

CONVENTION RIGHTS (COMPLIANCE) (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Part 3

Legal Aid

Fixed payments for criminal legal assistance: exceptional cases

68. [Section 7](#) of the Act inserts new subsections (3C) to (3K) into section 33 of the 1986 Act.
69. New subsection (3C) allows the Scottish Ministers to make regulations in which they can prescribe the circumstances and conditions under which a solicitor shall be paid under section 33(2) and (3) of the 1986 Act instead of being paid under section 33(3A) of the 1986 Act. This means that a solicitor will be paid on a "time and line" basis rather than under the fixed payment scheme. The purpose of these regulations is to enable the Scottish Legal Aid Board to ensure that a person who is provided with criminal legal assistance under section 33(3A) of the 1986 Act is not deprived of the right to a fair trial because of the amount of the fixed payments payable under section 33(3A) of the 1986 Act (see new subsection (3D)). Such regulations will be subject to negative resolution procedure.
70. New subsection (3J) allows the Scottish Ministers to apply any regulations made under subsection (3C) retrospectively to cases ongoing at the time of the commencement of section 7 of the Act. It also enables the Scottish Ministers to disapply any conditions in the regulations made under subsection (3C)(b) to any such ongoing cases.
71. Subsection (3K) requires the Board to set up a procedure to allow the review of any decision by it to refuse an application under subsection (3H) or determine that a solicitor is not to be paid under section 33(2) and (3) of the 1986 Act.