



Criminal legal assistance

Issued to criminal solicitors

February 2010

Financial eligibility for solemn criminal legal aid - consultation on applying the undue hardship test

The power to grant legal aid in solemn criminal cases will be transferred from the courts to the Board on commencement of section 64 of the Legal Profession and Legal Aid (Scotland) Act 2007, due later in 2010.

This change entitles a person who has applied to the Board for legal aid in a solemn case to a grant provided they meet an undue hardship test. This test, under a new section 23A to the Legal Aid (Scotland) Act 1986 Act, is:

“Criminal legal aid shall be available on an application made to the Board, where a person is being prosecuted under solemn procedure, if the Board is satisfied after consideration of the person’s financial circumstances that the expenses of the case cannot be met without undue hardship to the person or the person’s dependants.”

The test does not differ from that which the courts were required to apply or which we have historically had to apply in assessing applications for summary criminal legal aid. It looks at the applicant’s and their dependants’ unique circumstances in assessing their actual ability to pay for their defence costs.

The Board has issued a consultation paper setting out our proposals on how we plan to apply the undue hardship test in solemn criminal cases. We would welcome your views on this. You can download a copy of the consultation paper from our website at www.slab.org.uk. If you have any queries on the paper, please contact Kingsley Thomas, Manager of Criminal Legal Assistance, telephone: 0131 240 2085 or email thomaski@slab.org.uk

Please address your written comments to:

Solemn Undue Hardship Consultation
Criminal Legal Assistance Department
Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh
EH3 7SW

Alternatively, you can send your response by:

- Legal Post to: LP2 Edinburgh 7
- Hays DX to: DX ED555250 Edinburgh 30
- Email to: thomaski@slab.org.uk

All responses must be sent to us by Friday 14 May 2010.