

2011 No. 333

LEGAL AID AND ADVICE

**The Criminal Legal Assistance (Fees) (Scotland)
Regulations 2011**

Made - - - - 14th September 2011
Laid before the Scottish Parliament 16th September 2011
Coming into force - - 31st October 2011

The Scottish Ministers make the following Regulations in exercise of section 33(2), (3) and (3A) of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Assistance (Fees) (Scotland) Regulations 2011 and come into force on 31st October 2011.

Application

2. These Regulations apply only in relation to a case where criminal legal assistance is first provided to the assisted person on or after 31st October 2011.

Amendment of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999

3. In regulation 4 of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(b) (fixed payments allowable to solicitors), paragraphs (6A) to (6C) are revoked.

Amendment of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008

4. For regulation 7(5)(a) of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008(c) (which specifies work in respect of which solicitors are entitled to separate payment despite paragraphs (3) and (4) of that regulation), substitute—

“(a) the provision of advice and assistance to—

- (i) a person to whom section 15A of the Criminal Procedure (Scotland) Act 1995(d) (right of suspects to have access to a solicitor) applies;

(a) 1986 c. 47; section 33(2) has been amended by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 67; section 33(3A) was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 51. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
(b) S.I. 1999/491; amended by S.I. 1999/1820 and S.S.I. 1999/48, 2001/307, 2002/247 and 442, 2003/249, 2004/51, 126 and 263, 2005/93, 2006/234, 2008/240, 2010/237, 267, 270 and 312 and 2011/161 and 162.
(c) S.S.I. 2008/240; amended by S.S.I. 2010/270 and 312.
(d) 1995 c.46; section 15A was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15), section 1(4).

- (ii) a person to whom section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995^(a) (right of suspects to have access to a solicitor: revenue and customs offences) applies; or
 - (iii) a person detained under section 26 of that Act (detention in connection with certain drug smuggling offences);
- (ab) the provision of advice and assistance to an assisted person at a police station, other than in the circumstances referred to in sub-paragraph (a), if the time spent at the police station, together with the time spent reasonably and proportionately (as compared to the time involved in the attendance) travelling to and from the police station, exceeds 2 hours;”.

KENNY MACASKILL

A member of the Scottish Executive

St Andrew's House,
Edinburgh
14th September 2011

(a) 1995 c.39; section 25A was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (Consequential Provisions) Order 2011 (S.I. 2011/1739), Schedule 1, paragraph 4.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify legal aid and advice legislation in connection with the fees payable to solicitors for providing advice and assistance to persons who are facing questioning, or are being questioned, by the police, who are suspected of a Revenue and Customs offence or who are being detained in connection with certain drug smuggling offences.

The modifications made by these Regulations apply only to cases in relation to which criminal legal assistance (as defined by section 41 of the Legal Aid (Scotland) Act 1986^(a)) is first provided to the person on or after 31st October 2011.

Regulation 3 revokes paragraphs (6A) to (6C) of regulation 4 of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999. Those paragraphs provided that, subject to certain exceptions, any fee payable to a solicitor for providing advice and assistance to a client at a police station (or other place of detention if the client was detained under section 14(1) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”)) would be deducted from the fixed payment payable to any other solicitor who acted for that client in respect of any related prosecution under summary procedure. The revocation of paragraphs (6A) to (6C) means that there will be no deduction from the fixed payment payable to a solicitor on account of the fact that the client was provided with advice and assistance in relation to the same matter by a different solicitor at a police station or other place of detention.

Regulation 4 amends regulation 7 of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008. Regulation 7 of those Regulations provides that where one type of criminal legal assistance is made available in relation to summary proceedings, payment is to be made in respect of one type of assistance only. Exceptions to the single payment rule are set out in regulation 7(5). Prior to these Regulations, advice and assistance provided to a client who was at a police station, or who was detained at any other place under section 14(1) of the 1995 Act, was excepted from the single payment rule in certain circumstances. Regulation 4 of these Regulations extends that exception so that the single payment rule does not apply in relation to advice and assistance provided to a client who has a right of access to a solicitor under section 15A of the 1995 Act or section 25A of the Criminal Law (Consolidation) (Scotland) Act 1995 or who is detained under section 26 of that Act.

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(a) The definition of “criminal legal assistance” was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 1, paragraph 12(10)(b).

SCOTTISH STATUTORY INSTRUMENTS

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