

## Justice Committee

### Drug Driving (Specified Limits) (Scotland) Regulations 2019 [draft]

#### Written submission from the Scottish Legal Aid Board

The Scottish Legal Aid Board (SLAB) has considered the proposed regulations, particularly the draft Financial Impact Assessment on the Regulations, and offer the following view.

You estimate that this new drug driving offence, together with new drug type limits will bring extra prosecutions. The estimate is 896 new prosecutions, based on the actual convictions for similar offences in England and Wales where the equivalent offence and associated drug type limits were introduced in March 2015. For Scotland you have used 10% of the average annual figure and converted convictions into a higher number of prosecutions to come up with 896 cases. You have also used Upper and Lower estimates based on plus/minus 20%, and costed out 717 and 1075 as well as 896 cases. And estimate that 1% of these cases will be Sheriff Solemn, with 99% at Sheriff Summary level. It is understood that neither SLAB nor the Justice Directorate (our sponsor directorate) were approached for a view on the figures but the approach in the calculations seem reasonable.

For the legal aid costs you have used 2015/16 figures of £1614 for Sheriff Solemn, and £590 for Sheriff Summary. There are some flaws with this as set out below and we could suggest some changes to the costings.

- The figures used are quite old, we have some more up to date figures for 2017/18 now. We don't have an updated Sheriff Solemn figure, but perhaps a more realistic figure would now be £1,800.
- You assume that all the new prosecutions will get legal aid. That's not the case. Some will be refused on financial grounds, and others will not apply at all. Perhaps we should use 90% for the solemn cases and 80% for the Sheriff Summary.
- For the Summary cases, you have used the summary legal aid average. This includes JP cases, and also assumes a NG plea in all cases. Some will plead guilty, so an average of both summary and ABWOR should be used. In 2017/18, the Sheriff Summary average was £636 and ABWOR - £529. If we assume 20% plead guilty, then a better overall average is £615.
- You have taken into account the cost of the disposals of convicted cases (custody, community sentences and fines). For the community sentences, it is estimated an increase in Community Payback Orders of 18.1% (an extra 114, 142, or 171 CPOs). And suggested that the costs also include an increase in review hearings and in the number of breach applications, but give no actual figures for this part. Reviews and Breaches of CPOs come under distinct ABWOR, and our average costs for these cases in 2017/18 was £315.

In the Financial Impact Assessment, the legal aid element of the costs of increased prosecutions was:

- 896 cases - £537,856
- 717 cases - £430,198
- 1075 cases - £646,578

Using updated figures and averages as described above, I have worked these out as:

- 896 cases - £451,050 ( 8 Solemn @ 1800 + 710 Summary @ 615)
- 717 cases - £360,120 (6 Solemn @ 1800 + 568 Summary @ 615)
- 1075 cases - £541,365 (10 Solemn @ 1800 + 851 Summary @ 615)

These figures are between £70K and £105K less, but are perhaps a bit more realistic. We would need a figure for the estimated increase in Review and Breaches of CPOs though to add something back for this.

I hope you find this information helpful and should you require updated costings or figures please let us know

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