
STATUTORY INSTRUMENTS

1998 No. 1938 (S.101)

LEGAL AID AND ADVICE, SCOTLAND

The Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Regulations 1998

<i>Made</i>	- - - -	<i>31st July 1998</i>
<i>Laid before Parliament</i>		<i>7th August 1998</i>
<i>Coming into force</i>	- -	<i>1st October 1998</i>

The Secretary of State, in exercise of the powers conferred on him by section 28A(1), (5) (6) and (8) and 37(1) of the Legal Aid (Scotland) Act 1986(1), and all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Scottish Legal Aid Board (Employment of Solicitors to Provide Criminal Legal Assistance) Regulations 1998 and shall come into force on 1st October 1998.

(2) In these Regulations “employed solicitor” means a solicitor employed by the Board as provided for in regulation 2 below.

Employment of solicitors by the Board

2. The Board may employ solicitors for the purpose of providing criminal legal assistance.
3. Where solicitors are employed by the Board—
 - (a) those solicitors are to be used in the Sheriff Court district of Edinburgh; and
 - (b) the Board may require as many of the persons seeking criminal legal assistance in that area as it considers appropriate to instruct the solicitors employed by it.

Consequential Provisions – Advice & Assistance

4. Where advice and assistance is given in relation to criminal matters by an employed solicitor—
 - (a) regulations 9, 11 and 17 to 19 of the Advice and Assistance (Scotland) Regulations 1996(2) shall not apply;

(1) 1986 c. 47; section 28A was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 50.
(2) S.I.1996/2447, as amended by S.I. 1997/726 and S.I. 1998/724.

- (b) in any case where any fees and outlays in respect of advice and assistance provided by an employed solicitor are payable by the client to the Board under the provisions of section 11 of the Act or are payable out of any expenses payable to the client or any property recovered or preserved for the client under the provisions of section 12 of the Act, the client may, if he is dissatisfied with the amount of those fees and outlays, require taxation of the fees and outlays by the auditor; the auditor shall tax the fees and outlays as if they were fees and outlays allowable to a solicitor under regulation 17 of the Advice and Assistance (Scotland) Regulations 1996, and such taxation shall be conclusive of the amount of the fees and outlays so allowable;
- (c) in any case where the fees and outlays allowable in respect of advice and assistance in accordance with paragraph (b) are less than any contribution paid by the client under section 11 of the Act, the Board shall refund the excess contribution; and
- (d) Regulation 21 of the Advice & Assistance (Scotland) Regulations 1996 shall apply so that for the reference to sums paid out of the fund there is substituted a reference to the sums that would have been paid out of the fund had the solicitor not been so employed by the Board.

Consequential provisions – Criminal Legal Aid

- 5. Where criminal legal aid is given by an employed solicitor–
 - (a) references in the Criminal Legal Aid (Scotland) Regulations 1996(3) to a “nominated solicitor” or “solicitor nominated by an assisted person” are taken to include reference to an employed solicitor.
 - (b) Regulation 18(2)(a) of the Criminal Legal Aid (Scotland) Regulations 1996 shall apply so that for reference to the amount paid out of the Fund in respect of the fees and outlays there is substituted reference to the amount that would have been paid out of the Fund in respect of fees and outlays had the solicitor not been so employed by the Board.

St Andrew’s House,
Edinburgh
31st July 1998

Henry McLeish
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the employment of solicitors by the Scottish Legal Aid Board to provide criminal legal assistance. The Regulations provide that solicitors employed by the Scottish Legal Aid Board are to be used in the Sheriff Court district of Edinburgh (regulation 3(a)) and authorise the Scottish Legal Aid Board to require as many persons seeking criminal legal assistance in the Sheriff Court district of Edinburgh to use the solicitors employed by it as it considers appropriate (regulation 3(b)). They also make minor consequential modifications as to the operation of The Advice and Assistance (Scotland) Regulations 1996 and the Criminal Legal Aid (Scotland) Regulations 1996 as they apply where solicitors employed directly by the Scottish Legal Aid Board are giving criminal legal assistance.