STATUTORY INSTRUMENTS

1982 No. 1553 (S.174)

LEGAL AID AND ADVICE, SCOTLAND

The Legal Aid (Scotland) (Criminal Proceedings) Amendment Regulations 1982

Made - - - -	21*st October* 1982
Laid before Parliament	10*th November* 1982
Coming into Operation	1*st December* 1982

In exercise of the powers conferred on me by section 15 of the Legal Aid (Scotland) Act 1967 (**a**), and of all other powers enabling me in that behalf, I hereby make the following regulations.

Citation and commencement

1. These regulations may be cited as the Legal Aid (Scotland) (Criminal Proceedings) Amendment Regulations 1982, and shall come into operation on 1st December 1982.

Interpretation

2. In these regulations any reference to the principal regulations is a reference to the Legal Aid (Scotland) (Criminal Proceedings) Regulations 1975 (**b**).

Amendments

3. In regulation 2(1) of the principal regulations, for the definition of "Act of 1954" there shall be substituted the following definition:—

" "Act of 1975" means the Criminal Procedure (Scotland) Act 1975 (**c**) ;"

and the definition of "list" is hereby revoked.

4. In regulation 3 of the principal regulations—

(a) for paragraph (1) there shall be substituted the following paragraph:—

"(1) An application—

(a) for legal aid in connection with proceedings to which the provisions of section 2(5)(a) or (b) of the Act apply; or

(b) for legal aid in connection with any proceedings where the restriction imposed upon a court by section 41(1) of the Criminal Justice (Scotland) Act 1980 (**d**) has become applicable upon conviction or failure to pay a fine—

may be made orally or otherwise to the clerk of the court before which the proceedings are being taken".

(b) in paragraph (2) for the words "otherwise than under the said section 2(5)" there shall be substituted the words "other than an application to which paragraph (1) of this regulation relates".

(**a**) 1967 c.43. (**b**) S.I. 1975/717. (**c**) 1975 c.21.
(**d**) 1980 c.62.

5. In regulation 6 of the principal regulations—

(a) in paragraph (1), after the words "in connection with" there shall be inserted the words "(or, in the case of the legal aid mentioned in section 1(5)(b) of the Act, in contemplation of)", and after the words "section 2(5)(a) or (b)" there shall be inserted the words "or section 2(5AA)(**a**)";

(b) in paragraph (2), for the words "at any stage in proceedings" there shall be substituted the words "in the circumstances" and after the words "section 2(5)" there shall be inserted the words "or (5AA)".

6. In regulation 7(1) of the principal regulations, after the words "Section 2(5)" there shall be inserted the words "or (5AA)".

7. In regulation 8 of the principal regulations—

(a) in paragraph (2)—

(i) for the words "by way of stated case under section 62 of the Act of 1954" there shall be substituted the words "under section 442 of the Act of 1975 (**b**) which is by way of stated case under section 444 of that Act" (**c**).

(ii) in sub-paragraph (a), for the words "section 1(6A)(i)(b)" there shall be substituted the words "section 1(7)(a)(ii)".

(b) in paragraph (3), there shall be inserted at the end the following words:—

"or

(c) any appeal, under article 13(2) of the Scheme, against refusal to issue an interim appeal certificate".

(c) in paragraph (4), the words "on the appropriate list", at both places where they occur, are hereby revoked.

8. In regulation 9 of the principal regulations—

(a) in paragraph (1), for the words "by way of stated case under section 62 of the Act of 1954" there shall be substituted the words "under section 442 of the Act of 1975 which is by way of stated case under section 444 of that Act".

(b) in paragraph (3), for the words "section 1(6A)(ii)" there shall be substituted the words "section 1(7)(b)".

(c) in paragraph (4), for the words "section 62 of the Act of 1954" there shall be substituted the words "section 444 of the Act of 1975";

(d) in paragraph (5)(a), the words "or for which caution is to be found under section 64 of the Act of 1954" are hereby revoked;

(e) in paragraph (6), for the words "section 67 of the Act of 1954" there shall be substituted the words "section 448 of the Act of 1975 (**d**)".

George Younger,
One of Her Majesty's Principal Secretaries of State.

New St Andrew's House,
Edinburgh.
21st October 1982.

(**a**) Section 2(5AA) was inserted by section 10(4) of the Criminal Justice (Scotland) Act 1980.
(**b**) Section 442 was substituted by the Criminal Justice (Scotland) Act 1980, section 34 and Schedule 3, paragraph 1.
(**c**) Section 444 was amended by the Criminal Justice (Scotland) Act 1980, section 34 and Schedule 3, paragraph 3.
(**d**) Section 448 was amended by the Criminal Justice (Scotland) Act 1980, section 34 and Schedule 3, paragraph 7.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations amend the Legal Aid (Scotland) (Criminal Proceedings) Regulations 1975 ("the principal regulations") in consequence of the provisions of the Criminal Justice (Scotland) Act 1980 and in consequence of certain amendments to the Legal Aid (Scotland) (Criminal Proceedings) Scheme 1975 which are made by the Legal Aid (Scotland) (Legal Aid, Legal Advice and Assistance and Criminal Proceedings) Variation Scheme 1982. They also replace references in the principal regulations to repealed provisions of the Summary Jurisdiction (Scotland) Act 1954 (c. 48) by reference to the corresponding provisions of the Criminal Procedure (Scotland) Act 1975 and correct errors in the text of the principal regulations.

Regulation 4(a) amends Regulation 3(1) of the principal regulations to provide how the application for legal aid is to be made in circumstances where Section 41(1) of the Criminal Justice (Scotland) Act 1980 applies (where the court is obliged to give an accused who is not legally represented and has not previously been sentenced to imprisonment or detention the opportunity to apply for legal aid before sentencing him to imprisonment or detention or ordering his imprisonment or detention for failure to pay a fine). The application is to be made orally or otherwise to the clerk of the court.

Regulation 5 amends Regulation 6 of the principal regulations to include representation by a solicitor at an identification parade in terms of Section 10 of the Criminal Justice (Scotland) Act 1980. Regulation 6 as amended will ensure that legal aid is made available in these circumstances notwithstanding that the applicant may be able to obtain financial or other help in relation to his defence from other sources.

Regulations 7(a)(ii) and 8(b) correct erroneous references in the principal regulations to provisions of the Legal Aid (Scotland) Act 1967.

The remaining amendments are of a consequential nature.

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