

EXECUTIVE NOTE

LEGAL AID REGULATIONS

The Criminal Legal Aid (Summary Justice Pilot Courts and Bail Conditions) (Scotland) Regulations 2006 SSI/2006/234

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by sections 33(2)(a), (3)(a), (b), (f), (3A)(a) and 41A 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.

Policy Objectives – Bail Conditions

The Criminal Procedure (Amendment) (Scotland) Act 2004 introduced new provisions *inter alia* section 24A to the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). These provide that an accused who has been refused bail may apply to the court for the imposition of a remote (electronic) monitoring order which would enable the court to release him on bail

with a movement restriction condition. By section 24A(2) of the 1995 Act the court may at its own hand impose a remote monitoring requirement as a further condition of bail in cases where persons are charged with or convicted of rape or murder, without an application from the accused.

Scottish Ministers, by regulations, have set up pilots in 4 courts which may currently impose remote monitoring of restrictions on movements as a condition of bail. These are the Sheriff Courts of Glasgow, Kilmarnock and Stirling and the High Court sitting at Glasgow. The pilots commenced on 18 April 2004 and will run until April 2007.

Before making an order, the court must obtain and consider a report from a local authority criminal justice social work officer and consider information about the place or places proposed to be specified in the requirement including information as to the attitude of persons likely to be affected by the presence there of the applicant. If it considers necessary, it will hear the officer who prepared the report. An additional hearing is required for the court to consider the report.

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.

The pilots of Bail Subject to a Remote Monitoring Requirement were developed by a National Steering Group, comprising representatives from ACPOS, ADSW, the Law Society, SCS, COPFS and the Sheriff's Association.

Purpose

The purpose of this instrument is threefold. It makes changes to legislation to provide that in respect of designated summary justice pilot courts, where duty solicitors appear the capped fee does not apply for appearances made by them on behalf of assisted persons. Provision is also made for a fixed fee of £50 to be payable to solicitors of the assisted person's choosing for each appearance made by them in these pilot courts. It further provides that a fixed fee of £50 shall be payable to solicitors for all work done in connection with an application for bail subject to a movement restriction condition and a remote monitoring requirement in courts which may impose such a requirement and condition of bail.

Financial Implications

It has been estimated that the annual cost of applications for bail that will relate to the consideration of a remote monitoring requirement will be £6,000 under the 4 pilot Sheriffdoms, based on 1,200 hearings.

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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