POLICY NOTE

THE CRIMINAL LEGAL AID AND ASSISTANCE BY WAY OF REPRESENTATION (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2026

SSI 2026/XXX

The above instrument was made in exercise of the powers conferred by sections 9, 21(2) and (3), 33(2), (3)(a), (b) and (f), (3A) and (3C) and 36(1), (2)(a), (b), (c), (d) and (e) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Summary

These Regulations aim to improve access to justice by simplifying legal aid processes for solemn and summary criminal cases, standardising eligibility, and ensuring fair and sustainable remuneration for solicitors. These changes reduce complexity, support early resolution, and guarantee timely representation for those most in need.

Policy Objectives

The Criminal Legal Aid and Assistance by Way of Representation Miscellaneous Amendment (Scotland) Regulations 2026 amend criminal legal aid and assistance by way of representation (ABWOR) provision in relation to criminal matters with the objective of improving access to justice, simplifying legal aid processes, and ensuring fair and sustainable remuneration for solicitors.

For solemn cases, the Regulations align the preparation fee for cases resolved by a guilty plea at any diet prior to trial with the existing fee where intimation is given in accordance with section 76 of the Criminal Procedure (Scotland) Act 1995, supporting early resolution and maintaining fairness in payment structures.

In relation to summary criminal cases the Regulations remove ABWOR provision and make amendments to existing regulations to provide that summary criminal legal aid is the default form of legal aid. The Regulations aim to create a clearer, more consistent system by way of amendments which standardise financial eligibility tests, reduce administrative complexity, and provide greater certainty for solicitors. Automatic legal aid for guilty pleas from custody and undertakings ensures timely access to representation for those most in need.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Criminal Legal Aid and Assistance by Way of Representation Miscellaneous Amendment (Scotland) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

A targeted consultation on proposals to reform criminal legal aid was undertaken between 20 October and 9 November 2025, attracting 56 responses from a broad range of stakeholders, including solicitors, advocacy organisations, and representative bodies such as the Law Society of Scotland. Overall, respondents expressed support for the regulations and viewed the proposals as simplifying processes, improving access to justice, and supporting fair remuneration for solicitors.

Feedback varied across specific measures:

- **ABWOR reforms:** 24% supported, 15% opposed, 61% no view.
- **Simplified summary legal aid:** 39% supported, 5% opposed, 57% no view.
- **Removing duty solicitor exclusivity:** 36% supported, 14% opposed, 50% no view.
- **Undue hardship test:** 30% supported, 11% opposed, 59% no view.
- **Automatic legal aid for guilty pleas:** 38% supported, 11% opposed, 51% no view.
- **Solemn case provisions:** 27% supported, 7% opposed, 67% no view.

Overall, it is notable that a high number of "No view" responses were received across the consultation. This is likely attributable to the specialised nature of legal aid practice, with many solicitors commenting only on areas relevant to their expertise, whether that be civil, children, or criminal legal aid. While levels of active support varied and many respondents expressed no view, the consultation indicated broad acceptance of the overall direction of reform. Stakeholders generally welcomed measures that simplify processes, widen eligibility, and provide greater certainty for solicitors. The responses suggest that, despite limited engagement on some technical aspects, the proposed changes are seen as positive steps toward improving access to justice and ensuring a fair, sustainable legal aid system.

Impact Assessments

The following impact assessments have been completed for the Criminal Legal Aid and Assistance by Way of Representation Miscellaneous Amendment (Scotland) Regulations 2025:

- Equality Impact Assessment (EQIA)
- Business and Regulatory Impact Assessment (BRIA)
- Fairer Scotland Duty Impact Assessment (FSDIA)
- Children's Rights and Wellbeing Impact Assessment (CRWIA)

It has been assessed that this instrument will improve and simplify access to justice across solemn and summary criminal legal aid cases by providing greater administrative simplicity and wider eligibility for applicants, while supporting fair remuneration for solicitors. No negative impacts have been identified and accordingly no actions have been taken as a result.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed. The impact of this policy on business is anticipated to be positive by simplifying the legal aid system, reducing administrative burden, and providing greater confidence and certainty of payment for solicitors and law firms who are registered to provide criminal legal aid in Scotland.

Employment in this sector includes:

- Solicitors and legal support staff
- Paralegals and administrative personnel
- Some staff may also be employed in third-sector organisations or law centres.

These professionals will be positively impacted by changes to fee structures, payment processes, and administrative requirements. Other groups positively impacted by the simplifications include the following:

- Service users: Individuals accessing legal aid may benefit from improved access and simplified processes.
- The Scottish Legal Aid Board (SLAB): As the administrator of the Scottish Legal Aid Fund, SLAB will be responsible for operationalising the changes.

Scottish Government
Directorate for Justice

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