
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 200

The Children's Legal Assistance (Scotland) Regulations 2013

PART 2

CHILDREN'S ASSISTANCE BY WAY OF REPRESENTATION

Amendment of the Advice and Assistance (Assistance By Way Of Representation) (Scotland) Regulations 2003

3.—(1) The Advice and Assistance (Assistance By Way Of Representation) (Scotland) Regulations 2003(1) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of “the 1995 Act”, insert—

““the 2011 Act” means the Children's Hearings (Scotland) Act 2011;”;

(b) after the definition of “the chairman of a tribunal”, insert—

““child” has the meaning given in section 199 of the 2011 Act;

“children's hearing” has the meaning given in section 5 of the 2011 Act;

“compulsory supervision order” has the meaning given in section 83 of the 2011 Act;”;

(c) after the definition of “Parole Board case”, insert—

““pre-hearing panel meeting” has the meaning given in section 79 of the 2011 Act;”;
and

(d) after the definition of “prisoner”, insert—

““relevant person” has the meaning given in section 200 of the 2011 Act and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(3)(a) of that Act;”.

(3) After regulation 3, insert—

“Application of Part II of the Act to assistance by way of representation: hearings or proceedings under the Children's Hearings (Scotland) Act 2011

3A.—(1) Part II of the Act applies to assistance by way of representation in relation to—

(a) a child in respect of—

(i) the circumstances set out in section 28C(1) and (2) of the Act;

(ii) a children's hearing under the 2011 Act other than in the circumstances set out in section 28C(1) and (2) of that Act;

- (iii) a pre-hearing panel meeting at which a determination under section 81 of the 2011 Act is to be made as regards an individual to whom section 79(2)(a)(i) of the 2011 Act refers;
 - (iv) an application to the sheriff as regards that child for a child assessment order under section 35 of the 2011 Act or a child protection order under section 38 of the 2011 Act;
 - (b) a relevant person in respect of—
 - (i) the circumstances set out in section 28C(1) and (2) of the Act;
 - (ii) a children’s hearing under the Act other than in the circumstances set out in section 28C(1) and (2) of that Act;
 - (iii) a pre-hearing panel meeting at which a determination under section 81 of the 2011 Act is to be made as regards an individual to whom section 79(2)(a)(i) of the 2011 Act refers;
 - (iv) an application to the sheriff for a child assessment order under section 35 of the 2011 Act or a child protection order under section 38 of the 2011 Act;
 - (c) an individual to whom section 126 of the 2011 Act refers, in respect of any hearing under that section which relates to that individual;
 - (d) an individual to whom section 79(2)(a)(i) of the 2011 Act refers, in respect of a pre-hearing panel meeting or children’s hearing at which a determination under section 81 of the 2011 Act is to be made as regards that individual.
- (2) The assistance by way of representation described in paragraphs (1)(a)(i) and (iv) is available without reference to the financial limits under section 8 of the Act (availability of advice and assistance).
- (3) The assistance by way of representation described in paragraph (1)(b)(i) and (iv) is to be provided under Part II of the Act only if the solicitor to whom the application has been made is satisfied that legal representation is required to allow the relevant person to participate effectively.”.
- (4) In regulation 13 (assistance by way of representation requiring approval of the Board)—
- (a) in paragraph (1), after “(m)”, insert “, 3A(1)(a)(ii) and (iii), (b)(ii) and (iii), (c) and (d)”;
 - (b) after paragraph (3), insert—
 - “(3A) The Board must only approve the provision of assistance by way of representation in relation to the hearings described in regulation 3A(1)(a)(ii) and (iii), (b)(ii) and (iii), (c) and (d) where it is satisfied that the legal representation is required to allow the child, the relevant person or individual (as the case may be) to participate effectively.”.
- (5) After regulation 13, insert—

“Effective participation under the Children’s Hearings (Scotland) Act 2011

14. When determining for the purposes of regulations 3A(3) or 13(3A) whether legal representation is required to allow a person to participate effectively, the solicitor or Board (as the case may be) must take into account the following matters—

- (a) the complexity of the case, including the existence and difficulty of any points of law in issue;
- (b) the nature of the legal issues involved;
- (c) the ability of the person to consider and challenge any document or information in the hearings or proceedings without the assistance of a solicitor; and

- (d) the ability of the person to present his or her views in an effective manner without the assistance of a solicitor.”.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

4.—(1) The Advice and Assistance (Scotland) Regulations 1996⁽²⁾ are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the 1996 Act” insert—

““the 2011 Act” means the Children’s Hearings (Scotland) Act 2011⁽³⁾;

(b) for the definition of “child” substitute—

““child” means a person under the age of 16 years, except in relation to any hearings or proceedings under the 2011 Act, where “child” has the meaning in section 199 of that Act;”

(c) after the definition of “legal representative” insert—

““safeguarder” means a safeguarder appointed to a child under section 30 or 31 of the 2011 Act”.

(3) In regulation 6(1) (applications on behalf of others)—

(a) in sub-paragraph (b), after “representative” insert “or;”; and

(b) after sub-paragraph (b) insert—

“(c) where the client is a child in terms of the 2011 Act, and the application concerns hearings or proceedings under that Act, a safeguarder or other lay representative of the child.”.

(4) In paragraph 4A of Schedule 2 (assessment of disposable capital and disposable income), after sub-paragraph (3) insert—

“(4) This paragraph does not apply to assistance by way of representation in relation to hearings or proceedings under the 2011 Act.”.

⁽²⁾ S.I. 1996/2447; relevant amending instruments are S.S.I. 2000/399, 2003/421, 2005/445 and 2010/462.

⁽³⁾ 2011 asp 1.