EXECUTIVE NOTE

LEGAL AID REGULATIONS

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

The above instrument will be made in exercise of the powers conferred on the Scottish Ministers by sections 9(1), 9(2)(e), 36(1) and 36(2)(b) of the Legal Aid (Scotland) Act 1986('the 1986 Act'). The instrument is subject to the affirmative resolution procedure.

Policy objectives

Civil advice and assistance

This instrument is part of a package of regulations that are being made to introduce a new scheme for advice and assistance in relation to civil matters. It amends the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 as regards the financial limits for the different categories of advice and assistance including in civil matters. It will come into force on 1 May 2007. The financial limit of applications for advice and assistance mad~ on or after that date will be in accordance with these Regulations.

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.

This instrument amends the financial limits for all the different categories of advice and assistance specified in section 10(2) of the 1986 Act beyond which solicitors are required to seek prior approval of the Scottish Legal Aid Board before providing further advice and assistance. It provides that where regulation 4 of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 applies and the subject matter of a civil

case is either a distinct matter under regulation 8A(2) of the Advice and Assistance (Scotland) Regulations 1996 (as amended by the Advice and Assistance (Scotland)Amendment Regulations 2007) or the subject matter of a civil case is not distinct but following application to SLAB is to be treated as if it were so, the financial limit is £180. Under the pre-existing scheme the limit for such cases was £160.

Where regulation 4 of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 does not apply and where the subject matter of a civil case is a distinct matter or is not distinct but following application to SLAB is to be treated as if it were so, the financial limit is £95. Under the pre-existing scheme the limit for such cases was £80. The financial limit for cases relating to children's matters is increased from £80 to £95. Where the subject matter of a civil case is not determined by SLAB to be a distinct matter the financial limit for a diagnostic interview is £35. Under the pre-existing scheme there is no previous figure as this is a new limit. For cases other than civil and children's cases, the financial limit remains £80.

Parole Board (Scotland) Rules 2001

Regulation 2 of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 is amended so as to update the reference to the Parole Board (Scotland) Rules.

Purpose

The purpose of this instrument is to give effect to the civil advice and assistance reforms, to provide for financial limits to be increased and to update the references to the Parole Board (Scotland) Rules.

Consultation

The Scottish Executive conducted a consultation in relation to civil advice and assistance reforms in late 2005/06 following which the scheme was fully discussed. with the Law Society of Scotland and received approval.

Financial Implications

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

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