

## **EXECUTIVE NOTE**

### **THE CRIMINAL LEGAL ASSISTANCE (FEES) (NO. 2) (SCOTLAND) REGULATIONS 2010**

#### **S.S.I. 2010/312**

The Criminal Legal Assistance (Fees) (No. 2) (Scotland) Regulations 2010 (“the Regulations”) are made in exercise of the powers conferred on the Scottish Ministers by section 33(2), (3) and (3A) of the Legal Aid (Scotland) Act 1986 and all other powers enabling them to do so.

The Regulations amend the Advice and Assistance (Scotland) Regulations 1996 (S.I. 1996/2447) (“the 1996 Regulations”), the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (S.I. 1999/1820) (“the 1999 Regulations”) and the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008 (S.S.I. 2008/240) (“the 2008 Regulations”).

#### **Policy Objective**

The policy objective is to provide an increased, or in certain circumstances, additional payment to solicitors for providing advice and assistance to a suspect being detained for the purpose of questioning by the police during anti-social hours. The anti-social hours are 10pm to 7am.

For providing advice and assistance in those circumstances (whether over the telephone or in person) solicitors will be paid a fee at the rate of £15.47 per quarter hour. That is a 1/3 uplift on the standard advice and assistance rate of £11.60 per quarter hour. Where a 15 minute charging period begins before but ends at or after 10pm, or begins before but ends at or after 7am, the whole period will be chargeable at the rate of £15.47. Where the provision of the advice and assistance takes less than 30 minutes a minimum payment of £30.94 will be made.

As alluded to the Regulations will, in certain circumstances, not only increase the fee payable to solicitors but will provide for an additional payment. In terms of Regulation 7(5) of the 2008 Regulations, where a client receives advice and assistance at a police station and goes on to receive assistance by way of representation or criminal legal aid in respect of any related prosecution under summary procedure, generally no fee will be payable in respect of the advice and assistance provided. The Regulations amend the 2008 Regulations so that where the advice and assistance is provided during anti-social hours, a fee for providing that advice and assistance will continue to be payable in addition to any payment for the assistance by way of representation or criminal legal aid subsequently provided.

Moreover, the Regulations provide that paragraphs (6A) and (6B) of regulation 4 of the 1999 Regulations will not apply in respect of advice and assistance provided to a suspect

prior to arrest during anti-social hours. Paragraphs (6A) and (6B) were inserted by the Criminal Legal Assistance (Fees) (Scotland) Regulations 2010 (S.S.I. 2010/270). They apply where one solicitor provides advice and assistance prior to a client's arrest and a different solicitor goes on to provide criminal legal assistance in respect of the same matter. Paragraphs (6A) and (6B) provide that in that event any fee payable to the solicitor who provides the pre-arrest advice and assistance is to be deducted from the fixed payment due to the solicitor (or solicitors) who provide the further criminal legal assistance. The Regulations amend the 1999 Regulations so that regulation 4(6A) and (6B) will not apply insofar as the solicitor who provides the pre-arrest advice and assistance does so during anti-social hours.

### **Consultation**

The Government has consulted the Scottish Legal Aid Board, the Law Society of Scotland, ACPOS and COPFS on the Regulations.

### **Financial Implications**

The Scottish legal Aid Board estimate that the cost of the Regulations will be circa £190,153.08 for a full year.