
STATUTORY INSTRUMENTS

1996 No. 2444 (S.189)

LEGAL AID AND ADVICE, SCOTLAND

The Civil Legal Aid (Scotland) Regulations 1996

<i>Made</i>	- - - -	<i>19th September 1996</i>
		<i>23rd September</i>
<i>Laid before Parliament</i>		<i>1996</i>
<i>Coming into force</i>	- -	<i>7th October 1996</i>

The Secretary of State, in exercise of the powers conferred on him by sections 17(2B), 19(4), 20(4), 36(1), (2)(a) and (c) to (h), (3)(e) and (f) and (4), 37(1) and (3) 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, hereby makes the following Regulations:

PART I
GENERAL

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Regulations 1996 and shall come into force on 7th October 1996.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Legal Aid (Scotland) Act 1986;

“the 1992 Act” means the Social Security and Contributions Act 1992⁽²⁾;

“the 1995 Act” means the Children (Scotland) Act 1995⁽³⁾;

“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;

“counsel” includes a solicitor-advocate, except in regulations 21(1)(c), 44 and 45 below;

(1) 1986 c. 47; subsection (2B) was inserted in section 17 by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36(6).

(2) 1992 c. 4.

(3) 1995 c. 36.

“Employment Appeal Tribunal” means the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975(4);

“Fund” means the Scottish Legal Aid Fund;

“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;

“interest in land” has the same meaning as in section 28(1) of the Land Registration (Scotland) Act 1979(5);

“junior counsel” includes a junior solicitor-advocate;

“legal aid” means “civil legal aid” within the meaning of section 13(2) of the Act(6);

“legal representative” means a person having parental responsibilities in relation to a child or a curator bonis, tutor, judicial factor or guardian;

“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;

“parental responsibilities” has the meaning given in section 1(3) of the 1995 Act;

“parental rights” has the meaning given in section 2(4) of the 1995 Act;

“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;

“right of audience” means, in relation to a solicitor, a right of audience in the Court of Session, the House of Lords and the Judicial Committee of the Privy Council which a solicitor has by virtue of section 25A (rights of audience in specified courts) of the Solicitors (Scotland) Act 1980(7);

“senior counsel” includes a senior solicitor-advocate, except in paragraph (2) below;

“solicitor-advocate” means a solicitor, whether instructed by another solicitor or not, when and only when he is exercising his right of audience or acting in connection with the exercise of such a right and “junior solicitor-advocate” and “senior solicitor-advocate” shall be construed in accordance with paragraph (2) below;

and, unless the context otherwise requires, any reference in these Regulations to a solicitor does not include a solicitor when acting as a solicitor-advocate.

(2) For the purposes of these Regulations, a solicitor-advocate shall be—

(a) a senior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a senior counsel in a case in the House of Lords or where the Board has authorised the employment of senior counsel under regulation 21(1)(b) or (2) below; and

(4) 1975 c. 71.

(5) 1979 c. 33.

(6) Section 13(2) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Schedule 8, paragraph 36(3).

(7) 1980 c. 46; section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, section 24, and was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 31.

- (b) a junior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a junior counsel, irrespective of whether or not the Board has authorised the employment of senior counsel in the case.

Revocations and savings

3.—(1) Subject to paragraphs (2) and (3) below, the Regulations specified in Schedule 1 to these Regulations are hereby revoked.

(2) The revocation by these Regulations of—

- (a) a transitional provision relating to the coming into force of, or
- (b) an application provision which restricts the application of,

a provision, which is revoked and re-enacted by these Regulations, does not affect the operation of that transitional provision or, as the case may be, application provision, insofar as it remains capable of having effect in relation to the provision which is re-enacted in these Regulations.

(3) Where a period of time specified in any provision, which is revoked by these Regulations, is current at the date of coming into force of these Regulations, these Regulations have effect as if the provision which re-enacts that revoked provision in these Regulations had been in force when that period began to run.

Distinct proceedings for purposes of legal aid

4.—(1) For the 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⁽⁸⁾ 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.

(8) 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⁽⁹⁾ shall be—

- (a) in writing, in such form as the Board may require, and signed by the applicant, or, where the applicant on cause shown cannot sign the application, by a person authorised by the applicant, or, where the applicant is mentally disordered in terms of section 1(2) of the Mental Health (Scotland) Act 1984⁽¹⁰⁾, by the applicant's legal representative;
- (b) accompanied by a statement, signed by the applicant, or, where the applicant in terms of the above sub-paragraph either cannot sign the application or is mentally disordered, by an authorised person or by the applicant's legal representative, 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) accompanied by a copy for each opponent of the statement referred to in sub-paragraph (b) above together with such form of intimation as the Board may require in relation to each opponent and either the address of each opponent or each opponent's solicitor or a statement that the whereabouts of the opponent are unknown following reasonable enquiry.

(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, itemising 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.—(1) Without prejudice to any right of a child to apply under regulation 5 above, application on behalf of a child may be made by any person having parental responsibilities in relation to the child 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.

⁽⁹⁾ Section 14 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Schedule 8, paragraph 36(4) and (5).

⁽¹⁰⁾ 1984 c. 36.

(2) An application by or on behalf of a child under the upper age limit of compulsory school age in terms of regulation 6(1) above shall be determined in terms of Part III below.

Notification to opponent

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

- (a) notification that application for legal aid has been made;
- (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 addresses of the opponent and his solicitor are not known to the Board 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 and resources of cohabittees

11.—(1) 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.

(2) A man and a woman who are not married to each other and who are living together in the same household as husband and wife shall be treated for the purposes of section 42 of the Act as if they were spouses of each other.

Deprivation or conversion of resources

12. If it appears to the Board that a person has, with intent to reduce his disposable income or disposable capital, whether for the purpose of making himself eligible for civil legal aid, reducing his liability to pay a contribution towards civil legal aid or otherwise—

- (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

13.—(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 in accordance with the law applicable at the time of the original determination and shall take into account—

- (a) any increase in the amount of his disposable income by an amount greater than £750;
- (b) any decrease in the amount of his disposable income by an amount greater than £300; and
- (c) any increase in the amount of his disposable capital by an amount greater than £750.

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

14.—(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

15. 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

16.—(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.

Contributions

17. Where the Board grants the application, it shall make determinations as to the amount of the contribution to the Fund which the applicant is required to pay under section 17(1) of the Act, as to whether the contribution is payable in one sum or by instalments, as to the amount or amounts of the instalments and as to the date or dates on which the contribution or the instalments are payable.

Legal aid in matters of special urgency

18.—(1) The Board may make legal aid available for specially urgent work undertaken before an application is determined, if it is satisfied that at the time such work was undertaken there was *probabilis causa litigandi* and it appears to the Board that it is reasonable in the particular circumstances of the case that the applicant should receive legal aid, in either of the following circumstances:—

- (a) where any step specified in paragraph (2) below has required to be taken as a matter of special urgency to protect the applicant's position; or

- (b) in any other circumstances where the Board is satisfied on application that steps require to be taken as a matter of special urgency to protect the applicant's position.
- (2) The steps referred to in paragraph (1)(a) above are—
- (a) such steps as may be appropriate to intimate an intention to oppose proceedings;
 - (b) such steps as may be appropriate to state the basis upon which proceedings are opposed;
 - (c) such steps as may be appropriate to reponer or otherwise recall a decree in absence;
 - (d) moving to sist further procedure or opposing the recall of a sist;
 - (e) moving to prorogate the time for compliance with any order or rule;
 - (f) moving or opposing a motion for discharge of any diet;
 - (g) moving for or opposing decree by default;
 - (h) moving for or opposing a motion for summary decree;
 - (i) initiating proceedings to avoid time-bar;
 - (j) moving for interim orders for custody or interdict or interim orders under section 11 of the 1995 Act including (where not already done) initiating or entering proceedings in which such orders may be sought;
 - (k) opposing interim orders of any kind;
 - (l) moving for or opposition to an exclusion order;
 - (m) moving for or opposition to an order for a power of arrest;
 - (n) opposing a motion for variation of an order relating to parental responsibilities or parental rights;
 - (o) opposing a freeing order for adoption or an application by a local authority to assume parental rights;
 - (p) obtaining reports on custody or access or on residence orders or contact orders within the meaning of section 11(2)(c) and (d) of the 1995 Act when the court so orders;
 - (q) appearing at a Child Welfare Hearing which has been fixed under rule 33.22A of the Ordinary Cause Rules 1993⁽¹¹⁾;
 - (r) obtaining warrant for inhibition on the dependence or arrestment on the dependence, including (where not already done) initiating proceedings containing an application for such warrant, and taking steps to have the warrant executed;
 - (s) initiating proceedings for suspension or suspension and interdict;
 - (t) initiating or opposing appellate proceedings other than such proceedings in the House of Lords;
 - (u) initiating such proceedings as are necessary to enable an application to be made for interim liberation in an immigration matter; and
 - (v) initiating an application to the Court of Session which is certified by the Secretary of State to be a Convention application as defined in regulation 46 below.
- (3) Where a solicitor undertakes work under paragraphs (1)(a) and (2) above, the solicitor shall, within 28 days of commencement of the work, both notify the Board of such commencement and, if an application for legal aid has not already been submitted, submit an application for legal aid; failure so to do shall exclude that work from any legal aid that may be made available.
- (4) Where the Board is satisfied in accordance with paragraph (1)(b) above that steps require to be taken as a matter of special urgency to protect the applicant's position—

⁽¹¹⁾ The Ordinary Cause Rules 1993 are contained in Schedule 1 to the Sheriff Courts (Scotland) Act 1907 (c. 51); Schedule 1 was substituted by S.I. 1993/1956 and relevantly amended by S.I. 1996/2167.

- (a) the Board shall so certify and may specify that the steps to be taken shall be limited to such work, or such purposes, or such period, or be subject to such conditions, all as it shall consider appropriate in the circumstances; and
- (b) the solicitor shall, if an application for legal aid has not already been submitted, submit an application for legal aid within 28 days of commencement of the urgent work; failure so to do shall exclude that work from any legal aid that may be made available.

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 and as to its determinations under regulation 17 above.

(3) Where the Board, in terms of regulation 29 below, suspends the availability of legal aid, it shall inform the assisted person and his solicitor of the grounds of such suspension.

(4) 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—

- (a) the Board has determined that the applicant has disposable income which makes him ineligible for legal aid;
- (b) the Board has determined that the applicant 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;
- (c) the proceedings to which the application relates are not proceedings for which legal aid may be given;
- (d) it appears to the Board by virtue of the provisions of regulation 14(2), regulation 15 or, as the case may be, regulation 16 above, that legal aid should not be granted;
- (e) the Board is not satisfied that he has *probabilis causa litigandi*;
- (f) 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 and prior approval of the Board in cases of work of an unusual nature or likely to involve unusually large expenditure

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;
- (d) for the employment of any expert witness; and
- (e) for work of an unusual nature or likely to involve unusually large expenditure.

(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 paragraphs (2), (3) and (4) 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 the service of a charge for payment where the same is required to enable an earnings arrestment to be carried out in execution of a decree or order specified in regulation 33(a)(i) to (iii) or of any settlement specified in regulation 33(a)(vi) below, where the service of such a charge is carried out within 12 months from the date of that decree, order or settlement.

(3) The prior approval of the Board shall not be required for any arrestment in execution of a decree or order specified in regulation 33(a)(i) to (iii) or of any settlement specified in regulation 33(a)(vi) below, where such arrestment is carried out within 12 months from the date of that decree, order or settlement.

(4) Paragraph (1) above shall not apply where the Board, on an application made to it for retrospective approval for a step in the execution of diligence, considers that approval would have been given if timeous application had been made and that there was special reason why prior approval was not applied for.

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.

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 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 at the time of submitting his account of fees and expenses.

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 in accordance with the law applicable at the time of the original determination which shall have effect for all purposes as if it were the original determination.

(2) If the Board is satisfied—

- (a) that the assisted person's disposable income has increased by an amount greater than £750 or decreased by an amount greater than £300; or
- (b) that his disposable capital has increased by an amount greater than £750,

it may redetermine his disposable income, disposable capital and maximum contribution in accordance with the law applicable at the time of the original determination, 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.

Power of Board to suspend availability of legal aid

29.—(1) The Board may suspend for a period of up to 90 days the availability of legal aid (and, in that event, must notify the assisted person in terms of regulation 19(3) above), where satisfied that—

- (a) the assisted person has without reasonable cause failed—
 - (i) to comply with any condition, whether a requirement of the grant of legal aid by virtue of section 14(2) of the Act and regulation 19(2) above, or whether modified or newly imposed in terms of said section and regulation 27 above, or
 - (ii) to pay by the due date any contribution, or any instalment thereof, required in terms of regulation 17 above;
- (b) it requires to consider whether in any case information which it has received regarding any of the grounds specified in regulations 30(b), 31 or 32 below merits termination of legal aid; or
- (c) the solicitor nominated to act for the assisted person has ceased so to act.

(2) At the end of said period the Board shall either make legal aid available again, or cease to make such legal aid available in terms of regulations 30 and 31 below.

Termination of legal aid on change of circumstances

30. 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

31. The Board may cease to make legal aid available to an assisted person if it appears to it that the assisted person—

- (a) has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund;
- (b) has failed to comply with any condition imposed under section 14(2) of the Act;
- (c) has failed without reasonable excuse to attend for an interview or to provide information or documents when so required under these Regulations; or
- (d) having been required in terms of regulation 17 above to make a contribution or instalment thereof, is more than one month in arrears in making any payment in respect of that contribution or instalment.

Termination of legal aid and right of Board to recover sums paid out of the Fund in cases of false information, etc.

32.—(1) This regulation applies where after giving a person an opportunity of submitting representations, the Board is satisfied that that person has—

- (a) 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;
- (b) wilfully failed to comply with these Regulations by not furnishing to the Board any material information concerning anything other than his resources; or
- (c) knowingly made an untrue statement in furnishing such information.

(2) The Board—

- (a) may cease to make legal aid available to that person in the matter or proceedings;
- (b) 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 solicitors and counsel less any amount received from him by way of contribution.

(3) The person—

- (a) shall be deemed, for the purposes of sections 18 and 19 of the Act⁽¹²⁾, never to have been an assisted person;
- (b) shall not be entitled to avail himself of the provisions of regulation 18 in respect of any later stages of the same proceedings in the same court or any court to which those proceedings may be remitted;
- (c) shall not be entitled to legal aid in relation to any later stages of the same proceedings in the same court or any court to which those proceedings may be remitted; and
- (d) shall not be entitled to legal aid in any appellate proceedings in relation to the same action, cause or matter, unless the Board considers that there is special reason to make legal aid available for such appellate proceedings.

⁽¹²⁾ Section 18 was amended by the Legal Aid Act 1988 (c. 34), Schedule 4, Part II, paragraph 7; section 19 was amended by the Legal Aid Act 1988, Schedule 4, Part II, paragraph 8.

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 him) 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**(13)**;
 - (ii) under an order for the payment of a periodical allowance under section 5 of the Divorce (Scotland) Act 1976**(14)**, 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**(15)**, the Maintenance Orders (Reciprocal Enforcement) Act 1972**(16)** or the Civil Jurisdiction and Judgments Act 1982**(17)**, 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 disability working allowance, income support or family credit under section 129**(18)**, 124**(19)** or 128**(20)** of the 1992 Act, or an income-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995**(21)** but excluding any sum treated as payable by way of a jobseeker's allowance by virtue of section 26 of that Act (“an income-based jobseeker's allowance”);
 - (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;
 - (viii) by way of any housing benefit under section 130 of the 1992 Act**(22)**;
 - (ix) by way of child support maintenance under the Child Support Act 1991**(23)**;
- (b) to the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of—

(13) 1985 c. 37.

(14) 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.

(15) 1950. c.37.

(16) 1972 c. 18.

(17) 1982 c. 27.

(18) Section 129 was amended by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 2, by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 10 and Schedule 1, paragraph 32 and by the Jobseekers Act 1995 (c. 18), Schedule 2, paragraph 33.

(19) Section 124 was amended and repealed in part by the Jobseekers Act 1995, Schedule 2, paragraph 30 and Schedule 3.

(20) Section 128 was amended by the Jobseekers Act 1995, Schedule 2, paragraph 33.

(21) 1995 c. 18.

(22) Section 130 was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 3 and by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 174(4).

(23) 1991 c. 48.

- (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(24); 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(25) recovered or preserved from the effects of a grant of warrant sale of poidned 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 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 he was an assisted person.

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

35. Subject to regulation 32 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

36. 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.

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.

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

(25) 1987 c. 18.

Recovery of expenses

- 39.**—(1) This regulation applies where—
- (a) any sum of money is recoverable under any award or agreement as to expenses in favour of any party in any proceedings in respect of which he 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⁽²⁶⁾.
- (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.

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 him in the proceedings—
- (a) the party and his 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 his 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;

⁽²⁶⁾ Subsection (2A) was inserted in section 17 by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, Schedule 8, paragraph 36(6).

- (iii) where the property consists of or includes corporeal movables, the Board may require the party, at his 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 his 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 movables, 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 movables remaining in the possession of the Board to the party or to the person otherwise entitled thereto;
 - (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(27)) 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 him, there are any surplus monies or corporeal movables 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 movables to any such solicitor who has notified the Board as mentioned in paragraph (1) above.

PART VIII

PARTICULAR COURTS, TRIBUNALS AND PROCEEDINGS

Appeals to the House of Lords

- 43.** Where an application for legal aid relates to an appeal to the House of Lords—
- (a) 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; and
 - (b) 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(**28**).

(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 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 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⁽²⁹⁾;
- (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.

(2) Sections 14, 15 and 17 of the Act and regulations 5 and 7 above shall be modified to the extent provided in the following sub-paragraphs in the case of a person resident outside the United Kingdom who applies for legal aid for the purpose of pursuing by way of proceedings at first instance in the Court of Session an application which is certified by the Secretary of State to be a Convention application, namely—

- (a) section 14 shall be modified so as to provide that legal aid shall be available to such person on an application to the Board without the Board requiring to be satisfied that he has *probabilis causa litigandi* or to consider whether it is reasonable in the particular circumstances of the case that he should receive legal aid;
- (b) section 15 shall be modified so as to provide that such person shall be eligible for legal aid without regard to his income or capital;
- (c) section 17 shall be modified so as to provide that such person shall not require to pay any contribution to the Fund in respect of income or capital nor shall he require, where there is a net liability to the Fund on his account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for him;
- (d) regulation 5 above shall be modified so as to provide that such application for legal aid—

(29) 1985 c. 60.

- (i) may be signed by either the applicant or his solicitor and where it is signed by the applicant such signature shall not be subject to any additional formal requirement, and
- (ii) requires to be accompanied only by—
 - (aa) a statement signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and
 - (bb) a certificate of the Secretary of State that the application for legal aid relates to a Convention application; and
- (e) regulation 7(2) shall be modified so as to provide that paragraph (1) of that regulation shall not apply in the case of such application for legal aid.

(3) Sections 15 and 17 of the Act and regulation 5 above shall be modified to the extent provided in the following sub-paragraphs in the case of a person resident outside the United Kingdom who applies for legal aid for the purposes of an appeal whether to the Inner House of the Court of Session or to the House of Lords in relation to a Convention application, namely—

- (a) section 15 shall be modified so as to provide that such person shall be eligible for legal aid without regard to his income or capital;
- (b) section 17 shall be modified so as to provide that such person shall not require to pay any contribution to the Fund in respect of income or capital nor shall he require, where there is a net liability to the Fund on his account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for him; and
- (c) regulation 5 above shall be modified so as to provide that the application for legal aid—
 - (i) may be signed by either the applicant or his solicitor and where it is signed by the applicant such signature shall not be subject to any additional formal requirement; and
 - (ii) subject to paragraph (4), requires to be accompanied only by—
 - (aa) a statement signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and
 - (bb) a copy for each opponent of the statement.

(4) Where a person resident outside the United Kingdom applies for legal aid for the purposes of an appeal as mentioned in paragraph (3) and has not applied for legal aid in relation to an earlier stage of the proceedings, the application for legal aid for the purposes of such appeal shall be accompanied, in addition to the documents specified in paragraph (3)(c)(ii), by a certificate of the Secretary of State that the application 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⁽³⁰⁾ for the registration for enforcement of a judgment other than a maintenance order; and
- (b) 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.

(30) 1982 c. 27.

- (2) In the case of an application to which this regulation applies—
- (a) section 15 of the Act shall be modified so as to provide that a person making such application shall be eligible for legal aid without regard to his income or capital;
 - (b) section 17 of the Act shall be modified so as to provide that a person making such application shall not require to pay any contribution to the Fund in respect of income or capital nor shall he require, where there is a net liability to the Fund on his account, to pay the amount of that liability to the Board out of any property which is recovered or preserved for him;
 - (c) regulation 5 above shall be modified so as to provide that the application for legal aid—
 - (i) may be signed by either the applicant or his solicitor and where it is signed by the applicant such signature shall not be subject to any additional formal requirements; and
 - (ii) requires to be accompanied by a statement signed by the solicitor explaining the nature of the case and the interest of the applicant therein; and
 - (d) regulation 7(2) above shall be modified so as to provide that paragraph (1) of that regulation shall not apply in the case of an application for legal aid to which this regulation applies.

St Andrew's House,
Edinburgh
12th September 1996

Lindsay
Parliamentary Under Secretary of State, Scottish
Office

We concur,

19th September 1996

Kenneth Clarke
Patrick McLoughlin
Two of the Lords Commissioners of Her
Majesty's Treasury

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

SCHEDULE 1

Regulation 3

REGULATIONS REVOKED

Title	Reference
The Civil Legal Aid (Scotland) Regulations 1987	S.I.1987/381
The Civil Legal Aid (Scotland) Amendment Regulations 1987	S.I. 1987/431
The Civil Legal Aid (Scotland) Amendment Regulations 1988	S.I. 1988/490
The Civil Legal Aid (Scotland) Amendment (No.2) Regulations 1988	S.I. 1988/1171
The Civil Legal Aid (Scotland) Amendment (No.3) Regulations 1988	S.I. 1988/1891
The Civil Legal Aid (Scotland) Amendment Regulations 1989	S.I. 1989/505
The Civil Legal Aid (Scotland) Amendment Regulations 1990	S.I. 1990/631
The Civil Legal Aid (Scotland) Amendment Regulations 1991	S.I. 1991/745
The Civil Legal Aid (Scotland) Amendment (No.2) Regulations 1991	S.I. 1991/1904
The Civil Legal Aid (Scotland) Amendment Regulations 1992	S.I. 1992/753
The Civil Legal Aid (Scotland) Amendment Regulations 1993	S.I. 1993/535
The Civil Legal Aid (Scotland) Amendment (No.2) Regulations 1993	S.I. 1993/818
The Civil Legal Aid (Scotland) Amendment Regulations 1994	S.I. 1994/1049
The Civil Legal Aid (Scotland) Amendment Regulations 1995	S.I. 1995/1065
The Civil Legal Aid (Scotland) Amendment Regulations 1996	S.I. 1996/812

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 sub-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(1) 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. In computing the disposable income of the person concerned, there shall be disregarded—

- (a) income support paid under section 124 of the 1992 Act;
- (b) an income-based jobseeker's allowance;
- (c) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of a jobseeker's allowance;
- (d) any payment made by the Secretary of State under the Earnings Top-up Scheme 1996⁽³¹⁾.

6. 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.

7. There shall be disregarded—

- (a) disability living allowance paid under section 71 of the 1992 Act;
- (b) constant attendance allowance paid as an increase to a disablement pension under section 104 of the 1992 Act;
- (c) any sums paid to a person as holder of the Victoria Cross or the George Cross;
- (d) any payment made out of the social fund under section 138 of the 1992 Act.

8. 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;

⁽³¹⁾ This Scheme, which applies only in certain areas of Great Britain, is an extra statutory Scheme introduced by the Secretary of State for Social Security having effect on 8th October 1996. Copies of the rules of the Scheme may be obtained from the Customer Service's Manager, Earnings Top-up, Norcross, Blackpool, FY5 3TA and will be available for inspection at the Department of Social Security, 9th Floor, Adelphi, 1-11 John Adam Street, London, WC2N 6HD and Offices of the Benefits Agency and Employment Job Centres which serve the areas specified in Schedule 1 to the Scheme.

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- (b) the amount of any payments reasonably made for membership of a trade union or professional organisation;
- (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 or to a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993⁽³²⁾.

9. There shall be a deduction in respect of contributions payable by the person concerned (whether by deduction or otherwise) under the 1992 Act of the amount estimated to be so payable in the 12 months following the application.

10. There shall be a deduction in respect of the amounts payable or estimated to be payable in the 12 months following the application by the person concerned in respect of—

- (a) the council tax and the rate as defined in section 99(1) and (2)(a) of the Local Government Finance Act 1992⁽³³⁾; and
- (b) charges payable under an order made by virtue of section 79 of the Local Government etc. (Scotland) Act 1994⁽³⁴⁾.

11.—(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, 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⁽³⁵⁾) 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.

12. 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.

13.—(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

⁽³²⁾ 1993 c. 48.

⁽³³⁾ 1992 c. 14.

⁽³⁴⁾ 1994 c. 39.

⁽³⁵⁾ 1970 c. 35.

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 the difference, as at the date when the computation period began, between the income support allowance for a couple where both members are aged not less than 18 (which is specified in column 2 of paragraph 1(3)(c) of Part I of Schedule 2 to the Income Support (General) Regulations 1987(36)), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of Part I of Schedule 2 to those Regulations(37));
- (b) in the case of a dependent child or a dependent relative, at a rate equivalent to the amount specified in paragraph 2 of Part I of Schedule 2 to the Income Support (General) Regulations 1987(38) appropriate to the age of the child or relative at the date when the computation period began:

Provided that the Board may reduce such rate by taking into account the income and other resources of the dependent child or other dependent 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.

14. 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.

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

16. 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

(36) S.I. 1987/1967; paragraph 1(3) was substituted by S.I. 1996/206.

(37) The allowance specified was amended by S.I. 1995/559.

(38) The amount specified was amended by S.I. 1995/559.

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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.

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 where that person is in receipt of income support under section 124 of the 1992 Act, there shall be disregarded any amount which exceeds the sum for the time being specified as the disposable capital limit under section 17(2)(b) of the Act.

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

- (a) any payment which is made out of the social fund under section 138 of the 1992 Act;
- (b) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of a jobseeker's allowance.

9. 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.

10.—(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.

11. 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.

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12. 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.

13. 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.

14. 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.

15.—(1) Where the person concerned is of pensionable age and his annual disposable income (excluding any net income derived from capital) is less than the figure prescribed in section 17(2) (a) of the Act there shall be disregarded the amount of capital as specified in the following table:—

Annual disposable income (excluding net income derived from capital)	Amount of capital disregarded
Up to £350	£35,000
£ 351 — £ 800	£30,000
£ 801 — £1,200	£25,000
£1,201 — £1,600	£20,000
£1,601 — £2,050	£15,000
£2,051 — £2,450	£10,000
£2,451 and above	£ 5,000

(2) In this Schedule “pensionable age” means—

- (a) in the case of a man, the age of 65; and
- (b) in the case of a woman, the age of 60.

16. In computing the amount of capital of the person concerned there shall be wholly disregarded any capital payment received from any source which is made in relation to the subject matter of the dispute in respect of which the application for legal aid has been made.

17. 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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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate with amendments and revoke the Civil Legal Aid (Scotland) Regulations 1987 and the Regulations amending those Regulations.

The main amendments are as follows:–

- (a) in consequence of the Children (Scotland) Act 1995 (“the 1995 Act”)–
 - (i) the definition of “legal representative” has been amended to include a person having parental responsibilities in relation to a child (regulation 2(1));
 - (ii) in regulation 6(1) the previous reference to “parent or guardian” has been substituted to allow an application for advice and assistance to be made on behalf of a child by any person having parental responsibilities in relation to the child;
 - (iii) provision is made for legal aid to be made available for urgent work in relation to various orders under section 11 of the 1995 Act and for Child Welfare Hearings under the Ordinary Cause Rules 1993 (regulation 18(2)(j), (n), (p) and (q));
- (b) income-based jobseeker’s allowance has been included as one of the specified exceptions to the right to prior payment out of property recovered or preserved (regulation 33(a)(v));
- (c) income-based jobseeker’s allowance, a back to work bonus treated as payable by way of a jobseeker’s allowance and any payment made under the Earnings Top-up Scheme are excluded from the computation of income (paragraph 5 of Schedule 2); and
- (d) any back to work bonus treated as payable by way of a jobseeker’s allowance is excluded from the computation of capital (paragraph 8(b) of Schedule 3).