



Convention Rights (Compliance) (Scotland) Act 2001

2001 asp 7

PART 3

LEGAL AID

7 **Fixed payments for criminal legal assistance: exceptional cases**

In section 33 of the 1986 Act, after subsection (3B) (which provides that where fixed payments to solicitors for criminal legal assistance are prescribed, a solicitor providing it is not entitled to any other legal aid payment), there is inserted—

“(3C) The Scottish Ministers may, however, for the purpose of enabling the Board to ensure that a person to whom fixed payment criminal legal assistance is provided is not, for the reason specified in subsection (3D) below, deprived of the right to a fair trial, by regulations under this subsection, provide that—

- (a) in such circumstances; and
- (b) under such conditions,

as may be prescribed by the regulations, a solicitor who provides such criminal legal assistance shall, instead of receiving fixed payments, be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above.

(3D) The reason referred to in subsection (3C) above is the amount of the fixed payments payable for the criminal legal assistance provided.

(3E) In subsection (3C) above—

“fixed payment criminal legal assistance” means criminal legal assistance in respect of which fixed payments are prescribed under subsection (3A) above;

“fixed payments” means fixed payments so prescribed.

(3F) Regulations made under subsection (3C) above shall provide that it is for the Board to determine whether any prescribed circumstances exist and whether any prescribed conditions are met.

Status: This is the original version (as it was originally enacted).

- (3G) Circumstances may be prescribed under subsection (3C)(a) above by reference to such factors as the Scottish Ministers think fit.
- (3H) The conditions which may be prescribed under subsection (3C)(b) above include those which stipulate that a solicitor providing criminal legal assistance—
- (a) applies to the Board to exercise its power of determination under subsection (3F) above;
 - (b) does so in such manner and form as the Board may specify and at as early a stage in the provision of the criminal legal assistance as is reasonably practicable; and
 - (c) keeps proper records of all professional services provided by way of and outlays incurred in the provision of that criminal legal assistance, whether before or after the exercise of that power of determination.
- (3J) Regulations may be made under subsection (3C) above so as to relate to criminal legal assistance provided in relation to proceedings commenced before and continuing as at the date of coming into force of section 7 of the Convention Rights (Compliance) (Scotland) Act 2001 ([asp 7](#)), and regulations so relating may disapply any condition which would otherwise apply under subsection (3C)(b) above.
- (3K) The Board shall establish a procedure under which any person—
- (a) whose solicitor’s application under subsection (3H) above has been refused; or
 - (b) on whose solicitor’s application under that subsection the Board has made a determination which is such that the solicitor will not be paid out of the Fund in accordance with regulations made under subsections (2) and (3) above,
- may apply to the Board for review of that refusal or determination.”.