POLICY NOTE

THE ADVICE AND ASSISTANCE AND CIVIL LEGAL AID (FINANCIAL CONDITIONS AND CONTRIBUTIONS) (SCOTLAND) AMENDMENT REGULATIONS 2016

SSI 2016/xxx

The above instrument is made in exercise of the powers conferred by section 8A(1) and (1A) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Policy Objectives

Following the decision in *Cadder v HMA* in 2010, section 8A of the Legal Aid (Scotland) Act 1986 ("the 1986 Act") was introduced to allow Scottish Ministers to make regulations for criminal advice and assistance to be available without reference to the financial eligibility test that normally applies to advice and assistance in section 8 of that Act, and the circumstances in which it is available.

Advice and assistance was made available to anyone to whom section 15A of the Criminal Procedure (Scotland) Act 1995 applies (those detained, arrested without charge or attending voluntarily for questioning on suspicion of having committed an offence) before questioning or at any point during questioning without a financial eligibility test. While anyone in those circumstances will qualify for advice and assistance, they may be required to pay a contribution under section 11 of the 1986 Act and a financial means assessment is therefore still necessary. Section 8A of the 1986 Act was later amended, allowing Scottish Ministers to make regulations so that a person receiving advice and assistance under that section would not have to pay a contribution.

Lord Bonomy's Final Report on the Post-corroboration Safeguards Review, published April 2015, stated that requiring a person present as a suspect to pay a contribution towards legal advice and assistance (the possibility is specifically stated in the Letter of Rights given to suspects) is likely to dissuade some suspects from taking up their right to legal advice.

The policy aim is therefore to remove any requirement for suspects who are questioned by the police to pay a contribution toward the cost of their advice and assistance. While section 15A of the 1995 Act will be repealed if Parliament passes the Criminal Justice Bill, the policy intention will remain the same and will apply in relation to the new provisions of the Bill.

Consultation

Draft provisions were shared with the Scottish Legal Aid Board and the Law Society of Scotland. Both were supportive of the regulations.

The Law Society made wider comments on the fee rates and bureaucracy associated with advice and assistance provided at police stations. These comments will be taken into consideration as part of implementation of the Criminal Justice Bill, which will affect the delivery of advice and assistance in police stations.

Impact Assessments

An equality impact assessment has been completed on the draft SSI and is attached. There are no equality impact issues.

A child rights and wellbeing impact assessment has been completed on the draft SSI and is attached. There are no child rights and wellbeing issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that solicitors providing legal advice in police stations will no longer have to calculate and collect a contribution from their client. The Scottish Legal Aid Board will therefore not need to check that contributions have been correctly calculated.

The value of the contributions currently collected is around £18,000 per year. If removing contributions has a significant effect on the number of people accessing legal advice at the police station and the way in which solicitors provide that advice, the Scottish Legal Aid Board estimates that expenditure from the Legal Aid Fund may increase by between £200,000 and £650,000.

Scottish Government
Justice Directorate

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