POLICY NOTE

THE LEGAL AID AND ADVICE AND ASSISTANCE (MISCELLANEOUS AMENDMENTS) (CORONAVIRUS) (SCOTLAND) REGULATIONS 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by sections 9, 12(3), 33(2), (3) and (3A), and 36(1), (2)(a) and (g) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

This instrument makes provision for temporary amendments to regulations during the emergency period that will: facilitate interim payments of legal aid fees, support adherence to travel restrictions and social distancing guidance, and support access to justice for appeals against special restrictions or requirements.

Policy Objectives

The Scottish Government recognises the important role of legal aid providers in supporting their clients and the justice system in Scotland, and also recognises the financial difficulties and changing work practices faced by these providers as a consequence of the Coronavirus pandemic.

To support legal aid providers, this instrument makes provisions that will be effective during the emergency period to facilitate cash-flow by way of interim payments, and to support adherence to guidance issued by the Scottish Government in connection with reduced travel and social distancing requirements, by facilitating delegation to duty solicitors.

The Coronavirus (Scotland) Act 2020 introduced temporary changes to the Legal Aid (Scotland) Act 1986 to enable legal aid providers greater access to interim payment of fees from the Legal Aid Fund. This instrument removes residual regulatory prohibitions against the interim payment of fees. It also makes express provision for such payment in advice and assistance cases where it may be possible for expenses to be obtained or for property to be recovered or preserved, and provides that the requirement that payment for legal fees come from any such expenses or property first does not apply to claims for interim payment.

The Scottish Government wants to support adherence to its guidance on reduced travel and social distancing requirements. To assist legal aid providers, this instrument will facilitate greater use of duty solicitor arrangements by removal of a regulatory barrier to delegation and removal of payment of a half fee when a matter is delegated.

To support access to justice during the emergency period, the instrument provides that non-means tested ABWOR (Assistance by Way of Representation) be available to individuals with a right of appeal to a sheriff or summary sheriff against special restrictions or requirements imposed further to COVID-19 legislation. ABWOR is granted by a solicitor, not the Scottish Legal Aid Board, and is more appropriate in these circumstances. This will align policy with other areas, namely mental health law, whereby civil restrictions on a person's liberty can be challenged with access to legal support funded by non-means tested ABWOR.

Consultation

The instrument has prepared in consultation with the Scottish Legal Aid Board. Draft regulations were shared with the main representative bodies of the legal profession: the Law Society of Scotland and the Faculty of Advocates. No public consultation has taken place.

Impact Assessments

Consideration was given to the need to complete an Equality Impact Assessment and a Children's Rights and Wellbeing Impact Assessment. It was determined that there are no equality or children's impact issues.

Financial Effects

A partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that it will facilitate access to payment for work already completed. This will support business continuity for legal aid providers, protecting the current provision and securing it for the future.

Scottish Government
Justice Directorate

June 2020