
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend 4 sets of Regulations made under the Legal Aid (Scotland) Act 1986.

The amendments are in consequence of paragraphs 19 and 27 of schedule 4 of the Counter-Terrorism and Border Security Act 2019 (“the 2019 Act”). Those provisions extend the class of person for whom the Scottish Ministers may make automatic, non-means tested criminal legal advice and assistance available, to include where a person is detained under section 41 or schedule 7 of the Terrorism Act 2000 (“the 2000 Act”) or Part 1 of schedule 3 of the 2019 Act.

Regulation 2 amends regulation 3(c) of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 to specify the financial limit for advice and assistance by way of personal attendance in respect of detention under paragraph 16(6) of schedule 8 of the 2000 Act or paragraph 37(6) of schedule 3 of the 2019 Act. Beyond this limit, the solicitor requires approval from the Scottish Legal Aid Board in order to give any further advice and assistance.

Regulation 3 amends the Advice and Assistance (Scotland) Regulations 1996 in several respects. Paragraph (2) substitutes regulation 4A to exclude applications for advice and assistance in respect of detention under section 41 or schedule 7 of the 2000 Act and part 1 of schedule 3 of the 2019 Act from the requirement that the application be signed by the client or other person on their behalf. It also restates the exclusion from this requirement for such applications in the case of clients to whom section 32 of the Criminal Justice (Scotland) Act 2016 applies. Paragraph (3) amends regulation 14A to provide that the requirements in the event of a change of solicitor set out in that regulation do not apply in respect of proceedings under paragraphs 29 or 36 of schedule 8 of the Terrorism Act 2000. Paragraph (4) amends regulation 17 to specify which tables of fees are to apply in the calculation of fees and outlays. Paragraph (5) inserts into schedule 3 fee tables to apply for advice and assistance in relation to section 41 and schedule 7 of the 2000 Act and part 1 of schedule 3 of the 2019 Act, and advice by way or representation for proceedings under schedule 8 of the 2000 Act.

Regulation 4 amends regulation 7 of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008 to provide that the restrictions on entitlement to payment in that regulation do not apply to separate payments in respect of advice and assistance provided to a person entitled to consult a solicitor under paragraph 16(6) of schedule 8 of the 2000 Act or paragraph 37(6) of schedule 3 of the 2019 Act.

Regulation 5 amends regulation 3 of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 to provide that where the Board has arranged for a duty solicitor to be available to a person entitled to consult a solicitor under paragraph 16(6) of schedule 8 of the 2000 Act or paragraph 37(6) of schedule 3 of the 2019 Act, that person is not entitled to select a solicitor themselves, and the advice and assistance must only be provided by the duty solicitor provided.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh EH1 3DG.