EXECUTIVE NOTE TO
THE CRIMINAL LEGAL AID (SCOTLAND) AMENDMENT REGULATIONS 2010

S.S.I. 2010/377

The Criminal Legal Aid (Scotland) Amendment Regulations 2010 were made in exercise of the powers conferred on the Scottish Ministers by section 36(1), (2)(a) and (d) to (f) of the Legal Aid (Scotland) Act 1986 ("the 1986 Act") and all other powers enabling them to do so.

Policy Objective

The principal policy objective behind the Regulations is to amend the Criminal Legal Aid (Scotland) Regulations 1996 ("the principal Regulations") in consequence of amendments made to the 1986 Act, principally by sections 64 and 65 of the Legal Profession and Legal Aid (Scotland) Act 2007 ("the 2007 Act"). Those sections are brought into force on 25 November 2010 by the Legal Profession and Legal Aid (Scotland) Act 2007 (Commencement No. 6) Order 2010.

The effect of section 64 of the 2007 Act is to transfer the function of granting criminal legal aid in relation to solemn proceedings from the courts to the Scottish Legal Aid Board ("the Board"). In addition, sections 64 and 65 of the 2007 Act confer on the Board powers to make criminal legal aid available subject to conditions and require the Board to establish procedures under which those receiving criminal legal aid can apply for any such condition to be reviewed. Section 72 of the Act of the LPLA imposes the sane obligations in relation to civil legal aid and legal aid in respect of certain proceedings in relation to children.

In addition to amending the principal Regulations to reflect the new sections inserted into the 1986 Act by the 2007 Act, the opportunity has also been taken to amend the principal Regulations to reflect the insertion of section 25AB of the 1986 Act. That section, which provides for criminal legal aid to be made available in connection with references, appeals and applications for special leave to appeal to the Supreme Court, was inserted by the Scotland Act 1998 (Consequential Modifications) (No. 1) Order 1999. The amendments made by the Regulations are intended simply to clarify the application of the principal Regulations in respect of criminal legal aid made available under that section.

A further policy objective behind the Regulations is to allow the Board to require that applications made to it in connection with criminal legal aid be made in such form as it may require. As the Board set out in a mailshot at the beginning of the year to all legal aid practitioners, in the interests of efficiency and cost-effectiveness the Board intends to discontinue many of its paper based procedures in April 2011. The Board's mailshot (dated 26th January 2010) can be accessed from the Board's website:

http://www.slab.org.uk/profession/mailshots/2010/Switch%20off%20letter%20-%2025%20Jan%202010.pdf.

Provision made

The Regulations amend the principal Regulations to reflect the insertion of new provisions into the 1986 Act by the 2007 Act and by the Scotland Act 1998 (Consequential Modifications) (No. 1) Order 1999. Primarily this is achieved by adding references to those inserted provisions wherever the principal Regulations previously referred to sections 24 and 25 only.

Regulation 3(5) amends regulation 9 of the principal Regulations. As before, the Regulations state that an applicant for criminal legal aid must attend an interview by a representative of the Board if the Board so requires it and also that the applicant must supply the Board with such information as it may require for the purpose of determining the application. The new regulation clarifies that if an applicant wilfully fails to comply with these requirements, the Board may treat the application as abandoned.

Regulation 3(11) amends regulation 18 of the principal Regulations including to add to the grounds on which the Board can cease to make criminal legal aid available and recover sums paid out of the Scottish Legal Aid Fund, any failure by the person receiving legal aid to comply with conditions imposed by the Board under the new provisions inserted into the 1986 Act by the 2007 Act.

One of the effects of these provisions will be to ensure that the Board has the powers in place to manage the granting of solemn legal aid in a cost effective and efficient manner.

Regulation 3(3) inserts a new regulation 7A into the principal Regulations dealing with the form in which, and the time limits within which, applications must be made to the Board. The provisions of the principal Regulations which previously dealt with those matters referred to applications being made "in writing". To avoid any dubiety as to what "in writing" may mean when virtually all legal aid business between the Board and solicitors is to be conducted online in the future, the Regulations revoke the provisions of the principal Regulations which previously dealt with the procedure for making applications. In their place, the new regulation 7A expressly defines "form" to include online form.

Consultation

The Scottish Government has consulted the Board and the Law Society of Scotland in relation to the Regulations. No Business and Regulatory Impact Assessment has been carried out as the Regulations principally concern amendments consequent on the transfer of an existing function.

Financial Implications

It is anticipated that transferring the function of granting criminal legal aid in relation to solemn proceedings from the courts to the Board, facilitated in part by some of the provisions made in these Regulations, will deliver savings of approximately £600,000 in financial year 2011/12 and approximately £1.1 million 2012-13.

Scottish Government
1 November 2010