
STATUTORY INSTRUMENTS

1994 No. 1000 (S. 43)

LEGAL AID AND ADVICE, SCOTLAND

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 1994

Made - - - - 28th March 1994
Coming into force - - 11th April 1994

The Secretary of State, in exercise of the powers conferred on him by sections 9(1), (2)(a), (c) and (d), and (3), 36(1) 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 resolution of, each House of Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 1994 and shall come into force on 11th April 1994.

(2) In these Regulations—

“the principal Regulations” means the Advice and Assistance (Assistance by way of Representation) (Scotland) Regulations 1988⁽²⁾; and

“the 1975 Act” means the Criminal Procedure (Scotland) Act 1975⁽³⁾.

Application

2. These Regulations shall apply only in relation to any case where an application for advice and assistance is granted on or after 11th April 1994.

Amendment of the principal Regulations

3. In regulation 3 of the principal Regulations (application of Part II of the Act to assistance by way of representation)⁽⁴⁾—

(a) for paragraph (b) there shall be substituted—

(1) 1986 c. 47.

(2) S.I. 1988/2290.

(3) 1975 c. 21.

(4) Regulation 3 was substituted by S.I. 1993/972 and amended by S.I. 1993/3186.

- “(b) proceedings under Part V of the Mental Health (Scotland) Act 1984(5);” and
- (b) at the end there shall be added—
- “(g) proceedings under section 186 or 387 of the 1975 Act(6) in relation to failure to comply with the requirements of a probation order;
- (h) proceedings under section 187 or 388 of the 1975 Act in relation to the conviction of a probationer by a Court in Great Britain of an offence committed during his probation period;
- (i) proceedings under section 4 of the Community Service by Offenders (Scotland) Act 1978(7) in relation to failure to comply with the requirements of a community service order;
- (j) proceedings under paragraph 4 of Schedule 6 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(8) in relation to failure to comply with the requirements of a supervised attendance order; and
- (k) applications under section 42 of the Road Traffic Offenders Act 1988(9) for the removal of a disqualification.”
4. In regulation 5 (criteria for determining whether assistance by way of representation should be provided)—
- (a) in paragraph (1) for “regulation 4(a) and (b)” there shall be substituted “regulation 4(1) (a) and (b)”(10); and
- (b) in paragraph (2) for “regulation 4(c), (d), (e) and (f)” there shall be substituted “regulation 4(1)(c), (d), (e) and (f)”.
5. After regulation 5 of the principal Regulations there shall be inserted—

“Assistance by way of representation requiring approval of Board

5A. The approval of the Board shall be required as a pre-condition of the provision of assistance by way of representation in relation to the proceedings described in regulation 3(k) above.”

St Andrew’s House,
Edinburgh
28th March 1994

Fraser of Carmyllie
Minister of State, Scottish Office

(5) 1984 c. 36.

(6) Sections 186 and 387 were amended by the Community Service by Offenders (Scotland) Act 1978 (c. 49), section 8; the Criminal Justice (Scotland) Act 1980 (c. 62), section 46(1)(a) and (d) respectively; the Criminal Justice Act 1982 (c. 48), Schedule 7, paragraphs 3 and 9 respectively; the Criminal Justice (Scotland) Act 1987 (c. 41), section 65(5); the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 61(2) and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), Schedule 5, paragraph 1(7).

(7) 1978 c. 49; section 4 was amended by the Criminal Justice Act 1982 (c. 48), Schedule 7, paragraph 12 and by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 28.

(8) 1990 c. 40.

(9) 1988 c. 53; section 42 was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 98.

(10) Regulation 4 was amended by S.I. 1992/1588, 1993/972 and 3186.

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 (“the principal Regulations”).

The regulations—

- (a) provide for assistance by way of representation to be made available in relation to any proceedings under Part V of the Mental Health (Scotland) Act 1984, to proceedings for breach of a probation order, community service order or supervised attendance order and to proceedings by way of petition for the removal of a driving disqualification (regulation 3);
- (b) amend regulation 5 of the principal Regulations to take account of amendments made to regulation 4 of the principal Regulations by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 1992 (S.I.1992/1588) (regulation 4); and
- (c) provide that the approval of the Scottish Legal Aid Board is required for the provision of assistance by way of representation in relation to petitions for the removal of a driving disqualification (regulation 5).