

Final Business and Regulatory Impact Assessment

Title of Proposal

The Legal Aid and Assistance By Way of Representation (Fees for Time at Court and Travelling) (Scotland) Regulations 2014

Purpose and intended effect

- **Background**

A Sustainable Future for Legal Aid, published in October 2011, sets out the Government's intention to maintain and improve access to justice by taking forward a series of legal aid reforms.

It is vital to have effective, up-to-date legislation and the people of Scotland attach the highest value to their public services. The quality of these services is important for future prosperity. Tackling waste, duplication and inefficiency is a top priority for all those in public service and Government will encourage the swifter adoption of proven strategies for improvement and the rapid roll-out of reforms.

- **Objective**

The aim of this proposal is to have a more consistent application of the payment arrangements where the solicitor is engaged on court business and has multiple work activities (i.e. conducting a hearing, travel, meeting and waiting) for the same client on the same day, specifically on how that time is aggregated for the purpose of determining how much the solicitor is paid for it. This will achieve savings to the Legal Aid Fund and support the efficient operation of the justice system by minimising complexity for solicitors and the Scottish Legal Aid Board.

- **Rationale for Government intervention**

The intention is for the solicitor to be paid on the basis of the total time engaged per day. The time for the different elements of work would be added up and then rounded to the nearest quarter of an hour. This will also bring in a greater consistency across aid types as to how the solicitor is entitled to charge for time based work at court, particularly where there are gaps in the times.

The financial circumstances of the public sector in Scotland mean that it is particularly important to ensure that taxpayers' money is used effectively and efficiently. The legal aid system contributes to the Safer and Stronger Strategic Objective. Particularly, it contributes to the National Outcome of "strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others" by ensuring that individuals can be held to account for their actions and can enforce their own legal rights through the effective functioning of our civil and criminal courts.

Consultation

- **Within Government**

The Scottish Legal Aid Board (“The Board”) is a non-departmental public body which administers legal aid in Scotland and is accountable to Scottish Ministers. The Board has been consulted from an early stage in the development of these regulations through regular discussions and exchange of draft versions of accompanying documentation.

- **Public Consultation**

These regulations directly affect solicitors providing legal aid services. As those affected by this policy are limited, no public consultation was carried out. We did however consult directly with legal aid solicitors and this is covered in the ‘Business’ consultation section.

- **Business**

The representative body for solicitors in Scotland is the Law Society of Scotland (“the Society”). The Society’s work on legal aid issues is led by the criminal and civil legal aid negotiating teams, each being panels of experts in the field and responsible to the Council of the Society. The criminal and civil legal aid negotiating teams have been consulted in the development of these regulations. The proposal was accepted by both negotiating teams.

Options

Option 1: Do nothing

This would mean making no change to regulations with regard to rationalisation of aggregated time at court. Different methods of calculating payments for time at court for civil and criminal legal assistance would continue, with ambiguity as to whether the time spent on a prescribed activity should be rounded up prior to or after adding the time up.

Option 2: Rationalise calculation of fees for time spent at court and time spent travelling in legal aid fee regulations

Calculating fees for time at court would be based on a rule which broadly reflects the terms of the 1989 Civil Fees Regulations, Schedule 6, Chapter II, paragraph 19 of the Notes on the operation of chapter II. This would allow for only one method of calculating the fees for time at court and travelling, regardless of the type of proceedings or legal assistance available in the case. The policy intention is that certain fees should be calculated on the basis of the total time engaged per day. This means that where time is spent on a prescribed activity at various stages throughout the day, the individual blocks of time spent on that activity should be totalled up and then rounded up to the nearest unit of time specified, before the prescribed fee rate is applied. The individual blocks of time should not be rounded up and then added, as this will result in a higher fee being charged.

- **Sectors and groups affected**

These measures will impact on the Board and those solicitors' firms providing civil and criminal legal aid.

- **Benefits**

Option 1: Do nothing

In some cases and depending on the type of legal assistance, solicitors would be able to receive higher fees.

Option 2: Rationalise calculation of fees for time spent at court and time spent travelling in legal aid fee regulations

The Board estimates there would be a saving to the Scottish Legal Aid Fund of £100,000-150,000. Bringing the aggregation of time rule for criminal legal assistance into line with the historical practice that has been applied in civil rationalises the approach of aggregation of court time for the Board's online accounting systems and simplifies the time at court calculations for solicitors.

- **Costs**

Option 1: Do nothing

The Board estimates there would be a cost to the Scottish Legal Aid Fund of £100,000-150,000. The Board would continue to use different methods of calculating time at court for civil and criminal legal assistance incurring administrative and system costs.

Having three time-based fees for civil solicitors and three time-based fees for criminal solicitors with a further difference between solemn and summary proceedings would result in an inconsistent method of calculating fees for time at court for solicitors. Solicitors would continue to submit claims calculated differently for time at court for civil and criminal legal assistance incurring administrative costs.

Option 2: Rationalise calculation of fees for time at spent at court and time spent travelling in legal aid fee regulations

Criminal solicitors unfamiliar with the calculation for civil legal aid would be required to learn about a different fee calculation method. These proposals may only affect a very small number of solicitors and the impact on them would be so minimal that we have not been able to quantify the costs for this option.

Scottish Firms Impact Test

As stated in the consultation section, consultation took place with the representative body for solicitors in Scotland, the Law Society of Scotland ("the Society"). The Society's work on legal aid issues is led by the criminal and civil legal aid negotiating teams, each being panels of solicitors who work in these fields, either as a sole operator or a member of a Firm. These panels are responsible to the Council of the Society. The criminal and civil legal aid negotiating teams have been consulted in the development of these

Regulations.

As the original consultation took place with the representatives of individual businesses and given the minimal impact of the proposals, we felt it would be disproportionate to carry out further face to face discussions with a further 6-12 businesses.

An Equality Impact Assessment has been carried out on this proposal. The Scottish Government does not believe the regulation will give rise to any adverse impacts on groups with protected characteristics as defined in the Equality Act 2010.

- **Competition Assessment**

In our view, having applied the Competition and Markets Authority competition filter, the proposal will not impact on competition within the legal aid market. The regulations do not directly or indirectly limit the number or range of suppliers. They do not limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

- **Test run of business forms**

There should be no requirement for new forms. All legal aid applications are currently submitted on line through the Board's Legal Aid Online system.

Legal Aid Impact Test

The Scottish Legal Aid Board estimates the proposal could produce savings of up to £100,000-£150,000 to the Scottish Legal Aid Fund.

Enforcement, sanctions and monitoring

The proposals will be enforced through secondary legislation. The proposals do not create any new enforcement or monitoring mechanisms but ties into existing mechanisms. The Board will monitor the implications of these measures and has responsibility for administering the Scottish Legal Aid Fund.

Implementation and delivery plan

The policy will be implemented by the Board. It is intended that the regulations will come into force on 10 November 2014. The Board is fully aware of this timescale.

- **Post-implementation review**

The Scottish Government and the Board will review the impact of this legislation within 10 years through consideration of analysis of data which is collected routinely by the Board.

Summary and recommendation

It is recommended that legal aid fees regulations be amended to rationalise the calculation of fees for time spent at court and time spent travelling (Option 2). This will bring in a level of consistency across all aid types on how court based time including travel should be charged, which has benefits both to the Board and solicitors while bringing some savings to the Legal Aid Fund.

- **Summary costs and benefits table**

Options	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	<p><u>Legal aid solicitors</u> Some may continue to receive higher fees due to the inconsistent way time at court fees are calculated.</p> <p><u>Legal aid applicants</u> None.</p> <p><u>Scottish Legal Aid Board</u> None.</p> <p><u>Scottish Government</u> No new regulations would be required.</p>	<p><u>Legal aid solicitors</u> Inconsistent time at court calculations would require different administrative processes.</p> <p><u>Legal aid applicants</u> None.</p> <p><u>Scottish Legal Aid Board</u> Administrative cost of not having consistent fee structure for aggregated time at court for civil and criminal legal assistance.</p> <p><u>Scottish Government</u> Estimated cost of £100,000-£150,000 per year to the Legal Aid Fund.</p>
2	<p><u>Legal aid solicitors</u> One method of calculating time at court, regardless of the type of case.</p> <p><u>Legal aid applicants</u> None.</p> <p><u>Scottish Legal Aid Board</u> Consistent fee structure for aggregated time at court for civil and criminal legal assistance.</p> <p><u>Scottish Government</u> Estimated saving of £100,000-£150,000 per year to the Legal Aid Fund.</p>	<p><u>Legal aid solicitors</u> Adjustment to a different calculation time at court (for some criminal solicitors).</p> <p><u>Legal aid applicants</u> None.</p> <p><u>Scottish Legal Aid Board</u> None.</p> <p><u>Scottish Government</u> Administrative cost of developing, making and laying regulations.</p>

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Kenny MacAskill, Cabinet Secretary for Justice

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