

Final CRWIA - Web publication of Bill / Secondary Legislation CRWIA

CRWIA title: The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016 16 December 2015

Executive Summary

The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016 relate to publically funded legal advice for those being questioned by the police. The regulations remove any requirement for the person receiving that advice to pay a contribution toward the costs. The changes will take place on 1 April 2016 when the regulations come into force.

The Regulations will impact on those being questioned at a police station, particularly those who currently have to pay a contribution towards the legal advice and assistance they receive from a solicitor. The possibility of a contribution is determined on a financial assessment on the child or young person's means, rather than their parents.

In terms of children and young people, those aged 16 or 17 are most likely to be affected by the policy, particularly those who would previously have owed a contribution toward the cost of their legal advice. The most common types of offences for those referred to the Children's Reporter were assault, vandalism and threatening or abusive behaviour.

The policy is expected to have a positive impact on the rights and wellbeing of children and young people.

Background

Following the decision in *Cadder v HMA* in 2010, section 8A of the Legal Aid (Scotland) Act 1986 ("the 1986 Act") was introduced to allow Scottish Ministers to make regulations for criminal advice and assistance to be available without reference to the financial eligibility test that normally applies to advice and assistance (A&A) in section 8 of that Act, and the circumstances in which it is available.

A&A is currently available under regulation 8 of the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2011 to anyone to whom section 15A of the Criminal Procedure (Scotland) Act 1995 applies (those detained, arrested without charge or attending voluntarily for questioning on suspicion of having committed an offence) before questioning or at any point during questioning without a financial eligibility test. While anyone in those circumstances will qualify for A&A, they may be required to pay a contribution under section 11 of the 1986 Act and a financial means assessment is therefore still necessary. Section 8A of the 1986 Act was later amended to allow Scottish Ministers to make regulations so that a person receiving A&A under that section would not have to pay a contribution.

Section 15A of the 1995 Act will be repealed by the Criminal Justice (Scotland) Bill, however the policy intention to waive contributions for suspects being questioned at a police station will remain the same

	<p>and will apply in relation to the relevant new provisions of the Bill.</p> <p>The policy aim of these regulations is to remove any requirement for suspects who are questioned by the police to pay a contribution toward the cost of their A&A.</p> <p>The policy contributes to the Scottish Government's Safer and Stronger objective, through the following national outcomes.</p> <ul style="list-style-type: none"> • strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others • public services are high quality, continually improving, efficient and responsive to local people's needs.
<p>Scope of the CRWIA</p>	<p>The policy was examined against both the United Nations Convention on the Rights of the Child (UNCRC) and the Wellbeing Indicators. A number of different data sources were used to inform the CRWIA, which included: the Scottish Children's Reporter Administration, the Scottish Legal Aid Board, Police Scotland, and independent reviews by Lord Bonomy and Lord Carloway. The policy is concerned only with the payment of contributions toward the cost of publicly-funded legal advice in police stations. The scope of this CRWIA is therefore restricted to solely this aspect of legal advice in police stations</p> <p>Those who have been detained, arrested without charge or are attending voluntarily for questioning on suspicion of having committed an offence are most likely to be affected by the policy. Solicitors providing legal advice in police stations will also be affected, but will not be aged under 18.</p>
<p>Children and young people's views and experiences</p>	<p>While there is little information available on children and young people's views and experiences in custody, commissioning separate research was considered disproportionate in the development of this policy due to the overwhelmingly positive impacts anticipated.</p>
<p>Key Findings</p>	<p>After those experiencing a lack of parent care, the children and young people most likely to be referred to the Children's Reporter are those who have committed an offence. The most common types of alleged offences were assault, vandalism and threatening or abusive behaviour. Approximately 2,800 children aged 15 and under were referred to the Children's Reporter compared to approximately 400 over the age of 16.¹ This may be because 16 and 17 year olds can be more easily processed through the adult criminal justice system.²</p> <p>The Carloway Report suggested that additional statutory safeguards were required to protect child suspects in the criminal justice system. The importance of their rights and the form they take was also</p>

¹ Police Scotland are working to divert children and young people taken through police stations and the criminal justice system as a whole. The number of children referred to the Children's Reporter has decreased for the eighth consecutive year. Those over the age of 12 and under age of 16 that are charged with some offences determined by the Lord Advocate (i.e. those indictable) are deemed appropriate to be dealt with in the adult criminal justice system.

² SCRA Annual; Report 2014/2015 - http://www.scra.gov.uk/cms_resources/SCRA%20Annual%20Report%202014-15.pdf

	<p>viewed to be of great importance.</p> <p>Police Scotland indicated that about 20% of those in police custody are currently offered access to legal advice.³ It is estimated that approximately 8,000 children and young people between 16 and 17 years old attending police stations between 2011 and 2012. In the period 4 July 2011 to 30 June 2012, SLAB figures show that 6.9% of the suspects contacting the Solicitor Contact Line were below 18 years old and 1.2% were under 16 years old.⁴</p> <p>Informal measures such as the Children’s Reporter tend to be used to deal with the social needs of a child or young person,⁵ which indicates that the policy may be of more importance to those over 16 years and being processed through the adult criminal justice system. However, even under the age of 16 but above age of 12, there are instances where children and young people can be processed through the same route as an adult, i.e. if the offence is indictable. All children under 18 are currently assessed for a contribution on their own means. Around 3% of 12 to 17 years olds were assessed as eligible to pay a contribution in 2014/2015.</p> <p>Those aged 16 and over have a greater maturity and understanding of their rights, however, still require additional safeguards. They should be able, with appropriate assistance, to express fully coherent, informed views to participate effectively with their solicitor and the police.⁶</p> <p>In England and Wales there is a 55% waiver to legal advice at a police station. Lord Bonomy’s Post-corroboration Report suggests that this is because those held believe that the advice will not assist them and that they may have to wait longer in custody to receive this advice. This information was sought from academics, police, Crown Prosecution Service in London and Newcastle and speaking to Judge at the Crown Court in Southwark and those in Newcastle Magistrates.</p>
<p>Conclusions and Recommendations</p>	<p>The policy is aimed at suspects being questioned at a police station. The children and young people most likely to be affected are those being questioned at a police station who, when tested on their own financial means, are currently required to pay a contribution toward advice and assistance they receive. The children most likely to be affected are therefore between 12 and 17 years old.</p> <p>Previous work to divert children and young people from police stations and the adult criminal justice system appears to be working as the Children’s Reporter has noted that there has been an overall reduction over 8 years in those being referred for offence related grounds⁷.</p>

³ [http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20\(Scotland\)%20Bill/b35s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20(Scotland)%20Bill/b35s4-introd-en.pdf)

⁴ [http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20\(Scotland\)%20Bill/b35s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20(Scotland)%20Bill/b35s4-introd-en.pdf)

⁵ Carloway Report - <http://www.gov.scot/Resource/Doc/925/0122808.pdf>

⁶ Carloway Report - <http://www.gov.scot/Resource/Doc/925/0122808.pdf>

⁷ Scottish Children’s Reporter Administration Annual Report 2014/2015 - http://issuu.com/scra1/docs/scra_annual_report_2014-15_issuu

	<p>Those children and young people still being processed through police stations are afforded the statutory safeguard of publically funded advice and assistance to protect their rights due to differing levels of maturity, experience of justice system and express coherent views and wishes with the Police. These are most likely to be 16 and 17 year olds, but also includes those under the age of 16 and over the age of 12 who are being questioned on indictable offences. The policy will mean that these children are not deterred from accessing that safeguard as it will be absolutely clear that there is no financial implication in obtaining legal advice as they would be going through the criminal justice system anyway.</p> <p>The is no firm evidence of numbers in respect of children and young people waiving their rights to legal advice. But, for the population of suspects as a whole (the large majority of whom are adults), a significant proportion of suspects currently waive their right to legal advice. The policy is expected to remove any financial incentive to waive that right for any suspect, including children of any age. However, some suspects decline to answer questions at the police station even with legal advice. More detailed reasons for waiving this right to legal advice may become apparent with the implementation of Section 24(6) of the Criminal Justice (Scotland) Bill and the amendment of the Solicitor Access Right Form at Police Stations.</p> <p>The policy will positively impact children by promoting their right to receive legal advice (article 40 of UNCRC) encourage their best interests to be catered for through legal advice and representation (article 3), support them in voicing their thoughts and opinions appropriately (article 12), and help safeguard them from cruelty (article 37). Overall, it is expected to contribute positively to their wellbeing, particularly the indicators of Safe, Respected, Responsible.</p> <p>It is recommended that amending regulations be laid to remove the requirement for a contribution to be made by anyone to whom section 15A of the Criminal Procedure (Scotland) Act 1995 applies (those detained, arrested without charge or attending voluntarily for questioning on suspicion of having committed an offence) before questioning or at any point during questioning, if they had the sufficient means to be due a contribution.</p>			
<p>Monitoring and review</p>	<p>The Scottish Legal Aid Board has a continuing programme of research and analysis relating to both the supply of and access to legal aid, and factors which may affect such supply and access.</p> <p>Due to anticipated changes in the delivery of police station advice following implementation of the Criminal (Justice) Scotland Bill, it may be difficult to measure the impact of this particular change made by the policy of removing contributions. However, the Scottish Legal Aid Board will attempt to isolate changing patterns of advice seeking and nominated solicitor behaviour specifically for interviews.</p>			
<p>Bill - Clause</p>	<p>Aims of</p>	<p>Likely to</p>	<p>Compliance</p>	<p>Contribution</p>

	measure	impact on . . .	with UNCRC requirements	to wellbeing indicators
The Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016	Remove client contributions toward the costs of their legal advice for questioning at a police station.	Those being questioned at a police station, especially those who would currently be due a contribution. Of children and young people, 16 and 17 year olds are most likely to be affected.	Supportive of the rights set out in Articles 40, 3, 12 and 37	Most directly, it will help children feel Included in the process. If there is an increase in uptake of legal advice, there will be corresponding benefits to children being Safe, Respected and Responsible.
CRWIA Declaration				
CRWIA required			CRWIA not required	
x				
Authorisation				
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