Draft Regulations laid before the Scottish Parliament under section 37(2) of the Legal Aid (Scotland) Act 1986 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2026 No.

LEGAL AID AND ADVICE

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026

Made - - - -	*2026*
Coming into force - -	*1st June 2026*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9, 12(3), 36(2)(b) and 42 of the Legal Aid (Scotland) Act 1986(**a**) and all other powers enabling them to do so.

In accordance with section 37(2) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament(**b**).

Citation and commencement

1. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 and come into force on 1 June 2026.

Application

2. Regulations 3 and 6 apply only in relation to a case where the advice and assistance or assistance by way of representation was made available on or after 1 June 2026.

Amendment of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993

3.—(1) The Advice and Assistance (Financial Limit) (Scotland) Regulations 1993(**c**) are amended as follows.

(2) In regulation 2 (interpretation), after the definition of "the Act" insert—

(**a**) 1986 c. 47 ("the Act"). The functions of the Secretary of State under the Act were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). Section 9 was amended by section 32 of the Access to Justice Act 1999 (c. 22) and sections 18(1) and 23(5) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3) ("the 2013 Act"). Section 12(3) was amended by section 62(1) and paragraph 12(4)(b) of schedule 1 of the Crime and Punishment (Scotland) Act 1997 (c. 48), section 23(7)(a) of the 2013 Act and section 67(5) of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5). Section 36(2)(b) was amended by paragraph 6 of schedule 4 of the Legal Aid Act 1988 (c. 34) and section 23(9) of the 2013 Act. Section 42 was amended by paragraph 1(9) of schedule 5 of the Children's Hearings (Scotland) Act 2011 (asp 1).

(**b**) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(**c**) S.I. 1993/3187. Regulation 3 was substituted by S.S.I. 2007/248; paragraph (b)(iii) was revoked by S.S.I. 2008/251 and paragraph (c)(xvii) was inserted by S.S.I. 2021/368 and amended by S.S.I. 2023/313.

""the 2011 Act" means the Children's Hearings (Scotland) Act 2011;

"children's matter" means any matter relating to proceedings under the 2011 Act;".

(3) In regulation 3 (financial limit)—

(a) in paragraph (b)—

(i) in sub-paragraph (i), omit "a children's matter,"

(ii) after sub-paragraph (ii), insert—

"(iv) where the advice and assistance relates to a children's matter, the sum of £135;

(v) where the assistance by way of representation relates to a children's matter, the sum of £550;",

(b) in paragraph (c)(xvii), for "£500" substitute "£550".

Amendment of the Advice and Assistance (Scotland) Regulations 1996

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

(2) In regulation 2(1) (interpretation), after the definition of "auditor" insert—

""care leaver payment" means care experience assistance paid by virtue of regulations made under section 93A(1) of the Social Security (Scotland) Act 2018(**b**),".

(3) In regulation 16(2) (payment of fees and outlays from property recovered or preserved), after sub-paragraph (cf) insert—

"(cg) to a care leaver payment;".

(4) In paragraph 5(d) of schedule 2 (assessment of disposable capital and disposable income), after head (azi) insert—

"(azj) care leaver payment;".

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

5.—(1) The Civil Legal Aid (Scotland) Regulations 2002(**c**) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of "assisted person" insert—

""care leaver payment" means care experience assistance paid by virtue of regulations made under section 93A(1) of the Social Security (Scotland) Act 2018;".

(3) In regulation 33(a) (payments out of property recovered or preserved: exceptions)—

(i) in sub-paragraphs (xxxii) and (xxxiii), for "2024" substitute "2025",

(ii) after sub-paragraph (xxxiii) insert—

"(xxxiv) by way of a care leaver payment.".

(4) In paragraph 7 of schedule 2 (rules for computing disposable income)—

(i) omit—

"(p) any carer's allowance supplement paid under section 81 of the Social Security (Scotland) Act 2018;

(q) any payment made by way of an allowance known as a care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022;",

(ii) after sub-paragraph (u) insert—

(**a**) S.I. 1996/2447, relevantly amended by S.S.I. 2024/311 and S.S.I. 2003/163. Paragraph 5(d) of schedule 2 was inserted by S.S.I. 2003/163.

(**b**) 2018 asp 9. Section 93(A) was inserted by the Social Security (Amendment) (Scotland) Act 2025 (asp 2).

(**c**) S.S.I. 2002/494, relevantly amended by S.S.I. 2024/178, S.S.I. 2024/216 and S.S.I. 2024/311. Sub-paragraphs (xxxii) and (xxxiii) of regulation 33(a) inserted by S.S.I. 2024/311.

"(v) any carer's allowance supplement paid under section 81 of the Social Security (Scotland) Act 2018;

(w) any payment made by way of an allowance known as a care experienced students bursary paid under regulation 3(1) of the Student Support (Scotland) Regulations 2022;

(x) any care leaver payment.".

(5) In paragraph 8 of schedule 3 (rules for computing disposable capital), after sub-paragraph (q) insert—

"(r) any care leaver payment.".

Amendment of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003

6.—(1) The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003(**a**) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation), for the definition of "child" substitute—

""child" means a person who is under the age of 18;".

(3) In regulation 3A (assistance by way of representation for hearings or proceedings under the Children's Hearings (Scotland) Act 2011 and proceedings under the Age of Criminal Responsibility (Scotland) Act 2019)—

(a) in paragraph (2)—

(i) for "paragraphs (1)(a)(i) and (iv)" substitute "paragraph 1",

(ii) after "(availability of advice and assistance)" insert "where the applicant is a child",

(b) at the start of paragraph (3) insert "Except where the applicant is a child, ",

(c) after paragraph (3) insert—

"(4) Where a solicitor approves an application by a client to provide them with assistance by way of representation in accordance with this regulation in relation to one or more of the proceedings under the 2011 Act listed in paragraph (5), subject to paragraph (6) they may by virtue of that approval provide such assistance to that client also in relation to any of the other proceedings listed in that paragraph without requiring the client to make any further application.

(5) The proceedings under the 2011 Act for the purposes of paragraph (4) are—

(a) an application for a child protection order made under section 38 (consideration by sheriff: application by local authority only) or section 39 (consideration by sheriff: application by local authority or other person),

(b) a children's hearing arranged by virtue of section 45 (review by children's hearing where child in place of safety) or of section 46 (review by children's hearing where order prevents removal of child),

(c) an application under section 48 (application for variation or termination),

(d) a children's hearing arranged under section 69(2) (determination under section 66: referral to children's hearing) following receipt by the Reporter of a notice under section 43 (notice of child protection order) where that hearing is to be held no later than either 8 working days from the date the child was removed to a place of safety or from the date the order was made.

(**a**) S.S.I. 2003/179. Definition of "child" in regulation 1, regulation 3A and regulation 13(3A) inserted by S.S.I. 2013/200. Regulation 13(1) also relevantly amended by S.S.I. 2023/11.

(6) The assistance by way of representation mentioned in paragraph (4) may be provided until a determination is made as to the making of a compulsory supervision order in respect of any of the proceedings listed in paragraph (5).".

(4) In regulation 13 (assistance by way of representation requiring approval of the Board)—

(a) in paragraph (1)—

(i) at the start insert "Subject to paragraph (1A), ",

(ii) after "3A(1)" omit "(a)(ii), (iii), (iiia) and (iiib),",

(b) after paragraph (1) insert—

"(1A) Paragraph (1) does not apply in relation to proceedings under regulation 3A where the applicant is a child.",

(c) in paragraph (3A)—

(i) at the start insert "Except where the applicant is a child, ",

(ii) after "3A(1)" omit "(a)(ii), (iii), (iiia) and (iiib),",

(iii) after "required to allow" omit "the child,".

Amendment of the Children's Legal Assistance (Scotland) Regulations 2013

7.—(1) The Children's Legal Assistance (Scotland) Regulations 2013(**a**) are amended as follows.

(2) In regulation 2(1) (interpretation) after the definition of "assisted person" insert—

""care leaver payment" means care experience assistance paid by virtue of regulations made under section 93A(1) of the Social Security (Scotland) Act 2018;".

(3) In paragraph 5 of schedule 1 (assessment of disposable income for the purposes of children's legal aid), after sub-paragraph (w) insert—

"(x) any care leaver payment.".

(4) In paragraph 8 of schedule 2 (assessment of disposable capital for the purposes of children's legal aid), after sub-paragraph (q) insert—

"(r) any care leaver payment.".

Name
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

(**a**) S.S.I. 2013/200, relevantly amended by S.S.I. 2024/216.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulations made under the Legal Aid (Scotland) Act 1986. They remove financial eligibility and merits assessments for any child accessing assistance by way of representation ("ABWOR") in relation to proceedings under the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"), provide that such assistance may cover a range of matters by way of a single application and raise the initial expenditure limit so that more work may be done on such cases before the approval of the Scottish Legal Aid Board ("SLAB") is required. They also amend regulations so that care experience assistance paid by virtue of regulations made under section 93A(1) of the Social Security (Scotland) Act 2018 ("a care leaver payment") is to be disregarded by SLAB in the assessment and computation of that person's disposable capital and income.

Regulation 3 increases the initial expenditure limit for ABWOR provided to a child in relation to proceedings under the 2011 Act.

Regulation 4 amends the Advice and Assistance (Scotland) Regulations 1996 to disregard a care leaver payment for the purposes of advice and assistance. It also excludes such a payment from bearing fees and outlays when forming part of any recovered or preserved property in proceedings.

Regulation 5 amends the Civil Legal Aid (Scotland) Regulations 2002 to make equivalent provision for the purposes of civil legal aid.

Regulation 6 amends the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 to provide that references in those regulations to a child are to a person under 18 years of age and that where ABWOR is provided to a child for any one of specified proceedings under the 2011 Act it may also be provided for any of the other specified proceedings. Regulation 6 also removes the requirements for a merits assessment and the approval of SLAB in respect of ABWOR provided to a child in relation to proceedings under the 2011 Act.

Regulation 7 amends the Children's Legal Assistance (Scotland) Regulations 2013 to disregard a care leaver payment for the purposes of children's legal aid.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

£6.40

http://www.legislation.gov.uk/id/sdsi/2026/9780111064658

ISBN 978-0-11-106465-8

