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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No.165**

**LEGAL AID AND ADVICE**

**The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2005**

*Made - - - - 17th March 2005*

*Coming into force in accordance with regulation 2*

The Scottish Ministers, in exercise of the powers conferred by section 9 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 and commencement**

1. These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2005.
2. Regulations 4 and 5 shall come into force on 4th April 2005 and all other regulations shall come into force on 1st April 2005.

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

3. The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003(2) are amended in accordance with the following regulations.
4. In regulation 1(2) (interpretation) omit—
  - (a) from “adjudicator” where it occurs in the first instance to “the Asylum and Immigration Act 1996(3)”; and
  - (b) the definition of “the 1999 Act(4)”; and
  - (c) the definition of “Immigration Appeal Tribunal”.
5. In regulation 3 for paragraph (1) substitute—

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(1) 1986 c. 47; section 9(2)(dd) and (de) was 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.S.I. 2003/179, amended by S.S.I. 2003/500 and S.S.I. 2004/307.  
(3) 1996 c. 49.  
(4) The Immigration and Asylum Act 1999 c. 33.

“(l) proceedings before the Asylum and Immigration Tribunal, as established by virtue of section 26 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004<sup>(5)</sup>.”.

6. In regulation 4 (Application of Part II of the Act to assistance by way of representation: proceedings under the Criminal Procedure (Scotland) Act 1995<sup>(6)</sup>), after paragraph (2)(i), insert–

“(j) under section 90B, 90C, 90D or 90E<sup>(7)</sup> in relation to orders made in respect of witnesses apprehended under section 90A, breach of bail, the review of orders made, or, as the case may be, appeals in respect of orders made.”

7. In regulation 9 (Prescribed proceedings), after paragraph (e), insert–

“(f) proceedings under sections 90B to 90E of the Criminal Procedure (Scotland) Act 1995.”.

St Andrew’s House, Edinburgh  
17th March 2005

*HUGH HENRY*  
Authorised to sign by the Scottish Ministers

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<sup>(5)</sup> 2004 c. 19.

<sup>(6)</sup> 1995 c. 46.

<sup>(7)</sup> Sections 90A to 90E were inserted by the [Criminal Procedure \(Amendment\) \(Scotland\) Act 2004 \(asp 5\)](#), section 11.

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## 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 2003 Regulations”) so as to provide that—

- (a) assistance by way of representation under Part II of the Legal Aid (Scotland) Act 1986 is available for proceedings before the Asylum and Immigration Tribunal. The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 creates the Asylum and Immigration Tribunal which replaces the Immigration Appellate Authority and the Immigration Appeal Tribunal on 4th April 2005; and
- (b) assistance by way of representation under Part II of the Legal Aid (Scotland) Act 1986 is available for persons who, as witnesses, are brought before the court in solemn criminal proceedings, having been apprehended for deliberately and obstructively failing to appear at any diet to which they have been cited. This assistance by way of representation shall be available without reference to sections 8 and 11 of the 1986 Act which relate to financial limits on the availability of advice and assistance and payment of contributions towards advice and assistance.