1988 No. 1171 (S.119)

LEGAL AID AND ADVICE, SCOTLAND

The Civil Legal Aid (Scotland) Amendment (No.2) Regulations 1988

Made - - - -	*6th July 1988*
Laid before Parliament	*11th July 1988*
Coming into force	*1st August 1988*

The Secretary of State, in exercise of the powers conferred on him by sections 17(5), 36 and 37(1) of the Legal Aid (Scotland) Act 1986(**a**) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment (No.2) Regulations 1988 and shall come into force on 1st August 1988.

Interpretation

2. In these Regulations, "the principal Regulations" means the Civil Legal Aid (Scotland) Regulations 1987(**b**).

New definition

3. In regulation 3 of the principal Regulations, there shall be inserted after the definition of "legal aid" the following definition:–

""legal representative" means curator bonis, tutor, judicial factor or guardian;".

Form of application

4.—(1) In regulation 5 of the principal Regulations there shall be inserted–

(a) at the end of regulation 5(1)(a) ", 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(**c**), by the applicant's legal representative"; and

(b) in regulation 5(1)(b), after the word "applicant" where it first appears, ", 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, ".

(2) Regulation 5(1)(d) of the principal Regulations shall be deleted and the following sub-paragraph substituted:–

"(d) accompanied by a copy for each opponent of the statement referred to in sub-paragraph (b) above embodied in such form of intimation as the Board may require together with either the address of each opponent or each opponent's solicitor or

(**a**) 1986 c.47.
(**b**) S.I. 1987/381, as amended by S.I. 1987/431 and 1988/490.
(**c**) 1984 c.36.

a statement that the whereabouts of the opponent are unknown following reasonable enquiry.".

(3) In regulation 5(2) of the principal Regulations the words "signed by some responsible person who has knowledge of the facts, certifying that part of the application which relates to " shall be deleted, and there shall be substituted the word "itemising".

Notification to opponent

5. In regulation 7 of the principal Regulations:–

(a) in paragraph (1) the words "the solicitor acting for the applicant" shall be deleted, and the words "the Board" shall be substituted;

(b) for paragraph (1)(a) there shall be substituted the following:–

"(a) notification that application for legal aid has been made;"; and

(c) in paragraph (2)(a) after the words "known to" there shall be inserted the words "the Board".

Legal aid for urgent steps in proceedings

6. Regulations 18 and 18A of the principal Regulations shall be deleted, and in their place there shall be inserted the following regulation:–

"Legal aid in specified proceedings or matters of special urgency

18.—(1) Legal aid made available may include any work undertaken before an application is determined in either of the following circumstances:–

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

(b) in any other circumstances where the Board is satisfied on application that special urgency exists.

(2) The steps to which paragraph (1) above applies are–

(a) entering appearance, lodging notice of intention to defend or appear, or reponing;

(b) moving that the action be sisted to enable an application for legal aid to be determined by the Board;

(c) where the court requires it, lodging defences;

(d) opposing a motion to recall a sist;

(e) opposing interim orders of any kind;

(f) obtaining reports on custody or access when ordered by the Court;

(g) opposing a freeing order for adoption or an application by a local authority to assume parental rights;

(h) lodging a minute for an award of aliment, periodical allowance or capital payment in any action of divorce or separation and aliment;

(i) raising and sisting an action about to be time barred;

(j) raising an action containing a conclusion or crave for interim interdict or interim custody, moving for same and sisting the cause;

(k) moving for or opposing a motion to discharge a diet of proof;

(l) initiating proceedings for inhibition on the dependence;

(m) suspension and interdict;

(n) initiating or opposing appellate proceedings; and

(o) where the court requires it, lodging answers when convened as third party or additional defender.

(3) Where a solicitor undertakes work under paragraphs (1)(a) and (2) above, the solicitor shall both notify the Board and submit an application for legal aid within 14 days; failure so to do shall exclude that work from any legal aid that may be awarded.

(4) Where the Board certifies that work under paragraph (1)(b) above may be included in any legal aid that may be awarded the Board shall -

(a) specify that it is available only for such limited purposes, or such limited period, or both, as it shall consider appropriate in the circumstances;

(b) require the applicant as soon as practicable to satisfy it that the requirements of section 14(1) of the Act are fulfilled, that the applicant's disposable income is such that the applicant is eligible for legal aid, and that the applicant should not be refused legal aid by virtue of section 15(2) of the Act; and

(c) if the applicant does not satisfy the Board, cease to make legal aid available to that applicant.".

Notification of decision

7.—(1) After regulation 19(2) of the principal Regulations there shall be inserted the following paragraph:–

"(2A) Where the Board, in terms of regulation 28A below, suspends the availability of legal aid, it shall inform the assisted person and his solicitor of the grounds of such suspension.".

(2) In regulation 19(3)(ii) of the principal Regulations the word "application" shall be deleted and there shall be substituted the word "applicant".

Execution of diligence

8. In regulation 22(2) of the principal Regulations the words "18 months" shall be deleted, and the words "12 months" shall be inserted.

Duty to report completion of proceedings

9. In regulation 26 of the principal Regulations the words "within one month" shall be deleted and there shall be inserted after the words "assisted person", where they second appear, the words "at the time of submitting his account of fees and expenses."

Power of Board to suspend the availability of legal aid

10. After regulation 28 of the principal Regulations there shall be inserted the following:–

"**Power of Board to suspend availability of legal aid**

28A.—(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(2A) 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 required in terms of section 17(3) of the Act; or

(b) it requires to consider whether in any case information which it has received regarding any of the grounds specified in regulations 29(b) or 30 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 29 and 30 below.".

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

11. In regulation 31 of the principal Regulations the words "18(2)(c) above, regulation 29(a) above" shall be deleted, and there shall be substituted the words "18(4)(c) above".

Payments out of property recovered or preserved

12.—(1) In regulation 32(a)(vi) after the words "or periodical allowance" there shall be inserted the words "or periodical payment of sums".

(2) After regulation 32(a)(vii) of the principal Regulations, there shall be inserted the following:–

"(viii) by way of any housing benefit under the Social Security Act 1986(a);".

Recovery of sums due to the Fund

13. In regulation 39(3)(a) of the principal Regulations there shall be inserted after the words " assisted person" where they occur for the third time the following:–

"and, in a case where the person paying the money makes the payment to the assisted person's solicitor, the Board, without prejudice to any right of recovery it may have against the person who has paid such sum, shall be entitled to deduct an amount equal to said sum so paid from any sum due from the Fund to the assisted person's solicitor".

Right of Board to security over heritable property

14. In regulation 40(1)(b) of the principal Regulations:–

(a) at the beginning the words "either (i)" shall be inserted; and

(b) at the end there shall be inserted "or

(ii) any sum recovered or preserved is used to purchase an interest in land (as defined in (b)(i) above) comprising heritable property for use as the assisted person's principal private dwellinghouse,".

Interest on sums outstanding

15. In regulation 41 of the principal Regulations–

(a) paragraph (1) shall be deleted;

(b) the words "(other than a sum to which paragraph (1) above applies)" in paragraph (2) shall be deleted;

(c) in paragraph (3), for the words "paragraphs (1) and (2)", there shall be substituted the words "paragraph (2)".

James Douglas-Hamilton
Parliamentary Under Secretary of State,
Scottish Office

St Andrew's House, Edinburgh
6th July 1988

(a) 1986 c.50.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the provisions of the Civil Legal Aid (Scotland) Regulations 1987 in the following respects.

They provide that–

(a) legal aid applications are in all cases signed by a specified person (regulation 4);

(b) non UK applicants are treated in the same way as UK applicants in respect of disposable income and disposable capital (regulation 4);

(c) the Board, not the solicitor for the applicant, takes certain steps in notification (regulation 5);

(d) in relation to any proceedings, legal aid may be made available in relation to further specified steps (regulation 6);

(e) suspension of legal aid is available to the Board in specified circumstances, and that notification thereof shall be given by the Board (regulations 7 and 10);

(f) diligence may only be carried out without the prior approval of the Board if done within twelve months of the date of the decree or order giving rise to the diligence (regulation 8);

(g) the time limit governing the duty to report the completion of proceedings is extended to avoid unnecessary administration (regulation 9);

(h) termination of legal aid in certain specified cases no longer leads to consequential financial penalty (regulation 11);

(i) account is taken of housing benefit under the Social Security Act 1986 (regulation 12);

(j) the Board may by internal set off account for sums due to the Board but paid to the assisted person's solicitor (regulation 13);

(k) certain amendments are made relative to extension of the Board's right to security over heritable property in certain circumstances (regulation 14); and

(l) the Board may no longer impose interest on an assisted person's unpaid contribution (regulation 15).