EXECUTIVE NOTE
LEGAL AID REGULATIONS
ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 ("the 2000 Act")

THE CIVIL LEGAL AID (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2006 SSI/2006/325

The Civil Legal Aid (Scotland) Amendment (No. 2) Regulations 2006 will be made in exercise of the powers conferred on Scottish Ministers by section 36(1) and (2)(d), (e) and (h) of the Legal Aid (Scotland) Act 1986 and of all other powers enabling them in that behalf. They amend the Civil Legal Aid (Scotland) Regulations 2002. The instrument is subject to the negative procedure.

Policy Objectives- Legal Aid Efficiency Measures

The measures incorporated in the Regulations provide that civil legal aid is available for persons concerned as claiming or having an interest in the property, financial affairs or personal welfare of an adult under the 2000 Act without any regard being made to the applicant's income or capital and without any contribution being payable by the applicant to the Legal Aid Fund. These cases relate to applications (made by persons other than the adult him or herself) for intervention and guardianship orders which in any way concern the personal welfare of the adult. The regulations provide that in such applications civil legal aid shall be available without reference to sections 15 and 17 of the Legal Aid (Scotland) Act 1986 which provide for the financial condition as to the availability of civil legal aid. A modification is also made to Regulation 5 of the Civil Legal Aid (Scotland) Regulations 2002 so that a written statement itemising an applicant's disposable income and capital is not required for such applications.

Consultation

The changes will be welcomed by stakeholders as they address a number of problems that have arisen. Indeed, these Regulations can be seen to go further than was originally envisaged as it seemed impractical in the interests of justice to try and separate out welfare applications from other applications seeking an order relating to property, financial affairs and personal welfare. The Scottish Legal Aid Board and the Law Society of Scotland have been fully consulted on the proposals and are in agreement with the nature of the proposed changes.

Purpose: Adults with Incapacity (Scotland) Act 2000

The Minister's speech at the Joint Law Society Conference on 29 October 2004 indicated that there should be changes made to legal aid following the two year monitoring report on the 2000 Act. These Regulations make changes to the civil legal aid scheme so as in these cases civil legal aid is to be free from assessment of the financial means tests.

Financial Implications

It is difficult to forecast with accuracy what the cost of making free civil legal aid available in connection with applications for intervention and guardianship orders where an order relating to the personal welfare of the adult is sought will be. The Scottish Legal Aid Board does not keep comprehensive information about the breakdown of the type of all case

applications that it receives. In order to provide some guidance, 99 applications for guardianship were made in 2003-04. Assuming that all these applications were granted, based on the then average civil case of £1308, the cost of allowing these application would have been in the in region of £94k. There are, however, controls in the grant of civil legal aid in that every application will be subject to the usual statutory tests of merits namely probable cause and reasonableness.

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