

EXECUTIVE NOTE

THE CRIMINAL LEGAL AID (SCOTLAND) (FEES) AMENDMENT REGULATIONS 2010

SSI/2010/63

These Regulations are made in exercise of the powers conferred on Scottish Ministers by sections 33(2)(a), (3)(a), (b), (c), (d) and (f) and 36(1) and 2(a) of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

Policy Objective

These Regulations amend Schedule 2 to the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (“the 1989 Regulations”).

The policy objectives are to update the Table of Fees for counsel in criminal appeal cases as laid down in the 1989 Regulations and to increase the fees payable to counsel in criminal appeal cases. These regulations continue to reflect Ministers’ wishes to ensure fair remuneration for work necessarily undertaken while ensuring value for tax payer’s money.

The regulations have been developed following a long period of discussion with the Faculty of Advocates, and have a degree of retrospective effect, where that is to the benefit of an advocate claiming fees in a particular case. Regulation 2 provides that counsel can decide to apply the changes retrospectively when charging for work done after 2 October 2006.

Regulation 3 provides that from the period 4 April 2005 to 2 October 2006, where an additional fee is payable in exceptional cases involving extraordinary preparation, the fee is to be calculated by reference to the main fee payable, rather than by reference to the minimum fee payable.

The Regulations also introduce ranges of fees in certain hearings and written work and in particular sets out the circumstances in which a higher fee within a range of fees shall be payable. The Regulations further set out the circumstances in which an additional fee can be claimed.

The Regulations insert into the 1989 Regulations a new category of fee for hearings in which witnesses are called to give evidence following the adjournment or continuation of the preliminary hearing. With regard to certain confiscation diets, the Regulations allow for an uprating of fees and amends a fee for counsel for a particular confiscation diet in the sheriff or district court.

Consultation

Consultation on the detail of these changes in this instrument have taken place with both the Faculty of Advocates and the Scottish Legal Aid Board.

Financial Implications

It is estimated that the cost of these Regulations will be circa £600,000, in respect of the retrospective provisions, if advocates choose to submit fresh fee notes, in respect of cases for which payment under the previous regulations may already have been made. It is further estimated that future full year costs will be £175,000.