EXECUTIVE NOTE

THE ADVICE AND ASSISTANCE (ASSISTANCE BY WAY OF REPRESENTATION) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2011

SSI 2011/216

Policy Objective

The intention is to ensure that publicly funded legal assistance continues to be available for disability discrimination in schools cases.

Provision made

The UK Equality Act 2010 will move disability discrimination in schools cases from the Sheriff Court to the Additional Support Needs Tribunal for Scotland (ASNTS). Currently, civil legal aid is available for these cases. The priority going forward will be to maintain a reasonable level of access to legal assistance for such cases.

The Government has concluded generally that Assistance By Way of Representation (ABWOR) is the most appropriate aid type for proceedings before Tribunals. Provision is therefore made here to make ABWOR available in relation to disability discrimination in schools cases.

In addition, the Regulations take the opportunity to remove paragraphs which provided that ABWOR could only be provided under regulation 6A(1) of the the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 "the principal Regulations" by an assisted person's "appointed solicitor" (as defined by regulation 6A(1E)). Provision to similar effect is to be made in a separate set of Regulations, which will cover duty arrangements in a comprehensive manner. These separate Regulations will be brought forward shortly and - to ensure continuity - they will come into force at the same time as regulation **Error! Reference source not found.Error! Reference source not found.** of these Regulations.

Consultation

The Scottish Government has consulted the Scottish Legal Aid Board and the Law Society of Scotland in relation to the Regulations. No Business and Regulatory Impact Assessment has been carried out as the Regulations principally concern ensuring the continued provision of publicly funded legal assistance as a result of a transfer of jurisdiction.

Financial Implications

There are currently only 2 to 3 such cases a year. No significant costs to the legal aid fund are expected as a result of these Regulations.

Scottish Government
1 February 2011