



**THE LAW SOCIETY  
of SCOTLAND**  
www.lawscot.org.uk

**Brief**

## **Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Amendment Regulations 2016**

**January 2016**

## Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors.

With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession

We have a statutory duty to work in the public interest<sup>1</sup>, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

This evidence has been prepared on behalf of the Law Society by members of our Legal Aid Committee.

## Comments

Following the decision in *Cadder v HMA*,<sup>2</sup> legislation was passed to make legal assistance automatically available to suspects at the police station. Whilst this means a suspect is automatically entitled to legal advice, he or she might still be required to pay a contribution and a means test is therefore still necessary.

These regulations remove the requirement for suspects to pay a contribution toward the cost of their advice.

We have consistently maintained that contributions are not practical in police station advice cases.<sup>3</sup> We are therefore pleased that the Scottish Government is taking these steps and we welcome these regulations.

However, we would like to make clear that these regulations do nothing to resolve other fundamental difficulties regarding the payment mechanism for police station work.

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<sup>1</sup> Solicitors (Scotland) Act section 1

<sup>2</sup> [2010] UKSC 43

<sup>3</sup> E.g. Our consultation response on the Introduction of Financial Contributions in Criminal Legal Aid and Changes to Financial Eligibility: <http://www.gov.scot/Resource/Doc/254431/0119256.pdf>

- First, the Advice and Assistance (A&S) payment mechanism involves time-recording and requires solicitors to seek prior SLAB sanction for increases in the A&A grant. The administrative burden involved in these activities incurs the time and cost of both solicitors and SLAB staff. Removal of this additional bureaucracy would mean that solicitors could spend more time helping their clients.
- Second, the A&A payment rates do not adequately remunerate solicitors for the work involved. The rates, set out in the Advice and Assistance (Scotland) Regulations 1996, are currently £11.60 per quarter hour which increases only to £15.47 per quarter hour when work is undertaken between 10pm and 7am. The rates do not reflect the role of the solicitor during the interview to represent, protect and advance the legal interest and rights of a suspect as well as the length of time spent at the interviews and the out-of-office hours often involved in attendance. The rates do not reflect that firms require appropriate staffing levels for 24/7/365 staff cover or that firms have to ensure there are appropriate systems and infrastructure in place to travel to police stations, communicate with the SLAB helpline and submit forms online.

As set out in our [recommendations paper](#), we believe the most efficient framework for providing suspects with free legal advice is through a system of block fees, automatically payable to the solicitor on completion of the work. Such a system would benefit clients, solicitors and SLAB and we query why this proposal has not yet been explored by the Government.

The [Policy Note](#) to the regulations states that our concerns in relation to the payment mechanism will be taken into consideration as part of implementation of the Criminal Justice Bill, which will further affect the delivery of advice and assistance in police stations. We are keen to work with the Scottish Government and the Scottish Legal Aid Board on these issues.

There is no doubt that these regulations are to be welcomed. Removal of contributions from police station advice cases will ensure that every member of the public who needs the services of a solicitor whilst questioned in a police station is able to get free automatic legal assistance thus increasing access to justice. It also removes the practical difficulties involved in trying to assess finances and collect contributions when the suspect will not have the relevant documentation to hand. Therefore, notwithstanding our ongoing concerns about the payment arrangements, we are pleased to support these regulations.

**For further information and alternative formats, please contact:**

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