
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 200

**CHILDREN AND YOUNG PERSONS
LEGAL AID AND ADVICE**

The Children's Legal Assistance (Scotland) Regulations 2013

Made - - - - *18th June 2013*

Coming into force - - *24th June 2013*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9(1), (2)(a), and (c) to (dd), 28K(2), 28L(1), 31(9), 36(1), 36(2)(a), (c), (d) to (h) and 42 of the Legal Aid (Scotland) Act 1986(1) and all other powers enabling them to do so.

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

PART 1

GENERAL

Citation and Commencement

1. These Regulations may be cited as the Children's Legal Assistance (Scotland) Regulations 2013 and come into force on 24th June 2013.

Interpretation

2.—(1) In these Regulations—

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

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

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

(1) 1986 c.47 (“the Act”); section 9(2)(dd) was inserted by section 32 of the Access to Justice Act 1999 (c.22), sections 28K and 28L were inserted by section 191 of the Children's Hearings (Scotland) Act 2011 (asp 1; “the 2011 Act”), and section 31(9) was amended by section 74 and paragraph 36(14) of Schedule 8 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40). 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). The powers to make these Regulations are exercised by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) 1992 c.4.

“assisted person” means a person who is or has been in receipt of children’s legal aid⁽³⁾ in the proceedings or hearings in question;

“child” has the meaning given in section 199 of the 2011 Act;

“children’s hearing” has the meaning given in section 5 of the 2011 Act;

“relevant person” has the meaning given in section 200 of the 2011 Act, and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(3)(a) of that Act; and

“safeguarder” means a safeguarder appointed to a child under section 30 or 31 of the 2011 Act.

(2) In these Regulations, any reference to the applicant or the assisted person includes, unless otherwise provided, the safeguarder or other representative (other than a solicitor) of the applicant or assisted person.

PART 2

CHILDREN’S ASSISTANCE BY WAY OF REPRESENTATION

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

3.—(1) The Advice and Assistance (Assistance By Way Of Representation) (Scotland) Regulations 2003⁽⁴⁾ are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “the 1995 Act”, insert—

““the 2011 Act” means the Children’s Hearings (Scotland) Act 2011;”;

(b) after the definition of “the chairman of a tribunal”, insert—

““child” has the meaning given in section 199 of the 2011 Act;

“children’s hearing” has the meaning given in section 5 of the 2011 Act;

“compulsory supervision order” has the meaning given in section 83 of the 2011 Act;”;

(c) after the definition of “Parole Board case”, insert—

““pre-hearing panel meeting” has the meaning given in section 79 of the 2011 Act;”;

(d) after the definition of “prisoner”, insert—

““relevant person” has the meaning given in section 200 of the 2011 Act and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(3)(a) of that Act;”.

(3) After regulation 3, insert—

“Application of Part II of the Act to assistance by way of representation: hearings or proceedings under the Children’s Hearings (Scotland) Act 2011

3A.—(1) Part II of the Act applies to assistance by way of representation in relation to—

(a) a child in respect of—

(3) Children’s legal aid” is defined in section 28B of the Act; that section was inserted by section 191 of the 2011 Act.

(4) [S.S.I. 2003/179](#); relevant amending instruments are [S.S.I. 2005/165](#), [2006/615](#) and [2011/216](#).

- (i) the circumstances set out in section 28C(1) and (2) of the Act;
 - (ii) a children's hearing under the 2011 Act other than in the circumstances set out in section 28C(1) and (2) of that Act;
 - (iii) a pre-hearing panel meeting at which a determination under section 81 of the 2011 Act is to be made as regards an individual to whom section 79(2)(a)(i) of the 2011 Act refers;
 - (iv) an application to the sheriff as regards that child for a child assessment order under section 35 of the 2011 Act or a child protection order under section 38 of the 2011 Act;
 - (b) a relevant person in respect of—
 - (i) the circumstances set out in section 28C(1) and (2) of the Act;
 - (ii) a children's hearing under the Act other than in the circumstances set out in section 28C(1) and (2) of that Act;
 - (iii) a pre-hearing panel meeting at which a determination under section 81 of the 2011 Act is to be made as regards an individual to whom section 79(2)(a)(i) of the 2011 Act refers;
 - (iv) an application to the sheriff for a child assessment order under section 35 of the 2011 Act or a child protection order under section 38 of the 2011 Act;
 - (c) an individual to whom section 126 of the 2011 Act refers, in respect of any hearing under that section which relates to that individual;
 - (d) an individual to whom section 79(2)(a)(i) of the 2011 Act refers, in respect of a pre-hearing panel meeting or children's hearing at which a determination under section 81 of the 2011 Act is to be made as regards that individual.
- (2) The assistance by way of representation described in paragraphs (1)(a)(i) and (iv) is available without reference to the financial limits under section 8 of the Act (availability of advice and assistance).
- (3) The assistance by way of representation described in paragraph (1)(b)(i) and (iv) is to be provided under Part II of the Act only if the solicitor to whom the application has been made is satisfied that legal representation is required to allow the relevant person to participate effectively.”.
- (4) In regulation 13 (assistance by way of representation requiring approval of the Board)—
- (a) in paragraph (1), after “(m)”, insert “, 3A(1)(a)(ii) and (iii), (b)(ii) and (iii), (c) and (d)”;
 - (b) after paragraph (3), insert—

“(3A) The Board must only approve the provision of assistance by way of representation in relation to the hearings described in regulation 3A(1)(a)(ii) and (iii), (b)(ii) and (iii), (c) and (d) where it is satisfied that the legal representation is required to allow the child, the relevant person or individual (as the case may be) to participate effectively.”.
- (5) After regulation 13, insert—

“Effective participation under the Children's Hearings (Scotland) Act 2011

14. When determining for the purposes of regulations 3A(3) or 13(3A) whether legal representation is required to allow a person to participate effectively, the solicitor or Board (as the case may be) must take into account the following matters—

- (a) the complexity of the case, including the existence and difficulty of any points of law in issue;

- (b) the nature of the legal issues involved;
- (c) the ability of the person to consider and challenge any document or information in the hearings or proceedings without the assistance of a solicitor; and
- (d) the ability of the person to present his or her views in an effective manner without the assistance of a solicitor.”.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

- 4.—(1) The Advice and Assistance (Scotland) Regulations 1996⁽⁵⁾ are amended as follows.
- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “the 1996 Act” insert—

““the 2011 Act” means the Children’s Hearings (Scotland) Act 2011⁽⁶⁾,”
 - (b) for the definition of “child” substitute—

““child” means a person under the age of 16 years, except in relation to any hearings or proceedings under the 2011 Act, where “child” has the meaning in section 199 of that Act,”
 - (c) after the definition of “legal representative” insert—

““safeguarder” means a safeguarder appointed to a child under section 30 or 31 of the 2011 Act”.
- (3) In regulation 6(1) (applications on behalf of others)—
- (a) in sub-paragraph (b), after “representative” insert “or,”; and
 - (b) after sub-paragraph (b) insert—

“(c) where the client is a child in terms of the 2011 Act, and the application concerns hearings or proceedings under that Act, a safeguarder or other lay representative of the child.”.
- (4) In paragraph 4A of Schedule 2 (assessment of disposable capital and disposable income), after sub-paragraph (3) insert—
- “(4) This paragraph does not apply to assistance by way of representation in relation to hearings or proceedings under the 2011 Act.”.

PART 3

CHILDREN’S LEGAL AID

Children’s legal aid: individual

- 5.—(1) Children’s legal aid is available to an individual to whom section 126 of the 2011 Act refers in respect of any proceedings before a sheriff, sheriff principal or in the Court of Session in connection with a hearing under that section where the conditions in paragraph (2) are met.
- (2) The conditions are that the Board is satisfied that—
- (a) for the purpose of enabling the individual to participate effectively in the proceedings, it is necessary that the individual be represented by a solicitor or counsel;

(5) S.I. 1996/2447; relevant amending instruments are S.S.I. 2000/399, 2003/421, 2005/445 and 2010/462.

(6) 2011 asp 1.

- (b) it is reasonable in the particular circumstances of the case that the individual should receive children's legal aid; and
 - (c) after consideration of the disposable income and disposable capital of the individual, in accordance with these Regulations, the expenses of the case cannot be met without undue hardship to the individual or the dependants of the individual.
- (3) When determining for the purposes of condition in paragraph (2)(a) whether the individual would be able to participate effectively in the proceedings, the Board must take into account the following matters—
- (a) the nature and complexity of the case (including any points of law);
 - (b) the ability of the individual, with the assistance of any accompanying person, to consider and challenge any document or information before the proceedings; and
 - (c) the ability of the individual, with the assistance of any accompanying person, to give his or her views in the proceedings in an effective manner.

Distinct proceedings

6.—(1) In this regulation any reference to a numbered section is to a section bearing that number in the 2011 Act.

- (2) For the purposes of children's legal aid the following are treated as distinct proceedings—
- (a) an application to the sheriff to vary or terminate a child protection order under section 48;
 - (b) subject to paragraph (3), an application to the sheriff to extend or vary an interim compulsory supervision order under section 98;
 - (c) subject to paragraph (3), an application to the sheriff to further extend or vary an interim compulsory supervision order under section 99;
 - (d) an application to the sheriff to establish grounds under section 101;
 - (e) an application to the sheriff for review of a grounds determination under section 110;
 - (f) an appeal to the sheriff against a decision of the children's hearing under section 154;
 - (g) an appeal to the sheriff against a relevant person determination under section 160;
 - (h) an appeal to the sheriff against a decision relating to a contact or permanence order under section 161;
 - (i) an appeal to the sheriff against a decision to implement a secure accommodation authorisation under section 162;
 - (j) an appeal to the sheriff principal or the Court of Session against a determination or decision of a sheriff under section 163;
 - (k) an appeal to the sheriff principal or the Court of Session against a decision of a sheriff in an appeal against a relevant person determination under section 164;
 - (l) an appeal to the sheriff principal or the Court of Session against a decision of a sheriff in an appeal relating to a contact or permanence order under section 165;
 - (m) an appeal to the Court of Session against a determination or decision of the sheriff principal under section 163;
 - (n) an appeal to the Court of Session against a decision of the sheriff principal in an appeal against a relevant person determination under section 164;
 - (o) an appeal to the Court of Session against a decision of the sheriff principal in an appeal relating to a contact or permanence order under section 165;
 - (p) an application to the sheriff for review of a decision or determination imposing a duty on a local authority under section 166; and