
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 251

The Advice and Assistance (Limits, Conditions and Representation) (Scotland) Regulations 2008

Assistance by way of representation

4.—(1) The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003⁽¹⁾ are amended as follows.

(2) In regulation 6—

(a) after paragraph (1)(b) insert—

“(ba) at any diet to which the case has been adjourned under section 145 of the 1995 Act;”;

(b) in paragraph (2)—

(i) after sub paragraph (a) insert “or”;

(ii) omit sub paragraph (c) and the “or” immediately preceding it.

(3) In regulation 6A—

(a) in paragraph (1), for “a sheriff court which has been designated as a summary justice pilot court by the sheriff principal” substitute “any court”;

(b) after paragraph (1) insert—

“(1A) Except where paragraph (1D) below applies, an appointed solicitor is the only person who—

(a) may provide the assistance by way of representation described in paragraph (1) above;

(b) is entitled to any fees attributable to the provision of that representation.

(1B) However, the provision of that representation by an appointed solicitor may be effected, from the appearance from custody onwards, through the services of another solicitor (except the duty solicitor) where—

(a) the other solicitor is expressly authorised by the appointed solicitor; and

(b) the services of the other solicitor are required in circumstances where the appointed solicitor cannot reasonably attend because of—

(i) illness or incapacity;

(ii) the arising (since instruction in relation to the appearance) of a professional obligation to act (in person) in another case that is to call elsewhere at or around the same time; or

(iii) another good reason.

(1C) Paragraph (1D) below applies where an appointed solicitor is not available to act immediately (whether in person or through the services of another solicitor under

(1) Regulations 6 and 7 were amended, and regulations 6A, 6B and 9(g) were inserted, by [S.S.I. 2006/345](#).

paragraph (1B) above) for the purpose of providing the assistance by way of representation described in paragraph (1) above.

(1D) Where this paragraph applies, the duty solicitor is the only person who may provide the representation under the Act in relation to the appearance from custody (and, accordingly, no other person is entitled to any fees attributable to the provision of that representation).

(1E) In this regulation, an “appointed solicitor” is a solicitor–

- (a) with whom the person appearing in answer to the complaint has (or has had) a solicitor and client relationship that is demonstrable by reference to circumstances apart from those relating solely to the appearance; and
- (b) who is instructed directly by that person for the purposes of that person’s representation.”.

(4) Regulation 6B is omitted.

(5) In regulation 7–

(a) for paragraphs (1) and (2) substitute–

“(2A) The assistance by way of representation described in regulation 6(1) above is to be provided under Part II of the Act only if the solicitor to whom the application has been made is satisfied that it is in the interests of justice for the assistance to be provided.

(2B) The factors to be taken into account in determining whether it is in the interests of justice for the assistance to be provided include those listed in section 24(3)(a) to (c) of the Act.”;

(b) in paragraph (3), for “Paragraphs (1) and (2) above” substitute “This regulation”.

(6) In regulation 9, omit paragraph (g).