EXECUTIVE NOTE TO

THE CIVIL LEGAL AID (SCOTLAND) AMENDMENT REGULATIONS 2012

S.S.I. 2012/64

The Civil Legal Aid (Scotland) Amendment Regulations 2012 ("the Regulations") are made in exercise of the powers conferred by section 36(1) of the Legal Aid (Scotland) Act 1986 ("the 1986 Act") and all other powers enabling the Scottish Ministers to do so.

Policy Objective

The main policy objective is to enable the Scottish Legal Aid Board ("the Board") to pay existing unclaimed surplus monies (including both the principal sum and accrued interest), held by the Board at present in a general account, into the Legal Aid Fund ("the Fund"), after a period of five years has lapsed. This will apply to cases where the assisted person cannot be traced despite the Board making attempts to trace them.

The Regulations give effect to the objective by amending the Civil Legal Aid (Scotland) Regulations 2002 ("the 2002 Regulations"). A Ministerial Determination ("Determination"), which will come into force on the same date as these Regulations, will also be issued enabling the Board to pay any such monies into the Fund.

Background

The Board currently holds unclaimed monies dating, in some cases, back to the 1960's, prior to the establishment of the Board. Responsibility for these monies transferred to the Board under Schedule 4 to the 1986 Act. The Board also holds monies unclaimed since its inception. The monies concerned are monies that have been paid to the Board as part of property preserved or recovered by a civil case. Once the person's contribution liability is determined and paid at the end of the case and the person's solicitor paid it sometimes transpires that the Board is left holding a surplus.

Regulation 40(4)(d) of the 2002 Regulations provides that monies paid to the Board have to be deposited into one general account, and not the Fund. The Board, by virtue of regulation 40(4)(e)(i) and (ii) of the 2002 Regulations, is then obliged to pay the surplus monies plus interest accrued thereon to the person concerned. The Board may, despite its best efforts, be unable to locate the person to whom to make the payment. As a result, the Board is left with the unclaimed monies and interest in the general account.

As explained above, a Determination will be issued which will provide that where monies have been paid to the Board since its inception and are unclaimed in accordance with the 2002 Regulations (as amended by these Regulations), the monies and interest can be paid into the Fund. The Determination will also provide for unclaimed monies transferred into the Board, by virtue of Schedule 4, to be paid into the Fund.

Whist a determination under section 4(3)(e) can authorise the Board to pay certain monies into the Fund, it cannot permit the Board to derogate from its obligation to hold the monies in accordance with regulation 40.

The Regulations therefore amend the 2002 Regulations by inserting a new paragraph (5A). The new paragraph provides that where the Board has, after these Regulations come into force, been unable to pay the surplus monies and the interest after a period of 5 years, regulation 40(4) ceases to apply, including the right to continue to accrue interest

The Board, having made the necessary attempts to contact the person concerned, shall, by virtue of the Determination, pay the monies and interest accrued into the Fund after a period of five years has lapsed. Should the person then make a claim, the Board can pay the person out of the Fund, again by virtue of the Determination.

Consultation

Details of the above changes will be made available on the Board's website (www.slab.org.uk) on 1 March 2012. In relation to the Determination, it is also intended that this will be made available on the Board's website. No separate Business and Regulatory Impact Assessment (BRIA) has been carried out.

Financial effects

The financial implications arising from these Regulations are that the Fund will receive the benefit of the monies currently held by the Board, in the region of £300k. It is intended that these monies will be paid directly into the Legal Aid Fund before the end of the financial year; and that any future surplus monies held for over five years will benefit the Fund.