
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 466

The Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017

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

7.—(1) The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003⁽¹⁾ are amended as follows.

(2) After regulation 4 (application of Part II of the Legal Aid (Scotland) Act 1986 to assistance by way of representation: proceedings under the Criminal Procedure (Scotland) Act 1995), insert—

“Application of Part II of the Act to assistance by way of representation: proceedings under sections 19, 30 and 36(1)(a) of the Criminal Justice (Scotland) Act 2016

4A. Part II of the Act shall apply to assistance by way of representation in relation to proceedings under sections 19, 30 and 36(1)(a) of the Criminal Justice (Scotland) Act 2016.”.

(3) In regulation 13 (assistance by way of representation requiring approval of the Scottish Legal Aid Board)—

- (a) in paragraph (1) for “and 5” substitute “, 4A, 5”; and
- (b) after paragraph (3B) insert—

“(3C) The Board must only approve the provision of assistance by way of representation in relation to the proceedings in regulation 4A where it is satisfied that it is in the interests of justice.

(3D) The factors to be taken into account by the Board in determining whether it is in the interests of justice for the purposes of paragraph (3C) that assistance by way of representation be made available include whether—

- (a) it is reasonable in the particular circumstances of the case that assistance by way of representation is made available;
- (b) the case is too complex to allow the applicant to present it to the minimum standard of effectiveness in person; and
- (c) it is in the interests of someone other than the applicant that the applicant be legally represented.”.