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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 240**

**The Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008**

*Further provision*

**Supply of information by assisted persons etc.**

5.—(1) A person who is receiving, or has received, criminal legal assistance must supply the Board with such information (including documents) as the Board may require from the person for the purposes of performing its functions under the Legal Aid (Scotland) Act 1986.

(2) The Board may recover from the person any amounts that have been paid out of the Fund in respect of the fees and outlays of the person's solicitor in the case (and, if counsel is acting, of counsel) if the person has—

- (a) wilfully failed to comply with a requirement made under paragraph (1) above; or
- (b) knowingly made a false statement or representation, or wilfully failed to disclose a material fact, in relation to such a requirement.

(3) In this regulation, reference to counsel includes reference to a solicitor advocate.

**Withholding payment in certain summary criminal matters**

6.—(1) Paragraphs (2) and (3) apply where, under the Legal Aid (Scotland) Act 1986—

- (a) advice and assistance has been provided in relation to a criminal matter or assistance by way of representation has been provided in relation to a summary criminal matter; and
- (b) the Board finds that the provision—
  - (i) was not (wholly or partly) in accordance with the relevant rules applying by virtue of that Act; or
  - (ii) was otherwise unjustified in the circumstances of the case (including by reason of inadequate assessment or verification of any relevant factor).

(2) In considering whether or not the provision was in accordance with those rules, the Board may have regard to any relevant guidance it has issued in relation to their application.

(3) The Board may—

- (a) withhold (wholly) payment from the Fund in respect of the provision; or
- (b) if such payment has been made, fully recover it.

**Single payment in summary criminal cases**

7.—(1) Paragraphs (3) and (4) apply where, under the Legal Aid (Scotland) Act 1986, more than one relevant type of criminal legal assistance is made to the same person in respect of the same matter.

(2) Here, the relevant types of criminal legal assistance are (in order from first to third)—

- (a) advice and assistance (whether concerning a fixed penalty, compensation or work offer under section 302, 302A or 303ZA of the Criminal Procedure (Scotland) Act 1995 or any complaint or otherwise);
  - (b) assistance by way of representation in relation to summary criminal proceedings;
  - (c) criminal legal aid in relation to summary proceedings.
- (3) Where the first and second types of assistance are provided (but not the third type), any entitlement to payment in respect of fees and outlays attributable to the provision (or payment of any fixed fees) is restricted to payment in respect of the second type.
- (4) Where the third type of assistance and either or both of the first and second types are provided, any entitlement to payment in respect of fees and outlays attributable to the provision (or payment of any fixed fees) is restricted to payment in respect of the third type.
- (5) However, paragraphs (3) and (4) do not affect any entitlement to separate payment in respect of—
- (a) attendance at a police station in relation to the provision of advice or assistance to, or representation of, the assisted person which (along with reasonable (and proportionate as compared to the amount of time involved in the attendance) time for travel to and from the police station) takes more than 2 hours;
  - (b) an appeal under section 174(1) of the Criminal Procedure (Scotland) Act 1995.
- (6) Accordingly—
- (a) any requirement of the Board to make payment to a solicitor is (by reference to this regulation) qualified;
  - (b) if the total of any payments made from the Fund exceeds that which is allowed by virtue of this regulation, the Board may recover the excess.
- (7) The Board may disregard any claim by a solicitor for payment in respect of the first type of assistance until such time as it believes that provision of the second or third type will not be (or is unlikely to be) required in respect of the same matter.