

EXECUTIVE NOTE

The Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2005 SSI/2005/584

1. The above instrument will be made in exercise of the powers conferred on Scottish Ministers by sections 33(2)(a) and (3) and 36(1) and (2)(a) of the Legal Aid (Scotland) Act 1986. The instrument is subject to negative resolution procedure.[DN: what is required here when it is to be given immediate effect?]

Policy Objective

2. **Legal Aid Efficiency Measures:** This instrument follows on from the efficiency measures that were being introduced in the context of ongoing modernisation of legal aid. The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005 (“2005 regulations”) came into force on 4 April 2005. The 2005 regulations introduced a number of changes to the Table of Fees for payment of Counsel to move away from the current payment regime and bring in a block system of payments that would provide clarity, speed and certainty of payment for Counsel. It brought in controls of expenditure for Counsel in the High Court with less requirement to use the Auditor of Court as specific blocks of work were to be paid at agreed set rates. The 2005 regulations also brought in payment for work in relation to the requirements of the Criminal Procedure (Scotland) Act 2004 that brought in the Bonomy reforms to the High Court such as managed meetings.

3. This instrument seeks to modify certain aspects of the Table of Fees that provide for payment to Counsel in four areas of work where the rates set under the 2005 regulations should be modified in order that Counsel obtain reasonable remuneration for work carried out by them. The four areas of work are:-

3.1 Appeals:

- Where a hearing on a stated case or bill of suspension related to conviction or conviction and sentence is set down for a half day or longer then the fee payable will be increased in respect of Junior with leader, Junior alone and Senior Counsel from £101, £132 and £203 to £223, £315 and £409 respectively.
- Where a hearing relates to an appeal against sentence including a revisal of a note of appeal is set down for a half day or longer then the fee payable will be increased in respect of Junior with leader, Junior alone and Senior Counsel from £41, £91 and £132 to £223, £315 and £409 respectively.
- The maximum fee allowable in cases to which paragraph 5 applies (complex or difficult work) will be prescribed in paragraph (f) of Chapter 3 of Part II of the Table of Fees which in respect of Junior with leader, Junior alone and Senior Counsel will be set at £625, £825 and £1250 respectively.

3.2 Hearings under Section 76 of the Criminal Procedure (Scotland) Act 1995

If Counsel claims a fee in respect of such hearings, a fee shall be payable for all post conviction hearings including hearings where the Table of Fees already makes provision for a prescribed fee.

3.3 Travel

Paragraph 19 of Schedule 2 of the 2005 regulations will be modified:-

- To provide that the fee excludes travel which shall be a chargeable outlay;
- To ensure that Counsel shall if required produce records to certify the travel undertaken by them;
- To allow counsel to claim a fee either once or twice depending whether counsel requires to make an outward and return journeys on the same day or on different days;
- To ensure that payments made for necessary subsistence and accommodation are chargeable only in circumstances where a supplementary fee for travel is chargeable and on cause shown; and
- To allow payment for accommodation and associated subsistence at £75 per day.

3.4 Confiscation Diets

3.4.1 High Court:

- Confiscation diets where substantial evidence is led or where full settlement is agreed, where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges or follow a trial in respect of junior as leader, junior alone, junior with leader, the rates of payment will be changed from £360, £315 and £225 respectively to reflect different rates depending the categorisation of the trial as provided under Chapter 2 paragraph 3 so that
 - Category 3(a) will be £750 £650 and £450 respectively
 - Category 3(b) will be £617.50, £535. and £375 respectively
 - Category 3(c) will be £455, £395 and £275 respectively
 - Category 3(d) will be £362 £315 and £225 respectively.
- Confiscation diets where substantial evidence is led or where full settlement is agreed, where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges or follow a trial in respect of Senior Counsel, the rate of payment will be changed from £410 to reflect different rates depending the categorisation of the trial as provided under Chapter 2 paragraph 3 so that the rates in paragraphs 3(a), 3(b), 3(c), and (d) will now be £900, £700, £515 and £410 respectively.

3.4.2 Sheriff and District Court:

Confiscation diets where substantial evidence is led or where full settlement is agreed, where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges or

follow a trial in respect of junior as leader, junior alone, and junior with leader, the rate of payment will be changed from £288, £252 and £804 to reflect different rates depending the categorisation of the trial as provided under paragraph 2 chapter 1 so that the rates in

- paragraph 2(a), will now be £647.50, £575, and £360 respectively
- paragraph 2(b) will now be £495, £430, and £300 respectively
- paragraph 2(c) will now be £345, £300 and £210 respectively.

Confiscation diets where substantial evidence is led or where full settlement is agreed, where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges or follow a trial in respect of Senior Counsel will be changed from £328 to reflect different rates depending the categorisation of the trial as provided under paragraph 2 chapter 1 so that the rates in paragraphs 2(a) 2(b) and 2(c) will be £720, £560 and £325 respectively.

3.5 The rates of payment in Confiscation Diets that no substantial evidence is led under paragraph 4 (k) of Chapter 1 of Part 1 of Table of Fees remain unchanged.

4. This instrument is designed to be retrospective in its effect. The four changes that are being made will apply to cases that concluded on or after 4 April 2005. [DN: exact wording to be provided once draft seen.] This means that it will apply to all the cases to which the 2005 regulations currently apply.

Consultation

There have been a number of meetings among the Scottish Executive, the Scottish Legal Aid Board and Faculty of Advocates since June 2005 to take forward these changes which have been requested by Faculty. The Law Society of Scotland with their interest in solicitor advocates has been consulted on the terms of this Instrument as well. It is understood that the terms of the Instrument will be welcomed so specifically with its effect being made retrospective.

Purpose

The purpose of this Instrument is to introduce the specific changes in the Table of Fees to address specific difficulties that have arisen in relation to the work being undertaken by advocates in section 76 hearings that are a key aspect of the Bonomy reforms, complex appeals cases that have been set down a half day in court and confiscation hearings and payments being made for travel to distant courts. These areas have been identified as causing the maximum difficulty at present so by addressing these issues, it is anticipated that monitoring of the 2005 regulations can continue while other longer term changes may be taken forward.

Financial Implications

5. The 2005 Regulations were estimated in March 2005 originally to save in the region of £1.2 million per year. From information received anecdotally, it appears that such savings may be greater than originally estimated but it will be some time before such figures will be finalised as the full impact of the High Court reforms are still ongoing and cannot still be fully determined.

6. In making the changes in this Instrument, there are the same difficulties in calculating what the potential reduction in the overall savings will be. Such costs have been estimated to be in the region of £150k per year. These costs can be seen to be fairly insignificant in comparison with the overall savings in the High Court reform programme. The benefits too with the 2005 regulations need to be maintained in respect of the provision of certainty, clarity and speed of payments that are to be made to advocates for set blocks of work supporting the core principles of modernisation of legal aid of value for money to the tax payer and fair reward for work being undertaken.

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