POLICY NOTE

THE LEGAL AID AND ADVICE AND ASSISTANCE (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2023

SSI 2023/XXX

The above instrument was made in exercise of the powers conferred by sections 9, 12(3), 17(2B), 36(2)(a) and 42 of the Legal Aid (Scotland) Act 1986 and all other powers enabling Scottish Ministers to do so. The instrument is subject to the affirmative procedure.

Purpose of the instrument.

This instrument makes provision for Assistance By Way of Representation ("ABWOR") to be available, subject to an effective participation test, to individuals with or seeking participation rights in Children's Hearing proceedings; it also provides for compensatory payments from the Scottish Infected Blood Support Scheme (SIBSS) and additional payments from the State for the purpose of responding to increases in the cost of living to be disregarded from financial assessment when applications are made for publicly funded legal assistance.

Policy Objective

These Regulations have been brought forward in order that:

i) siblings with, or seeking, participation rights at Children's Hearing proceedings may apply to the Scottish Legal Aid Board for publicly funded legal assistance when there is a need to ensure effective participation.

ii) individuals living in Scotland do not lose access to justice as a result of receiving a compensatory award from the SIBSS or receiving financial assistance from the State to support increases to cost of living. The Scottish Government considers that it would not be appropriate for low income families in receipt of such monies to be put in a position which could threaten their access to justice.

The objective will be delivered by amending the following Regulations:

- the Advice and Assistance (Scotland) Regulations 1996
- the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003
- the Civil Legal Aid (Scotland) Regulations 2002
- the Children's Legal Assistance (Scotland) Regulations 2013

Consultation

These Regulations were developed in consultation with Clan ChildLaw (a law centre for children and young people) and the Scottish Legal Aid Board. Draft regulations have been shared with the main representative bodies of the legal profession: Law Society of Scotland and Faculty of Advocates.

Impact Assessments

The following impact assessments were considered:

Child Rights & Wellbeing Impact Assessment – has been completed and no negative impacts on child rights and wellbeing have been identified .
Equality Impact Assessment – has been completed and no negative impacts on groups with protected characteristics have been identified.
Business & Regulatory Impact Assessment – additional spend to the legal aid fund identified and a BRIA has been completed.
Fairer Scotland Duty – has been completed and no negative impacts have been identified
Strategic Environmental Assessment – not required
Data Protection Impact assessment – not required

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed.

The impact of this policy on business is that it will facilitate publicly funded legal representation to be available for individuals with or seeking participation rights at children's hearings, subject to prior approval by the Scottish Leal Aid Board. It is estimated that the cost of such cases may be around £469 with around ten per year. It will also ensure that individuals who would currently be eligible for publicly funded legal assistance will not be removed from scope due to awards and payments from the State, therefore no additional costs will be incurred.

It is not foreseen, however, that there will be any negative effect on the Scottish Legal Aid Fund as a result of these regulations. The impact of this policy on business is minimal, but is likely to be positive to the relevant stakeholders.

Scottish Government
Justice Directorate

November 2022