

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

2015 No.

LEGAL AID AND ADVICE

**The Advice and Assistance (Assistance by Way of
Representation) (Scotland) Amendment Regulations 2015**

Made - - - -

Coming into force - - 26th January 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 9 of the Legal Aid (Scotland) Act 1986(1) and all other powers enabling them to do so.

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

Citation and commencement

1. These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2015 and come into force on 26th January 2015.

Amendment of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003

2.—(1) The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003(2) are amended as follows.

(2) In paragraph (1) of regulation 3A(3)—

(a) in sub-paragraph (a), after head (iii) insert—

“(iiia) a pre-hearing panel meeting at which a determination under section 81A of the 2011 Act is to be made as regards an individual to whom section 79(5A)(a)(i) of the 2011 Act refers;”(4); and

(b) in sub-paragraph (b), after head (iii) insert—

(1) 1986 c.47; section 9 has been amended, but not relevantly for the purposes of 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).
(2) S.S.I. 2003/179; relevantly amended by S.S.I. 2013/200.
(3) Regulation 3A was inserted by S.S.I. 2013/200, regulation 3(3).
(4) Sections 79(5A) and 81A of the Children’s Hearings (Scotland) Act 2011 (asp 1) were inserted by section 84 of the Children and Young People (Scotland) Act 2014 (asp 8).

“(iia) a pre-hearing panel meeting at which a determination under section 81A of the 2011 Act is to be made as regards an individual to whom section 79(5A)(a)(i) of the 2011 Act refers;”.

(3) In regulation 13—

- (a) in paragraph (1), for “3A(1)(a)(ii) and (iii), (b)(ii) and (iii)” substitute “3A(1)(a)(ii), (iii) and (iia), (b)(ii), (iii) and (iia)”**(5)**; and
- (b) in paragraph (3A), for “3A(1)(a)(ii) and (iii), (b)(ii) and (iii)” substitute “3A(1)(a)(ii), (iii) and (iia), (b)(ii), (iii) and (iia)”**(6)**.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

(5) Regulation 13(1) was amended by [S.S.I. 2013/200](#), regulation 3(4)(a).
(6) Regulation 13(3A) was inserted by [S.S.I. 2013/200](#), regulation 3(4)(b).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advice and Assistance (Assistance By Way of Representation) (Scotland) Regulations 2003 (“the principal Regulations”) in consequence of amendments made to the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”) by Part 16 (children’s hearings) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”).

The principal Regulations provide for Assistance By Way of Representation (“ABWOR”) to be available in relation to the determination, at a pre-hearing panel meeting or at a children’s hearing, of whether a person should be deemed to be a “relevant person” under section 81 of the 2011 Act. Section 84 of the 2014 Act amends the 2011 Act to provide for a determination (under inserted section 81A) that the deeming of such a person as a “relevant person” is to end. These Regulations amend the principal Regulations to make ABWOR available at a hearing at which such a determination is to be made, on the same basis as it is available for hearings to make a determination under section 81.