

EXECUTIVE NOTE

LEGAL AID REGULATIONS

Draft: The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2006

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by sections 9(1), (2)(a), (b), (c), (dd) and (de) of the Legal Aid (Scotland) Act 1986. The instrument is subject to the affirmative resolution procedure.

Policy Objectives – Summary Justice Pilot Courts

The Grampian and West Lothian Criminal Justice Boards have developed pilots to encourage organisations and individuals to work together to improve the summary criminal justice system in order to encourage earlier resolution of summary criminal cases. Both pilot schemes are similar in their aims in that they propose that the accused should be permitted to choose his own solicitor when the accused appears from custody or in response to an undertaking. Prior to these regulations the accused could choose his own solicitor, but this solicitor only becomes eligible for legal aid payments once a plea of not guilty is tendered, irrespective of appearing from custody or undertaking. The duty solicitor was paid for representation of accused appearing from custody. The use of solicitor of choice, often with prior knowledge of the accused's previous convictions and social circumstances, will enable early advice to be given on the most appropriate plea.

In addition the pilots adopt one of the key reforms identified as part of reviews undertaken by Sheriff Principal McInnes in respect of the overall summary criminal justice system, namely the earlier resolution of cases in court by encouraging earlier pleas of guilty. There have been a number of ongoing discussions among officials in the Executive, COPFS, SCS and ACPOS which are in the process of taking these reforms forward in the context of the Criminal Proceedings Reform etc (Scotland) Bill and supporting development of the summary criminal justice model. The changes being introduced in the pilot courts are:

- the disclosure of information by the Crown;
- provision of appropriate remuneration to defence solicitors to encourage work carried out earlier to encourage pleas of guilty both at the outset or following investigation, but prior to trial; and
- the accused to be represented by solicitor of choice from custody and undertaking cases where his solicitor will be remunerated.

The pilot schemes are anticipated to provide useful information to support the development of legal aid changes that will be required to underpin summary criminal reform and support both the efficiency and effectiveness of the summary criminal justice system.

Policy Objectives – Probation Progress Reviews

Probation progress reviews came into operation on 7 February 2006, by section 229A of the Criminal Procedure (Scotland) Act 1995 Act inserted by section 12 of the Management of Offenders etc (Scotland) Act 2005. The lack of a fee for these hearings could have become a

significant issue, as it is estimated that there may be up to 2,000 such hearings on an annual basis.

Consultation

The regulations have been developed fully in conjunction with the Scottish Legal Aid Board. In accordance with Tripartite working arrangements, the Law Society of Scotland has seen the regulations in draft form. Solicitors should welcome the changes encouraging the accused to choose their own solicitor who will be remunerated for his appearance.

Purpose

The purpose of this instrument is to make changes to legislation to allow assistance by way of representation to be provided for hearings relating to probation progress reviews and failures to comply with probation order. It further provides that assistance by way of representation shall be available, without application of the means or merits tests, for all accused appearing from custody, irrespective of their plea, in summary justice pilot courts until either the conclusion of the first court hearing at which they are called upon to plead, or until the conclusion of any work carried out in connection with any application for liberation following that hearing, or where a plea of guilty is tendered at the hearing and where criminal legal aid has not been made available until the case concludes. It also further provides that assistance by way of representation shall be available, subject to the means and merits tests, for those accused persons who, following their initial plea of not guilty, have been refused criminal legal aid by the Scottish Legal Aid Board, change their plea to one of guilty.

Financial Implications

It is estimated that the annual cost of the reviews of probation orders could be £100,000.

As far as the summary justice pilot courts are concerned, three sets of regulations are being made to give effect to a number of changes in respect of which the anticipated costs based on current usage are estimated to be £33,000 per year. It should be appreciated that both summary justice pilot courts are intending to devote more resources to the pilots. This may result in a greater number of cases being dealt with an associated increase in cost. However, savings should be realised in the earlier resolution of such cases by earlier pleas. These costs are capable of being absorbed within the Justice Department budget.

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