

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 17 – Other Reforms

Children’s legal aid

Section 92 – Power of Scottish Ministers to modify circumstances in which children’s legal aid to be made available

273. This section inserts a new section 28LA into the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Section 28L of the 1986 Act allows Scottish Ministers to make children’s legal aid available by regulations for specified children’s hearings under the 2011 Act to specified persons. The purpose of section 28LA is to allow Scottish Ministers to make similar regulations in respect of court proceedings under the 2011 Act. Those regulations would be subject to affirmative procedure.
274. The same tests would apply to similar circumstances whether children’s legal aid is provided by means of section 28LA or another section of the Act. In relation to court proceedings, the eligibility tests for a person (other than a child) are whether it is reasonable and whether undue hardship would occur if state-funded representation is not provided. In relation to court proceedings where the person is a child, the eligibility tests are reasonableness, undue hardship, and whether it is in the best interests of that child for children’s legal aid to be made available. If the court proceedings are an appeal, the person (whether or not they are a child) must satisfy an additional test of substantial grounds for making or responding to that appeal.