

2005 No. 448

LEGAL AID AND ADVICE

**The Civil Legal Aid (Scotland) Amendment (No. 2)
Regulations 2005**

Made - - - - - *13th September 2005*

Laid before the Scottish Parliament *13th September 2005*

Coming into force - - - *5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by section 36(1) and (2)(a) and (d) of the Legal Aid (Scotland) Act 1986(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2005 and shall come into force on 5th October 2005.

Application

2. These Regulations shall apply only in relation to any case where an application for civil legal aid is made on or after 5th October 2005.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

3. The Civil Legal Aid (Scotland) Regulations 2002(b) are amended in accordance with the following regulations.

4. In regulation 2(1) (Interpretation)–

- (a) in the definition of “legal representative” at the end insert “or on a patient’s behalf under the Mental Health (Care and Treatment) (Scotland) Act 2003(c)”; and
- (b) after the definition of “parental rights” insert ““patient” has the same meaning as in section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003;”.

5. In regulation 5(1)(a)(iii) (Form of application) for “section 1(2) of the Mental Health (Scotland) Act 1984(d)” substitute “section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

6. In regulation 14 (Assessment of resources, etc. of person making application in representative, fiduciary, official or other capacity), in paragraphs (1) and (2) after “official

(a) 1986 c.47; section 36 was amended for purposes not relevant to these Regulations. 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).

(b) S.S.I. 2002/494, to which there are amendments not relevant to these Regulations.

(c) 2003 asp 13.

(d) 1984 c.36.

capacity” insert “or is a named person by virtue of any of sections 250 to 254 and 257 of the Mental Health (Care and Treatment) (Scotland) Act 2003”.

St Andrew’s House,
Edinburgh
13th September 2005

CATHY JAMIESON
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) Regulations 2002 as follows:–

- (a) the definition of “legal representative” is extended to include persons authorised to act on a patient’s behalf under the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”);
- (b) the reference to the Mental Health (Scotland) Act 1984 is removed in regulation 5 where it makes provision as to the procedure for signing applications for civil legal aid where the applicant is unable to sign due to mental disorder and is substituted with a reference to the 2003 Act; and
- (c) a reference to named persons, nominated and appointed in terms of the 2003 Act, is added to regulation 14 which provides for the assessment of financial resources of persons who make applications for civil legal aid in a representative, fiduciary or official capacity.

The Mental Health (Scotland) Act 1984 is replaced and repealed by the 2003 Act.

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