

1988 No. 2290 (S.225)

LEGAL AID AND ADVICE, SCOTLAND

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

Made 16th December 1988

Coming into force 17th December 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(a) 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) Regulations 1988 and shall come into force on 17th December 1988.

Interpretation

2. In these Regulations unless the context otherwise requires—
“the Act” means the Legal Aid (Scotland) Act 1986;
“the 1975 Act” means the Criminal Procedure (Scotland) Act 1975(b).

Application of Part II of the Act to assistance by way of representation

3. Part II of the Act shall apply to assistance by way of representation in relation to summary criminal proceedings and appeals to the sheriff under the Mental Health (Scotland) Act 1984(c).

Assistance by way of representation which may be provided

4. The assistance by way of representation which may be provided under Part II of the Act in relation to summary criminal proceedings shall be representation of an accused person who is not in custody—

- (a) at any diet (other than a diet which has been preceded by a plea of not guilty) at which a plea to the competency or relevancy of the complaint or proceedings, or a plea in bar of trial, is tendered on his behalf, and thereafter until that plea has been determined by the court and any related appeal to the High Court of Justiciary under section 334(2A) of the 1975 Act(d) has been disposed of or withdrawn;

(a) 1986 c.47.

(b) 1975 c.21.

(c) 1984 c.36.

(d) Section 334(2A) was inserted by the Criminal Justice (Scotland) Act 1980 (c.62), section 36.

- (b) at any diet (other than a diet which has been preceded by a plea of not guilty) at which a question within the meaning of rule 113 of the Act of Adjournal (Consolidation) 1988(a) is raised and thereafter until that question has been determined by the court;
- (c) at any diet at which there is tendered, on behalf of an accused who has not previously tendered a plea of not guilty, a plea of guilty to the charges against him, or a plea of guilty to part thereof, which partial plea is accepted by the prosecutor, and thereafter until his case has been finally disposed of;
- (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.

Criteria for determining whether assistance by way of representation should be provided

5.—(1) The assistance by way of representation described in regulation 4(a) and (b) above shall be provided under Part II of the Act only where the solicitor to whom application has been made is satisfied that —

- (a) the offence is such that if proved it is likely that the court will impose a sentence which would deprive the applicant of his liberty or lead to loss of his livelihood;
- (b) there are substantial grounds for tendering the plea or, as the case may be, raising the question; and
- (c) it is reasonable in the particular circumstances that assistance by way of representation be made available.

(2) The assistance by way of representation described in regulation 4(c), (d), (e) and (f) above shall be provided under Part II of the Act only where the solicitor to whom application has been made is satisfied either—

- (a) that it is likely that the court will impose a sentence which would deprive the applicant of his liberty or lead to his loss of livelihood; or
- (b) that the applicant is unable to understand the proceedings or to make his own plea in mitigation because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or other incapacity.

Revocation

6. The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1987(b) and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 1988(c) are hereby revoked.

St. Andrew's House, Edinburgh
16th December 1988

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

(a) S.I. 1988/110.
(b) S.I. 1987/642.
(c) S.I. 1988/1390.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1987 and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 1988.

These Regulations provide for assistance by way of representation to be available in relation to certain 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 only change of substance is to apply the criteria set out in regulation 5(2) to the circumstances set out in regulation 4(d), (e) and (f).

Regulation 4 specifies the proceedings for which assistance by way of representation may be available, and regulation 5 sets out the criteria for determining whether it should be provided.