
STATUTORY INSTRUMENTS

1993 No. 3186 (S.308)

LEGAL AID AND ADVICE, SCOTLAND

The Advice and Assistance (Assistance
by Way of Representation) (Scotland)
Amendment (No. 2) Regulations 1993

Made - - - - 14th December 1993

Coming into force - - 10th January 1994

The Secretary of State, in exercise of the powers conferred on him by sections 9(1) and (2)(a) and (b) and 37(1) of the Legal Aid (Scotland) Act 1986(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations, of which a draft has, in accordance with section 37(2) of that Act, been laid before, and approved by a resolution of, each House of Parliament:

Citation and commencement

1. These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 1993 and shall come into force on 10th January 1994.

Interpretation

2. In these Regulations “the principal Regulations” means the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1988(2).

Amendment of the principal Regulations

3. In regulation 2 of the principal Regulations at the end after the definition of “the 1975 Act” there shall be inserted—

““the chairman of a tribunal”, in relation to a Parole Board case, has the same meaning as in Rule 2(1) of the Parole Board (Scotland) Rules 1993(3);

“disciplinary proceedings”, in relation to a prisoner, means proceedings before a governor held in pursuance of rules 40, 42 and 43 of the Prison (Scotland) Rules 1952(4) or rules 39,

(1) 1986 c. 47.

(2) S.I.1988/2290 amended by S.I.1992/1588 and S.I. 1993/972.

(3) S.I. 1993/2225.

(4) S.I. 1952/565; relevant amending Instruments are S.I. 1954/240 and 1993/2227.

41 and 42 of the Young Offenders (Scotland) Rules 1965⁽⁵⁾ in respect of an offence against discipline which the prisoner is alleged to have committed;

“governor” means the person who is appointed by the Secretary of State under section 3(1) of the Prisons (Scotland) Act 1989⁽⁶⁾ as the governor of a prison and includes any officer appointed to act for the governor in relation to disciplinary proceedings;

“Parole Board case” means a case of a prisoner to which Part IV of the Parole Board (Scotland) Rules 1993 applies;

“prison” has the same meaning as in section 43(1) of the Prisons (Scotland) Act 1989 and also includes a young offenders institution;

“prisoner”

(a) in relation to disciplinary proceedings, has the same meaning as in section 43(1) of the Prisons (Scotland) Act 1989 and also includes a person serving a sentence of detention in a young offenders institution, and

(b) in relation to a Parole Board case, has the same meaning as in Rule 2(1) of the Parole Board (Scotland) Rules 1993;

“tribunal” in relation to a Parole Board case, means a tribunal formed under Rule 18 of the Parole Board (Scotland) Rules 1993, and includes a preliminary hearing before the chairman of a tribunal under Rule 19 of those Rules;

“young offenders institution” has the same meaning as in section 19(1) of the Prisons (Scotland) Act 1989.”.

4. In Regulation 3 of the principal Regulations—

(a) at the end of paragraph (c), the word “and” shall be deleted; and

(b) at the end of paragraph (d), the full stop shall be deleted and there shall be inserted—

“;

(e) disciplinary proceedings before a governor in relation to a prisoner, where the prisoner has been permitted by the governor to be legally represented; and

(f) proceedings in Parole Board cases.”.

5. In Regulation 4 of the principal Regulations after paragraph (3) there shall be inserted—

“(4) The assistance by way of representation which may be provided under Part II of the Act in relation to disciplinary proceedings shall be for representation of the prisoner at all stages of the proceedings before the governor.

(5) The assistance by way of representation which may be provided under Part II of the Act in relation to a Parole Board case shall be for representation of the prisoner at all stages of the proceedings before a tribunal relating to that case.”.

St Andrew’s House,
Edinburgh
14th December 1993

Fraser of Carmyllie
Minister of State Scottish Office

(5) S.I. 1965/195; relevant amending instrument is S.I. 1993/2228.

(6) 1989 c. 45.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1988 and provide for assistance by way of representation (ABWOR) to be made available in relation to—

- (a) disciplinary proceedings before a governor in relation to a prisoner or a person serving a sentence of detention, under the Prison (Scotland) Rules 1952 or the Young Offenders (Scotland) Rules 1965, where the prisoner is permitted by the governor to be legally represented; and
- (b) Parole Board cases involving a discretionary life prisoner or a prisoner who is treated as if he were a discretionary life prisoner which are referred to the Parole Board under the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9).

The Regulations provide for ABWOR to be available at all stages of disciplinary proceedings before a governor and, in Parole Board cases, at all stages of proceedings relating to those cases before a tribunal composed of Parole Board members or before the chairman of a tribunal at a preliminary hearing.