

EXECUTIVE NOTE

THE ADVICE AND ASSISTANCE (SCOTLAND) AMENDMENT REGULATIONS 2010

SSI 2010/462

These Regulations are linked to the Civil Legal Aid (Scotland) Amendment Regulations 2010.

Policy Objective

There are three policy objectives designed to ensure that, going forward, Advice and Assistance (“A&A”) can continue to be targeted at those who need it most. First, to change the verification process in relation to civil A&A to make it consistent with criminal cases, whereby it would become mandatory, so far as necessary and practicable, for the solicitor to obtain documentary evidence of financial eligibility. The objective is to ensure that documentary evidence of financial eligibility should be obtained by the solicitor in all but some exceptional scenarios for civil and children’s cases.

Second, the Board is to be given the power to withhold payment for A&A (which includes assistance by way of representation) in relation to all civil matters. The intention is to introduce a power which will allow the Scottish Legal Aid Board (“the Board”) to withhold payment where the eligibility tests have not been correctly applied by the solicitor. This provision was introduced as regards First-tier tribunal and Upper Tribunal proceedings by regulation 3 of the Advice and Assistance and Civil Legal Aid (Transfer of Tribunal Functions) (No.1) (Scotland) Regulations 2010. Regulation 6 of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008, which is in identical terms to regulation 3(3), has been operating in relation to summary criminal proceedings for almost two years.

Third, the intention is amend the Advice and Assistance (Scotland) Regulations 1996 to require that the assets of any person who owes an obligation of aliment to a child under section 1(1) (c) or (d) of the Family Law (Scotland) Act 1985 should be taken into account when that child applies for A&A in relation to a non-criminal matter. Parents’ assets used to be taken into account when assessing a child’s eligibility for civil A&A. The policy is to reinstate that requirement. Provision is made so that this requirement is not to apply if its application would produce an unjust or inequitable result in the circumstances. For the purposes of assessing resources only, a child has the meaning given in section 1(5) of the Family Law (Scotland) Act 1985.

Consultation

The Scottish Government has consulted the Board and the Law Society of Scotland (“the Society”) in relation to the Regulations. No Business and Regulatory Impact Assessment has been carried out in addition to these consultations with the Society. The Regulations principally concern amending how solicitors are to go about determining their client’s disposable income and disposable capital for the purpose of assessing clients’ eligibility and aligning the verification process in relation to civil A&A to make it consistent with how it is already operating in criminal cases.

Financial Implications

It is anticipated that these Regulations, together with the Civil Legal Aid (Scotland) Amendment Regulations 2010, will deliver savings of approximately £0.785 in financial year 2011/12 and £1.2 million in 2012-13.

Scottish Government
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