

Draft Business and Regulatory Impact Assessment

Title of Proposal

The Legal Aid (Employment of Solicitors) (Scotland) Amendment Regulations 2018 (Civil Legal Assistance Offices)

Purpose and intended effect

Background

The Civil Legal Assistance Office (CLAO) was established in 2008 to enable the Scottish Legal Aid Board (SLAB) to address unmet legal need in specific geographic areas by using directly employed solicitors. The CLAO currently operates from four offices in parts of Scotland where it was considered that people required assistance with linking into or otherwise obtaining access to legal advice and assistance.

Each CLAO employs solicitors and administrative staff who work in partnership with other local solicitors and agencies in the area to provide legal services to clients who are eligible for legal aid. Part of CLAO's function is to operate a referral service linking people into private sector and third sector sources of legal advice and other assistance. They also accept referrals from local agencies, in addition to self referral.

A review of the CLAO, carried out by SLAB, concluded early in 2016. The review involved a wide range of stakeholders, including solicitors in private practice and advice agencies/service providers.

The Legal Aid (Employment of Solicitors)(Scotland) Regulations 2001 authorises SLAB to employ solicitors in accordance with sections 26 to 28 of the Legal Aid (Scotland) act 1986 (the 1986 Act) on such terms and conditions as it may consider appropriate'. There is however a further provision by virtue of regulation 3 to the effect that there is an underlying dependency of SLAB having received a written request from a local organisation for the services of an employed solicitor, and that SLAB was satisfied that the services of the local organisation would be enhanced thereby. That dependency no longer fits the policy objective and its removal is sought.

Objective

- **Rationale for Government intervention**

The review found that CLAO were successfully embedded in their local communities and recognised as an important part of the legal and advice community. The review also recognised that the main areas for change were to better prioritise the allocation of its resources, particularly to balance the demand of casework with broader development of local partnerships. The

review concluded that operational and practical changes could improve the user experience by delivering improved impact and better value for money. The Business Plan that followed on from the review focussed on shifting the referral arrangements so that CLAO accepted referrals and self referrals from the public in core subject matters which have comprised the bulk of their work, referring onwards where a local advice agency is best placed to deliver the services required or they are not able to deliver a service. The plan is to maintain their role as a referral hub in their local communities for a range of advice needs.

The requirement is to change the regulatory footing to reflect the remit for the CLAO, which is that the CLAO will undertake direct casework where a client presents to the CLAO with an issue that is within their core areas (all within the range of social welfare law) without need for onward referral first. A referral service will still be available where CLAO cannot provide a service.

The regulation change would reflect the fact that CLAO is often best placed to provide advice and representation on that issue, and it would provide a good quality and cost effective service. Separately there may continue to be engagement with local organisations where appropriate, but that need not underpin all work. The change sought is that SLAB may employ solicitor for the purpose of:

- a) giving advice and assistance to which Part II of the Act applies,
- b) acting for persons receiving legal aid, or
- c) providing any such services as are mentioned in section 26(2) of the 1986 Act for in connection with any organisation.

Consultation

- **Within Government**

The SLAB is a non-departmental public body which administers legal aid in Scotland and is accountable to Scottish Ministers. SLAB have been consulted in the development of these Regulations.

- **Public Consultation**

A consultation took place in relation to these regulations between the 5th and 30th of March 2018 to ensure the Regulations met the original policy intent. Stakeholders included various legal institutions such as the Law Society of Scotland, the Faculty of Advocates, the Society of Solicitor Advocates and the Society of Solicitors in the Supreme Courts. Various third sector and public sector organisations such as Citizen Advice Scotland, Victim Support Scotland, Clan Childlaw, the Scottish Refugee Council, Scottish Women's Aid, the Legal Services Agency, the Scottish Children's Reporters Administration and Shelter Scotland were also consulted.

Only one response was received, from the Law Society of Scotland, who advised they were content with the policy intent.

- **Business**

The representative body for solicitors in Scotland is the Law Society of Scotland (“the Society”). The Society’s engagement 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 practitioner or a member of a firm. The Society were consulted in the development of these Regulations as stated above.

Options

Option 1: Do Nothing

Benefits - The current arrangements will continue, which met requirements until now. There would be no need to change the established system.

Costs - No costs are associated with this option.

Option 2: Amend the Regulations

Benefits - The 2016 review of CLAO suggested this change will improve the process involving individuals seeking the services of the CLAO, making it more efficient and achieving best value in terms of maximising resources to achieve good outcomes for clients.

Costs - No additional costs have been identified to the CLAO or to private solicitors.

Scottish Firms Impact Test

As stated in the consultation section, consultation took place with the Society, which negotiates with the Government on behalf of the profession.

The profession includes solicitors employed in firms, partners and sole practitioners. If there are any impact as a result of these proposals, the majority of providers affected are likely to be small providers (both small and micro sized businesses¹) due to the dominance of small legal service providers in the legal aid market. In SLAB's 2010 survey of legal aid solicitors, partners were asked how many solicitors their firm employed across Scotland. Almost half of the firms (48%) employed 2 to 4 solicitors; and a total of 43 (19%) of the partners who took part in the survey were sole practitioners.

Competition Assessment

Having applied the Competition and Markets Authority competition filter, the proposal will not impact on competition within the civil legal aid market. These 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.

The CLAO take into account existing provision when developing core areas of expertise. For example, the Edinburgh office does not provide family law as there are enough private solicitors practising in family law in the area.

As more than two questions have been answered in the negative, there was

¹ Small business have less than 50 employees, micro business have less than 10 employees

no requirement to complete a full Competition Assessment.

Test run of business forms

There will be no requirement for new forms. All legal aid applications are currently submitted online through SLAB's Legal Aid Online.

Legal Aid Impact Test / Financial Implications

The regulatory change is a technical change in how CLAO are able to set up services, rather than one which relates to service provision and there will be no change to CLAO resources as a result of the change, or any need to expand operational resources in order to implement the change.

Enforcement, sanctions and monitoring

The proposals will be enforced through secondary legislation. The proposals do not, otherwise, create any new enforcement or monitoring mechanisms. SLAB will monitor the implications of these measures and has responsibility for administering the Legal Aid Fund.

Implementation and delivery plan

These Regulations will come into force in 2018

Post-implementation review

The Scottish Legal Aid Board monitor changes and report to the Scottish Government any negative impacts.

The Law Society of Scotland will also report any negative impacts on the legal profession to both SLAB and Scottish Government.

Recommendation

It is recommended that the amendments to the regulations are implemented (**Option 2**).

Declaration and publication

I have read the Business and Regulatory 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:

Annabelle Ewing
Minister for Community Safety and Legal Affairs

Scottish Government Contact point:

Jamie Wilhelm
Access to Justice Team
Civil Law and Legal System Division
Scottish Government
GW, St Andrew's House
Edinburgh
EH1 3DG

E-mail: Jamie.Wilhelm@scot.gov