EXECUTIVE NOTE

LEGAL AID REGULATIONS

The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006

The above instrument will be made in exercise of the powers conferred on the Scottish Ministers by sections 11(2), 36(1) and (2)(b) of the Legal Aid (Scotland) Act 1986. The instrument is subject to the affirmative resolution procedure.

Policy Objectives

Disposable Income Limits

The purpose of the instrument is to increase the disposable income limits for eligibility for advice and assistance. The weekly disposable upper income limit above which advice and assistance is not available, is increased from £203 to **£208**. The instrument also increases the weekly disposable lower income limit above which a person is required to pay a contribution from £86 to **£88**; and prescribes the scale of contributions to be paid where the weekly disposable income falls between £88 and £208. The uprating of the financial eligibility limits will take effect from Monday 10 April 2006, the date the benefit upratings come into force.

The disposable income limits for advice and assistance are increased annually in line with contributory benefits. As announced by the Secretary of State for Social Security on 6 December 2005, contributory benefits will rise by the Retail Price Index (RPI), which stood at 2.7%.

In the means assessment for advice and assistance, no deductions are made for rent, council tax etc. The income limits for advice and assistance contain built-in allowances on an average basis for these kinds of outlays in order to simplify the means assessment, which is carried out directly by the applicant's solicitor. It is, therefore appropriate that the advice and assistance limits should be uprated by the RPI, which includes housing costs.

Disposable Capital Limit

The instrument will also increase the disposable capital limit for eligibility for advice and assistance. The capital limit has been increased broadly in line with inflation and this means that the current limit of £1,412 will increase to **£1,450**.

The instrument also revokes the Advice and Assistance (Financial Conditions) (Scotland) Regulations 2005 except in relation to any case where an application for advice and assistance is made before 10th April 2006.

Consultation

The Scottish Executive does not normally conduct public consultation on detailed secondary legislation on legal aid.

Financial Implications

The upratings are only keeping the disposable income and disposable capital limits up-to-date and therefore it is expected that the expenditure on the Legal Aid Fund will remain unchanged.

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