EXECUTIVE NOTE

THE CIVIL LEGAL AID (SCOTLAND) AMENDMENT REGULATIONS 2007 SSI/2007/59

The Civil Legal Aid (Scotland) Amendment Regulations 2007 will be made in exercise of the powers conferred on the Scottish Ministers by sections 17(2B), 36(1) and (2)(g) and 42 of the Legal Aid (Scotland) Act 1986. The instrument is subject to the negative resolution procedure.

Policy Objectives

Capital disregard limit in matrimonial cases

The purpose of this instrument is to increase the capital disregard limit by which property recovered or preserved in certain matrimonial cases is excepted from being payable to the Legal Aid Fund. The capital disregard limit has been increased by the Retail Price Index of 3.6% which is broadly in line with inflation. The requirement for a person who is in receipt of civil legal aid to pay the net amount of any liability of the Legal Aid Fund shall not apply to the first £4,821 recovered or preserved. This figure is increased from £4,653.

Disregard pension credit in the computation of disposable income for civil legal aid

The purpose of this instrument is to amend the rule contained in paragraph 5 of Schedule 2 to the Civil Legal Aid (Scotland) Regulations 2002 concerning the assessment of applicants' resources in relation to the computing of disposable income to provide that state pension credit payable under the State Pension Credit Act 2002 shall be disregarded. This corrects an anomaly, as income-related benefits paid to those of working age are already disregarded from legal aid eligibility calculations. The rule which requires the amount of a net liability of the Legal Aid Fund in any case to be paid out of any property recovered or preserved is amended to provide that it shall not apply in respect of money payable by way of state pension credits.

These regulations apply in relation to any case where an application for civil legal aid is made on or after 9 April 2007.

Consultation

The Scottish Executive does not normally conduct public consultation in connection with the annual uplift of financial eligibility in relation to civil legal aid which forms part of detailed secondary legislation. The intention to disregard state pension credit from the calculation of disposable income formed part of the consultation of the Advice for All and received widespread public support. The Law Society of Scotland has been advised of the detail of these regulations.

Purpose

The purpose of this instrument is to give effect to the changes in the capital disregard limit being increased broadly in line with inflation, to disregard state pension credit from the calculation of disposable income in assessing eligibility for civil legal aid and to provide that money payable by way of state pension credits shall be excepted from the general rule which provides that property recovered or preserved shall be payable to the Legal Aid Fund.

Financial Implications

Widening of access to justice by disregarding stat~ pension credit from the calculation of disposable income for civil legal aid has been estimated by the Scottish Legal Aid Board to increase spending by around £50,000. The uprating of the capital disregard limit simply keeps the limit up-to-date in connection with inflation. Increasing eligibility in line with increased benefits levels should have no financial effect. It is anticipated that the expenditure on the Legal Aid Fund will remain substantially unchanged.

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