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STATUTORY INSTRUMENTS

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**1996 No. 2444**

**The Civil Legal Aid (Scotland) Regulations 1996**

**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<sup>(1)</sup>.

(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

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(1) S.I.1976/1897.

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(2);
- (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;

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(2) 1985 c. 60.

- (d) regulation 5 above shall be modified so as to provide that such 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) 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(3) 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.
- (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.