



25 November 2010

Power to grant solemn criminal legal aid transferred to the Scottish Legal Aid Board

Responsibility for granting criminal legal aid in serious criminal matters has now transferred to the Scottish Legal Aid Board.

Currently, sheriffs decide whether to grant legal aid for cases which will be heard in the High Court or by a sheriff sitting with a jury - generally known as solemn cases.

The test to be applied by the Board is whether an accused can afford to meet the cost of their criminal case. The Board consulted on its approach to the test earlier in 2010.

The Government's reasons for transferring responsibility for the granting of solemn criminal legal aid include:

- to increase consistency in the granting of cases;
- to enable greater verification and checking of applicants' financial circumstances and consequent reduction in the risk of fraudulent applications.

It is expected that the greater consistency of granting against a standard means test will result in savings to the legal aid fund.

The new application system will be available online to reduce bureaucracy and ensure speedy processing. The administrative cost of carrying out these new responsibilities will be met out of efficiency savings within the Board's running costs.

Lindsay Montgomery CBE, Chief Executive stated, "People are not entitled to have their defence publicly funded if they are able to pay for it. The change will make for more consistent, robust and effective legal aid arrangements which are aimed at ensuring that those who are able to pay for their defence do so. The Board welcomes the opportunity to take on the administration of solemn criminal legal aid to ensure both access to justice for accused and to protect the interests of the taxpayer"

Ends

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Notes for editors

- Legal aid is help towards the costs of legal advice and representation, for those who qualify, paid for out of public funds. It is designed to help individuals on low and modest incomes gain access to the legal system. There are two main types of legal assistance: advice and assistance and legal aid. Together these are called legal assistance. Legal aid may be free, or someone may have to pay towards the cost of their case, for example through paying a contribution or from the money or property that they win or keep as a result of their legal action. Legal aid is accessed through a solicitor. Unlike most public expenditure, the legal aid fund is not cash limited. The Scottish Government will provide the Board with the funds required to meet the cost of cases which have been granted.

- For criminal legal aid - if an accused has disposable income (total income less allowances for dependants and essential household outgoings) of less than £215 per week, and/or disposable capital of less than £1,664, then they will be eligible to receive solemn criminal legal aid. If their disposable income or capital exceed these amounts, then the excess amounts will be compared to average legal aid costs for the cases to see if they can afford to pay for their own case. Where it is felt that they are in a position to pay for their own legal representation, legal aid will be refused. A review procedure will be introduced, and where an accused's financial circumstances change (for example, if they become unemployed) then a further application for legal aid can also be made. If legal aid is granted, the client is then obliged to advise the Board of any significant positive changes in their financial circumstances, so that the Board can check to see if they remain eligible to receive legal aid.

- The Scottish Parliament decided on this transfer of powers in 2007 (section 64 of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) ("the 2007 Act") and the Board has consulted widely on how it would implement the change.