

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

2022 No.

LEGAL AID AND ADVICE

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2022

Made - - - - 2022
Coming into force - - 1st October 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9(1), (2)(a), (dd) and (de), 12(3), 31(9), 33(2), (3)(b) and (f) and (3A) and 36(1), (2)(a) and (g) 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 this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2022 and come into force on 1 October 2022.

Amendments to the Civil Legal Aid (Scotland) (Fees) Regulations 1989

2. In schedule 6, chapter 2 (sheriff court civil fees (defended)) of the Civil Legal Aid (Scotland) (Fees) Regulations 1989(2)—

- (a) in paragraph 24, omit “Except as provided for by paragraph 25 or where otherwise prescribed,” and
- (b) omit paragraph 25.

(1) 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(2)(dd) and (de) were inserted by section 32 of the Access to Justice Act 1999 (c. 22). Section 33(3A) was inserted by section 51 of the Crime and Punishment (Scotland) Act 1997 (c. 48). 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.

(2) S.I. 1989/1490, relevantly amended by S.S.I. 2003/178 and S.S.I. 2020/191.

Amendments to the Criminal Legal Aid (Scotland) (Fees) Regulations 1989

3. In schedule 2 (fees of counsel) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989(3)—

- (a) in paragraph 13(d), omit “, unless claimed during the emergency period”, and
- (b) in paragraph 22 (interpretation), omit the entry relating to “emergency period”.

Amendments to the Advice and Assistance (Scotland) Regulations 1996

4. In regulation 16A of the Advice and Assistance (Scotland) Regulations 1996(4) (interim payment of fees and outlays during the emergency period)—

- (a) for the heading substitute “Interim payments”,
- (b) for paragraph (1) substitute—

“(1) This regulation applies where a claim is made for interim payment under the Act.”, and
- (c) omit paragraph (2).

Amendments to the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999

5. In regulation 4 (fixed payments allowable to solicitors) of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(5)—

- (a) in paragraph (5C), omit “during the emergency period”, and
- (b) omit paragraph (5D).

Amendments to 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(6) are amended as follows.

- (2) In regulation 3 (miscellaneous proceedings), omit paragraph (v).
- (3) In regulation 9 (prescribed proceedings), omit paragraph (j).

Amendments to the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011

7. In regulation 7 (duty solicitors: persons prosecuted under summary procedure) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011(7)—

- (a) in paragraph (5A), omit “For the duration of the emergency period”,
- (b) omit paragraph (5B), and
- (c) for paragraph (8) substitute—

“(8) Paragraph (7) does not apply in relation to—

 - (a) proceedings before a court which has been designated as a youth court or a domestic abuse court by the sheriff principal;
 - (b) persons to whom paragraph (2)(b)(ii) applies.”.

(3) S.I. 1989/1491, relevantly amended by S.S.I. 2005/113, S.S.I. 2005/656, S.S.I. 2012/276 and S.S.I. 2020/191.

(4) S.I. 1996/2447; regulation 16A was inserted by regulation 4 of S.S.I. 2020/191.

(5) S.S.I. 1999/491, relevantly amended by S.S.I. 2020/191.

(6) S.S.I. 2003/179, relevantly amended by S.S.I. 2020/191.

(7) S.S.I. 2011/163, relevantly amended by S.S.I. 2020/191.