

EXECUTIVE NOTE

THE ADVICE AND ASSISTANCE AND CIVIL LEGAL AID (TRANSFER OF TRIBUNAL FUNCTIONS) (NO. 1) (SCOTLAND) REGULATIONS 2010

S.S.I. 2010/166

The Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 1) (Scotland) Regulations 2010 (the “(No. 1) Regulations”) were made in exercise of the powers conferred on the Scottish Ministers by sections 12(3), 17(2B), 33(2)(a) and (3) and 36(1), (2)(a), (c), (g) and (h) and (3)(e) of the Legal Aid (Scotland) Act 1986 and of all other powers enabling them to do so.

The (No. 1) Regulations are subject to negative resolution procedure. They form part of a package of amendments together with the draft Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No. 2) (Scotland) Regulations 2010 (“the (No. 2) Regulations”). The (No. 2) Regulations are subject to affirmative resolution procedure.

Policy Objective

The over-arching policy objective behind the (No. 1) and (No. 2) Regulations is to ensure that State funded legal representation continues to be available in relation to those proceedings for which it was available prior to the relevant transfers of functions to the First-tier Tribunal and the Upper Tribunal (“the Tribunals”) established under the Tribunals, Courts and Enforcement Act 2007, and to harmonise the form of legal assistance for proceedings before the Tribunals.

The relevant transfers of functions are—

- a.) the transfer of the Social Security Commissioners’ functions and the Child Support Commissioners’ functions effective from 3rd November 2008 under the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833);
- b.) the transfer of the VAT and duties tribunals’ functions effective from 1st April 2009 under the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56);
- c.) the transfer of the Asylum and Immigration Tribunal’s functions, effective from 15th February 2010 under the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21); and
- d.) the transfer of the Pensions Regulator Tribunal’s functions, effective from 6th April 2010 under the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22).

In addition, section 20 of the Tribunals, Courts and Enforcement Act 2007 provides for judicial review proceedings, in certain circumstances, to be transferred from the Court of Session to the Upper Tribunal.

Provision made

As set out in the Executive Note accompanying the (No. 2) Regulations, those Regulations will, if approved, provide for assistance by way of representation (“ABWOR”) to be made available in relation to specified types of proceedings before the Tribunals. Regulation 3 of the (No. 1) Regulations provides that the Scottish Legal Aid Board (“the Board”) will be able to withhold, or recover, payment made from the Scottish Legal Aid Fund for ABWOR provided in relation to proceedings before the Tribunals where it has been provided contrary to statutory requirements or where the provision is otherwise unjustified when the circumstances of the case have been taken into account.

The other provisions of the (No. 1) Regulations tidy up the statute book following the abolition of the Child Support Commissioners and the Asylum and Immigration Tribunal. References to the Child Support Commissioners are removed from the Civil Legal Aid (Scotland) (Fees) Regulations 1989, the Advice and Assistance (Scotland) Regulations 1996 and the Civil Legal Aid (Scotland) Regulations 2002. A reference to the Asylum and Immigration Tribunal is removed from the Civil Legal Aid (Scotland) Regulations 2002.

Consultation

The Scottish Government has consulted the Board in relation to the (No. 1) Regulations.

Financial Implications

It is not anticipated that the changes made by the (No. 1) Regulations will result in any additional cost to the Scottish Legal Aid Fund.

Scottish Government
April 2010