

Title of Proposal: the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2012

Purpose and intended effect

Objectives

- To deliver full year legal aid savings of £500,000
- To update the table of fees and notes on the operation as part of the wider justice system changes
- Value for money in the use of taxpayers funds
- The introduction of quality assurance
- Fair reward for work done

Background

The outcome of the UK Government's Comprehensive Spending Review in 2010, and the subsequent drop in Scotland's overall budget, formed a significant backdrop to the review of the justice system and to the legal aid fund in particular. The legal aid overall budget, including the Board's administration costs, will reduce from £154.1m in 2011-12 to £142.8 in 2014-15. This follows the reductions in legal aid spending already made in 2010-11.

Rationale for Government intervention

- To take the opportunity to improve the operation of the system where possible within the current spending constraints.
- There is an agreement that the fee system in the Principal Regulations would be reviewed at regular intervals.
- Since the introduction of the new system the Scottish Legal Aid Board has been monitoring closely the new payment arrangements, which had amended the principal regulations (SSI/1491).
- This led to the identification of a number of areas where refinements could be made to control certain aspects better and to improve the flexibility of the system further.

Consultation

- **Within Government**
- **Public Consultation**
- **Business**
- Scottish Legal Aid Board
- Law Society of Scotland
- Faculty of Advocates

BUSINESS AND REGULATORY IMPACT TEST

The current review of the fees began with a number of productive meetings held by the Board with representatives from the Faculty and with the solicitor advocate branch of the Society.

Meetings then took place with the Scottish Government, the Board and the Faculty and the Society in attendance. A tripartite meeting with the Faculty took place on 18 January 2012 and with the Society on 21 February 2012. Thirty proposed changes were initially discussed. Following detailed negotiations and exchanges many of the original proposals have been modified and seven were dropped entirely. Many of the proposals were made at the request of the profession and as a result these regulations introduce for the first time new fees for abortive consultations, mandatory defence statements and exceptional consultations.

In response to comments from the profession, a number of changes were made to the proposals including that relating to travel. The Faculty and Society have both been consulted on the final policy proposals which are given effect to in these Regulations.

Options

Option one

The status quo.

Required savings would not be achieved, and the current complex system would carry on with the subsequent effect of the public purse.

Option two

Simplify and clarify the system for remuneration of Counsel.

This is the preferred option.

Sectors and groups affected

- Legal Counsel
- Have already responded to some requests from the Faculty of Advocates and the Law Society of Scotland

Benefits

- Fair reward for work done
- Update of table of fees and notes
- Clarification of the system

Costs

- An initial cost as new system is bedded in. Thereafter, savings will be achieved.

Scottish Firms Impact Test

- **Competition Assessment**

- **Test run of business forms**

Legal Aid Impact Test

These regulations are designed to deliver savings to the legal aid fund.

Enforcement, sanctions and monitoring

Given the continued pressure on legal aid expenditure, the Government will work with the Scottish Legal Aid Board to monitor closely the delivery of the savings expected to result from these regulations.

It may be necessary to reopen the current review of these fees if the expected savings are not delivered or if further savings are required above and beyond those outlined to the profession.

Implementation and delivery plan

- **Post-implementation review**

Summary and recommendation

Summary costs and benefits table

The overall impact of this policy on business will be to produce a reduction in the fees paid to counsel and to solicitor advocates for criminal work. However, several of the changes made in the Regulations will deliver improvements and clarification for the profession and in some cases provide for new fees in certain circumstances.

It is estimated that these Regulations overall will deliver full year savings of £500,000. The full effect of the savings will be realised by 2015-16. In 2013-14 savings are likely to be £400,000 and in 2014-15 the savings are likely to be £450,000.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents the costs, benefits and impacts of the policy and (b) that the benefits justify the costs. I am satisfied that that the business impact has been assessed with the support of the relevant businesses in Scotland.

Signed: Kenny MacAskill

Date: 18/10/12

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