
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 270

LEGAL AID AND ADVICE

**The Criminal Legal Assistance
(Fees) (Scotland) Regulations 2010**

<i>Made</i>	- - - -	<i>28th June 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>29th June 2010</i>
<i>Coming into force</i>	- -	<i>8th July 2010</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 33 of the Legal Aid (Scotland) Act 1986(1) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Assistance (Fees) (Scotland) Regulations 2010 and come into force on 8th July 2010.

Application

2. These Regulations apply only in relation to a case where criminal legal assistance is first provided to the assisted person at a police station on or after 8th July 2010.

Amendment of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999

3. After regulation 4(6) of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(2) insert—

“(6A) Where, in respect of the same matter—

- (a) a solicitor (“solicitor A”) is entitled, by virtue of regulation 7(5)(a)(ii) of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008(3), to separate payment in relation to the provision of advice and assistance to, or representation of, an assisted person at a police station; and

(1) 1986 c.47 (as relevantly amended). 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).
(2) S.S.I. 1999/1820; amended by S.I. 1999/1820 and S.S.I. 1999/48, 2001/307, 2002/247 and 442, 2003/249, 2004/51, 126 and 263, 2005/93, 2006/234 and 2008/240.
(3) S.S.I. 2008/240.

(b) a different solicitor (“solicitor B”) provides further criminal legal assistance to the assisted person,

the fixed payment payable to solicitor B under (as the case may be) Part 1 of Schedule 1 or 1B or Schedule 1A is, subject to paragraph (6B), to be reduced by the amount of the fee to which solicitor A is entitled.

(6B) Where more than one solicitor provided the further criminal legal assistance referred to in paragraph (6A)(b), the fixed payment payable to each solicitor in respect of that assistance is to be reduced by the quotient of the fee to which solicitor A is entitled divided by the number of solicitors who provided the assistance.

(6C) If solicitor A was, at the time of providing criminal legal assistance to the assisted person, employed by the Board by virtue of section 28A of the Act⁽⁴⁾, solicitor A is to be deemed not to have been so employed for the purposes of determining the reduction to any fixed payment in accordance with paragraph (6A) or (6B).”.

Amendment of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008

4. In regulation 7(5)(a) of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008, from “which” to the end substitute—

“if—

- (i) the time spent at the police station, together with the time spent reasonably and proportionately (as compared to the time involved in the attendance) travelling to and from the police station, exceeds 2 hours; or
- (ii) the solicitor does not go on to provide any further criminal legal assistance to the assisted person in respect of the same matter”.

St Andrew’s House, Edinburgh
28th June 2010

KENNY MACASKILL
A member of the Scottish Executive

(4) Section 28A was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 50 and has been amended by the Criminal Justice (Scotland) Act 2003 (asp 7), section 73.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“1999 Regulations”) and the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008 (“2008 Regulations”) in relation to the fees and fixed payments payable to solicitors.

The amendments made by these Regulations only apply to cases in relation to which criminal legal assistance (as defined by section 41 of the Legal Aid (Scotland) Act 1986⁽⁵⁾) is first provided to the client at a police station on or after 8th July 2010 (regulation 2).

Regulation 4 of the 1999 Regulations is amended to make provision for cases in which a solicitor who provides less than 2 hours’ advice and assistance to a client at a police station is, by virtue of the amendment made by regulation 4 of these Regulations, entitled to payment for that work and subsequently a different solicitor (or solicitors) act for the client in respect of the same matter. Regulation 3 of these Regulations amends regulation 4 of the 1999 Regulations to provide that in such cases (except where the case proceeds before a designated drug court) the fee that the solicitor who acted for the client at the police station is entitled to, is to be deducted from any fixed payment payable to the solicitor (or solicitors) who subsequently acted for the client.

Regulation 7 of the 2008 Regulations provides that where more than one type of criminal legal assistance is made available, payment is to be made in respect of one type of assistance only. Exceptions to the single payment rule are set out in regulation 7(5). Regulation 4 of these Regulations amends regulation 7(5) of the 2008 Regulations to add a further exception. The added exception allows a solicitor to be paid for spending less than 2 hours providing advice and assistance to an assisted person at a police station, provided that solicitor does not go on to provide the assisted person with further criminal legal assistance in respect of the same matter.

(5) The definition of “criminal legal assistance” was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 1, paragraph 12(10)(b).