

EXECUTIVE NOTE

THE CRIMINAL LEGAL ASSISTANCE (FEES) (SCOTLAND) REGULATIONS 2010

SSI/2010/270

The Criminal Legal Assistance (Fees) (Scotland) Regulations 2010 (“the Regulations”) are made in exercise of the powers conferred on the Scottish Ministers by section 33 of the Legal Aid (Scotland) Act 1986 and all other powers enabling them to do so.

The Regulations amend the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“the 1999 Regulations”) and the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008 (“the 2008 Regulations”).

Policy Objective

The policy objective is to ensure that a solicitor who assists a client at a police station during the initial 6 hour detention period is paid for doing so where another solicitor goes on to act for the client in any summary criminal proceedings subsequently raised. The intention is to achieve that without materially increasing the costs to the Scottish Legal Aid Fund (“the Fund”).

The assistance provided to a client by a solicitor may be paid for out of the Fund under one of 3 regimes: advice and assistance, assistance by way of representation and criminal legal aid. In cases which proceed under summary criminal procedure, regulation 7 of the 2008 Regulations provides that all assistance provided to a client in respect of the same matter is to be paid for in accordance with only 1 of those regimes. The effect of this is that if a solicitor assists a client at a police station during the initial 6 hour detention period the payment for that work (which would normally be made in accordance with the advice and assistance regime) is subsumed within any criminal legal aid fixed payment due in respect of the case under the 1999 Regulations. The upshot, subject to some exceptions, is that if a solicitor only assists a client at a police station and the rest of the case is handled by a different solicitor, the solicitor who provided assistance at the police station is not paid because his or her fee is subsumed within the fixed payment made to the solicitor who handles the rest of the case.

The Regulations amend the 2008 Regulations to allow the solicitor who assisted the client at the police station to be paid for that work in accordance with the advice and assistance regime.

The fixed payments payable under the 1999 Regulations are intended to incorporate a fee for providing assistance to the client at a police station. If a different solicitor is paid for providing that assistance under the advice and assistance regime, it follows that the solicitor receiving the fixed payment should not be paid for that work. Accordingly, the Regulations amend the 1999 Regulations so that the fee paid to the solicitor who provides

assistance at the police station is deducted from the fixed payment to the solicitor who goes on to assist the client.

The Regulations are being brought into force on 8th July 2010, which is fewer than 21 days after they were laid before the Parliament. In that respect, article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Scotland) Order 1999 has not been complied with. The Government considers it necessary to bring the Regulations into force after fewer than 21 days because the Lord Advocate's interim guidelines (lodged in SPICe on 16th June 2010, bib no. 51123) on access to a solicitor by suspects, which was issued to chief constables on 9th June 2010, takes effect in relation to cases which proceed under summary procedure on 8th July 2010.

Consultation

The Government has consulted the Scottish Legal Aid Board on the Regulations.

Financial Implications

As discussed above the Regulations seek to avoid causing any significant increase to expenditure from the Fund by providing for any fee payable to the solicitor who assists the client at the police station to be deducted from the fixed payment made to any solicitor who goes on to assist the client in respect of the same matter. If the further assistance is not to be paid for by way of a fixed payment, the Scottish Legal Aid Board will be able to adjust the payments due to each solicitor accordingly. It is therefore not anticipated that these Regulations will significantly increase the costs to the Fund.

The Government and the Scottish Legal Aid Board will be monitoring the situation closely to ensure that the legal aid system can operate effectively alongside the Lord Advocate's guidelines.

Justice Directorate
Scottish Government
June 2010