

2010 No. 377

LEGAL AID AND ADVICE

**The Criminal Legal Aid (Scotland) Amendment Regulations
2010**

<i>Made</i>	- - - -	<i>1st November 2010</i>
<i>Laid before the Scottish Parliament</i>		<i>3rd November 2010</i>
<i>Coming into force</i>	- -	<i>25th November 2010</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 36(1), (2)(a) and (d) to (f) 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 Criminal Legal Aid (Scotland) Amendment Regulations 2010 and come into force on 25th November 2010.

Application

2. Regulation 3 applies only in relation to proceedings commenced on or after 25th November 2010.

Amendment of the Criminal Legal Aid (Scotland) Regulations 1996

3.—(1) The Criminal Legal Aid (Scotland) Regulations 1996(b) are amended in accordance with paragraphs (2) to (11).

(2) Regulation 6 (applications for criminal legal aid in solemn proceedings) is revoked.

(3) After regulation 7 (availability of other rights and facilities in proceedings to which section 23 of the Act applies) insert—

“Applications to the Board

7A.—(1) An application to the Board under any of the following provisions of the Act must be made in such form as the Board may require:—

- (a) section 23A(c) (legal aid in solemn proceedings);
- (b) section 24 (legal aid in summary proceedings);
- (c) section 25 (legal aid in appeals); and

(a) 1986 c. 47; section 36 has been amended for purposes not relevant to these Regulations. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
(b) S.I. 1996/2555; amended by S.I. 1999/1042 and S.S.I. 2001/306, 2002/441, 2003/249, 2004/282, 2005/450 and 2009/312.
(c) Section 23A was inserted by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 64(4).

- (d) section 25AB(a) (legal aid in references, appeals or applications for special leave to appeal to the Supreme Court).
- (2) For the purposes of paragraph 1, a “form” may be an online form.
- (3) Unless the Board considers there to be a special reason to consider a late application, an application to the Board—
 - (a) for criminal legal aid under section 24 of the Act must be made within 14 days after the conclusion of the first diet at which the applicant tendered a plea of not guilty;
 - (b) for a review of a refusal of a criminal legal aid application must be made within 10 days of the Board informing the applicant of the refusal.”.
- (4) Regulation 8 (applications for criminal legal aid in summary proceedings) is revoked.
- (5) For regulation 9 (attendance for interview and supply of information) substitute—

“9.—(1) An applicant for criminal legal aid under section 23A, 24, 25 or 25AB of the Act must—

 - (a) attend for interview by a representative of the Board if the Board so requires for the purpose of determining the application;
 - (b) supply the Board with such information, including documents, as the Board may require for that purpose.

(2) If the applicant wilfully fails to comply with a requirement under paragraph (1), the Board may treat the application as abandoned and, where it does so, is to notify the applicant.”.
- (6) The heading to regulation 10 (availability of other rights and facilities in summary proceedings) becomes “availability of other rights and facilities”, and in that regulation for “24”, in both places it occurs, substitute “23A, 24, 25 or 25AB”.
- (7) In regulation 11 (notification of decision)—
 - (a) in paragraph (1) for “24” substitute “23A, 24, 25 or 25AB”; and
 - (b) in paragraph (2) omit “under section 24 of the Act”.
- (8) Regulation 12 (applications for review) is revoked.
- (9) Regulation 13 (legal aid for criminal appeals) is revoked.
- (10) In regulation 15 (matters of special urgency)—
 - (a) in paragraph (1)—
 - (i) for “24 or section 25” substitute “23A, 24, 25 or 25AB”;
 - (ii) before sub-paragraph (a) insert—

“(za) in the case of an application under section 23A of the Act, as to the matter specified in subsection (1) of that section;”;
 - (iii) omit the “and” immediately preceding sub-paragraph (b), and at the end of that sub-paragraph insert—

“; and
 - (c) in the case of an application under section 25AB of the Act, as to the matter (or in the case of an application for special leave to appeal the matters) specified in subsection (2) of that section”; and

(a) Section 25AB was inserted by S.I. 1999/1042, and has been amended by the Constitutional Reform Act 2005 (c.4), Schedule 9, Part 2, paragraph 85(3) and by the Legal Profession and Legal Aid (Scotland) Act 2007, section 73.

(b) in paragraph (2)(b) from “that” to the end substitute—

“—

- (i) in the case of an application under section 23A of the Act, as to the matter specified in subsection (1) of that section;
- (ii) in the case of an application under section 24 of the Act, as to the matters specified in subsection (1) of that section;
- (iii) in the case of an application under section 25 of the Act, as to the matters specified in subsection (2) of that section;
- (iv) in the case of an application under section 25AB of the Act, as to the matter (or in the case of an application for special leave to appeal the matters) specified in subsection (2) of that section”.

(11) In regulation 18(1) (duty of Board to cease to make criminal legal aid available and right to recover sums paid out of the Fund)—

(a) for “(a) to (d)” substitute “(a) to (e)”;

(b) in sub-paragraph (d) for “24” insert “23A, 24, 25 or 25AB”; and

(c) at the end of sub-paragraph (d) insert—

“; or

(e) has failed to comply with any condition to which the criminal legal aid is subject by virtue of section 23A(2), 24(1A), 25(2C) or 25AB(2A) of the Act”.

St Andrew’s House,
Edinburgh
1st November 2010

KENNY MACASKILL
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Scotland) Regulations 1996 (“the principal Regulations”) to allow legal aid applications to be made online and in consequence of the transfer, from the courts to the Scottish Legal Aid Board (“the Board”), of the function of granting criminal legal aid in relation to solemn proceedings and the conferral on the Board of powers to make criminal legal aid available subject to conditions. The power to grant criminal legal aid in relation to solemn proceedings is transferred by virtue of section 64 of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the 2007 Act”) and the powers to make criminal legal aid available subject to conditions is conferred on the Board by virtue of sections 64 and 65 of the 2007 Act. Those sections come into force on 25th November 2010 by virtue of the Legal Profession and Legal Aid (Scotland) Act 2007 (Commencement No. 6) Order 2010 (S.S.I. 2010/376).

Regulation 3(3) inserts a new regulation 7A into the principal Regulations which makes provision as to the manner of, and time limits for, making applications to the Board under sections 23A, 24, 25 and 25AB of the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Paragraphs (2), (4), (8) and (9) of regulation 3 revoke the provisions of the principal Regulations which made provision as to those matters in connection with applications to the Board under sections 24 and 25 of the 1986 Act.

Paragraphs (5), (6), (7), (10) and (11)(b) of regulation 3 amend regulations 9, 10, 11, 15 and 18(1)(d) of the principal Regulations respectively to apply to criminal legal aid made available under sections 23A, 24, 25 and 25AB of the 1986 Act. Previously, those regulations applied only in relation to criminal legal aid under sections 24 and 25 (or in the case of regulation 18(1)(d) only in relation to criminal legal aid under section 24) of the 1986 Act. Regulation 9 of the principal Regulations is further amended to make clear that where an applicant for criminal legal aid wilfully fails to comply with a requirement under paragraph (1) of that regulation, the Board may treat the application for criminal legal aid as abandoned.

Paragraphs (a) and (c) of regulation 3(11) amend regulation 18 of the principal Regulations to add to the list of grounds on which the Board can cease to make criminal legal aid available and recover sums paid out of the Scottish Legal Aid Fund, any failure to comply with a condition imposed by the Board under section 23A(2), 24(1A), 25(2C) or 25AB(2A) of the 1986 Act.

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