
- (c) constant attendance allowance paid as an increase to a disablement pension under section 61 of the Social Security Act 1975(18);
- (d) any sums paid to a person as holder of the Victoria Cross or the George Cross.

7 When the income of the person concerned consists, wholly or in part, of a wage or salary from employment there shall be deducted—

- (a) the reasonable expenses of travelling to and from his place of employment;
- (b) the amount of any payments reasonably made for membership of a trade union or professional organisation;

(18) 1975 c. 14.

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- (c) when it would be reasonable to do so, an amount to provide for the care of any dependent child living with the person concerned during the time that person is absent from the home by reason of employment; and
- (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act 1975⁽¹⁹⁾.

8 There shall be a deduction in respect of contributions payable by the person concerned (whether by deduction or otherwise) under the Social Security Acts 1975 to 1986 of the amount estimated to be so payable in the 12 months following the application.

9.—(1) There shall be a deduction, in respect of rent of the main or only dwelling in the case of a householder, of the amount of the net rent paid or such part thereof as is reasonable in the circumstances; provided that any contributions received from any other person towards that payment of rent shall be taken into account as income, and the Board shall decide which is the main dwelling where the person concerned resides in more than one dwelling in which he has an interest.

(2) In this rule the expression “rent” means—

- (a) the feu duty or ground annual or the rent payable in respect of a year; and
- (b) a sum in respect of the yearly outgoings borne by the householder including, in particular, rates, a reasonable allowance towards any necessary expenditure on repairs and insurance and any other annual burden, including any annual instalment (whether of interest or capital) payable in respect of a heritable security (within the meaning of section 9(8)(a) of the Conveyancing and Feudal Reform (Scotland) Act 1970) or a real burden *ad factum praestandum*.

(3) In this rule the expression “net rent” means

- (a) the rent less any proceeds of sub-letting any part of the premises in respect of which the said rent is paid or the outgoings incurred; or
- (b) where any person or persons other than the person concerned, his or her spouse or any dependent of his or hers is accommodated, otherwise than as a sub-tenant, in the premises for which the rent is paid, the rent less such an amount as the Board may determine to be reasonably attributable to the accommodation of such person.

(4) Where any amount of the rent or rates is met by a rebate or allowance, the amount so met shall be deducted from the rent to be considered under paragraph (1) of this rule.

10. If the person concerned is not a householder, there shall be a deduction in respect of the cost of his living accommodation of such amount as is reasonable in the circumstances.

11.—(1) There shall be a deduction in respect of the maintenance of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent child and in respect of the maintenance of any dependent relative of the person concerned, being (in either of such cases) a member of his or her household, at the following rates:—

- (a) in the case of a spouse at a rate equivalent to 25 per cent above the amount specified for the time being in column (3) of paragraph 6 of Part IV of Schedule 4 to the Social Security Act 1975 (increase for adult dependant of Category A retirement pensioner)⁽²⁰⁾;
- (b) in the case of a dependent child or a dependent relative, at a rate equivalent to 25 per cent above the amount specified for the time being in paragraph 3 of Schedule 1 to the

⁽¹⁹⁾ 1975 c. 60.

⁽²⁰⁾ Schedule 4 was relevantly amended by S.I. 1986/1117 and will be further amended (as from 6th April 1987) by S.I. 1987/45.

Supplementary Benefit (Requirements) Regulations 1983(21) appropriate to the age of the child or relative:

Provided that the Board may reduce such rate by taking into account the income and other resources of the dependent child or other dependant to such extent as appears to the Board to be just and equitable.

(2) In ascertaining whether a child is a dependent child and whether a person is a dependent relative regard shall be had to their income and other resources.

12. If the person concerned is making and, throughout such period as the Board may consider adequate, has regularly made *bona fide* payments for the maintenance of a spouse who is living apart, of a former spouse, of a child or of a relative who is not (in any of such cases) a member of the household of the person concerned, there shall be a deduction at the rate of such payments or at such rate, not exceeding the rate of such payments, as in all the circumstances is reasonable.

13. Where the person concerned must provide for any other matter the Board may make an allowance of such amount as he considers to be reasonable in the circumstances of the case.

14. In computing the income from any source there shall be disregarded such amount, if any, as the Board considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

SCHEDULE 3

Regulation 10

RULES FOR COMPUTING DISPOSABLE CAPITAL

1. Subject to the provisions of these Regulations, there shall be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application for legal aid:

Provided that, where it is brought to the notice of the Board that, between the date of the application and the determination there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the possession of the person concerned, the Board shall compute the capital resources of that person in the light of such facts and the resources as so computed shall be taken into account in the determination.

2. So far as any resource does not consist of money, the amount or value thereof shall be taken to be the amount which that resource would realise if sold in the open market or, if there is only a restricted market for that resource, the amount which it would realise in that market, or shall be taken to be the amount or value thereof assessed in such manner as appears to the Board to be just and equitable.

3. Where money is due to the person concerned, whether immediately payable or otherwise and whether the payment thereof is secured or not, the value shall be taken to be the present value thereof.

4. If the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Board may, in lieu of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were such sole owner or partner and compute the amount of his capital in respect of that resource in accordance with the succeeding rule.

(21) S.I. 1983/1399; Schedule 1 was relevantly amended by S.I. 1986/1173 and will be further amended (as from 6th April 1987) by S.I. 1987/49.

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5. Where the person concerned is or is to be treated as the sole owner of or a partner in any business, the value of such business or his share therein to that person shall be taken to be either—

- (a) such sum, or his share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development thereof; or
- (b) such sum as that person could borrow on the security of his interest in such business without injuring the commercial credit of that business;

whichever is the greater.

6. The value of any interest, whether vested or contingent, of the person concerned in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, shall be computed by the Board in such manner as appears to it to be both equitable and practicable.

7. In computing the amount of capital of the person concerned, there shall be wholly disregarded—

- (a) any death grant paid to a person under the provisions of section 32 of the Social Security Act 1975; and
- (b) any maternity grant to which a woman is entitled under section 21 of the Social Security Act 1975.

8. Save in exceptional circumstances, nothing shall be included in the amount of capital of the person concerned in respect of—

- (a) the household furniture and effects of the dwelling house occupied by him;
- (b) articles of personal clothing; and
- (c) the personal tools and equipment of his trade, not being part of the plant or equipment of a business to which the provisions of rule 5 of this Schedule apply.

9.—(1) In computing the amount of capital of the person concerned, the value of any interest in the main or only dwelling in which he resides shall be wholly disregarded.

(2) Where the person concerned resides in more than one dwelling in which he has an interest, the Board shall decide which is the main dwelling and shall take into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which might be obtained by borrowing money on the security thereof.

10. Where the person concerned has received or is entitled to receive from a body of which he is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which legal aid is applied for, such sum shall be disregarded.

11. The value of any life assurance or endowment policy shall be taken to be the amount which the person concerned could readily borrow on the security thereof.

12. Where under any statute, bond, agreement, indemnity, guarantee or other instrument the person concerned is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, an allowance shall be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of application for legal aid.

13. An allowance may be made in respect of any debt owed by the person concerned (other than a debt secured on the dwelling or dwellings in which he resides) to the extent to which the Board considers reasonable, provided that the person concerned produces evidence to its satisfaction that the debt or part of the debt will be discharged within the twelve months immediately following the date of the application.

14. In computing the amount of capital there shall be disregarded such an amount of capital, if any, as the Board in the circumstances of the case may in its discretion decide.

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SCHEDULE 4

Regulation 40(4)

FORM 1 Form of Charging Order The Legal Aid (Scotland) Act 1986 Civil Legal Aid (Scotland) Regulations 1987 CHARGING ORDER

We, the SCOTTISH LEGAL AID BOARD, empowered under regulation 40 of the Civil Legal Aid (Scotland) Regulations 1987(a) to make a charging order in respect of property comprising an interest in land (as defined in the Conveyancing and Feudal Reform (Scotland) Act 1970) recovered or preserved for a person receiving civil legal aid under the Legal Aid (Scotland) Act 1986 or over any other interest in land subsequently acquired by that person in substitution therefor, hereby in the exercise of the powers conferred by that regulation make an order to the effect that the subjects described in the schedule hereto are charged and burdened with payment to us of the sum of _____ together with interest thereon in accordance with regulation 41 of those Regulations.

SCHEDULE

Description of subjects¹

Name and description of owner

Given under the seal of the Board on _____ 19 ____

2

Notes for Guidance

1 Describe the subjects, if possible, by reference to a recorded title or in accordance with the provisions of section 15(1) of the Land Registration (Scotland) Act 1979 whichever is appropriate.

2 Add name of Chairman or other Member of the Board and other person authorised to sign on behalf of the Board.

(a) S.I. 1987/381.

FORM 2 Form of Discharge of Charging Order The Legal Aid (Scotland) Act 1986 Civil Legal Aid (Scotland) Regulations 1987 DISCHARGE OF CHARGING ORDER

We, the SCOTTISH LEGAL AID BOARD, in consideration of the sum of £ _____ being the whole amount secured by the Charging Order after mentioned paid by _____ hereby discharge a Charging Order in our favour dated _____ and [recorded in the Register of Sasines for _____] [registered under Title No. _____] on 19 ____ .

Given under the seal of the Board on _____ 19 ____ .

1

Note for Guidance

1 Add name of Chairman or other member of the Board and other person authorised to sign on behalf of the Board.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the administration of civil legal aid in Scotland following the coming into force on 1st April 1987 of the main provisions of the Legal Aid (Scotland) Act 1986. The Act, among other things, transferred to the Scottish Legal Aid Board from the Law Society of Scotland responsibility for granting civil legal aid, and from the Scottish Home and Health Department responsibility for assessing financial eligibility for civil legal aid. The Regulations supersede in relation to applications for civil legal aid granted on or after 1st April 1987 the Legal Aid (Scotland) Regulations 1960 as amended, and related Regulations, and the Legal Aid (Scotland) (Assessment of Resources) Regulations 1980, which are revoked; and the Legal Aid (Scotland) Scheme 1958.

The Regulations make provision as to:—

- (i) what are to be treated as distinct proceedings for the purposes of civil legal aid (regulation 4);
- (ii) the procedure for applications for civil legal aid, (regulations 5 to 9);
- (iii) the assessment by the Board of the applicant's financial resources (regulations 10 to 15 and Schedules 2 and 3);
- (iv) applications in matters of special urgency (regulation 18);
- (v) the Board's procedure on determining an application and the applicant's right to apply to the Board for a review of such a decision (regulations 16, 17, 19 and 20);
 - (vi) the need for prior approval by the Board for the employment of counsel and expert witnesses and for the execution of diligence (regulations 21 and 22);
 - (vii) the duty of an applicant or assisted person to inform the Board of any change in circumstances (regulation 23);
 - (viii) the duty of an assisted person's solicitor or counsel to inform the Board of a suspected abuse of civil legal aid (regulation 24);
 - (ix) the duty of an assisted person's solicitor to inform the Board of his withdrawal from a case, or the conclusion and outcome of assisted proceedings, and the requirement for the Board to approve a change of solicitor by the assisted person (regulations 25 and 26);
- (x) the Board's power to modify or terminate a grant of civil legal aid, and its right in certain circumstances to recover amounts already paid from the Scottish Legal Aid Fund (regulations 27 to 31);
 - (xi) exceptions to the Board's right to recover money due to the Fund from property recovered or preserved for an assisted person (regulation 32);
 - (xii) liability for expenses (regulations 33 to 38);
 - (xiii) arrangements for recovery of sums which are due to the Fund from property recovered or preserved or awards of expenses, including the taking out by the Board of charging orders on heritable property recovered or preserved and the interest payable on such orders when recovery is postponed (regulations 39 to 42 and Schedule 4); and

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- (xiv) applications for civil legal aid for appeals to the House of Lords, proceedings in the Restrictive Practices Court or the Employment Appeal Tribunal, or under certain international conventions (regulations 43 to 47).