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SCOTTISH STATUTORY INSTRUMENTS

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**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;

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(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<sup>(3)</sup> 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<sup>(4)</sup> 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;” and

(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—

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(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<sup>(5)</sup> 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<sup>(6)</sup>;”
  - (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;

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

<sup>(6)</sup> 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

- (q) an appeal to the sheriff principal against a determination of a review, or the making of an order, by a sheriff under section 167.
- (3) An application under paragraph (2)(b) or (c) is not to be treated as distinct proceedings where
  - (a) the application arises as part of other proceedings under the 2011 Act; and
  - (b) the person, who would otherwise be required by virtue of paragraph (2) to apply for children's legal aid, has already been granted children's legal aid.

### **Form of application**

7.—(1) Subject to regulations 8 (applications by or on behalf of children) and 18 (matters of special urgency), an application for children's legal aid under Part 5A of the Act<sup>(7)</sup> or under regulation 5 must be in such form as the Board may require, which may include an online form.

(2) Where the applicant resides outside the United Kingdom and is not able to be present in the United Kingdom when the application is being considered, the application, which must be in English or in French, must, subject to paragraph (3), be sworn—

- (a) if the applicant resides within the Commonwealth or the Republic of Ireland, before any Justice of the Peace or Magistrate, or any person for the time being authorised by law, in the place where the applicant is, to administer an oath for any judicial or other legal purpose; or
- (b) if the applicant resides elsewhere, before a consular officer in the service of Her Majesty's Government in the United Kingdom, or any other person for the time being authorised to exercise the functions of such an officer or having authority to administer an oath in that place for any judicial or other legal purpose,

and must be accompanied by a statement itemising the applicant's disposable income and disposable capital.

(3) The requirements of paragraph (2) may be waived in whole or in part by the Board where it is satisfied that compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the requirements of paragraph (1).

### **Applications by or on behalf of children**

8.—(1) Without prejudice to any right of a child to apply under regulation 7 (form of application), an application on behalf of a child may be made by the child's relevant person, safeguarder or other representative of the child (other than a solicitor).

(2) An application by or on behalf of a child in terms of paragraph (1) is to be determined in accordance with regulations 10 to 14.

### **Attendance for interview and supply of information**

9.—(1) An applicant for children's legal aid must, if required by the Board to do so, attend for interview by a representative of the Board or supply such further information or documents as the Board may require to enable it to determine the application or to make determination as to the amount of contribution to the Fund.

(2) Where an applicant for children's legal aid fails to comply with a requirement under paragraph (1)—

- (a) the Board may treat the application as having been abandoned, and where it does so it must give intimation of the abandonment to the applicant; and

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(7) Part 5A was inserted by section 191 of the 2011 Act.

- (b) the Board has the right to recover from the applicant the amount paid out of the Fund in respect of fees and outlays of the applicant's solicitors and counsel, less any amount received from that person by way of contribution.

### **Determination of disposable income and disposable capital**

**10.** Unless otherwise provided in these Regulations, the disposable income and disposable capital of a person is to be respectively determined at amounts calculated in accordance with Schedules 1 and 2 to these Regulations.

### **Circumstances in which resources of spouse not to be taken into account and resources of cohabittees**

**11.—**(1) The resources of a person's spouse are not to be treated as the person's resources if—

- (a) the spouse has a contrary interest in the matter in respect of which application for children's legal aid is made; or
- (b) the Board is satisfied that the person and the spouse are living separate and apart.

(2) For the purposes of section 42 of the Act, two persons living together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex are to be treated as if they were spouses of each other.

### **Deprivation or conversion of resources**

**12.—**(1) If it appears to the Board that a person (A) has, with intent to reduce A's disposable income or disposable capital, whether for the purpose of making A eligible for children's legal aid, reducing A's liability to pay a contribution or otherwise—

- (a) directly or indirectly deprived A of any resources; or
- (b) converted any part of A's resources into resources which under these Regulations are to be wholly or partly disregarded or in respect of which nothing is to be included in determining the resources of A,

the resources of which A has been so deprived or which have been so converted are to be treated as part of A's resources or as not so converted, as the case may be.

(2) Where it appears to the Board that an assisted person has acted in the way described in paragraph (1) it may make an amended determination in accordance with regulation 28 (power of the Board to amend determination).

### **Assessment of disposable income, etc. in relation to appellate proceedings**

**13.—**(1) Subject to paragraph (2), where an application relates to any of the proceedings specified in regulation 6 (distinct proceedings), and the applicant was previously an assisted person in relation to that matter, the Board must not redetermine the applicant's disposable income and disposable capital but must assess the amount of the maximum contribution, if any, payable in respect of the proceedings at an amount not greater than the maximum contribution assessed in relation to the earlier proceedings, less any amount assessed by the Board to be paid in respect of those proceedings.

(2) If since the last occasion on which the disposable income and disposable capital of the person concerned was determined in relation to that matter, that person's circumstances have altered otherwise than as a result of the payment of a contribution in respect of the earlier proceedings, the Board may redetermine that person's disposable income and disposable capital in accordance with the law applicable at the time of the original determination and must take into account—

- (a) any increase in the amount of that person's disposable income by an amount greater than £750;
- (b) any decrease in the amount of that person's disposable income by an amount greater than £300; and
- (c) any increase in the amount of that person's disposable capital by an amount greater than £750.

#### **Assessment of resources, etc. of person making application in representative, fiduciary, official or other capacity**

14.—(1) Where the applicant is a person who is concerned in the proceedings only in a representative, fiduciary or official capacity, then for the purpose of determining that person's disposable income and disposable capital, and the amount of any contribution required under section 28K of the Act<sup>(8)</sup>, the personal resources of the applicant are to be disregarded, but regard must be had to the value of any property or the amount of any fund out of which the applicant is entitled to be indemnified and to the disposable income and disposable capital of any persons (including the applicant if appropriate) who might benefit from the outcome of the proceedings.

(2) Where a person applies for children's legal aid in connection with any proceedings in which that person is concerned in a representative, fiduciary or official capacity and it appears to the Board that the applicant is entitled, whether by an order of the court or otherwise, to be indemnified in respect of the applicant's expenses in connection with the proceedings out of a fund or by a third party, it must not grant children's legal aid unless it is satisfied that the Fund cannot reasonably be expected to bear the expense of the proceedings or, as the case may be, that the third party would, if a party to the proceedings, be entitled to children's legal aid.

#### **Applicant having rights and facilities in relation to litigation**

15.—(1) Subject to paragraph (2), where it appears to the Board that an applicant has available rights and facilities making it unnecessary for that applicant to obtain children's legal aid or has a reasonable expectation of obtaining financial or other help from a body of which that applicant is a member, the Board must not approve the application unless the applicant has not succeeded in enforcing or obtaining such rights, facilities or help, after having taken, in the opinion of the Board, all reasonable steps to enforce or obtain them:

(2) Where it appears that the applicant has a right to assistance in the conduct of the proceedings in question, that applicant is not, for the purpose of this regulation, deemed to have failed to take all reasonable steps by reason only that the applicant has not taken proceedings by way of declarator or otherwise to enforce that right.

(3) Where the Board approves an application by a person who is a member of a body which might reasonably have been expected to give that person financial help towards the expenses of the proceedings, the Board must require that person to sign an undertaking to pay to the Board, in addition to a contribution if any, any sum received from that body on account of the expenses of the proceedings.

#### **Contributions in respect of children's legal aid**

16. Where the Board grants an application for children's legal aid, it must make a determination as to—

- (a) the amount of the contribution to the Fund which the applicant is required to pay under section 28K of the Act;

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<sup>(8)</sup> Section 28K was inserted by section 191 of the 2011 Act.



- (b) whether the contribution is payable in one sum or by instalments;
- (c) the amount or amounts of any instalments; and
- (d) the date or dates on which the contribution is, or any instalments are, payable.

### **Liability to pay a contribution to the Fund**

17. For the purposes of section 28K(2)(a) of the Act, the proportion of the excess is prescribed to be 67.1%.

### **Matters of special urgency**

18.—(1) The Board may make children’s legal aid available for specially urgent work undertaken before an application for children’s legal aid is determined, if—

- (a) it appears to the Board that it is reasonable in the particular circumstances of the case that the applicant should receive children’s legal aid; and
- (b) the Board is satisfied on application that participation in proceedings is required as a matter of special urgency to protect the applicant’s position.

(2) This paragraph applies where—

- (a) at the time the Board receives an application under paragraph (1)—
  - (i) an application for children’s legal aid by the applicant in relation to the same proceedings has been refused or treated as abandoned; or
  - (ii) the Board has ceased to make children’s legal aid in respect of the same proceedings available to the applicant;
- (b) the Board has given the applicant an opportunity to show that there is a realistic prospect that children’s legal aid will be granted following an application for review or a further application; and
- (c) the Board is not satisfied that the applicant has so shown.

(3) This paragraph applies where—

- (a) the Board, on receipt of an application under paragraph (1), has called on the applicant to provide the Board with sufficient information to enable the Board to determine whether the conditions mentioned in Part 5A of the Act or regulation 5 are met;
- (b) the Board is satisfied either—
  - (i) that the applicant has had sufficient opportunity to provide the information called for; or
  - (ii) that the applicant would have had sufficient opportunity to provide the information called for but for the undue delay on the part of the solicitor in submitting the application under paragraph (1); and
- (c) the Board is not satisfied that the conditions mentioned in Part 5A of the Act or regulation 5 are met.

(4) Where the Board is satisfied in accordance with paragraph (1) that participation in proceedings is required as a matter of special urgency to protect the applicant’s position and that paragraphs (2) and (3) do not apply—

- (a) the Board must so certify and may specify that the participation be limited to such work, or such purposes, or such period, or be subject to such conditions, all as it considers appropriate in the circumstances; and

- (b) the solicitor must, if an application for children’s legal aid has not already been submitted, submit an application for legal aid within 28 days of commencement of the urgent work and failure to do so excludes that work from any legal aid that may be made available.
- (5) Where work is carried out by a solicitor in the circumstances described in paragraph (1)—
  - (a) section 28K of the Act (contributions to the Fund) is modified so that—
    - (i) a legally assisted person for the purposes of that section includes a person for whom such work is carried out; and
    - (ii) the requirements of that section apply in respect of specially urgent work undertaken before an application for children’s legal aid made in terms of the Act is determined; and
  - (b) regulation 21 (prior approval of the Board required for employment of counsel etc.) is modified so that a person in receipt of children’s legal aid for the purposes of those regulations includes a person for whom such work is carried out.
- (6) Where work is carried out by a solicitor in the circumstances described in paragraph (1) and an application for children’s legal aid made is subsequently refused, section 4(2)(a) of the Act<sup>(9)</sup> is modified so that there is to be paid out of the Fund—
  - (a) where the Board is satisfied as to the factors in paragraph (7), payments to meet such sums as the Board approves; or
  - (b) where the Board is not satisfied as to the factors in paragraph (7), any contribution paid by a person for whom a solicitor has undertaken specially urgent work.
- (7) The factors referred to in paragraph (6) are that the Board is satisfied that—
  - (a) the solicitor had reasonable grounds for believing, on the information available at the time the work was done, that the applicant would be eligible for children’s legal aid in terms of the Act; and
  - (b) the work was actually, necessarily and reasonably done, due regard being had to economy.

### **Notification of decision**

**19.**—(1) The Board must give notice of its decision to grant or, as the case may be, refuse, legal aid to the applicant and the applicant’s solicitor.

(2) Where the Board grants the application it must give notice to the applicant of any conditions with which, by virtue of section 28G<sup>(10)</sup> of the Act, that applicant is required to comply and as to its determinations under regulation 16 (contributions for children’s legal aid).

(3) Where the Board, in terms of regulation 29 (suspension of legal aid), suspends the availability of legal aid, it must inform the assisted person and that person’s solicitor of the grounds of such suspension.

(4) Where the Board refuses an application it must inform the applicant and the applicant’s solicitor that the application has been refused on one or more of the following grounds—

- (a) in the case of an application under section 28D of the Act (availability of children’s legal aid: child), that the Board is satisfied—
  - (i) it is not in the best interests of the applicant that children’s legal aid be made available;

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<sup>(9)</sup> Relevant amendments to section 4 were made by section 44 and paragraph 1(a) of Schedule 4 to the Legal Aid Act 1988 (c.34); section 62(1) and paragraph 12(2)(a) of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c.48); and sections 67 and 68 of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5).

<sup>(10)</sup> Section 28G was inserted by section 191 of the 2011 Act.

- (ii) it is not reasonable in the circumstances of the case that the applicant should receive children's legal aid;
  - (iii) the expenses of the case can be met without undue hardship to the applicant;
- (b) in the case of an application under section 28E of the Act (availability of children's legal aid: relevant person), that the Board is satisfied—
  - (i) it is not reasonable in the circumstances of the case that the applicant should receive children's legal aid;
  - (ii) the expenses of the case can be met without undue hardship to the applicant;
- (c) in the case of an application under section 28E(5) of the Act, that the Board is satisfied—
  - (i) it is not reasonable in the circumstances of the case that the applicant should receive children's legal aid;
  - (ii) the expenses of the case can be met without undue hardship to the applicant;
  - (iii) the applicant does not have substantial grounds for making or responding to the appeal;
- (d) in the case of an application under section 28F of the Act (availability of children's legal aid: appeals relating to deemed relevant person), that the Board is satisfied—
  - (i) it is not reasonable in the circumstances of the case that the applicant should receive children's legal aid;
  - (ii) the expenses of the case can be met without undue hardship to the applicant;
  - (iii) the applicant does not have substantial grounds for making or responding to the appeal;
- (e) in the case of an application under regulation 5 (children's legal aid: individual), that the Board is satisfied—
  - (i) it is not necessary for the applicant to be represented by solicitor or counsel in order to effectively participate in the proceedings;
  - (ii) it is not reasonable in the circumstances of the case that the applicant should receive children's legal aid;
  - (iii) the expenses of the case can be met without undue hardship to the applicant or the dependants of the applicant;
- (f) the proceedings to which the application relates are not proceedings for which children's legal aid may be given;
- (g) it appears to the Board, by virtue of the provisions of regulation 14 (person applying in fiduciary capacity etc) or regulation 15 (applicant having rights and facilities), that children's legal aid should not be granted.

(5) Where the Board refuses an application it must inform the applicant and the applicant's solicitor that the applicant may apply for a review under section 28H of the Act<sup>(11)</sup>, except where the refusal follows a review under that section.

#### **Application for review or review of conditions**

**20.**—(1) An application for a review of an application for children's legal aid under section 28H of the Act must—

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<sup>(11)</sup> Section 28H was inserted by section 191 of the 2011 Act.

- (a) be lodged with the Board within 15 days of the time when notice of refusal of the application was given to the applicant (or such longer time as the Board may in the circumstances allow); and
  - (b) include a statement of any matters which the applicant wishes the Board to take into account in reviewing the application.
- (2) An application for review of a condition under section 28J(12) of the Act must—
- (a) be lodged with the Board within 15 days of the time when the applicant was notified of the conditions imposed by the Board under section 28G(13) of the Act (or such longer time as the Board may in the circumstances allow); and
  - (b) include a statement of any matters which the applicant wishes the Board to take into account in reviewing the conditions.

**Employment of counsel and expert witnesses and prior approval of the Board in cases of work of an unusual nature or likely to involve unusually large expenditure**

- 21.—(1) Subject to paragraph (2), the prior approval of the Board is 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) where the proceedings are before a children’s hearing or pre-hearing panel, for the employment of counsel;
  - (d) for the employment of any expert witness; and
  - (e) for work of an unusual nature or likely to involve unusually large expenditure.

(2) Paragraph (1) does not apply where the Board, on an application made to it for retrospective approval for the employment of counsel, of an expert witness, for work of an unusual nature, or, as the case may be, work likely to involve unusually large expenditure, considers that that employment or work would have been approved by it and that there was special reason why prior approval was not applied for.

**Duty to report changes of circumstances**

22.—(1) It is the duty of an applicant, an assisted person or a person acting on behalf of an applicant or assisted person where the facts are within the knowledge of that person, immediately to inform the Board of—

- (a) any change in that applicant’s or assisted person’s circumstances, financial or otherwise; or
- (b) any change in the circumstances, financial or otherwise, so far as known to that applicant person or person acting on behalf of an applicant or assisted person, of any other person jointly concerned with, or having the same interest in, the matter.

(2) Where a person acting on behalf of an applicant or assisted person has reason to believe that the applicant or assisted person has not complied with the duty under paragraph (1), the person must immediately draw this matter to the attention of the Board.

- (3) In this regulation, “a person acting on behalf of an applicant or assisted person” includes—
- (a) a solicitor, counsel, and other representative of the applicant or assisted person; or
  - (b) where the applicant or assisted person is a child, a solicitor, counsel, the child’s relevant person, safeguarder or other representative of the child (other than a solicitor).

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(12) Section 28J was inserted by section 191 of the 2011 Act.

(13) Section 28G was inserted by section 191 of the 2011 Act.

(4) No solicitor or counsel is precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client from informing the Board of, or drawing the Board's attention to, any matter specified in paragraphs (1) and (2).

**23.**—(1) The Board from time to time may directly request from the applicant or assisted person, or a solicitor or counsel acting for the applicant or assisted person, information relating to any change in circumstances, financial or otherwise.

(2) No solicitor or counsel is precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client from providing the Board with any information requested in accordance with paragraph (1).

#### **Duty to report abuse of children's legal aid**

**24.**—(1) Where an assisted person's solicitor or counsel has reason to believe that the assisted person has—

- (a) required that person's case to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the case be continued; or
- (b) wilfully failed to comply with any requirement of the Act or of these Regulations as to the information to be furnished by that assisted person or, in furnishing such information, has knowingly made a false statement or false representation,

the solicitor or counsel must immediately draw this matter to the attention of the Board.

(2) No solicitor or counsel is precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client, from disclosing to the Board any information, or from giving any opinion, which that solicitor or counsel is required to disclose or give to the Board under the Act or these Regulations, or which may enable the Board to perform its functions thereunder.

#### **Change of nominated solicitor**

**25.**—(1) Where the solicitor nominated by an assisted person determines that he or she should cease to act for that person, the solicitor must—

- (a) notify the assisted person and the Board accordingly; and
- (b) supply to the Board a statement of reasons for ceasing to act.

(2) Where an assisted person has required the solicitor nominated by that person to cease to act, the solicitor must notify the Board accordingly.

(3) Where an assisted person wishes to be represented by a solicitor other than the solicitor presently nominated by that person to act, the assisted person must—

- (a) apply to the Board for authority to nominate another specified solicitor to act; and
- (b) inform the Board of the reason for the application.

(4) On receipt of an application under paragraph (3) the Board, if it is satisfied that there is good reason for the application and that it is reasonable in the particular circumstances of the case for the assisted person to continue to receive legal aid, may grant the application.

#### **Duty to report**

**26.**—(1) It is the duty of the solicitor acting for an applicant or assisted person to report to the Board on such matters and in such form as the Board may require, which may include an online form, and in accordance with any guidance issued from time to time by the Board.

(2) No solicitor is precluded, by reason of any privilege arising out of the relationship between solicitor and client, from making such a report as is referred to in paragraph (1).

### **Power of Board to modify or impose conditions**

27. Where the Board has made children's legal aid available in relation to any proceedings under the 2011 Act, the Board may, at any time prior to the conclusion of the proceedings, if it considers it expedient, modify any conditions imposed by it under section 28G of the Act, or impose conditions (or as the case may be additional conditions) by virtue of that section.

### **Power of Board to amend determination**

28.—(1) If the Board is satisfied that—

- (a) there has been some error or mistake in the determination of a person's disposable income, disposable capital or maximum contribution and that it would be just and equitable to correct that error or mistake; or
- (b) an assisted person has acted in the way described in regulation 12 (deprivation of resources),

it may make an amended determination in accordance with the law applicable at the time of the original determination which is to have effect for all purposes as if it was the original determination.

(2) If the Board is satisfied—

- (a) that the assisted person's disposable income has increased by an amount greater than £750 a year or decreased by an amount greater than £300 a year; or
- (b) that the assisted person's disposable capital has increased by an amount greater than £750 a year,

it may redetermine that person's disposable income, disposable capital and maximum contribution in accordance with the law applicable at the time of the original determination, and in that event the amount or value of any resource of a capital nature is to be ascertained as at the date of the redetermination.

(3) Where the amount of the actual contribution required to be paid by the assisted person has been fixed at a sum less than the maximum contribution which that person could be required to contribute, and it appears to the Board that the cost of the proceedings is likely to exceed or has exceeded the amount of that actual contribution, it may increase the actual contribution which is required to be paid.

### **Power of Board to suspend availability of children's legal aid**

29.—(1) The Board may suspend for a period of up to 90 days the availability of children's legal aid to an assisted person (and, in that event, must notify the assisted person in terms of regulation 19 (notification of decision) where satisfied that—

- (a) the assisted person has without reasonable cause failed—
  - (i) to comply with any condition, whether a requirement of the grant of children's legal aid by virtue of section 28G of the Act and regulation 22(2) (duty to report changes of circumstances), or whether modified or newly imposed in terms of that section and regulation 27 (Board's power to modify conditions etc); or
  - (ii) to pay by the due date any contribution, or any instalment of a contribution, required in terms of section 28K of the Act<sup>(14)</sup>;
- (b) it requires to consider whether in any case information which it has received regarding any of the grounds specified in regulations 30 (termination on change), 31 (termination other than on change of circumstances) and regulation 33 (false information) merits termination of children's legal aid; or

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<sup>(14)</sup> Section 28K was inserted by section 191 of the 2011 Act.

- (c) the solicitor nominated to act for the assisted person has ceased so to act.
- (2) At the end of the period referred to in paragraph (1) the Board must—
  - (a) make children’s legal aid available again to the assisted person;
  - (b) suspend the availability of children’s legal aid to the assisted person for one further period of up to 90 days; or
  - (c) cease to make such children’s legal aid available to the assisted person in terms of regulations 30, 31 and 33.

**Termination of children’s legal aid on change of circumstances**

- 30.** The Board may cease to make children’s legal aid available to an assisted person if—
- (a) in any case it is satisfied, in consequence of an amended determination under regulation 28(1) (power of Board to amend determination), or a redetermination under regulation 28(2), that the assisted person has—
    - (i) a disposable income which makes that person ineligible for children’s legal aid; or
    - (ii) disposable capital of an amount which makes that person liable to be refused children’s legal aid, and it appears to the Board that the assisted person can afford to proceed without children’s legal aid;
  - (b) in any case it no longer considers that—
    - (i) it is reasonable in the particular circumstances of the case that that person should continue to receive children’s legal aid; or
    - (ii) that the expenses of the case cannot be met without undue hardship being caused to the child or relevant person, as the case may be;
  - (c) in the case of children’s legal aid under section 28D of the Act<sup>(15)</sup>, it is no longer in the best interests of the child in the particular circumstances of the case that children’s legal aid be made available to the child; or
  - (d) in the case of children’s legal aid under section 28E(5) or section 28F of the Act<sup>(16)</sup>, the assisted person no longer has substantial grounds for making or responding to the appeal.

**Termination of children’s legal aid other than on change of circumstances**

- 31.** The Board may cease to make children’s legal aid available to an assisted person—
- (a) if it appears to it that the assisted person—
    - (i) has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund;
    - (ii) has failed to comply with any condition imposed under section 28G of the Act; or
    - (iii) has failed without reasonable excuse to attend for an interview or to provide information or documents when so required under these Regulations; or
  - (b) if it is satisfied that there has been an error or mistake in the assessment as to whether it is reasonable in the particular circumstances of the case that the assisted person should receive children’s legal aid, and that children’s legal aid should never have been made available.

**32.** If an applicant or assisted person fails to provide information requested by the Board under regulation 23 (duty to report changes of circumstances), the Board has the right to recover from that

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<sup>(15)</sup> Section 28D was inserted by section 191 of the 2011 Act.

<sup>(16)</sup> Section 28E and 28F were inserted by section 191 of the 2011 Act.

person the amount paid out of the Fund in respect of the fees and outlays of that person's solicitors and counsel less any amount received from that person by way of contribution.

**Termination of children's legal aid in cases of false information, etc.**

**33.—**(1) This regulation applies where after giving a person an opportunity of submitting representations, the Board is satisfied that that person has—

- (a) in relation to any application for children's legal aid, made an untrue statement as to that person's resources or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after children's legal aid was made available to that person;
- (b) wilfully failed to comply with these Regulations by not furnishing to the Board any material information concerning anything other than that person's resources; or
- (c) knowingly made an untrue statement in furnishing such information.

(2) The Board—

- (a) may cease to make children's legal aid available to that person in the matter or proceedings; and
- (b) has the right to recover from that person the amount paid out of the Fund in respect of the fees and outlays of that person's solicitors and counsel less any amount received from that person by way of contribution.

(3) The person is not entitled—

- (a) to avail himself or herself of the provisions of regulation 18 (matters of special urgency) in respect of any later stages of the same proceedings in the same children's hearing, court or any court to which those proceedings may be remitted;
- (b) to children's legal aid in relation to any later stages of the same proceedings in the same children's hearing, court or any court to which those proceedings may be remitted; and
- (c) to children's legal aid in any appellate proceedings in relation to the same action, cause or matter, unless the Board considers that there is special reason to make children's legal aid available for such appellate proceedings.

**Termination on request by assisted person**

**34.—**(1) The Board will cease to make children's legal aid available to an assisted person where the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) that the solicitor or assisted person has advised the Board that the assisted person no longer wishes to receive children's legal aid and wishes instead to pay for his or her own legal representation or to represent himself or herself;
- (b) that the assisted person has complied with the requirements of regulation 9 (attendance for interview and supply of information); and
- (c) that the assisted person has paid in full any contribution due under section 28K of the Act by virtue of a determination made under regulation 16 (contributions) or 30 (amended determinations).



## PART 4

### CHILDREN'S LEGAL AID: DUTY SOLICITOR SCHEME

**35.** In circumstances where the Board has arranged, in accordance with section 31(8) of the Act, that a solicitor is to be available for the purpose of providing to a child children's legal aid under section 28C of the Act<sup>(17)</sup>

- (a) section 31(1) of the Act<sup>(18)</sup> does not apply; and
- (b) the children's legal aid referred to must be provided only by the solicitor so made available.

St Andrew's House, Edinburgh  
18th June 2013

*KENNY MACASKILL*  
A member of the Scottish Government

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<sup>(17)</sup> Section 28C was inserted by section 191 of the 2011 Act.

<sup>(18)</sup> Section 31(1) was amended by section 62(1) and paragraph 12(8)(a) of Schedule 1 to the Crime and Punishment (Scotland) Act 1997 (c.48).

## SCHEDULE 1

Regulation 10

**ASSESSMENT OF DISPOSABLE INCOME FOR  
THE PURPOSES OF CHILDREN'S LEGAL AID**

**1.—(1)** The income of the person concerned from any source is taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of computation.

(2) In this paragraph “period of computation” means the period of one calendar month immediately preceding the date of application for children’s legal aid, or such other period as in the particular circumstances of any case the Board may consider to be appropriate.

**2.** The income in respect of any emolument, benefit or privilege receivable otherwise than in cash is to be estimated at such a sum as in all the circumstances is just and equitable.

**3.—(1)** The income from a trade, business or gainful occupation other than an employment at a wage or salary is deemed to be whichever of the following the Board considers more appropriate and practicable—

- (a) the profits which have accrued or will accrue to the person concerned in respect of the period of computation; or
- (b) the drawings of the person concerned.

(2) In calculating the profits and drawings referred to in paragraph (1)—

- (a) the Board may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and
- (b) there is to be deducted all sums necessarily expended to earn those profits, but no deduction is to be made in respect of the living expenses of the person concerned or any member of that person’s family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of that person’s remuneration.

**4.** In computing the income of the person concerned there is to be left out of account—

- (a) any income tax paid or payable on income treated under the provisions of this Schedule as the person’s income;
- (b) the amount estimated to have been paid by way of contributions under the 1992 Act or any scheme made under that Act in the calendar month immediately preceding the date of application for children’s legal aid;
- (c) when it would be reasonable to do so, an amount to provide for the care of any dependent child living with the person concerned during the time that person is absent from the home by reason of employment; and
- (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act 1975<sup>(19)</sup> or to a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993<sup>(20)</sup>.

**5.** In computing the disposable income of the person concerned, there is to be disregarded any payments made in accordance with—

- (a) income support;
- (b) income-based jobseeker’s allowance;

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<sup>(19)</sup> 1975 c.60.

<sup>(20)</sup> 1993 c.48.

- (c) disability living allowance;
- (d) income-related employment and support allowance;
- (e) universal credit;
- (f) personal independence payment;
- (g) armed forces independence payment.

6. In computing the disposable income of the person concerned, there is to be disregarded a payment by a local authority in exercise of the power in section 20 of the Local Government in Scotland Act 2003(21) (power to advance well-being) and using funds provided by Scottish Ministers from the Scottish Welfare Fund where the payment is—

- (a) a crisis payment made for the purpose of meeting an immediate short term need; or
- (b) made for the purpose of meeting a need for community care.

7. There is to be a deduction in respect of the amounts payable or estimated to be payable in the calendar month immediately following the application by the person concerned in respect of—

- (a) the council tax and the rate as defined in section 99(1) and (2)(a) of the Local Government Finance Act 1992(22); and
- (b) charges payable under an order made by virtue of section 37 of the Water Industry (Scotland) Act 2002(23).

8.—(1) Subject to sub-paragraph (2), there is to be a deduction, in respect of rent of the main or only dwelling in the case of a householder, of the amount of the net rent paid or such part of the net rent paid as is reasonable in the circumstances.

(2) Any contributions received from any other person towards that payment of rent is taken into account as income, and the Board is to decide which is the main dwelling, where the person concerned resides in more than one dwelling in which that person has an interest.

(3) In this paragraph the expression “rent” means—

- (a) the feu duty or ground annual or the rent payable in respect of a calendar month; and
- (b) a sum in respect of the outgoings borne by the householder for the calendar month immediately preceding the making of the application for children’s legal aid including, in particular, a reasonable allowance towards any necessary expenditure on repairs and insurance and any other annual burden, including any instalment (whether of interest or capital) payable in respect of a heritable security (within the meaning of section 9(8)(a) of the Conveyancing and Feudal Reform (Scotland) Act 1970(24) or a real burden relating to the performance of an act.

(4) In this paragraph the expression “net rent” means—

- (a) the rent less any proceeds of subletting any part of the premises in respect of which the rent is paid or the outgoings incurred; or
- (b) where any person or persons other than the person concerned, any spouse of that person or persons, or any dependent of that person or persons is accommodated, otherwise than as a subtenant, in the premises for which the rent is paid, the rent less such an amount as the Board may determine to be reasonably attributable to the accommodation of such person.

9. If the person concerned is not a householder, there is to be a deduction in respect of the cost of that person’s living accommodation of such amount as is reasonable in the circumstances.

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(21) 2003 asp 1.

(22) 1992 c.14.

(23) 2002 asp 3.

(24) 1970 c.35.

**10.**—(1) There is to be a deduction in respect of the maintenance of the spouse of the person concerned, if the spouses are living together and in respect of the maintenance of any person wholly or substantially maintained by the person concerned, being a member of his or her household, (“a dependent person”) at the following rates—

- (a) in the case of a spouse, at a rate equivalent to the difference, as at the date when the computation period began, between the income support allowance for a couple where both members are aged not less than 18 (which is specified in column (2) of paragraph 1(3)(d) of Part 1 of Schedule 2 to the Income Support (General) Regulations 1987<sup>(25)</sup>, and the allowance for a single person aged not less than 25 (which is specified in column (2) of paragraph 1(1)(e) of Part 1 of Schedule 2 to those Regulations);
- (b) in the case of a dependent person aged under 19, at a rate equivalent to the amount specified in column (2) of paragraph 2(1) of Part 1 of Schedule 2 to the Income Support (General) Regulations 1987 appropriate to that person as at the date when the computation period began;
- (c) in the case of a dependent person aged 19 or over, at a rate equivalent to the amount specified in column (2) of paragraph 2(1) of Part 1 of Schedule 2 to the Income Support (General) Regulations 1987 as at the date when the computation period began: Provided that the Board may reduce such rate by taking into account the income and other resources of the dependent person to such extent as appears to the Board to be just and equitable.

(2) In ascertaining whether a person is a dependent person regard is to be had to their income and other resources.

**11.** If the person concerned is making and, throughout such period as the Board may consider adequate, has regularly made payments in good faith for the maintenance of a spouse who is living apart, of a former spouse, of a child or of a relative who is not (in any such cases) a member of the household of the person concerned, there is to be a deduction at the rate of such payments or at such rate, not exceeding the rate of such payments, as in all the circumstances is reasonable.

**12.** Where the person concerned must provide for any other matter the Board may make an allowance of such amount as it considers to be reasonable in the circumstances of the case.

**13.** In computing the income from any source there is to be disregarded such amount, if any, as the Board considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

## SCHEDULE 2

Regulation 10

### ASSESSMENT OF DISPOSABLE CAPITAL FOR THE PURPOSES OF CHILDREN’S LEGAL AID

**1.**—(1) Subject to these Regulations, there is to be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application for legal aid.

(2) Where it is brought to the notice of the Board that between the date of the application and the determination—

- (a) there has been a substantial fluctuation in the value of a resource;
- (b) there has been a substantial variation in the nature of a resource affecting the basis of computation of its value;

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(25) S.I. 1987/1967.

- (c) any resource has ceased to exist; or
- (d) a new resource has come into the possession of the person concerned,

the Board is to compute the capital resources of that person in the light of such facts, and the resources as so computed are to be taken into account in the determination.

2. So far as any resource does not consist of money, the amount or value of the resource is to be taken to be—

- (a) the amount which that resource would realise if sold in the open market; or
- (b) if there is only a restricted market for that resource, the amount which it would realise in that market; or
- (c) the amount or value of the resource assessed in such manner as appears to the Board to be just and equitable.

3. Where money is due to the person concerned, whether immediately payable or otherwise and whether the payment the money is secured or not, the value is taken to be the present value of the money.

4. If the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Board may, instead of ascertaining the value of stocks, shares, bonds or debentures in that company, treat the person as if that person were such a sole owner or partner and compute the amount of the person's capital in respect of that resource in accordance with paragraph 5 of this Schedule.

5. Where the person concerned is, or is to be treated as, the sole owner of or a partner in any business, the value of such business or that person's share in the business to that person is taken to be either—

- (a) such sum, or that person's share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development of the business; or
- (b) such sum as that person could borrow on the security of his or her interest in such business without substantially injuring the commercial credit of that business, whichever is the greater.

6. The value of any interest, whether vested or contingent, of the person concerned in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, is to be computed by the Board in such manner as appears to it to be both equitable and practicable.

7. In computing the amount of capital of the person concerned where that person is in receipt of income support under section 124 of the 1992 Act, income-related employment and support allowance or universal credit, there is disregarded any amount which exceeds the sum for the time being specified as the disposable capital limit under section 28K(2)(b)(**26**) of the Act.

8. In computing the amount of capital of the person concerned, there is wholly disregarded—

- (a) a back to work bonus (payable under the Jobseekers Act 1995)(**27**);
- (b) any payment made under the Community Care (Direct Payments) Act 1996(**28**) or under section 12B of the Social Work (Scotland) Act 1968(**29**);

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(26) Section 28K was inserted by section 191 of the 2011 Act.

(27) 1995 c.18.

(28) 1996 c.30.

(29) 1968 c.49.

- (c) a payment by a local authority in exercise of the powers in section 20 of the Local Government in Scotland Act 2003(30) (power to advance well-being) and using funds provided by the Scottish Ministers from the Scottish Welfare Fund where the payment is—
- (i) a crisis payment made for the purpose of meeting an immediate short term need; or
  - (ii) made for the purpose of meeting a need for community care.

9. Save in exceptional circumstances, nothing is to be included in the amount of capital of the person concerned in respect of—

- (a) the household furniture and effects of the dwelling house occupied by that person;
- (b) articles of personal clothing; and
- (c) the personal tools and equipment of that person's trade, not being part of the plant or equipment of a business to which the provisions of paragraph 5 of this Schedule apply.

10.—(1) In computing the amount of capital of the person concerned, the value of any interest in the main or only dwelling in which that person resides is to be wholly disregarded.

(2) Where the person concerned resides in more than one dwelling in which that person has an interest, the Board is to decide which is the main dwelling and is to take into account, in respect of the value to that person of any interest in a dwelling which is not the main dwelling, any sum which might be obtained by borrowing money on the security of that dwelling.

11. Where the person concerned has received or is entitled to receive from a body of which that person is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which legal aid is applied for, such sum is disregarded.

12. The value of any life assurance or endowment policy is taken to be the amount which the person concerned could readily borrow on the security of that life assurance or endowment policy.

13. Where under any statute, bond, agreement, indemnity, guarantee or other instrument the person concerned is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, an allowance is to be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of application for children's legal aid.

14. An allowance may be made in respect of any debt owed by the person concerned (other than a debt secured on the dwelling or dwellings in which that person resides) to the extent to which the Board considers reasonable, provided that the person concerned produces evidence to the Board's satisfaction that the debt or part of the debt will be discharged within the twelve months immediately following the date of the application.

15.—(1) Where the person concerned is of pensionable age and his or her annual disposable income (excluding any net income derived from capital) is less than the figure prescribed in section 28K(2)(a) of the Act there is disregarded the amount of capital as specified in the following table—

<i>Annual disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
Up to £350	£35,000
£351–£800	£30,000
£801–£1,200	£25,000
£1,201–£1,600	£20,000

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(30) 2003 asp 1.

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<i>Annual disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
£1,601–£2,050	£15,000
£2,051–£2,450	£10,000
£2,451 and above	£5,000

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(2) In this Schedule “pensionable age” means the age of 60.

**16.** In computing the amount of capital there is disregarded such an amount of capital, if any, as the Board in the circumstances of the case may in its discretion decide.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend other regulations relating to legal assistance and legal aid to reflect the introduction of bespoke provisions about children’s legal aid in sections 28B to 28S of the Legal Aid (Scotland) Act 1986 as amended by the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”), and the coming into force of the 2011 Act itself.

Regulation 3 provides for the availability of assistance by way of representation (“ABWOR”) for children’s matters. Regulation 3 does so by amending the Advice and Assistance (Assistance By Way Of Representation) Regulations 2003. The amendments specify the person who may receive children’s ABWOR and the eligibility requirements which apply in each case.

Regulation 4 amends the Advice and Assistance (Scotland) Regulations 1996 (“the 1996 Regulations”) to ensure that advice and assistance continues to be available, with reference to the 2011 Act. Some minor amendments are required to ensure the 1996 Regulations apply appropriately to advice and assistance given in relation to matters arising under the 2011 Act.

Regulation 5 provides for children’s legal aid to be available to individuals to whom section 126 of the 2011 Act applies. The regulation also specifies the conditions which the Scottish Legal Aid Board must be satisfied are met before a grant of children’s legal aid in the circumstances can be made.

Regulations 6 to 34 and Schedules 1 and 2 apply to all applications for, and grants of, children’s legal aid. They provide for how children’s legal aid will be administered including: the form of application; how an applicant’s income and capital should be determined; how the resources of others should be accounted for; which proceedings under the 2011 Act constitute distinct proceedings (for which separate legal aid cover is required); procedures where a matter is of special urgency; when counsel or expert witnesses may be employed; the procedures for reporting a change in the circumstances of the assisted person or abuse of children’s legal aid; and when children’s legal aid may be suspended or terminated.

Regulation 35 relates to a children’s legal aid duty solicitor scheme. Under the regulation the Scottish Legal Aid Board is required to arrange for such a scheme and where a duty solicitor is available the provisions of the Legal Aid (Scotland) Act 1986 about selection of a solicitor will not apply.

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