POLICY NOTE

THE LEGAL AID AND ADVICE AND ASSISTANCE (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2026

SSI 2026/117

The above instrument was made in exercise of the powers conferred by section 9, 12(3), 36(2)(b) and 42 of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Summary

The Legal Aid and Advice and Assistance Miscellaneous Amendment (Scotland) Regulations 2026 remove means and merits tests for children's Assistance by Way of Representation (ABWOR) applications in relation to proceedings under the Children's Hearings (Scotland) Act 2011, extend the scope and duration of ABWOR where made available, increase the initial authorised expenditure limit to £550 and provide that Care Leaver Payments are to be disregarded in in the assessment of person's disposable capital and income for the purpose of financial eligibility for civil or children's legal aid and advice and assistance. The Regulations also correct cross reference and numbering errors in the Civil Legal Aid (Scotland) Regulations 2002 (see regulation 5(3) and (4)).

Policy Objectives

The policy objectives are to ensure that children in the children's hearings system can access legal representation without unnecessary barriers, while reducing administrative complexity for solicitors and the Scottish Legal Aid Board. Removing means and merits testing reflects the principles of The UN Convention on the rights of Children (UNCRC) including article 12, 19 and 20, and addresses feedback that current financial eligibility tests are confusing and disproportionate for children. Extending the scope and duration of ABWOR grants will improve continuity of representation and reduce repeated applications and financial reassessments for what is effectively a single case. Increasing the initial authorised expenditure limit will allow solicitors to undertake essential work without routine requests for additional funding, further reducing administrative burden. Introducing a disregard for the Care Leaver Payment ensures that young people moving on from care are not disadvantaged in accessing legal aid as a result of receiving this payment.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Legal Aid and Advice and Assistance Miscellaneous Amendment (Scotland) Regulations 2026 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

A targeted consultation on proposals to amend ABWOR provisions for children was undertaken between 20 October and 9 November 2025, attracting 56 responses from a broad range of stakeholders, including solicitors, representative bodies, and advocacy organisations such as the Law Society of Scotland, Children's Hearings Scotland, and Citizens Advice Scotland. Overall, respondents expressed support for the regulations and viewed the proposals as consistent with the principles of the UNCRC, simplifying processes, and ensuring that children have access to appropriate legal representation.

The consultation sought views on three key measures designed to strengthen access to justice for children involved in the Children's Hearings system:

- **Removing means and merits testing for all children:** 46% supported, 9% opposed, 45% no view. This change aims to remove financial barriers and ensure that all children can access legal assistance regardless of their circumstances.

- **Increasing initial authorised expenditure from £135 to £550:** 55% supported, 7% opposed, 38% no view. This increase reflects the complexity of cases and ensures solicitors are fairly remunerated for the work required.

- **Extending ABWOR to cover representation through to full Compulsory Supervision Order hearings:** 51% supported, 4% opposed, 45% no view. This measure ensures continuity of representation for children throughout the process, reducing disruption and improving outcomes.

While levels of active support varied and many respondents expressed no view, likely due to the specialised nature of children's legal aid, the consultation indicated broad acceptance of the overall direction of reform. Stakeholders generally welcomed measures that simplify processes, widen eligibility, and provide greater certainty for solicitors. One respondent suggested that children who can afford to pay should do so; however, this was a minority view and no changes were made to the regulations.

These reforms are intended to make the system more child-centred, reduce administrative burdens, and uphold Scotland's commitment to UNCRC principles by ensuring that every child has access to timely and effective legal representation.

Impact Assessments
The following impact assessments have been completed on The Legal Aid and Advice and Assistance Miscellaneous Amendment (Scotland) Regulations 2026:

- Equality Impact Assessment (EQIA)
- Business and Regulatory Impact Assessment (BRIA)
- Fairer Scotland Duty Impact Assessment (FSDIA)
- Children's Rights and Wellbeing Impact Assessment (CRWIA)

It has been assessed that this instrument will improve and simplify children's access to justice by removing existing administrative obstacles in children's ABWOR, and ensure that young people moving on from care are not disadvantaged in accessing legal aid as a result of receiving the Care Leaver Payment. No impact issues have been identified and accordingly no actions have been taken as a result.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed. The impact of this policy on business is anticipated to be positive by improving and simplifying the legal aid system for solicitors and law firms who are registered to provide children's legal aid in Scotland. Employment in this sector includes:

- Solicitors and legal support staff
- Paralegals and administrative personnel
- Some staff may also be employed in third-sector organisations or law centres.

Other groups positively impacted by the simplifications include the following:

- Service users: Individuals accessing legal aid — including children — may benefit from improved access and simplified processes.
- Consumers: Members of the public may experience more consistent and transparent legal aid services.
- The Scottish Legal Aid Board (SLAB): As the administrator of the Scottish Legal Aid Fund, SLAB will be responsible for operationalising the changes.

Scottish Government
Directorate for Justice

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