
STATUTORY INSTRUMENTS

1988 No. 1390 (S.129)

LEGAL AID AND ADVICE, SCOTLAND

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 1988

Made - - - - *29th July 1988*

Coming into force - - *1st August 1988*

The Secretary of State, in exercise of the powers conferred on him by sections 9 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 Parliament and approved by 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 Regulations 1988 and shall come into force on 1st August 1988.

Interpretation

2. In these Regulations, “the principal Regulations” means the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1987⁽²⁾.

Amendment of principal Regulations

3. At the end of regulation 3 of the principal Regulations there shall be inserted the following:—
“and appeals to the Sheriff under the Mental Health (Scotland) Act 1984⁽³⁾”

4. In regulation 4 of the principal Regulations—

- (a) in paragraph (b) the words “the Act of Adjournal (References to the European Court) 1973” shall be deleted and there shall be substituted the words “rule 113 of the Act of Adjournal (Consolidation) 1988”⁽⁴⁾

(1) 1986 c. 47
(2) S.I.1987/642
(3) 1984 c. 36
(4) S.I. 1988/110

- (b) the word “and” at the end of paragraph (b) shall be deleted and a semi-colon shall be substituted for the full stop at the end of paragraph (c);
- (c) there shall be inserted after paragraph (c) the following paragraphs:—
 - “(d) at any diet at which the court is considering the accused’s plea of guilty to the charges and where there has been no change of plea, and thereafter until final disposal of the case;
 - (e) at any diet at which the court is considering the accused’s changed plea of guilty to the charges, provided that the accused has intimated in writing his intention to change his plea to one of guilty to the prosecutor within 14 days of the diet at which the plea of not guilty was tendered, and where no application for criminal legal aid has been made, and thereafter until final disposal of the case; and
 - (f) at any diet where the judge orders a proof in mitigation, and thereafter until final disposal of the case.”.

St Andrew’s House,
Edinburgh
29th July 1988

James Douglas-Hamilton
Parliamentary Under Secretary of State, Scottish
Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Amendment Regulations provide for assistance by way of representation to be available in relation to certain further summary criminal proceedings in Scotland and appeals to the Sheriff under the Mental Health (Scotland) Act 1984, for which criminal legal aid is not available in terms of the Legal Aid (Scotland) Act 1986.

The Regulations extend the availability of representation by way of advice and assistance to the following circumstances:—

- (a) appeals to the Sheriff under the Mental Health (Scotland) Act 1984;
- (b) where an accused who has pled guilty is called before the court;
- (c) where an accused changes his plea from not guilty to guilty within 14 days and does not apply for criminal legal aid; and
- (d) where the court orders a proof in mitigation.