SCOTTISH STATUTORY INSTRUMENTS

2005 No. 450

LEGAL AID AND ADVICE

The Criminal Legal Aid (Scotland) Amendment Regulations 2005

Made - - - -	*13th September 2005*
Laid before the Scottish Parliament	*13th September 2005*
Coming into force - -	*5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by section 36(1) and (2)(a) and (d) of the Legal Aid (Scotland) Act 1986(**a**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Scotland) Amendment Regulations 2005 and shall come into force on 5th October 2005.

Application

2. These Regulations shall apply only in relation to any case where an application for criminal legal aid is made on or after 5th October 2005.

Amendment of the Criminal Legal Aid (Scotland) Regulations 1996

3. The Criminal Legal Aid (Scotland) Regulations 1996(**b**) are amended in accordance with the following regulations.

4. In regulation 2(1) (Interpretation)–

(i) in the definition of "legal representative" for "curator bonis, tutor, judicial factor or guardian" substitute "judicial factor or a person authorised to act on an adult's behalf under the Adults with Incapacity (Scotland) Act 2000(**c**) or on a patient's behalf under the Mental Health (Care and Treatment) (Scotland) Act 2003(**d**)"; and

(ii) after the definition of "legal representative" insert ""patient" has the same meaning as in section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003;".

(**a**) 1986 c.47; section 36 was amended for purposes not relevant to these Regulations. 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. 1996/2555, to which there are amendments not relevant to these Regulations.
(**c**) 2000 asp 4.
(**d**) 2003 asp 13.

5. In regulation 8(1)(a) (Applications for criminal legal aid in summary proceedings), for "section 1(2) of the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

6. In regulation 12(1)(b) (Applications for review), for "section 1(2) of the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

7. In regulation 13(1)(a) (Legal aid for criminal appeals) for "section 1(2) of the Mental Health (Scotland) Act 1984" substitute "section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003".

CATHY JAMIESON
A member of the Scottish Executive

St Andrew's House,
Edinburgh
13th September 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Scotland) Regulations 1996 to provide:

(a) that the definition of "legal representative" is altered by the removal of reference to curator bonis, tutor and guardian, and by substituting reference to persons authorised to act on an adult's behalf under the Adults with Incapacity (Scotland) Act 2000 and on a patient's behalf under the Mental Health (Care and Treatment) (Scotland) Act 2003; and

(b) references to the Mental Health (Scotland) Act 1984 are replaced with references to the Mental Health Care and Treatment) (Scotland) Act 2003.

The Mental Health (Scotland) Act 1984 is replaced and repealed by the Mental Health (Care and Treatment) (Scotland) Act 2003.

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