POLICY NOTE

THE LEGAL AID (SCOTLAND) ACT 1986 AMENDMENT REGULATIONS 2016

SSI 2016/xxx

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by section 13(4) of the Legal Aid (Scotland) Act 1986(**1**) and all other powers enabling them to do so.

In accordance with section 37(2) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Policy Objectives

The policy objective of this instrument is to adapt the framework and arrangements in existing legal aid regulations to accommodate the new tribunal structure being implemented from 1 December 2016.

The Tribunals (Scotland) Act 2014 ('the Tribunals Act') creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The Act creates two tribunals, the First-tier Tribunal for Scotland for first decisions and the Upper Tribunal for Scotland, primarily for appeals from the First-tier. They will be known collectively as 'the Scottish Tribunals'.

Existing tribunal jurisdictions will transfer into the Scottish Tribunals structure in a phased process with their existing membership, functions and rules of procedure where possible. In the new structure appeals will be decided by the Upper Tribunal, and not as at present by the Sheriff Court or Court of Session.. Civil legal aid is currently available in both the Court of Session and the Sheriff Court in accordance with Schedule 2 of the Legal Aid (Scotland) Act 1986 ("the 1986 Act") .

Regulation 2(2) amends Part 1 of Schedule 2 to the 1986 Act to include appeals to the Upper Tribunal, including an application for permission to appeal, to the list of proceedings for which civil legal aid is available.

Regulation 2(3) amends Part 1 of Schedule 2 of the 1986 Act to add petitions for judicial review remitted from the Court of Session to the Upper Tribunal to the list of proceedings for which civil legal aid is available.

These changes means that civil legal aid will be available for cases in the Upper Tribunal.

Consultation

Draft provisions were shared with the Faculty of Advocates, the Law Society of Scotland, the Lord President and the President of the Scottish Tribunals, tribunal presidents, the Scottish Legal Aid Board and relevant consumer and business organisations.

(**1**) 1986 c. 47. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

The Faculty of Advocates welcomed the extension of Civil Legal Aid. The Lord President and President of Scottish Tribunals and the then President of the Tax Tribunals were content with the proposals.

Shelter Scotland welcomed the proposals.

The Law Society of Scotland welcomed the proposals but raised the question of what fees would be available for the work. Fees provision will be covered in separate regulations.

Impact Assessments

An equality impact assessment has been completed on the draft SSI and is attached. There are no equality impact issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that civil legal aid will be available in the Upper Tribunal for Scotland.

Most of the appeals to be heard in the Upper Tribunal are currently heard by either Sheriffs in the Sheriff Court or Judges in the Court of Session and conducted by Counsel. Legal aid in these cases currently accounts for around £74,000 each year from the Legal Aid Fund.

Access to Justice Unit
September 2016