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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 109**

**LEGAL AID AND ADVICE**

**The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2000**

*Made* - - - - *7th April 2000*  
*Coming into force* - - *10th April 2000*

The Scottish Ministers, in exercise of the powers conferred on them by sections 9(1), (2)(a), (dd) and (de) and 37(1) of the Legal Aid (Scotland) Act 1986(1) and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 37(2) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2000 and shall come into force on 10th April 2000.

(2) In these Regulations—

“the principal Regulations” means the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1997(2).

**Amendment of principal Regulations**

2. In regulation 1(2) of the principal Regulations (interpretation)—

(a) after the definition of “the Act”, there shall be inserted the following:—

““adjudicator” means an adjudicator appointed by virtue of Schedule 3 to the 1999 Act(3) and includes—

(a) an adjudicator who acts as a special adjudicator for the purposes of section 8 of the Asylum and Immigration Appeals Act 1993(4); and

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(1) 1986 c. 47; subsections (2)(dd) and (2)(de) were inserted 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.I. 1997/3070, as amended by S.I. 1998/972 and S.I. 1999/214.  
(3) By virtue of article 3 of S.I. 2000/168, “adjudicator” and the “Immigration Appeal Tribunal” for the purposes of the Immigration and Asylum Act 1999 (c. 33) are to be treated as the adjudicators and the Immigration Appeal Tribunal for the purposes of the previous Immigration Acts as defined in that article.  
(4) 1993 c. 23; section 8 was amended by the Asylum and Immigration Act 1996 (c. 49), Schedule 3, paragraph 2.

- (b) an adjudicator who acts as a special adjudicator for the purposes of section 3 of the Asylum and Immigration Act 1996<sup>(5)</sup>”;
- (b) after the definition of “the 1995 Act”, there shall be inserted the following:–
- ““the 1999 Act” means the Immigration and Asylum Act 1999<sup>(6)</sup>”; and
- (c) after the definition of “governor”<sup>(7)</sup>, there shall be inserted the following:–
- ““Immigration Appeal Tribunal” means the Tribunal continued in force by virtue of section 56(1) of the 1999 Act”.
- 3.** In regulation 3 of the principal Regulations (application of Part II of the Act to assistance by way of representation: miscellaneous proceedings), after paragraph (j) there is inserted the following:–
- “.
- (k) proceedings before an adjudicator or the Immigration Appeal Tribunal.”.
- 4.** After regulation 8 of the principal Regulations (petitions for the appointment of an executor), there is inserted the following:–

**“Prescribed proceedings**

**8A.** Assistance by way of representation shall be available in relation to all proceedings under Part V of the Mental Health (Scotland) Act 1984<sup>(8)</sup> without reference to the financial limits under section 8 of the Act (availability of advice and assistance), and section 11(2) of the Act (client’s contributions) shall not apply as respects assistance by way of representation received in relation to such proceedings.”.

St Andrew’s House,  
Edinburgh  
7th April 2000

*ANGUS MacKAY*  
A member of the Scottish Executive

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(5) 1996 c. 49.  
(6) 1999 c. 33.  
(7) The definition of “governor” was substituted by S.I. 1998/972.  
(8) 1984 c. 36.

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## EXPLANATORY NOTE

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

These Regulations make assistance by way of representation available in relation to proceedings before an adjudicator (including a special adjudicator) or the Immigration Appeal Tribunal (regulation 3). the purposes of section 9(2)(dd) and (de) of the Legal Aid (Scotland) Act 1986 (c. 47) (“the 1986 Act”) (regulation 4). Subsection 9(2)(dd) and (de) were inserted into the 1986 Act by section 32 of the Access

The Regulations also prescribe proceedings for to Justice Act 1999 (c. 22). As such, where assistance by way of representation is made available in relation to proceedings under Part V of the Mental Health (Scotland) Act 1984 (c. 36) no account is taken of the financial eligibility test under section 8 of the 1986 Act or the client contribution test under section 11 of that Act.