# EXECUTIVE NOTE

# THE ADVICE AND ASSISTANCE AND CIVIL LEGAL AID (FINANCIAL CONDITIONS AND CONTRIBUTIONS) (SCOTLAND) REGULATIONS 2011

# SSI 2011/XXX

## Policy Objective

Annual Inflationary Increase

The policy objective is to maintain, broadly in line with inflation, financial eligibility for advice and assistance (A&A) and civil legal aid and the financial thresholds beyond which recipients of A&A and civil legal aid are required to contribute towards the cost of the assistance received.

This is to be achieved by increasing the prescribed limits of disposable capital and of weekly disposable income above which a person is not eligible for A&A. The value of weekly disposable income above which a person will be required to make a contribution towards the cost of A&A is also to be increased. Similarly, the upper disposable income and disposable capital limits for financial eligibility for civil legal aid will be increased. The maximum contributable proportion of disposable income exceeding the prescribed threshold (which is to be raised to £3,521 per annum) is to remain at 67.1%, as previously prescribed in the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations 2010 (S.S.I. 20010/139). The maximum contributable proportion of disposable income will not be collected in every case.

In 2010 the Scottish Government sent guidance to the Scottish Legal Aid Board ("the Board") under section 3(4) of the Legal Aid (Scotland) Act 1986 Act setting out how the amount of contributable disposal income to be collected should be calculated. It is intended that this guidance will be updated to reflect the inflationary increases which the Regulations effect.

Criminal Advice and Assistance: automatic availability in certain circumstances

In 2010 the Supreme Court ruled in the case of *Cadder v Her Majesty's Advocate* that Scottish law was incompatible with the European Convention on Human Rights as interpreted by the European Court in *Salduz v. Turkey*. The decision in *Cadder* meant that amendment was required to the existing police powers to detain and question suspects. The Criminal Procedure (Legal Assistance, Detention and Appeals (Scotland) Act 2010, which came into force on 30 October 2010, introduced a new section 15A into the Criminal Procedure (Scotland) Act 1995. This created a right of access to a solicitor before questioning by the police. The policy objective of regulation 8 is for A&A to be provided without reference to the financial limits for any person to whom section 15A (right of suspects to have access to a solicitor) of the Criminal Procedure (Scotland) Act 1995 applies in relation to a private consultation within the meaning of subsection (3) of that section.

Disapplying the financial eligibility test will make it easier to provide advice to suspects in certain circumstances. It will enable solicitors from the Public Defence Solicitors' Office (PDSO) to provide A&A to suspects, which broadens the scope of solicitors that can be

included within any future police station duty scheme. At present, solicitors from the PDSO are not able to assist those who are financially ineligible for A&A. In addition, given that those detained are unlikely to have about them the necessary documents to enable financial verification to take place, this should provide further certainty for solicitors in private practice providing A&A in these circumstances.

**Consultation**

The inflationary increases described above take place annually and are designed to maintain the existing financial eligibility thresholds in real terms. Formal consultation is not normally carried out. For the same reason, no Better Regulation Impact Assessment has been carried out. In relation to regulation 8 on disapplying financial eligibility, the following bodies have been consulted on the relevant regulation: the Board, the Law Society of Scotland, the Association of Chief Police Officers in Scotland (ACPOS) and the Crown Office and Procurator Fiscal's Office.

**Financial Implications**

Because the regulations relating to the inflationary increase are intended to maintain, rather than to change, the financial eligibility limits for A&A and civil legal aid they are not expected by the Board to have a significant impact on expenditure.

The Board estimates that disapplying financial eligibility for A&A in the circumstances described will be cost neutral, given the fact that the necessity to collect contributions from those who are able to pay them will remain. This is in line with the Government's general policy that those who can afford to pay a contribution for their legal assistance should do so, in order to ensure that legal assistance can continue to be directed at those who need it most. Those who are to become eligible as a result of this change will likely to be able to pay a contribution, thus offsetting the costs.

Scottish Government
2 February 2011