

CRIMINAL JUSTICE (SCOTLAND) ACT PART 1 IMPLEMENTATION – LEGAL AID REGULATIONS

Purpose

The purpose of this paper is to enable commencement of the consultation with the Law Society of Scotland (LSS) and the Scottish Legal Aid Board (the Board) on the provision of legal aid to cover the changes introduced by the Criminal Justice (Scotland) Act (CJ(S)A) 2016. Part 1 of the CJ(S)A making changes to the system of arrest and custody in Scotland is due for implementation 20 July 2017.

Background

CJ(S)A introduces changes to the current arrangements in relation to rights to legal advice of suspects being interviewed. The new arrangements and procedures relate to (a) right of consultation with a solicitor at any time while in police custody and (b) certain self-contained court procedures which can arise in relation to review of conditions of investigative liberations or bail undertaking and, separately, post-charge questioning. There has been a number of stakeholder events around CJ(S)A.

Options for Fees

There are two options around the provision of legal aid for CJ(S)A:

1. Extend the current legal aid regulations and their current rates to take account of the changes required.
2. Make changes to the legal aid regulations to extend current provision, introduce new provisions and change the fee structure.

Option one – the existing Table of Fees - would meet the new requirements for police station advice although ABWOR would still need to be extended to cover the new court procedures for challenges to investigative liberation, bail undertaking conditions or post-charge questioning where legal aid is not already in place. However, this option would not address any of the issues around simplification of the fees system.

Option two – make changes to the legal aid regulations to extend current provision, introduce new provisions and change the fee structure – is considered the preferable option. This option addresses the regulatory changes required and delivers benefits to the profession and the Board in terms of simplification.

Changing the fee structure to block fees is considered more efficient for the profession and the Board. In the paper 'Legal Assistance – Fit for the 21st century' LSS suggest that that 'a block fee should automatically apply to all matters where a solicitor is required to attend an interview in order to advise a suspect at any point during the interview process'. The block fee will allow for a simplified application and payments system to be introduced and would remove the need for the two stage advice and assistance application. The new arrangements will be much easier for solicitors to make claims and are considered a key benefit. Where comparisons can be made, the new fees can be seen to be offering increases on the current A&A regime.

There will also be administrative changes to simplify the payment process, and make it easier for solicitors to claim payment. Analysis suggests that a significant amount of fees currently potentially claimable are not claimed due to the perceived burden of claiming.

The application, fee and payment process will be simplified with a single online process while retaining the status quo of no means test and no client contribution.

The existing 33% supplement for advice given between 2200 and 0700 will be retained.

Mileage and up to 2 hours travelling time in half hour blocks will be paid in addition to the new block fees. Travelling time beyond this is allowable only where authorised by SLAB in advance.

The Solicitor Contact Line will remain the Police Scotland point of contact for duty solicitor advice for arrested persons. The Police will contact nominated solicitors directly.

We estimate that implementation of the CJ(S)A will require an additional investment into fees of around £2m per annum.

Future Fee Reform - Criminal

We are currently investigating a wide range of fee reforms for criminal legal aid. This will be a package of reforms designed to restructure and simplify the current system. There have been initial discussions around changes to Assistance by Way of Representation (ABWOR) post-conviction and summary fee reform and we are working on reforms to solemn fees.

It is our intention to have a new simplified block fee system in place for commencement of the CJ(S)A but if this proves impossible then we will need to introduce the new provisions using the old fee system as an interim fix while negotiation is ongoing.

Annex A – Fee Proposal

Criminal Justice (Scotland) Act 2016 – Section 32 and 44

1. Attendance Fee

Only one attendance fee under any of paragraphs A, B or C may be claimed in respect of work done for a client in relation to any single period in which a client is held in police custody.

A Inclusive fee for personal attendance by solicitor provided in relation to a period of police custody where the client has exercised right to consultation in terms of section 44 and where (i) the client has been assessed by the police to be a vulnerable person in terms of section 42 , and (ii) the client has not exercised the right to have a solicitor present at interview in terms of section 32 in respect of that period of police custody £75.00

B Inclusive fee for all work in relation to personal attendance by solicitor provided in relation to a period of police custody where the police have intimated an intention to interview and the client has exercised the right to have a solicitor present in terms of section 32

(i) Time engaged or waiting - excluding travel -up to 2 hours £100.00

(ii) Time engaged or waiting - excluding travel -over 2 hours and up to 4 hours £175.00

(iii) Where time engaged or waiting - excluding travel exceeds 4 hours –per hour or part thereof £46.40

C Inclusive fee for any consultation or advice provision or assistance by any means in relation to a period of police custody where the client has exercised right to consultation under section 44 other than any of the circumstances provided for in paragraphs A or B above £30.00

2. Anti-social hours provision for attendance fee

Supplement for anti-social hours where work concludes after 22:00 or starts before 07:00 - uplift of fee element per 33%

paragraph 1A, 1B or 1C

3. Travelling Time in relation to personal attendance with client in police custody

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| (i) | Travel time engaged up to 2 hours (per half hour or part thereof) | £11.60 |
| (ii) | Time engaged over 2 hours where authorised by SLAB in advance (per half hour of part thereof) | £11.60 |

Criminal Justice (Scotland) Act 2016 – Sections 19, 30 and 35-36(1)

1. Section 19 - Application for review of conditions of investigative liberation

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| (i) | Inclusive fee for all work where matter does not proceed to a court hearing | £50.00 |
| (ii) | Inclusive fee for all work where matter proceeds to a court hearing | £75.00 |
| (iii) | For attendance at court, travel time may be charged in accordance with standard provisions – per quarter hour | £5.80 |

2. Section 30 - Application for review of undertaking conditions

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| (i) | Inclusive fee for all work where matter does not proceed to a court hearing | £50.00 |
| (ii) | Inclusive fee for all work where matter proceeds to a court hearing | £75.00 |
| (iii) | For attendance at court, travel time may be charged in accordance with standard provisions - – per quarter hour | £5.80 |

3. Section 35 and 36(1) – Application for post-charge questioning

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| (i) | Inclusive fee for all work where matter does not proceed to a court hearing | £50.00 |
| (ii) | Inclusive fee for all work where matter proceeds to a court | £75.00 |

hearing

- (iii) For attendance at court, travel time may be charged in accordance with standard provisions – per quarter hour £5.80

Under this chapter a fee for travel time is chargeable only for time necessarily spent travelling to and from a court if the work undertaken is necessary work and otherwise work covered by the inclusive fee chargeable under paragraphs 1(ii), 2(ii) or 3(ii) above, and the court is not in a town or place where the solicitor has a place of business