

## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of Policy</b>	The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2016
<b>Summary of aims and desired outcomes of Policy</b>	<p>This instrument adapts the framework and arrangements for the payment of fees to solicitors contained in existing legal aid regulations to accommodate the new 'simple procedure' which will replace summary cause and small claims procedures.</p> <p>The policy ensures that legal aid continues to be available as appropriate for cases brought under the new simple procedure.</p>
<b>Directorate: Division: team</b>	Justice: Civil Law and Legal System: Access to Justice

### Executive summary

This instrument adapts the framework and arrangements for the payment of fees to solicitors contained in existing legal aid regulations to accommodate the new 'simple procedure' which will replace summary cause and small claims procedures.

This instrument therefore affects solicitors providing publicly-funded legal assistance for proceedings under simple procedure. Fees for counsel remain under current provisions. The effect of this is positive as it ensures that clear and flexible legal aid fees are specified for this work.

Solicitors providing civil legal aid are more likely to be male and aged between 35 and 44 than the general population.

No issues were identified that would have a detrimental impact on protected groups.

## Background

The legal aid system contributes to the ‘Safer and Stronger’ Strategic Objective. In particular, 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 enforce their own legal rights through the effective function of the courts.

Legal aid is currently available for a wide range of proceedings in Scottish courts. The Courts Reform (Scotland) Act 2014 (“the 2014 Act”) introduced reforms to modernise and enhance the efficiency of the Scottish civil justice system. Provisions are being commenced on 28 November 2016 to bring into force the new ‘simple procedure’ (provided for at section 72(3) of the 2014 Act) to replace current summary cause and small claims procedures.

Simple procedure applies to cases worth £5000 or less. Over time, these will be dealt with mainly by the new summary sheriffs that were introduced by the 2014 Act.

The 2014 Act contains a provision (at paragraph 23 of Schedule 5) to make civil legal aid available in simple procedure cases, excluding those that are broadly equivalent to small claims (which are not eligible for civil legal aid). The policy objective of this instrument is to adapt the framework and arrangements for the payment of fees to solicitors in the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (‘the 1989 Regulations’) to accommodate simple procedure.

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Under these provisions, solicitors will be able to charge on a detailed basis to reflect the work actually done at a rate equivalent to civil Advice by Way of Representation (“ABWOR”). The rationale for choosing a rate equivalent to ABWOR is the equivalence in the level of work anticipated under simple procedure. The rate for simple procedure cases is appropriately pitched at a rate below that which is available for ordinary actions in the sheriff court and work in the Sheriff Appeal Court and Court of Session. ABWOR rates

ISBN: 978-1-78045-XXX-X

are currently available for work before tribunals such as the Mental Health Tribunal and Immigration Tribunal.

Fees for Counsel continue to be governed by regulations 9 and 10(1) and schedule 4 of the 1989 Regulations and will not change.

The policy aims to ensure that legal aid continues to be available where appropriate for cases proceeding under the new simple procedure.

## **The Scope of the EQIA**

This policy was examined against each of the protected groups. A number of different data sources were used to inform the EQIA, which included: the 2011 Census records; Scottish Legal Aid Board reports; and a survey on solicitors conducted for the Law Society of Scotland.

An EQIA was carried out for the Courts Reform (Scotland) Bill at introduction:

<http://www.gov.scot/Publications/2014/03/9314/downloads>

This EQIA is therefore concerned with the legal aid fees provision contained in the instrument, and not the policy objectives of simple procedure itself.

Solicitors providing publicly-funded civil legal assistance will be affected by these provisions. This is expected to be a positive effect in that clear and flexible legal aid fees will be specified for this work, at a rate appropriate to the level of work.

Making clear provision for publicly-funded legal assistance for the new procedure may have some positive effect on clients in terms of increased uptake of legal aid work by solicitors in this area.

Following screening, a children's rights and wellbeing impact assessment was not completed. Although children and young people may be involved in a simple procedure case, the availability of publicly-funded legal assistance to them is not affected by this policy.

## **Key Findings**

Equalities issues have centred on whether this policy would impact on any group with protected characteristics. Our consideration suggests that a

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positive effect would be felt by solicitors providing publicly-funded legal assistance in simple procedure cases as clear and flexible fees will be specified for this work.

This means that men and those aged between 35 and 44 are more likely to benefit from the policy.

## **Recommendations and Conclusion**

The EQIA process did not identify any issues which would have a detrimental impact on protected groups. We have therefore taken this policy to its conclusion by laying the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2016.

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