SCOTTISH STATUTORY INSTRUMENTS

2002 No. 247

LEGAL AID AND ADVICE

The Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2002

Made - - - -	*21st May 2002*
Laid before the Scottish Parliament - - - -	*23rd May 2002*
Coming into force - -	*17th June 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 33(3A), (3AA), (3C) to (3H) and (3K) and 36(1) and (2)(a) and (e) of the Legal Aid (Scotland) Act 1986(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2002 and shall come into force on 17th June 2002.

Amendment of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999

2. The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(**2**) are amended in accordance with the following regulations.

3. After regulation 4 there is inserted–

"**Exceptional cases**

4A.—(1) A solicitor who provides relevant criminal legal aid shall–

(a) where the circumstances prescribed at paragraph (3) exist; and

(b) subject to the conditions prescribed at paragraph (5),

instead of receiving the fixed payments specified in Schedule 1, be paid out of the Fund in accordance with regulations made under section 33(2) and (3) of the Act.

(**1**) 1986 c. 47. Section 33(3A) was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 51. Section 33(3AA) was inserted by section 8 of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), and section 33(3C) to (3K) was inserted by section 7 of that Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) S.I.1999/491, amended by S.I. 1999/1820 and S.S.I. 1999/48 and 2001/307.

(2) It shall be for the Board to determine whether the circumstances prescribed at paragraph (3) exist, and whether the conditions prescribed at paragraphs (5) and (9) are met.

(3) The circumstances referred to in paragraph (1)(a) are where an assisted person would be deprived of the right to a fair trial in any case because of the amount of the fixed payments payable for the criminal legal assistance provided.

(4) The factors to be taken into account by the Board in considering whether the circumstances prescribed at paragraph (3) exist shall include–

(a) the number, nature and location of witnesses;

(b) the number and nature of productions;

(c) the complexity of the law (including procedural complexity);

(d) whether the assisted person, or any witnesses, may be unable to understand the proceedings because of age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise.

(5) The conditions referred to in paragraph (1)(b) are as follows:–

(a) the solicitor providing relevant criminal legal aid shall make an application to the Board–

(i) in such manner and form; and

(ii) containing such information,

as it may specify, at as early a stage in the provision of the relevant criminal legal aid as is reasonably practicable and that solicitor shall, if required by the Board to do so, supply such further information or such documents as the Board may require to enable it to determine the application; and

(b) that solicitor shall keep proper records of all professional services provided by way of and outlays incurred in the provision of that relevant criminal legal aid, whether before or after the Board exercises its power to determine whether the conditions prescribed at paragraph (5)(a) are met.

(6) An application for a review under section 33(3K) of the Act shall–

(a) be signed by the applicant;

(b) subject to paragraph (7), be lodged with the Board within 15 days of the time when notice of refusal of the application was given to the applicant;

(c) include a statement of any matters which the applicant wishes the Board to take into account in reviewing the application; and

(d) be accompanied by such additional precognitions and other documents as the applicant considers to be relevant to the review.

(7) Paragraph (6)(b) shall not apply where the Board considers that there is a special reason for it to consider a late application for review.

(8) Where the Board has granted an application for a change of solicitor under regulation 17(3) of the Criminal Legal Aid (Scotland) Regulations 1996(**3**), any solicitor who provided relevant criminal legal aid prior to that grant shall, where the Board has determined that the circumstances prescribed at paragraph (3) exist, instead of receiving the fixed payments specified in Schedule 1, be paid out of the Fund in accordance with regulations made under section 33(2) and (3) of the Act.

(**3**) S.I. 1996/2555.