SCOTTISH STATUTORY INSTRUMENTS

2003 No. 179

LEGAL AID AND ADVICE

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

Made - - - -	*7th March 2003*
Coming into force - -	*24th March 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 9 and 37(1) of the Legal Aid (Scotland) Act 1986 [F1], 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:

F1 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).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 and shall come into force on 24th March 2003.

(2) In these Regulations–

"the Act" means the Legal Aid (Scotland) Act 1986;

[F2]...

"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995 [F3];

[[F4]"the 2011 Act" means the Children's Hearings (Scotland) Act 2011;**]**

[[F5]"the 2018 Act" means the Historical Sexual Offences (Pardons and Disregards) (Scotland) Act 2018**]**;

[F6]...

"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 **[**[F7]2001**]**;

[[F8]"child" has the meaning given in section 199 of the 2011 Act;**]**

[[F8]"children's hearing" has the meaning given in section 5 of the 2011 Act;**]**

[F8“compulsory supervision order” has the meaning given in section 83 of the 2011 Act;**]**

“disciplinary proceedings”, in relation to a prisoner, means an inquiry before a governor held in pursuance of rules 97 and 98 of the Prisons and Young Offenders Institutions (Scotland) Rules 1994 F9 in respect of a breach of discipline which the prisoner is alleged to have committed;

“employment tribunal” means a tribunal established under section 1 of the Employment Tribunals Act 1996 F10;

“governor” means any of the following persons:–

(a) the person who is appointed by the Scottish Ministers under section 3(1) of the Prisons (Scotland) Act 1989 F11 as the Governor-in-Charge of a prison;

(b) the officer who is the Deputy Governor of a prison;

(c) any officer who is appointed to manage a function or group of functions within a prison and is known as a Unit Manager and who has been authorised to adjudicate disciplinary proceedings; and

(d) where there is no officer as mentioned in sub-paragraphs (a) to (c) above present for the time being in a prison, the most senior officer who is present in the prison at that time.

F12…

[F13“Mental Health Tribunal for Scotland” means the tribunal established under Part 3 of the Mental Health (Care and Treatment) (Scotland) Act 2003;**]**

“officer” means an officer of the prison appointed by the Scottish Ministers;

“Parole Board case” means a case of a prisoner to which Part IV of the Parole Board (Scotland) Rules **[**F72001**]** applies;

[F14“pre-hearing panel meeting” has the meaning given in section 79 of the 2011 Act;**]**

F15…

“prison” has the same meaning as in section 43(1) of the Prisons (Scotland) Act 1989 F16 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 **[**F72001**]**;

[F17“recovery proceedings” means proceedings relating to an application for an order for recovery of documents, in connection with criminal proceedings, in which—

(a) the documents sought include medical or other sensitive documents relating to a client;

(b) the application has been intimated to the client; and

(c) the client wishes to oppose recovery of the documents on the basis that the granting of the order would infringe their rights under Article 8 of the European Convention on Human Rights;**]**

[F18“relevant person” has the meaning given in section 200 of the 2011 Act and includes a person deemed to be a relevant person by virtue of section 81(3), 160(4)(b) or 164(3)(a) of that Act;**]**

"tribunal" in relation to a Parole Board case, means a tribunal formed under Rule 18 of the Parole Board (Scotland) Rules **[**[F7]2001**]**, and includes a preliminary hearing before the chairman of a tribunal under Rule 19 of those Rules; and

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

F2 Words in reg. 1(2) omitted (4.4.2005) by virtue of The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2005 (S.S.I. 2005/165), regs. 2, **4(a)**

F3 1995 c. 46.

F4 Words in reg. 1(2) inserted (24.6.2013) by The Childrens Legal Assistance (Scotland) Regulations 2013 (S.S.I. 2013/200), regs. 1, **3(2)(a)**

F5 Words in reg. 1(2) inserted (25.9.2020) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2020 (S.S.I. 2020/296), regs. 1, **2(2)**

F6 Words in reg. 1(2) omitted (4.4.2005) by virtue of The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2005 (S.S.I. 2005/165), regs. 2, **4(b)**

F7 Word in reg. 1 substituted (22.12.2006) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2006 (S.S.I. 2006/615), regs. 1, **3(a)**

F8 Words in reg. 1(2) inserted (24.6.2013) by The Childrens Legal Assistance (Scotland) Regulations 2013 (S.S.I. 2013/200), regs. 1, **3(2)(b)**

F9 S.I. 1994/1931; relevant amending instruments are S.I. 1996/32, 1997/2007 and 1998/1589.

F10 1996 c. 17. Section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c. 8) provides that the Industrial Tribunals Act 1996 may be cited as the Employment Tribunals Act 1996, and substitutes the term "industrial tribunal" with "employment tribunal" wherever it occurs in any enactment.

F11 1989 c. 45. Section 3(1) was modified by the Criminal Justice and Public Order Act 1994 (c. 33), **section 110** and amended by the Scotland Act 1998 (c. 46), **Schedule 8**, paragraph 27 and the Crime and Punishment (Scotland) Act 1997 (c. 48), **section 43**.

F12 Words in reg. 1(2) omitted (4.4.2005) by virtue of The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2005 (S.S.I. 2005/165), regs. 2, **4(c)**

F13 Words in reg. 1(2) inserted (5.10.2005) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2005 (S.S.I. 2005/482), regs. 1, **4** (with reg. 2)

F14 Words in reg. 1(2) inserted (24.6.2013) by The Childrens Legal Assistance (Scotland) Regulations 2013 (S.S.I. 2013/200), regs. 1, **3(2)(c)**

F15 Words in reg. 1(2) omitted (9.6.2010) by virtue of The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No.2) (Scotland) Regulations 2010 (S.S.I. 2010/239), regs. 1, **4(2)** (with reg. 2)

F16 Section 43(1) was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), **Schedule 4** and the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), **Schedule 5**.

F17 Words in reg. 1(2) inserted (13.9.2017) by The Advice and Assistance (Proceedings for Recovery of Documents) (Scotland) Regulations 2017 (S.S.I. 2017/291), regs. 1, **5(2)** (with reg. 2(2))

F18 Words in reg. 1(2) inserted (24.6.2013) by The Childrens Legal Assistance (Scotland) Regulations 2013 (S.S.I. 2013/200), regs. 1, **3(2)(d)**

Revocation

2. The Regulations specified in the Schedule to these Regulations are hereby revoked.

Application of Part II of the Act to assistance by way of representation: miscellaneous proceedings

3. Part II of the Act shall apply to assistance by way of representation in relation to–

(a) summary criminal proceedings;

(b) petitions for the appointment of an executor to a deceased person under the Act of Sederunt (Confirmation of Executors) 1964 [F19];

(c) proceedings under section 17 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 [F20];

[[F21](d) proceedings before the Mental Health Tribunal for Scotland;**]**

(e) petitions by a debtor for the sequestration of that debtor's estate under section 5(2)(a) of the Bankruptcy (Scotland) Act 1985 [F22];

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

(g) proceedings in Parole Board cases;

(h) applications under section 42 of the Road Traffic Offenders Act 1988 [F23] for the removal of a disqualification;

(i) proceedings under section 66(6) of the Criminal Justice and Public Order Act 1994 [F24] for the return of sound equipment;

(j) civil proceedings arising from a failure by a person to–

(i) pay a fine or other sum; or

(ii) obey an order of the court;

(k) applications, by someone other than the accused, under section 31(6) of the Criminal Law (Consolidation) (Scotland) Act 1995 [F25];

[F26](l) . . . . . .

(m) proceedings before an employment tribunal;

(n) proceedings in connection with an application for a warrant of further detention, or for an extension of such a warrant, made to the sheriff under paragraph 29 or 36 of Schedule 8 to the Terrorism Act 2000 [F27];

[[F28](na) proceedings in connection with—

(i) an application under section 11 of the Counter-Terrorism and Security Act 2015 (review of decisions relating to temporary exclusion orders); or

(ii) an application under paragraph 8 of Schedule 1 to that Act (seizure of passports etc.; extension of 14-day period by judicial authority);**]**

(o) proceedings before a hearing established under–

(i) paragraph 12 or paragraph 59 of the schedule to the Convention Rights (Compliance) (Scotland) Act 2001 [F29]; or

(ii) section 10(2F) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 [F30];

(p) proceedings under section 5 of the Protection from Abuse (Scotland) Act 2001 [F31]; [F32]...

[F26](q) . . . . . .

[[F33](r) applications under section 57 or 58 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 in relation to the variation or termination of a football banning order made under section 51 of that Act**][**[F34]; and

(s) any claim made to **[**[F35]the First-tier Tribunal for Scotland**]** in accordance with Part 3 of Schedule 17 to the Equality Act 2010 (which provides for claims to be made to **[**[F36]the First-

tier Tribunal for Scotland**]** that a responsible body of a school has contravened Chapter 1 of Part 6 of that Act because of a person's disability)**][**F37; F38...

(t) applications under sections 2(2), 3(3)(b), 4(3)(b), 11(3) and 12(3) of the Double Jeopardy (Scotland) Act 2011**][**F39; F40...

(u) recovery proceedings**][**F41; F42...

(v) appeals—

(i) against a decision taken under regulations made by the Scottish Ministers under paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 to impose a special restriction or requirement on or in relation to a person; or

(ii) under paragraph 38 of schedule 21 of the Coronavirus Act 2020 in relation to a requirement or restriction imposed by a public health officer under paragraph 35 of that schedule**][**F43; and

(w) appeal proceedings under section 8 of the 2018 Act**]**.

F19 S.I. 1964/1143.

F20 1981 c. 59; section 17 was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40), **Schedule 4**, paragraph 37.

F21 Reg. 3(d) substituted (5.10.2005) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2005 (S.S.I. 2005/482), regs. 1, **5** (with reg. 2)

F22 1985 c. 66; section 5(2) was substituted by the Bankruptcy (Scotland) Act 1993 (c. 6), **section 3(2)**.

F23 1988 c. 53; section 42 was amended by the Road Traffic Act 1991 (c. 40), **Schedule 4**, paragraph 98, and S.I. 1990/144, 1996/2824 and 1999/2864.

F24 1994 c. 33.

F25 1995 c. 39.

F26 Reg. 3(l)(q) omitted (9.6.2010) by virtue of The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No.2) (Scotland) Regulations 2010 (S.S.I. 2010/239), regs. 1, **4(3)** (with reg. 2)

F27 2000 c. 11.

F28 Reg. 3(na) inserted (1.4.2015) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2015 (S.S.I. 2015/155), regs. 1, **2(1)**

F29 2001 asp 7.

F30 1993 c. 9; section 10(2F) was inserted by section 3(1)(b) of the Convention Rights (Compliance) (Scotland) Act 2001.

F31 2001 asp 14.

F32 Word in reg. 3(p) omitted (22.12.2006) by virtue of The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2006 (S.S.I. 2006/615), regs. 1, **4(a)**

F33 Reg. 3(r)(s) inserted (22.12.2006) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2006 (S.S.I. 2006/615), regs. 1, **4(b)**

F34 Reg. 3(s) and word inserted (18.3.2011) by The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2011 (S.S.I. 2011/216), regs. 1(1), **2(2)**

F35 Words in reg. 3(s) substituted (12.1.2018) by virtue of The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 8(2)(a)**

F36 Words in reg. 3(s) substituted (12.1.2018) by The First-tier Tribunal for Scotland (Transfer of Functions of the Additional Support Needs Tribunals for Scotland) Regulations 2018 (S.S.I. 2018/4), reg. 1(1), **sch. 2 para. 8(2)(b)**

F37 Reg. 3(t) and word inserted (6.3.2012) by The Advice and Assistance (Assistance By Way of Representation) (Scotland) Amendment Regulations 2012 (S.S.I. 2012/84), regs. 1, **2(2)**

F38 Word in reg. 3(s) omitted (13.9.2017) by virtue of The Advice and Assistance (Proceedings for Recovery of Documents) (Scotland) Regulations 2017 (S.S.I. 2017/291), regs. 1, **5(3)(a)**