

*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.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

**LEGAL AID AND ADVICE**

**The Advice and Assistance (Assistance  
by Way of Representation) (Scotland)  
Amendment (No. 2) Regulations 2011**

*Made - - - -*

*Coming into force in accordance with regulation 1*

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.—(1) These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2011 and, apart from regulation 2(3), come into force on 18th March 2011.

(2) Regulation 2(3) comes into force on 6th June 2011.

**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 regulation 3 (application of Part II of the Legal Aid (Scotland) Act 1986 to assistance by way of representation: miscellaneous proceedings), at the end of paragraph (r) insert—

“; and

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(1) 1986 c.47; section 9 was amended by the Access to Justice Act 1999 (c.22), section 32. 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; amended by S.S.I. 2003/500, 2004/307, 2005/165 and 482, 2006/345 and 615, 2008/251, 2010/239 and 2011/13.

- (s) any claim made to an Additional Support Needs Tribunal for Scotland in accordance with Part 3 of Schedule 17 to the Equality Act 2010<sup>(3)</sup> (which provides for claims to be made to a tribunal that a responsible body of a school has contravened Chapter 1 of Part 6 of that Act because of a person’s disability)”.
- (3) Paragraphs (1A) to (1E) of regulation 6A are revoked.
- (4) In regulation 13 (assistance by way of representation requiring approval of the Board)—
  - (a) in paragraph (1), after “(m)” insert “, (s)”;
  - (b) in paragraph (2), after “3(m)” insert “and (s)”.

St Andrew's House,  
Edinburgh

A member of the Scottish Executive

## EXPLANATORY NOTE

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

These Regulations modify the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 (“the principal Regulations”).

Paragraphs (2) and (4) of regulation 2 amend the principal Regulations to make assistance by way of representation available in relation to disability discrimination in schools cases heard by an Additional Support Needs Tribunal for Scotland. Those paragraphs come into force on 18th March 2011, which is the date on which jurisdiction in respect of disability discrimination in schools cases is to be conferred on the Additional Support Needs Tribunal for Scotland by virtue of the Equality Act 2010.

Paragraph (3) of regulation 2 revokes regulation 6A(1A) to (1E) of the principal Regulations. Those paragraphs provided that assistance by way of representation could only be provided under regulation 6A(1) of the principal Regulations by an assisted person’s “appointed solicitor” (as defined by regulation 6A(1E)). Provision to similar effect is to be made in a separate set of Regulations which are to come into force at the same time as regulation 2(3) of these Regulations on 6th June 2011.