EXECUTIVE NOTE

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2005 SSI/2005/482

The above instrument will be made in exercise of the powers conferred on Scottish Ministers by sections 9(1),(2)(a), (dd), (de), 36(1) and 37(1) of the Legal Aid (Scotland) Act 1986. The instrument is subject to the affirmative resolution procedure.

Policy Objectives- Legal Aid

The regulations are being laid to ensure that ABWOR is available without financial tests in connection with proceedings before the Mental Health Tribunal for Scotland established under the Mental Health (Care and Treatment)(Scotland)Act 2003 ('the 2003 Act').

Consultation

As the changes being made to regulations are technical and essentially re-enact existing arrangements made available in relation to the provision of ABWOR for Part V proceedings brought under the Mental Health (Scotland) Act 1984 ('the 1984 Act') currently in force, no formal consultation was undertaken in relation to the legal aid aspects. The policy in relation to the establishment of the new tribunal system and free representation was the subject of extensive consultation undertaken by the mental health department. Discussions have taken place with the Health Department in relation to the regulations that are needed to make legal aid available for the new Mental Health Tribunal for Scotland.

Purpose: Legal aid arrangements for the Mental Health Tribunal for Scotland

The purpose of these regulations is to give effect to the changes that are needed to the Advice and Assistance (Assistance by Way of Representation)(Scotland) Regulations 2003 to ensure that the arrangements come into force at the same time as the Mental Health Tribunal for Scotland commences. Existing cases that have commenced prior to 5 October 2005 will continue under the old arrangements provided by the 1984 Act.

Financial Implications:

The number of proceedings under the 2003 Act has been estimated at approximately 3 850 cases. This shows a substantial rise in the number of cases from the figure of 1044 applications when legal aid was granted in 2003-04. These applications for legal aid in 2003/04 cost £736 020. If there is a rise in numbers of cases proceeding under the 2003 Act, there is a potential for the costs of legal aid to increase. Based on the average case cost, the estimate of the increase in the cost in legal aid proceedings before the new Tribunal on the numbers now quoted would be approximately £2 million.

This may represent an increase in ABWOR costs but this will be offset by a reduction in civil legal aid as certain functions will be undertaken by the Mental Health Tribunal for Scotland that were previously covered by civil legal aid.

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