EXECUTIVE NOTES
LEGAL AID REGULATIONS

DRAFT : The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2006

DRAFT : The Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2006

The above instruments will be made in exercise of the powers conferred by sections 9(1), (2)(a), (c) and (d) and 37(1) and section 21(2) respectively of the Legal Aid (Scotland) Act 1986. These instruments are subject to affirmative resolution procedure.

Policy Objectives – Legal Aid

The regulations that are being laid cover a number of policy objectives.

Police, Public Order and Criminal Justice (Scotland) Act 2006

The Act *inter alia* provided the court with the power to make orders banning persons from attending football matches. These orders can be made following conviction in criminal proceedings and in civil proceedings under sections 51 and 52 respectively. Sections 57 and 58 introduced provisions for variation and termination proceedings in respect of these orders. As civil legal aid covers any variation or terminations of such orders that are imposed as a result of civil proceedings no changes to the existing civil legal aid provisions are required. Amendment to the legal aid scheme is required for variations or terminations of such orders in criminal proceedings.

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2006 amend the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003. This is to provide that assistance by way of representation made under Part II of the Legal Aid (Scotland) Act 1986 is available, subject to eligibility, for applications made under sections 57 or 58 of the 2006 Act in relation to the variation or termination of such football banning orders made on conviction of a football-related offence under section 51 of that Act.

The Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2006 amend the Criminal Legal Aid (Scotland) (Prescribed Proceedings) Regulations 1997 to provide that criminal legal aid shall not be available for proceedings under sections 57 and 58 of the 2006 Act. This is because the appropriate aid-type available is assistance by way of representation.

Parole Board Rules 2001

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2006 also ensures that the references to the Parole Board (Scotland) Rules in regulation 1 of the Advice and Assistance (Assistance by Way of Representation) Regulations 2003 are updated.

Pensions Regulator Tribunal

The Pensions Act 2004 established the Pensions Regulator Tribunal. The Pensions Regulator, replacing the Occupational Pensions Regulatory Authority, was set up to protect the benefit of

members of occupational pension schemes. The Pensions Regulator is primarily concerned with the running of the scheme as a whole and investigates suspected breaches of pensions legislation. The Regulator's role will be to look at issues such as how the schemes are run, how pensions contributions are collected, recorded and accounted for and how monies are distributed if a scheme is wound up. Any person directly affected by a determination of the Regulator, i.e. a trustee, the board of trustees, the employer or manager of a scheme will have a right to refer the matter for appeal to the Pensions Regulator Tribunal within 28 days of the determination.

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2006 provide that assistance by way of representation under Part II of the Legal Aid (Scotland) Act 1986 is available for eligible persons in proceedings before the Pensions Regulator Tribunal in cases where the Scottish Legal Aid Board is satisfied that it is in the interests of justice and reasonable that it be made available.

Purpose

The amending regulations are intended to:

- provide Assistance by Way of Representation for proceedings to vary or terminate a Football Banning Order, subject to the existing means statutory eligibility test;
- update the reference to Parole Board (Scotland) Rules; and
- provide Assistance by Way of Representation for proceedings before the Pensions Regulator Tribunal, subject to the existing means and merits statutory eligibility tests.

Consultation

The Executive does not normally conduct public consultation on detailed secondary legislation on legal aid. The amendments have been discussed with the Scottish Legal Aid Board. The Law Society of Scotland has been given sight of the proposed amendments for information purposes. As this is expanding legal aid provision, it is expected that such provisions would be welcomed by the profession.

Financial Effects

The provision of Assistance by Way of Representation in relation to any proceedings brought for variation and termination of Football Banning Orders is estimated to cost approximately £10,000 per annum.

The amendment of the reference to Parole Rules is purely administrative. There will be no change in the associated costs of the provision of assistance by way of representation.

The majority of proceedings before the Pensions Regulator Tribunal will involve representatives of firms who will not be eligible for legal aid. As a result the cost of providing Assistance by Way of Representation for proceedings before the Tribunal is expected to be minimal.

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9 November 2006