

2021 No. 333

LEGAL AID AND ADVICE

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2021

Made - - - - *21st September 2021*

Laid before the Scottish Parliament *23rd September 2021*

Coming into force - - *26th November 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12(3), 17(2B), 36(2)(a) and 42 of the Legal Aid (Scotland) Act 1986(a), and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2021 and come into force on 26 November 2021.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

2.—(1) The Advice and Assistance (Scotland) Regulations 1996(b) are amended as follows.

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

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

““the 2021 Act” means the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021(d);”,

(b) after the definition of “legal representative”(e), insert—

““redress scheme” has the meaning given in section 2 of the 2021 Act;

“relevant payment” means any payment described in section 42(2) (deduction of previous payment from redress payment) read with section 42(3) and (7) as adjusted in accordance with sections 42(5) and 43 of the 2021 Act;”.

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

(a) 1986 c. 47. Section 12(3) was amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), schedule 1, paragraph 12(4)(b), the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 67(5) and the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3), section 23(7)(a). Section 17(2B) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), schedule 8, paragraph 36(6). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c. 46), section 53.

(b) S.I. 1996/2447, renamed by S.I. 1997/726. Relevant amending instruments are S.S.I. 2003/421, S.S.I. 2013/142, S.S.I. 2013/200 and S.S.I. 2020/424.

(c) Inserted by S.S.I. 2013/200, regulation 4(2)(a).

(d) 2021 asp 15.

(e) Inserted by S.S.I. 2003/421, regulation 4.

“(xv) by way of any payment made under Part 4 of the 2021 Act (financial redress for historical child abuse), or any relevant payment made or due to be made prior to the date of commencement of the redress scheme;”.

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

“(bd) there shall be left out of account any payment made under Part 4 of the 2021 Act (financial redress for historical child abuse), or any relevant payment made or due to be made prior to the date of commencement of the redress scheme;”.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

3.—(1) The Civil Legal Aid (Scotland) Regulations 2002(a) are amended as follows.

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

(a) after the definition of “the 2000 Act”(b), insert—

““the 2021 Act” means the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021(c);”,

(b) after the definition of “person concerned”, insert—

““redress scheme” has the meaning given in section 2 of the 2021 Act;

“relevant payment” means any payment described in section 42(2) (deduction of previous payment from redress payment) read with section 42(3) and (7) as adjusted in accordance with sections 42(5) and 43 of the 2021 Act;”.

(3) In regulation 33 (payments out of property recovered or preserved: exceptions), after paragraph (a)(xvii), insert—

“(xviii) by way of any payment made under Part 4 of the 2021 Act (financial redress for historical child abuse), or any relevant payment made or due to be made prior to the date of commencement of the redress scheme;”.

(4) In schedule 3 (rules for computing disposable capital), after paragraph 8(f), insert—

“(g) any payment made under Part 4 of the 2021 Act (financial redress for historical child abuse), or any relevant payment made or due to be made prior to the date of commencement of the redress scheme;”.

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

4.—(1) The Children’s Legal Assistance (Scotland) Regulations 2013(d) are amended as follows.

(2) In regulation 2(1)—

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

““the 2021 Act” means the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021(e);”,

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

““redress scheme” has the meaning given in section 2 of the 2021 Act;

“relevant payment” means any payment described in section 42(2) (deduction of previous payment from redress payment) read with section 42(3) and (7) as adjusted in accordance with sections 42(5) and 43 of the 2021 Act;”.

(a) S.S.I. 2002/494, relevant amending instruments are S.S.I. 2006/325 and S.S.I. 2020/424.

(b) Inserted by S.S.I. 2006/325, regulation 4(a).

(c) 2021 asp 15.

(d) S.S.I. 2013/200, relevant amending instrument is S.S.I. 2020/424.

(e) 2021 asp 15.

(3) In schedule 2 (assessment of disposable capital for the purposes of children’s legal aid), after paragraph 8(f), insert—

“(g) any payment made under Part 4 of the 2021 Act (financial redress for historical child abuse), or any relevant payment made or to be made prior to the date of commencement of the redress scheme.”.

Amendment of the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020

5.—(1) The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020^(a) are amended as follows.

(2) In regulation 2, in the heading, omit “(Consolidation and Amendment)”.

(3) In regulation 2(1) (interpretation), omit “(Consolidation and Amendment)”.

ASH DENHAM

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
21st September 2021

^(a) S.S.I. 2020/424.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend existing legal aid regulations in Scotland in connection with the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (“the 2021 Act”), which establishes a financial redress scheme for survivors of historical childhood abuse in certain residential care settings in Scotland.

Regulations 2 and 3 amend respectively the Advice and Assistance (Scotland) Regulations 1996 and the Civil Legal Aid (Scotland) Regulations 2002, to provide that payments made under Part 4 (redress payments) of the 2021 Act and certain other payments not covered by the statutory financial redress scheme are disregarded by the Scottish Legal Aid Board (“SLAB”) in the assessment and computation of an applicant’s disposable capital and income in respect of payment of advice and assistance and civil legal aid. Both regulations also exclude such payments from bearing fees and outlays when forming part of any recovered or preserved property in proceedings.

Regulation 4 amends the Children’s Legal Assistance (Scotland) Regulations 2013, to provide that payments made under Part 4 of the 2021 Act and certain other payments not covered by the statutory financial redress scheme are to be disregarded by SLAB in the assessment and computation of an applicant’s disposable capital in respect of payment of children’s legal assistance.

Regulation 5 amends the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020, to correct an incorrect reference to Regulations.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh, EH1 3DG.

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