

Draft Regulations laid before the Scottish Parliament under section 37(2) of the Legal Aid (Scotland) Act 1986 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

LEGAL AID AND ADVICE

**The Advice and Assistance (Assistance by Way of
Representation) (Scotland) Amendment Regulations 2006**

Made - - - - 2006
Coming into force - - 12th June 2006

The Scottish Ministers, in exercise of the powers conferred by section 9(1), (2)(a), (b), (c), (dd) and (de) of the Legal Aid (Scotland) Act 1986(1), and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 37(2) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2006 and shall come into force on 12th June 2006.

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

2. The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003(2) shall be amended in accordance with the following Regulations.

3. In regulation 4(2) for paragraph (a) substitute—

“(a) under section 229A(3) or 232(4) in relation to a probation progress review, or, as the case may be, failure to comply with the requirements of a probation order;”.

4. For regulation 6(2), substitute—

(1) 1986 c. 47. Section 9(2)(dd) and (de) was inserted by the Access to Justice Act 1999 (c. 22), section 32. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
(2) S.S.I. 2003/179 as relevantly amended by S.S.I. 2004/307.
(3) 1995 c. 46; section 229A was inserted by the Management of Offenders etc. (Scotland) Act 2005 asp 14, section 12.
(4) 1995 c. 46; section 232 was amended by the Crime and Punishment (Scotland) Act 1997 (c. 48), Schedule 1, paragraph 21, the Crime and Disorder Act 1998 (c. 37), Schedule 6, paragraph 2 and the Management of Offenders etc. (Scotland) Act 2005 asp 14, section 12.

“(2) The assistance by way of representation which may be provided under Part II of the Act in relation to summary criminal proceedings in a sheriff court which has been designated by the sheriff principal—

- (a) as a youth court;
- (b) as a domestic abuse court; or
- (c) as a summary justice pilot court,

shall include representation of an accused person following a finding of guilt but only where criminal legal aid has not been granted to that person in terms of section 24 of the Act.”.

5. After regulation 6, insert—

“**6A.** —

(1) The assistance by way of representation which may be provided under Part II of the Act in relation to summary criminal proceedings in a sheriff court which has been designated as a summary justice pilot court by the sheriff principal shall include the attending upon, advising and acting for any person who appears from custody on the day when that person is first brought to a court to answer to any complaint and thereafter—

- (i) until the conclusion of the first diet at which he is called upon to plead and in connection with any application for liberation following upon that diet; and
- (ii) where he has tendered a plea of guilty at that diet, until his case is finally disposed of.

(2) The references to “attending upon, advising and acting” in paragraph (1) above shall include the services of the solicitor at any preliminary plea to the competency or relevancy of the complaint and at any plea in bar of trial or any mental health proof.

6B. Where in summary criminal proceedings in a sheriff court which has been designated as a summary justice pilot court by the sheriff principal there is, following the refusal by the Board of any application for criminal legal aid made under section 24 of the Act, a change of plea, then assistance by way of representation may be provided under Part II of the Act only where the solicitor to whom application has been made has satisfied himself that the applicant is eligible to receive assistance by way of representation under the provisions of the Act and of these Regulations.”.

6. In regulation 7(2) for “regulation 6(1)(c), (d), (e) and (f)” substitute “regulations 6(1)(c), (d), (e), (f) and (2) and 6B”.

7. At the end of regulation 9, insert—

“(g) summary criminal proceedings in a sheriff court which has been designated as a summary justice pilot court by the sheriff principal in respect of which assistance by way of representation is provided under regulation 6A.”.

St Andrew’s House,
Edinburgh
2006

Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 (“the principal Regulations”) so as to provide that—

- (a) assistance by way of representation under Part II of the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) is available for court hearings where an offender’s probation order is reviewed (regulation 3);
- (b) assistance by way of representation under Part II of the 1986 Act is available for accused persons, subject to their satisfying the means and merits tests in a sheriff court which has been designated as a summary justice pilot court, at sentencing, where criminal legal aid has not been granted in terms of section 24 of the 1986 Act (regulations 4 and 6);
- (c) assistance by way of representation under Part II of the 1986 Act is available for accused persons appearing from custody in a sheriff court which has been designated as a summary justice pilot court until either the conclusion of the first diet at which the accused is called upon to plead and in connection with any application for liberation following upon that diet or, where he has tendered a plea of guilty at that diet and where there has been no grant of criminal legal aid, until his case is finally disposed of. This may include the services of solicitors at any preliminary plea to the competency or relevancy of the complaint and at any plea in bar of trial or any mental health proof (regulation 5);
- (d) assistance by way of representation under Part II of the 1986 Act for accused persons appearing from custody in a sheriff court which has been designated as a summary justice pilot court is available without their being required to satisfy either the merits tests set out in regulation 7 of the principal Regulations or the financial limits under sections 8 and 11(2) of the 1986 Act (regulations 6 and 7); and
- (e) following the tendering of a not guilty plea and the refusal by the Scottish Legal Aid Board of a criminal legal aid application, where there has then been a change of plea, application for assistance by way of representation may be made to the Scottish Legal Aid Board. Such applications are subject to the merits and means tests as provided by the 1986 Act and the principal Regulations (regulations 5 and 6).