

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

2012 No.

LEGAL AID AND ADVICE

**The Advice and Assistance (Assistance By Way of
Representation) (Scotland) Amendment Regulations 2012**

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 these Regulations 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 2012 and come into force on the day after the day on which they are made.

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)(3), at the end of paragraph (s), insert—

“; and

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- (1) 1986 c.47; to which there are amendments to section 9 not relevant to these Regulations. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.
- (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 2011/013 and 216.
- (3) Relevant amending instruments to regulation 3 are the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2005 (S.S.I. 2005/482), regulation 5; the Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (S.S.I. 2010/239), regulation 4(3); the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2006 (S.S.I. 2006/615), regulation 4(b) and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2011 (S.S.I. 2011/216), regulation 2(2).

- (t) applications under sections 2(2), 3(3)(b), 4(3)(b), 11(3) and 12(3) of the Double Jeopardy (Scotland) Act 2011(4).”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Executive

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 to make assistance by way of representation available for proceedings under the [Double Jeopardy \(Scotland\) Act 2011 \(asp 16\)](#) where—

- (a) an application has been made under sections 2(2), 3(3)(b) or 4(3)(b) of that Act to bring a new prosecution where a person has been acquitted of an offence;
- (b) an application has been made under section 11(3) of that Act where a person has been acquitted of an offence involving the physical injury of another person and the injured person has since died; or
- (c) an application has been made under section 12(3) of that Act to bring a new prosecution on the basis that the previous proceedings were a nullity.