1987 No. 384 (S. 34)

LEGAL AID AND ADVICE, SCOTLAND

The Legal Aid (Scotland) (Children) Regulations 1987

Made - - - -	*7th March 1987*
Laid before Parliament	*11th March 1987*
Coming into force	*1st April 1987*

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The Secretary of State, in exercise of the powers conferred upon him by section 36 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 Legal Aid (Scotland) (Children) Regulations 1987 and shall come into force on 1st April 1987.

Interpretation

2. In these Regulations, unless the context otherwise requires–

"the Act" means the Legal Aid (Scotland) Act 1986;

"the 1968 Act" means the Social Work (Scotland) Act 1968(b);

"assisted person" means a person who has been granted legal aid under section 29 of the Act;

(a) 1986 c.47.
(b) 1968 c.49.

"child" means a child as defined in section 30(1) of the 1968 Act(**a**);

"legal aid" means legal aid under section 29 of the Act;

"parent" means a parent as defined in section 94(1)(**b**) as read with section 30(2) of the 1968 Act.

Distinct proceedings

3. For the purpose of legal aid under section 29 of the Act the following shall be treated as distinct proceedings:–

(a) an application to the sheriff for a finding under section 42 of the 1968 Act;

(b) an appeal to the sheriff under section 49 of the 1968 Act against a decision of a children's hearing to grant a warrant for the detention of a child;

(c) an appeal to the sheriff under section 49 of the 1968 Act against a decision of a children's hearing, other than an appeal to which paragraph (b) above applies;

(d) an appeal to the sheriff under section 51 of the 1968 Act;

(e) an appeal to the Court of Session under section 50 of the 1968 Act (including proceedings following a remit to the sheriff under subsection (3) of that section, which proceedings shall accordingly not be treated as distinct proceedings).

Applications to the sheriff for legal aid

4.—(1) An application for legal aid under section 29(2)(a)(i) of the Act may be made orally or otherwise to the sheriff.

(2) An application for legal aid under section 29(2)(a)(ii) or (2)(b) of the Act shall be in such form, being in writing, as the sheriff may require.

Applications to the Board for legal aid

5.—(1) An application for legal aid under section 29(2)(c) of the Act shall–

(a) be in writing in such form as the Board may require and be signed by the applicant;

(b) include a statement signed by or on behalf of the solicitor nominated by the applicant as to his willingness to act for the applicant; and

(c) include, where the solicitor nominated by the applicant is of the opinion that in all the circumstances there are substantial grounds for making or responding to the appeal, a statement as to the nature of these grounds.

(2) Without prejudice to the right of a minor to apply under paragraph (1) of this regulation, application on behalf of a child may be made by his parent or guardian or by any person in whose care he is, by a person acting for the purpose of any proceedings as his tutor or curator, or by a person appointed by the sheriff under section 34A of the 1968 Act(**c**) to act for the purpose of safe-guarding the interests of the child.

Attendance for interview and supply of information to the Board

6. An applicant for legal aid under section 29(2)(c) of the Act (including, where the applicant is a child, his parents) shall, if required by the Board to do so, attend for interview by a representative of the Board or supply such further information and such documents as the Board may require to enable it to determine the application.

Provision as to applicant having rights and facilities in relation to proceedings

7.—(1) Where it appears to the sheriff or, as the case may be, to the Board that an applicant for legal aid under section 29 of the Act (other than legal aid under subsection (2)(a)(i) of that section) has available to him rights and facilities making it unnecessary for him to obtain legal aid, or has a reasonable expectation of receiving financial or other help from a body of which he or (if a child) his parent is a member, the sheriff or the Board shall not, unless he, or as the case may be, it, is satisfied that there are special reasons for doing so, make legal aid available.

(**a**) Section 30(1) was amended by the Education (Scotland) Act 1969 (c.49), Schedule 2, Part II, paragraph 5.
(**b**) The definition of "parent" in section 94(1) was amended by the Children Act 1975 (c.72), Schedule 4, Part I.
(**c**) Section 34A was inserted by section 66 of the Children Act 1975 (c.72).

(2) The sheriff or the Board, before making legal aid available to a person who is a member, or (if a child) whose parent is a member, of a body which might reasonably have been expected to give financial help towards the cost of the proceedings, shall require him or, as the case may be, his parent to undertake in writing to pay to the Board any sum received from that body on account of the expenses of the proceedings.

Matters of special urgency

8.—(1) Where an applicant seeks legal aid under section 29(2)(c) of the Act on a matter of special urgency, the Board may, if it thinks fit, make legal aid available to him notwithstanding that it has not been satisfied as to the matters specified in subsection 29(5) of the Act.

(2) Where legal aid is made available under paragraph (1) above, the Board shall–

(a) specify that it is available only for such limited purposes as the Board thinks appropriate in the circumstances;

(b) require the applicant as soon as practicable to satisfy it that the requirements of section 29(5) of the Act are met;

(c) in the case of the applicant not so satisfying it, cease to make legal aid available to him.

Notification of decision

9. The Board shall inform an applicant for legal aid, and the solicitor nominated by him, of its decision in regard to the application.

Employment of counsel and expert witnesses

10.—(1) Subject to paragraph (2) below, the prior approval of the Board shall be required–

(a) where the proceedings are in the Court of Session, for the employment of senior counsel or of more than one junior counsel;

(b) where the proceedings are in the sheriff court, for the employment of counsel;

(c) for the employment of an expert witness.

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

Duty of Board to cease to make legal aid available and right to recover sums paid out of the Fund

11.—(1) The Board shall cease to make legal aid available under section 29(2)(c) of the Act if it is satisfied that the assisted person has wilfully failed to comply with the provisions 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.

(2) Where the Board, in accordance with paragraph (1) above, ceases to make legal aid available–

(a) the Board shall have the right to recover from that person the amount paid out of the Fund in respect of the fees and outlays of his solicitor and counsel; and

(b) the solicitor who acted for the assisted person shall have the right to receive from him the difference between the amount payable out of the Fund and the full amount which would be payable to him on a solicitor and client basis in respect of fees and outlays.

Revocation

12. Without prejudice to their continuation in effect for certain purposes by virtue of paragraph 3 of Schedule 4 to the Act, the Legal Aid (Scotland) (Children) Regulations

1971(a) and the Legal Aid (Scotland) (Children) Amendment Regulations 1971(b) are hereby revoked.

Ian Lang
Parliamentary Under Secretary of State,
Scottish Office

New St. Andrew's House, Edinburgh
7th March 1987

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the administration of legal aid in certain proceedings in Scotland relating to children following the coming into force on 1st April 1987 of the Legal Aid (Scotland) Act 1986. The Regulations supersede, in relation to applications granted on or after 1st April 1987, the Legal Aid (Scotland) (Children) Regulations 1971, which are revoked, and the Legal Aid (Scotland) (Children) Scheme 1971.

The Regulations make provision as to–

(i) what are to be treated as distinct proceedings for the purposes of legal aid (regulation 3);

(ii) how to apply for legal aid (regulations 4 and 5);

(iii) attendance for interview and supply of further information by applicants (regulation 6);

(iv) the availability of legal aid where other rights and facilities may be available (regulation 7);

(v) applications in matters of special urgency (regulation 8);

(vi) notification of decisions by the Scottish Legal Aid Board as to the availability of legal aid (regulation 9);

(vii) employment of counsel and expert witnesses (regulation 10); and

(viii) the duty of the Scottish Legal Aid Board in certain circumstances to cease to make legal aid available and its right in such cases to recover sums paid out of the Scottish Legal Aid Fund (regulation 11).

(a) S.I. 1971/288.
(b) S.I. 1971/554.

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