

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

2020 No.

LEGAL AID AND ADVICE

**The Advice and Assistance (Assistance by Way of
Representation) (Scotland) Amendment Regulations 2020**

Made - - - - 2020
Coming into force - - 25th September 2020

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 2020 and come into force on 25 September 2020.

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 1(2) (interpretation) after the definition of “the 2011 Act” insert—

““the 2018 Act” means the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018(3).”.

(3) In regulation 3 (application of Part II of the Act to assistance by way of representation: miscellaneous proceedings)—

(1) 1986 c.47. Section 9(2)(dd) and (de) of the 1986 Act were inserted by the Access to Justice Act 1999 (c.22), section 32. There are other amendments to section 9 which are not relevant to these Regulations. The functions of the Secretary of State were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).
(2) S.S.I. 2003/179; relevant amending instruments are S.S.I. 2005/165, S.S.I. 2005/482, S.S.I. 2008/251 and S.S.I. 2012/84. Paragraph (g) of regulation 9 was revoked by S.S.I. 2008/251.
(3) 2018 asp 14.

- (a) in paragraph (u), omit “and”, and
 - (b) after paragraph (v), insert—
 - “; and
 - (w) appeal proceedings under section 8 of the 2018 Act”.
- (4) In regulation 9 (prescribed proceedings)—
- (a) in paragraph (i), omit “and”, and
 - (b) after paragraph (j), insert—
 - “; and
 - (k) appeal proceedings under section 8 of the 2018 Act”.
- (5) In regulation 13 (assistance by way of representation requiring approval of the Board)—
- (a) in paragraph (1), for “and (u)” substitute “, (u) and (w)”,
 - (b) in paragraph (5), after “4(a)” insert “and (7)”, and
 - (c) after paragraph (6), insert—
 - “(7) The Board must only approve the provision of assistance by way of representation in relation to the proceedings described in regulation 3(w) where it is satisfied that in all the circumstances of the case it is—
 - (a) in the interests of justice, and
 - (b) reasonable,that assistance by way of representation be made available.”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

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”) to make Assistance by Way of Representation (“ABWOR”) available for appeal proceedings under section 8 of the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018 (“the 2018 Act”).

The proceedings for which ABWOR is made available are proceedings relating to the appeal of determinations in respect of applications for the disregarding of historical sexual offence convictions (under section 5 of the 2018 Act).

Regulation 2 adds these proceedings to the list of prescribed proceedings in regulation 3 (Application of Part 2 of the Act to assistance by way of representation: miscellaneous proceedings) of the Principal Regulations for which ABWOR is available. It also adds these proceedings to the list of prescribed proceedings in regulation 9 (prescribed proceedings) of the Principal Regulations to make ABWOR available without reference to the financial criteria set out in the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) under section 8 (availability of advice and assistance) and section 11(2) (client’s contributions). It further adds these proceedings to the list of prescribed proceedings in regulation 13 (assistance by way of representation requiring approval of the Board) of the Principal Regulations to make ABWOR available only with the approval of the Scottish Legal Aid Board applying certain criteria.