POLICY NOTE

THE ADVICE AND ASSISTANCE (ASSISTANCE BY WAY OF REPRESENTATION) (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2015

SSI 2015/

The above instrument was made in exercise of the powers conferred by section 9 of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Policy Objectives

The Counter-Terrorism and Security Act 2015, which received Royal Assent on 12 February 2015, aims to stop people travelling overseas to fight for terrorist organisations or to engage in terrorism-related activity and subsequently returning to the UK; and to deal with those already in the UK who pose a risk to the public. The Act introduces provisions for:

- the retention of travel documents for an initial period of 14 days, extendable to 30 days (provisions in force from 13 February 2015) ;
- and temporary exclusion orders, which prevent the individual from returning to the UK unless their return is either in accordance with a "permit to return" issued by the Secretary of State or they are deported to the UK by the state they are in (provisions in force from 12 February 2015).

The instrument amends regulation 3 of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 to make assistance by way of representation (ABWOR) available for the retention of travel documents extendable to 30 days and temporary exclusion order review proceedings.

Consultation

There was limited time for consultation due to the speed of the Act's passage through Parliament.
The Scottish Legal Aid Board was consulted in drafting the provisions and the Law Society of Scotland was notified that the draft instrument would be laid and of its policy objectives.

Impact Assessments

An equality impact assessment for this policy was undertaken and is attached. There are no equality impact issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that it will allow legal firms and sole practitioners to provide timeous publicly-funded legal assistance to their clients. The Scottish Legal Aid Board estimates the provisions in the instrument will result in a cost of less than £10,000 per annum to the legal aid fund.

Scottish Government
Justice Directorate

16 February 2015