Justice Committee

Remit and membership

Remit:

To consider and report on:
a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and
b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

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Justice Committee

14th Report, 2014 (Session 4)

Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014

The Committee reports to the Parliament as follows—

1. At its meeting on 25 November 2014 the Committee considered the following instrument—

   • Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 [draft]

2. The instrument was referred to the Justice Committee as lead committee and was subject to affirmative procedure. The Cabinet Secretary for Justice designate, Michael Matheson, gave evidence on the instrument and also moved the relevant motion recommending approval of the instrument.

Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 [draft]

The draft instrument

3. The draft Regulations were made in exercise of the powers conferred by sections 9, 33(3A), (3C), (3D), (3F) to (3H) and 36(1) and (2)(a), (c) and (e) of the Legal Aid (Scotland) Act 1986(a).

4. The purpose of the instrument is to amend the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 to make savings to the Fund by:

   • simplifying the narrative relating to fees for deferred sentence hearings;
   • simplifying the fees in relation to multiple pleas in assistance by way of representation (ABWOR) cases;
   • widening the range of circumstances which can be treated as a single matter in failure to appear proceedings so an additional fee is not payable;
   • simplifying the narrative relating to duty solicitor half fees; and
• returning the reduced fee for breach of bail conditions to half of the principal fee.

5. The instrument also aims to make application of the regulations clearer and simpler in relation to: (a) paying solicitors for preparatory work in cases continued without plea, regardless of whether the case is called; (b) ensuring there is an exceptional case status provision for all fixed payments, and (c) updating or removing redundant wording.

**Scrutiny by the Delegated Powers and Law Reform Committee**

6. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 11 November 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit\(^1\).

**Justice Committee consideration**

7. The draft Regulations were considered by the Justice Committee on 25 November 2014, when it took evidence from Michael Matheson, Cabinet Secretary for Justice designate\(^2\).

8. In his opening remarks the Cabinet Secretary designate stated that the Regulations were the latest in a number of proposals to reduce the costs of the legal aid fund without affecting access to justice. He explained that the Regulations would mean that, when solicitors dispose of cases prior to trial, the fees would reflect the fact that the level of work carried out was less than that for a case that was taken to its conclusion through the courts, and would be in line with other fee regulations.

9. Mr Matheson further explained that the Regulations were not just about savings to the Fund; they would also provide consistency and simplicity for the benefit of solicitors, clients and the Crown.

10. In response to concerns highlighted in a late submission from the Law Society of Scotland\(^3\) about the provision for duty solicitors to be paid a half fee when there is a guilty plea, Mr Matheson replied that the Law Society had been fully engaged in the process of drafting the instrument and had not made any comments on the matter at that time.

11. When pressed further on the Law Society’s suggestion that the implementation of the Regulations should be delayed until they had been assessed in light of a taxation decision, Mr Matheson confirmed that the taxation case would be dealt with separately from the Regulations. Alasdair Smith, a solicitor in the Directorate of Legal Services at the Scottish Government, added

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\(^3\) Law Society of Scotland. Written submission to the Justice Committee. 24 November 2014. Available at: [http://www.scottish.parliament.uk/S4_JusticeCommittee/General%20Documents/20141124_LSS_on_ABWOR.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/General%20Documents/20141124_LSS_on_ABWOR.pdf)
that the Regulations’ effect would be prospective and they would therefore remove the uncertainty referred to by the Law Society.

12. Mr Matheson then moved the motion lodged by Kenny MacAskill: S4M-11524—That the Justice Committee recommends that the Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 [draft] be approved.

13. The motion was agreed to.

14. The Justice Committee therefore recommends to the Parliament that it approve the draft instrument.
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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland

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ISBN 978-1-78534-435-0