

POLICY NOTE

THE CRIMINAL LEGAL AID AND ADVICE AND ASSISTANCE (COUNTER-TERRORISM AND BORDER SECURITY) (SCOTLAND) REGULATIONS 2021

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by sections 9, 12(3), 33(2), (3) and (3A), and 36(1), (2)(a) and (g) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Purpose of the instrument.

This instrument makes provision to extend the existing police station advice scheme and the availability of non means tested advice and assistance for detention under the Counter-Terrorism and Border Security 2019 Act and Terrorism Act 2000.

Policy Objectives

The Counter-Terrorism and Border Security Act 2019 introduces powers to stop, question and detain individuals at a port or border area in order to determine whether they are, or have been, involved in hostile activity on behalf of, or in the interests of, a State other than the UK.

Under current legislative arrangements non means-tested criminal advice and assistance is available for any person who has a right under section 32 of the Criminal Justice (Scotland) Act 2016 to have a solicitor present at interview. However, this Part of the Act is disapplied for terrorism offences under the Terrorism Act 2000.

The instrument will provide for non means-tested advice and assistance to be available when a person is detained under certain provisions of the Counter-Terrorism Border Security Act 2019 or the Terrorism Act 2000, as is currently available for other criminal detentions in custody in Scotland.

Consultation

The instrument was prepared in consultation with the Scottish Legal Aid Board. Draft regulations have been shared with the main representative bodies of the legal profession: the Law Society of Scotland and the Faculty of Advocates. There were no comments made. No public consultation has taken place.

Impact Assessments

Consideration was given to the need to complete an Equality Impact Assessment and a Children's Rights and Wellbeing Impact Assessment. It was determined that there are no

negative impacts from an equality or children's right and wellbeing perspective so declarations were signed to that effect.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that it will facilitate access to payment for work carried out.

Scottish Government
Justice Directorate

November 2020