

Criminal Justice Committee

24th Meeting, 2022 (Session 6), Wednesday, 21 September 2022

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following affirmative instrument:
 - [The Advice and Assistance \(Summary Criminal Proceedings\) \(Miscellaneous Amendment\) \(Scotland\) Regulations 2022 \[draft\]](#)

Introduction

2. The Regulations are made in exercise of the powers conferred by sections 9(1) and (2)(a), 33(2) and (3)(b), (f) and (3A), and 36(2)(b) of the Legal Aid (Scotland) Act 1986.
3. **They make amendments to the current advice and assistance regulations to support a sheriff court initiative that seeks to encourage appropriate early resolution of summary criminal cases.**
4. Further details on the purpose of the instrument can be found in the policy note attached in the **Annex**.

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 28 June 2022. The DPLR Committee agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Criminal Justice Committee Consideration

- 6. The Committee is required to report to the Parliament by 4 October 2022.**
7. Motion S6M-05162 has been lodged proposing that the Committee recommends approval of the instrument. The Minister for Community Safety is due to attend the meeting on 21 September to answer any questions on the instrument and to move the motion for approval.
- 8. It is for the Committee to decide whether to agree to the motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument based on the Committee's recommendation.**
- 9. The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.**

Clerks to the Committee
September 2022

Annex

Policy Note

The Advice and Assistance (Summary Criminal Proceedings) (Miscellaneous Amendment) (Scotland) Regulations 2022

SSI 2022/XXX

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

Summary Box

This instrument makes amendments to advice and assistance regulations to support a sheriff court initiative that seeks to encourage appropriate early resolution of summary criminal cases.

Policy Objectives

Following the Scottish Courts and Tribunal Service (SCTS) Evidence and Procedure Review, three sheriff courts, Dundee, Hamilton and Paisley, will pilot an initiative to test the benefits of earlier engagement between Crown and defence agents to encourage appropriate early resolution of summary criminal cases. This instrument amends legal aid fee arrangements to allow an inclusive fee to be paid to defence agents at an earlier stage of proceedings.

Amendments are made to the following Regulations –

- The Advice and Assistance (Financial Limit) (Scotland) Regulations 1993
- The Advice and Assistance (Scotland) Regulations 1996
- The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003

Consultation

The Scottish Legal Aid Board (SLAB) is a non-departmental public body which administers legal aid in Scotland and is accountable to the Scottish Government. SLAB have been consulted in the development of the draft Regulations.

Draft Regulations were shared with the Law Society of Scotland and Bar Associations participating in the pilot.

No public consultation was carried out due to the technical nature of the proposed regulations.

Impact Assessments

The following impact assessments were considered:

- Child Rights & Wellbeing Impact Assessment – not required declaration completed
- Equality Impact Assessment – not required declaration completed
- Business & Regulatory Impact Assessment – BRIA not required
- Fairer Scotland Duty – not required
- Strategic Environmental Assessment – not required
- Data Protection Impact assessment – not required

Financial Effects

The Minister for Community Safety confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate
June 2022