

EXECUTIVE NOTE

LEGAL AID REGULATIONS

THE CIVIL LEGAL AID (SCOTLAND) (FEES) AMENDMENT (No. 3) REGULATIONS 2007 SSI/2007/438

The Civil Legal Aid (Scotland) (Fees) Amendment (No. 3) Regulations 2007 will be made in exercise of the powers conferred on Scottish Ministers by sections 33(2)(a) and (3), 36(1) and (2)(a) of the Legal Aid (Scotland) Act 1986 and of all other powers enabling them in that behalf. This instrument is subject to the negative procedure.

Policy objectives-

Commencement of Vulnerable Witnesses (Scotland) Act 2004 (VW Act)

These instructions seek to amend the civil legal aid regulations to provide for additional payments for solicitors dealing with cases that involve vulnerable witnesses following the commencement of the civil provisions of the VW Act and to make minor amendments to the existing provisions allowing civil legal aid fees to be increased in specified circumstances. Specifically this Instrument seeks to amend Regulations 5(2C) and 5(2D) and Schedule 6 chapter III of the Civil Legal Aid Regulations (Scotland) (Fees) Regulations 1989 as amended ('1989 Regulations').

Consultation: VW Act

Officials from the Scottish Government were involved in discussions with the Scottish Legal Aid Board (SLAB) in forming these proposals to make changes to amend Regulations 5(2C) and 5(2D) and Schedule 6 chapter III of the 1989 Regulations. The Law Society of Scotland is aware of these changes which are supportive to solicitors in making provision for additional payments in civil cases that involve vulnerable witnesses.

Purpose: VW Act

The policy aims regarding vulnerable witnesses are achieved by adding a further circumstance to Schedule 6 chapter III to cover cases which involve a vulnerable witness and the involvement of a vulnerable witness has necessitated significant additional work in seeking or opposing or implementing a special measure for taking of evidence from a vulnerable witness by virtue of sections 11, 12, 13 and 18(1) (a) and/or (b) of the VW Act.

The civil legal aid fees have also been also increased.

Regulation 5 (2C) of the 1989 Regulations sets out that SLAB at its discretion can allow a fee additional to the fees prescribed in chapter II of Schedule 6, where it is satisfied that any of the circumstances prescribed in chapter III of that Schedule exist and have a significant effect on the conduct of the case. Regulation 5(2D) indicates that the additional fee allowable in accordance with paragraph 2(C) shall be 10 per cent of the fee authorised by chapter II of Schedule 6 in respect of each of the circumstances specified in chapter III of that Schedule, up to a maximum in any case of 50 per cent of that fee (the maximum was originally 40% and was increased to 50% by S.S.I. 2007 No. 14, with effect from 10 February 2007). The level of uplifts specified under regulation 5 (2D) are increased to:-

- 15% (from 10%) in respect of the circumstances that the assisted person, although able to attend at the solicitor's office, suffered from a significant period of the case from a mental disorder within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the assisted person suffered from a physical disability which necessitated a significantly lengthier process than would normally have been encountered in the taking and obtaining of instructions or the assisted person was, for a significant period in relation to the case, unable to attend at the solicitor's office by reason of disability, illness or imprisonment. Only one of Factors 2, 3, or 4 can be claimed in any case (note (b) of chapter III) which provision is retained. and
- 20% (from 10%) in respect that the law in relation to the matter at issue was particularly complex and involved an area of law with which a solicitor engaged in general court practice would be unlikely to be familiar or the case raised unusually complex issues of fact including detailed consideration of extensive documentary evidence.

The new uplift in respect of vulnerable witnesses is set at 15%. The maximum total uplift in any one case remains at 50%.

Administration too is simplified by removing the exclusion of time travelling. Note (a) on the application of Chapter III has been amended.

Policy Objectives – changes to civil legal aid fees

Regulation 5 of these regulations amends the fee tables for undefended (non-divorce) proceedings in the Sheriff Court. The changes seek to bring parity between the defended and undefended fee tables by introducing specific fees for steps which may require to be taken in an undefended case.

Financial Implications:

The additional changes that are being made to Regulations 5(2C) and 5(2D) and Schedule 6 chapter III of the 1989 Regulations are estimated if the grant rate remains constant as in 2006-07 to be in the region of £3,000 - £4,000. Under the VW Act proposals, it is not known how many cases will be affected by the commencement of the VW Act in civil cases until the provisions are fully effective. Neither the additional changes nor the commencement of the VW Act provisions are expected to have a significant impact on the legal aid fund.

The overall cost of the changes to the undefended (non-divorce) fees table is estimated to be in the region of £150,000 in a full financial year based on current volumes of this type of work. Costs may be higher if the changes encourage more practitioners to take on this type of work under legal aid.