

EXECUTIVE NOTE

LEGAL AID REGULATIONS

The Advice and Assistance (Scotland) Amendment (No. 2) Regulations 2006 SSI/2006/233

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by sections 33(2)(b) and (3)(a), (b) and (f) of the Legal Aid (Scotland) Act 1986. The instrument is subject to the negative resolution procedure.

Policy Objectives – Summary Justice Pilot Courts

The Grampian and West Lothian Criminal Justice Boards have developed pilots to encourage organisations and individuals to work together to improve the summary criminal justice system in order to encourage earlier resolution of summary criminal cases. Both pilot schemes are similar in their aims in that they propose that the accused should be permitted to choose his own solicitor when the accused appears from custody or in response to an undertaking. Prior to these regulations the accused could choose his own solicitor, but this solicitor only becomes eligible for legal aid payments once a plea of not guilty is tendered, irrespective of appearing from custody or undertaking. The duty solicitor was paid for representation of accused appearing from custody. The use of solicitor of choice, often with prior knowledge of the accused's previous convictions and social circumstances, will enable early advice to be given on the most appropriate plea.

In addition the pilots adopt one of the key reforms identified as part of reviews undertaken by Sheriff Principal McInnes in respect of the overall summary criminal justice system, namely the earlier resolution of cases in court by encouraging earlier pleas of guilty. There have been a number of ongoing discussions among officials in the Executive, COPFS, SCS and ACPOS which are in the process of taking these reforms forward in the context of the Criminal Proceedings Reform etc (Scotland) Bill and supporting development of the summary criminal justice model. The changes being introduced in the pilot courts are:

- the disclosure of information by the Crown;
- provision of appropriate remuneration to defence solicitors to encourage work carried out earlier to encourage pleas of guilty both at the outset or following investigation, but prior to trial; and
- the accused to be represented by solicitor of choice from custody and undertaking cases where his solicitor will be remunerated.

The pilot schemes are anticipated to provide useful information to support the development of legal aid changes that will be required to underpin summary criminal reform and support both the efficiency and effectiveness of the summary criminal justice system.

Consultation

The regulations have been developed fully in conjunction with the Scottish Legal Aid Board. In accordance with Tripartite working arrangements, the Law Society of Scotland has seen the regulations in draft form. Solicitors should welcome the changes encouraging the

accused to choose their own solicitor who will be remunerated for his appearance. It is also understood from correspondence that there has been considered a need to provide for payments in respect of hearings for the bail conditions pilot.

Purpose

The purpose of this instrument is to introduce a fixed fee of £44.40 for assistance by way of representation and including all work carried out prior to the diet, payable for a solicitor who provides representation at any diet in a summary justice pilot court at which there is tendered a plea of not guilty.

Financial Implications

As far as the summary justice pilot courts are concerned, three sets of regulations are being made to give effect to a number of changes in respect of which the anticipated costs based on current usage are estimated to be £33,000 per year. It should be appreciated that both summary justice pilot courts are intending to devote more resources to the pilots. This may result in a greater number of cases being dealt with an associated increase in cost. However, savings should be realised in the earlier resolution of such cases by earlier pleas. These costs are capable of being absorbed within the Justice Department budget.

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