EXECUTIVE NOTE

LEGAL AID REGULATIONS

DRAFT : The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2007

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 1986 Act'). The instrument is subject to the affirmative resolution procedure.

Policy Objectives

Disposable Income Limits

The purpose of the instrument, in relation to any case where an application for advice and assistance is made on or after 9 April 2007, is to make a number of changes:-

• To increase the disposable income limit for eligibility for advice and assistance under the 1986 Act from £208 to £215;
• To increase the weekly disposable lower income limit above which a person is required to pay a contribution from £88 to £91; and
• To prescribe the scale of contributions to be paid where the weekly disposable income falls between £91 and £215.

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 7 December 2006, contributory benefits will rise by the Retail Price Index (RPI), which stood at 3.6%.

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. The advice and assistance limits should therefore be uprated in line with 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 ,450 will increase to £1,502.

Civil Advice and Assistance

The instrument, at regulation 7, also forms part of a package of regulations that are being made to introduce a new scheme of advice and assistance in relation to civil matters. Regulation 7 only applies in relation to applications for advice and assistance concerning

civil matters made on or after 1 May 2007. Advice and assistance is available to persons in relation to matters of Scots law subject to their being financially eligible. The solicitor approves the initial grant of advice and assistance.

The minimum fee arrangement is taken away under the new scheme. Advice and assistance can continue to be given for such matters through the introduction of a diagnostic interview as a stage in the application process. The diagnostic interview will allow a solicitor to determine whether the subject matter is a distinct category as agreed with the Law Society of Scotland and appearing on a list in which case it shall be passported into the advice and assistance scheme (subject to the standard initial authorised limit of expenditure provided by the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993).

In a case where the subject matter is not a distinct matter and where, following the diagnostic interview, the applicant and the solicitor consider that it should be treated as if it were on the list of distinct matters the Board can at its discretion, following application made to it, determine that it may be passported into the advice and assistance scheme. In cases where the work undertaken by the solicitor only relates to work done by way of a diagnostic interview the solicitor will only be paid the initial limit of expenditure for the diagnostic interview. No application can be made by a solicitor seeking an increase to this initial limit.

The changes introduced by this instrument will

• prescribe the scale of contributions to be paid where the weekly disposable income exceeds £91 but not £215 payable by applicants in respect of applications for advice and assistance in relation to civil matters where the work undertaken by a solicitor is made up solely of a diagnostic interview; and
• provide that where a solicitor has given advice and assistance by way of a diagnostic interview which upon application to the Scottish Legal Aid Board is determined by it to be treated as if the advice and assistance related to one of more distinct matters then the contribution payable shall be the amount as prescribed in regulation 6.

The instrument also revokes the Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006 except in relation to any case where an application for advice and assistance is made before 9 April 2007.

Consultation

The Scottish Executive conducted a consultation in relation to civil advice and assistance reforms in late 2005/06 where the scheme that has been fully discussed with the Law Society of Scotland received approval. As the changes to disposable capital and income limits are part of the annual uplifting of financial eligibility, no consultation is normally carried to this detailed secondary legislation.

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. The changes in civil advice and assistance system are being introduced to make the system more transparent and efficient.

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Scottish Executive 7 February 2007