

## **EXECUTIVE NOTE**

### **THE CRIMINAL LEGAL AID (FIXED PAYMENTS) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2010 (SSI 2010/267)**

The Criminal Legal Aid (Fixed Payments) (Scotland) Amendment (No. 2) Regulations 2010 (“the (No. 2) Regulations”) are made in exercise of the powers conferred on the Scottish Ministers by section 33(3A) and (3AA) of the Legal Aid (Scotland) Act 1986 and all other powers enabling them to do so.

The (No. 2) Regulations amend the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“the principal Regulations”).

#### **Policy Objective**

The (No. 2) Regulations cure a drafting defect in the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2010 (SSI 2010/237) (“the (No. 1) Regulations”) by extending the effect of certain amendments made to the principal Regulations by the (No. 1) Regulations.

The (No. 1) Regulations were laid before the Parliament on 11 June 2010 and come into force on 5 July 2010. One of the (No. 1) Regulations’ purposes is to reinstate a payment payable to solicitors for criminal legal aid work done in connection with a bail appeal under section 32 or 201(4) of the Criminal Procedure (Scotland) Act 1995. The payment for that work was inadvertently removed in the course of amendments made to the principal Regulations by the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008.

Regulation 2(2) of the (No. 1) Regulations provided for the reinstated payment to be available in relation to proceedings commenced between 30 June 2008 and 5 July 2010, but only if the proceedings were continuing as at the date the (No. 1) Regulations were made (i.e. 10 June 2010). However as the Subordinate Legislation Committee has helpfully drawn to the Government’s attention, proceedings commenced on or after 11 June 2010 can never satisfy the requirement of being proceedings which are “continuing” as at 10 June 2010. Contrary to the policy intention therefore, the (No. 1) Regulations will not reinstate the payment for work in connection with bail appeals where the proceedings commenced between the (No. 1) Regulations being made and coming into force.

The (No. 2) Regulations will cure this problem by extending the effect of the reinstatement of the payment for bail appeals in relation to proceedings commenced on or after 11 June 2010 and before 5 July 2010, provided those proceedings are continuing as at 4 July 2010.

The Scottish Government wrote to the Subordinate Legislation Committee on 22 June 2010 and advised them that the Government would lay a further set of Regulations before the Parliament as soon as possible.

### **Consultation**

The Scottish Government consulted the Scottish Legal Aid Board and the Law Society of Scotland in relation to the (No. 1) Regulations. As the (No. 2) Regulations only ensures that the policy objective of the (No. 1) Regulations is secured, there has been no further consultation.

### **Financial Implications**

The effect of the (No. 2) Regulations was budgeted for in relation to the (No. 1) Regulations. As stated in relation to the (No. 1) Regulations, the estimated cost of reinstating the bail appeal fee for proceedings commenced between 30 June 2008 and 5 July 2010 is around £25,000.