

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

2021 No.

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

**The Children's Legal Assistance (Miscellaneous Amendments
and Consequential Provisions) (Scotland) Regulations 2021**

Made - - - - *2021*
Coming into force - - *8th November 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9(2)(a), 28LB(1), 33(2) and 36(1) and (2)(c) of the Legal Aid (Scotland) Act 1986⁽¹⁾ and section 83 of the Age of Criminal Responsibility (Scotland) Act 2019⁽²⁾, and all other powers enabling them to do so.

In accordance with section 37(2) of the Legal Aid (Scotland) Act 1986 Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Children's Legal Assistance (Miscellaneous Amendments and Consequential Provisions) (Scotland) Regulations 2021 and come into force on 8th November 2021.

(2) In these Regulations, “the 1986 Act” means the Legal Aid (Scotland) Act 1986.

Amendment of the Legal Aid (Scotland) Act 1986

2.—(1) The 1986 Act is amended in accordance with paragraphs (2) and (3).

(2) In section 28C⁽³⁾ (circumstances where children's legal aid automatically available)—

(1) 1986 c. 47 (“the Act”). Section 28LB was inserted by section 73(3) of the Age of Criminal Responsibility (Scotland) Act 2019 (asp 7). 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) 2019 asp 7.

(3) Section 28C was inserted by section 191 of the Children's Hearings (Scotland) Act 2011 (asp 1).

- (a) at the end of subsection (1)(c) omit “or”,
- (b) in subsection (1), after paragraph (d) insert—
 - “(e) an application in relation to a child is made under section 34 (application for order authorising search in relation to child under 12), 42 (application for child interview order) or 61 (application for order authorising taking of prints and samples from child) of the 2019 Act, or
 - (f) an order is made in relation to a child under section 36 (search in relation to child under 12), 44 (child interview) or 63 (taking of prints and samples from child) of the 2019 Act”,
- (c) at the end of subsection (2)(b) omit “and”, and
- (d) after (2)(c) insert—
 - “(d) representations in respect of an application mentioned in subsection (1) (e), and
 - (e) proceedings before the sheriff under section 38 (appeal against decision under section 36), 46 (appeal against decision under section 44) or 67 (appeal against decision under section 63) of the 2019 Act in respect of permission to appeal a decision and, where such permission is given, proceedings before the Sheriff Appeal Court in respect of such an appeal”.
- (3) In section 41 (interpretation)—
 - (a) after the definition of “the 2011 Act” insert—
 - ““the 2019 Act” means the Age of Criminal Responsibility (Scotland) Act 2019 (asp 7),”, and
 - (b) in the definition of “children’s legal assistance” insert at the end—
 - “or in relation to proceedings under Part 4 of the 2019 Act”.

Amendment of the Civil Legal Aid (Scotland) (Fees) Regulations 1989

3.—(1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989⁽⁴⁾ are amended in accordance with paragraph (2).

(2) In schedule 7 (Sheriff Court proceedings for which fees for work done shall only be payable under schedule 5), after the entry relating to proceedings under the 2011 Act insert—

“proceedings under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, other than those subject to regulation 3(7) of these Regulations”.

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

4. In regulation 3(c) (financial limit) of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993⁽⁵⁾ after sub-paragraph (xvi) insert—

“(xvii) where the advice by way of representation relates to proceedings under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, the sum of £500”.

(4) S.I. 1989/1490; relevant amending instruments are S.S.I. 2003/178 and S.S.I. 2013/144.

(5) S.I. 1993/3187; relevant amending instruments are S.S.I. 2007/248, S.S.I. 2008/251 and S.S.I. 2021/55.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

5.—(1) The Advice and Assistance (Scotland) Regulations 1996⁽⁶⁾ are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(1) (interpretation)—

(a) for the definition of “child” substitute—

““child” means a person under the age of 16 years, except in relation to—

- (a) any hearings or proceedings under the 2011 Act, where “child” has the meaning in section 199 of that Act, or
- (b) proceedings under Chapter 3 of Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019, where “child” has the meaning in section 39(3) of that Act.”.

(3) In paragraph 1 of the Table of Fees in Part 1 of schedule 3 (table of fees allowable to solicitors for assistance by way of representation)⁽⁷⁾ after “Children’s Hearings (Scotland) Act 2011” insert “or Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019”.

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⁽⁸⁾ are amended in accordance with paragraphs (2) and (3).

(2) The heading of regulation 3A becomes “Application of Part II of the Act to assistance by way of representation: hearings or proceedings under the Children’s Hearings (Scotland) Act 2011 and proceedings under the Age of Criminal Responsibility (Scotland) Act 2019”

(3) In regulation 3A(1)(b)(i) and (ii) for “section 28C(1) and (2)” substitute “section 28C(1)(a)-(d) and (2)(a)-(c)”.

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

7.—(1) The Children’s Legal Assistance (Scotland) Regulations 2013⁽⁹⁾ are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the 2011 Act” insert—

““the 2019 Act” means the Age of Criminal Responsibility (Scotland) Act 2019,”

(b) for the definition of “child” substitute—

““child”—

- (a) in relation to proceedings under the 2011 Act has the meaning given in section 199 of that Act,
- (b) in relation to proceedings under the 2019 Act has the meaning given in section 80 of that Act,”

(c) after the definition of “children’s hearing”, insert—

⁽⁶⁾ S.I. 1996/2447; relevant amending instruments are S.S.I. 2000/399, S.S.I. 2003/421, S.S.I. 2005/445, S.S.I. 2010/462 and S.S.I. 2013/200.

⁽⁷⁾ Paragraph 1 was amended by S.S.I. 2005/171, S.S.I. 2008/240, S.S.I. 2011/162, S.S.I. 2013/144, S.S.I. 2014/366, S.S.I. 2017/466, S.S.I. 2019/78 and S.S.I. 2021/56.

⁽⁸⁾ S.S.I. 2003/179, relevantly amended by S.S.I. 2013/200.

⁽⁹⁾ S.S.I. 2013/200. Relevantly amended by S.S.I. 2016/387.