2001 No. 2

LEGAL AID AND ADVICE

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001

Made	*9th January 2001*
Coming into force	*15th January 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 9(1), (2)(a), (c) and (d) and 37(1) of the Legal Aid (Scotland) Act 1986(**a**) 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, commencement and interpretation

1.—(1) These Regulations may be cited as the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2001 and shall come into force on 15th January 2001.

(2) In these Regulations, "the principal Regulations" means the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1997(**b**).

Amendment of the principal Regulations

2. The principal Regulations shall be amended in accordance with the following regulations.

3. In regulation 1(2) (interpretation) of the principal Regulations, after the definition of "disciplinary proceedings" there shall be inserted–

> ""employment tribunal" means a tribunal established under section 1 of the Employment Tribunals Act 1996(**c**);".

4. In regulation 3 (application of Part II of the Act to assistance by way of representation: miscellaneous proceedings) of the principal Regulations, at the end of paragraph (k)(**d**), the full stop shall be omitted and there shall be inserted–

> ";
>
> (l) proceedings before an employment tribunal.".

5. In regulation 13 (assistance by way of representation requiring approval of the Board) of the principal Regulations–

(a) regulation 13 shall become paragraph (1) of that regulation;

(b) in paragraph (1), after "3(j)" there shall be inserted ", 3(l)"; and

(c) after paragraph (1), there shall be inserted–

(a) 1986 c.47. 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).

(b) S.I. 1997/3070, as amended by S.I. 1998/972, S.I. 1999/214, and S.S.I. 2000/109.

(c) 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.

(d) Inserted by S.S.I. 2000/109.

"(2) The Board shall only approve the provision of assistance by way of representation in relation to the proceedings described in regulation 3(l) where it is satisfied that–

(a) the case is arguable;

(b) it is reasonable in the particular circumstances of the case that assistance by way of representation be made available; and

(c) the case is too complex to allow the applicant to present it to a minimum standard of effectiveness in person.

(3) The factors to be taken into account by the Board in determining whether paragraph (2)(c) above applies shall include–

(a) the determination of the issue may involve procedural difficulty or consideration of a substantial question of law, or of evidence of a complex or difficult nature;

(b) the applicant may be unable to understand the proceedings or to state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability, or otherwise;".

JAMES WALLACE
A member of the Scottish Executive

St Andrew's House,
Edinburgh
9th January 2001

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1997 and provide for assistance by way of representation to be made available in relation to proceedings before an employment tribunal, subject to the approval of the Scottish Legal Aid Board ("the Board") (regulation 4).

The Regulations also prescribe the criteria to be applied by the Board in determining whether to approve an application for assistance by way of representation before an employment tribunal. These criteria are: where the case is arguable; where it is reasonable in the particular circumstances of the case that assistance by way of representation be made available; and where the case is too complex to allow the applicant to present it to a minimum standard of effectiveness in person (regulation 5). That regulation also sets factors to be taken into account by the Board in determining whether a case is too complex to allow the applicant to present it to a minimum standard of effectiveness in person.

S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

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