

2005 No. 482

LEGAL AID AND ADVICE

**The Advice and Assistance (Assistance by Way of
Representation) (Scotland) Amendment (No. 2)
Regulations 2005**

Made - - - - - *29th September 2005*

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

The Scottish Ministers, in exercise of the powers conferred by sections 9(1), (2)(a), (dd), (de), 36(1) and 37(1) of the Legal Aid (Scotland) Act 1986(a), 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. These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2005 and shall come into force on 5th October 2005.

Application

2. These Regulations apply only in respect of proceedings commenced on or after 5th October 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(b) are amended in accordance with the following regulations.

4. In regulation 1(2) (interpretation) insert at the appropriate place—

““Mental Health Tribunal for Scotland” means the tribunal established under Part 3 of the Mental Health (Care and Treatment) (Scotland) Act 2003(c);”.

(a) 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 1988 (c.46).
(b) S.S.I. 2003/179, to which there are amendments not relevant to these Regulations.
(c) 2003 asp 13.

5. In regulation 3 for paragraph (d) substitute–

“(d) proceedings before the Mental Health Tribunal for Scotland;”.

6. In regulation 9 for paragraph (b) substitute–

“(b) proceedings before the Mental Health Tribunal for Scotland;”.

St Andrew’s House,
Edinburgh
29th September 2005

HUGH HENRY
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 so as to provide that—

- (a) assistance by way of representation under Part II of the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) is available for proceedings before the Mental Health Tribunal for Scotland, as established by the Mental Health (Care and Treatment) (Scotland) Act 2003;
- (b) assistance by way of representation shall be available to persons 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; and
- (c) any grant of assistance by way of representation made before 5th October 2005 for proceedings under Part V of the Mental Health (Scotland) Act 1984^(a) shall continue until the case is disposed of as if these Regulations had not been made.

^(a) 1984 c.36.

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