

2011 No. 163

LEGAL AID AND ADVICE

**The Criminal Legal Assistance (Duty Solicitors) (Scotland)
Regulations 2011**

Made - - - - - *24th February 2011*

Laid before the Scottish Parliament *28th February 2011*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 31(9) and 36(1) and (2)(a) of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 and, except for regulation 3, come into force on 6th June 2011.

(2) Regulation 3 comes into force on 4th July 2011.

Interpretation

2.—(1) In these Regulations “the Act” means the Legal Aid (Scotland) Act 1986.

(2) The criminal legal aid to be provided by a solicitor arranged by the Board pursuant to regulations 5 to 7 includes attending upon, advising and acting for the assisted person in relation to any—

- (a) preliminary plea to the competency or relevancy of the petition or complaint;
- (b) plea in bar of trial;
- (c) mental health proof.

Duty solicitors: advice for suspects

3.—(1) The Board is to arrange for a solicitor to be available for the purpose of providing advice and assistance to any person to whom section 15A of the Criminal Procedure (Scotland) Act 1995(b) (right of suspects to have access to a solicitor) applies.

(2) Where the Board has arranged for a solicitor to be available pursuant to paragraph (1), for the purpose specified in that paragraph—

- (a) section 31(1) of the Act shall not apply; and

(a) 1986 c.47. 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).

(b) 1995 c.46; section 15A was inserted by the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 (asp 15).

- (b) advice and assistance shall be provided only by the solicitor so made available.

Duty solicitors: representation at identification parades

4.—(1) The Board is to arrange for a solicitor to be available for the purpose of providing criminal legal aid to any person at any identification parade to which section 21(4)(b) of the Act applies.

(2) Paragraph (1) does not apply in relation to a person for whom the Board is to arrange for a solicitor to be available in pursuance of regulation 5.

Duty solicitors: persons charged with murder, attempted murder or culpable homicide

5. The Board is to arrange for a solicitor to be available for the purpose of providing criminal legal aid to any person who has been taken into custody on a charge of murder, attempted murder or culpable homicide until that person is admitted to bail or committed until liberated in due course of law.

Duty solicitors: persons prosecuted under solemn procedure

6.—(1) The Board is to arrange for a solicitor to be available for the purpose of providing criminal legal aid to any person to whom paragraph (2) applies, from the day the person is first brought before a sheriff for examination until the person is admitted to bail or committed until liberated in due course of law.

(2) This paragraph applies to a person who—

- (a) is being prosecuted under solemn procedure (except on a charge of murder, attempted murder or culpable homicide); and
- (b) is in custody.

Duty solicitors: persons prosecuted under summary procedure

7.—(1) Subject to paragraph (6), the Board is to arrange for a solicitor to be available for the purpose of providing criminal legal aid to a person to whom paragraph (2) applies (“the accused”), from the day the accused is first brought before a court to answer to any complaint until—

- (a) the conclusion of the first diet at which the accused is called upon to plead if, at that diet, the accused tenders a plea of not guilty and following that diet does not make an application for liberation;
- (b) any application for liberation made following the first diet at which the accused is called upon to plead has been dealt with;
- (c) the conclusion of the proceedings against the accused if, at the first diet at which the accused is called upon to plead, the accused tenders a plea of guilty.

(2) This paragraph applies to a person who—

- (a) is being prosecuted under summary procedure; and
- (b) either—
 - (i) is in custody and does not have an appointed solicitor available immediately (either in person or through the services of another solicitor under paragraph (5)) to provide assistance by way of representation under regulation 6A of the Advice and Assistance (Assistance By Way of Representation) (Scotland) Regulations 2003(a); or
 - (ii) has been liberated under section 22(1)(a) of the Criminal Procedure (Scotland) Act 1995 (liberation by police on undertaking to appear).

(a) S.S.I. 2003/179; regulation 6A was inserted by S.S.I. 2006/345 and has been amended by S.S.I. 2008/251.

- (3) In this regulation an “appointed solicitor” is a solicitor who—
- (a) is instructed directly by the accused; and
 - (b) either—
 - (i) the solicitor has (or has had) a solicitor and client relationship with the accused that is demonstrable, to the satisfaction of the Board, by reference to circumstances apart from those relating solely to the appearance; or
 - (ii) the solicitor is connected with a firm and another solicitor connected with that firm has (or has had) such a relationship with the accused^(a).
- (4) For the purposes of paragraph (3), the solicitors employed by the Board under section 28A of the Act are to be deemed to be connected with the same firm.
- (5) Representation by an appointed solicitor may be effected, from the appearance from custody onwards, through the services of another solicitor (except the duty solicitor) where—
- (a) the other solicitor is expressly authorised to act by the appointed solicitor; and
 - (b) the other solicitor’s services are required because the appointed solicitor cannot attend personally due to—
 - (i) illness or incapacity;
 - (ii) the arising, after instruction in relation to the appearance, of a professional obligation to act in person in another case that is to call elsewhere at or around the same time; or
 - (iii) another good reason.
- (6) The Board is not to arrange for a solicitor to be available in pursuance of paragraph (1) in relation to proceedings before a court which has been designated as a drug court by the sheriff principal.
- (7) Where the Board has arranged for a solicitor to be available pursuant to paragraph (1), for the purpose specified in that paragraph—
- (a) section 31(1) of the Act shall not apply; and
 - (b) no solicitor, other than the solicitor so made available, shall provide criminal legal aid or assistance by way of representation to the accused.
- (8) Paragraph (7) does not apply in relation to proceedings before a court which has been designated as a youth court or a domestic abuse court by the sheriff principal.

Revocation of regulation 5 of the Criminal Legal Aid (Scotland) Regulations 1996

8. Regulation 5 of the Criminal Legal Aid (Scotland) Regulations 1996^(b) (duty solicitors) is revoked.

KENNY MACASKILL
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
24th February 2011

(a) Section 41 of the Act defines “solicitor connected with a firm” and cognate expressions.
(b) S.I. 1996/2555.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision requiring the Scottish Legal Aid Board (“the Board”) to make arrangements for solicitors to be available to provide advice and assistance and criminal legal aid to people in certain circumstances.

Regulation 3 requires the Board to make arrangements for a solicitor to be available to provide advice and assistance to anyone to whom section 15A of the Criminal Procedure (Scotland) Act 1995 applies. That section applies to any person suspected of committing an offence who (i) attends a police station or other place on a voluntary basis for questioning, (ii) any person detained within the meaning of section 14 of the Criminal Procedure (Scotland) Act 1995 and (iii) any person arrested but not charged who is being detained for the purposes of questioning. Advice and assistance can be provided to a person in any of those circumstances only by a solicitor made available by the Board.

Regulation 4 requires the Board to make arrangements for a solicitor to be available to provide criminal legal aid at any identification parade to which section 21(4)(b) of the Legal Aid (Scotland) Act 1986 applies. The regulation does not apply where regulation 5 requires the Board to arrange for a solicitor to be available to the person.

Regulation 5 requires the Board to make arrangements for a solicitor to be available to anyone taken into custody in connection with a charge of murder, attempted murder or culpable homicide until the person is either released on bail or committed until liberated in due course of law.

Regulation 6 requires the Board to make arrangements for a solicitor to be available to anyone who is in custody and being prosecuted under solemn procedure (other than in relation to one of the charges covered by regulation 5), from the first day the person is brought before a sheriff for examination until the person is admitted to bail or liberated in due course of law.

Regulation 7 requires the Board to make arrangements for a solicitor to be available, in certain circumstances, to provide criminal legal aid to anyone who is being prosecuted under summary procedure. Assistance by way of representation may be provided in similar circumstances to a person in custody by virtue of regulation 6A(1) of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003. Specifically, assistance by way of representation can be provided to anyone who appears from custody to answer to a complaint for the first time. It may be provided from that day until the conclusion of the case’s first calling (including any adjournment or subsequent application for liberation) if the person pleads not guilty or, if the person pleads guilty, until the conclusion of the case. Where a person is eligible to be given assistance by way of representation under the said regulation 6A(1), and the person has an appointed solicitor who is immediately available to provide that assistance by way of representation, regulation 7 of these Regulations does not require the Board to make a solicitor available. Regulation 7(3) and (4) of these Regulations specifies who may be an appointed solicitor. In any other case, only the solicitor made available by the Board under regulation 7(1) of these Regulations is entitled to be paid from the Scottish Legal Aid Fund for representing the person in the circumstances where regulation 7(1) applies, meaning no other solicitor can provide assistance by way of representation or criminal legal aid.

Regulations 4 to 7 of these Regulations re-enact the Board’s duty under regulation 5 of the Criminal Legal Aid (Scotland) Regulations 1996 to make arrangements for a solicitor to be available in the circumstances mentioned. Accordingly, regulation 5 of the Criminal Legal Aid (Scotland) Regulations 1996 is revoked by regulation 8 of these Regulations.