

## **POLICY NOTE**

### **THE LEGAL AID (EMPLOYMENT OF SOLICITORS) (SCOTLAND) AMENDMENT REGULATIONS 2018**

**SSI 2018/192**

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 26(1) and 27(1) of the Legal Aid (Scotland) Act 1986 (1), and all other powers enabling them to do so.

#### **Policy Objectives**

The policy objective of this instrument is to change the regulatory footing to reflect the remit for the Civil Legal Assistance Office (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 Legal Aid (Employment of Solicitors) (Scotland) Regulations 2001 authorises the Scottish Legal Aid Board (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.

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 1986 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 or in connection with any organisation.

#### **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

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(1) 1986 c. 47. Section 26 (1) was amended by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), section 9(6). The functions of the Secretary of State for Scotland were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c46).

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.

### **Impact Assessments**

An Equality Impact Assessment (EQIA) has been completed and is attached. There are no equality impact issues.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is predicted to be neutral as it is a minor technical change to the operation of the CLAO, no additional costs are expected as a result to SLAB. 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 is adequate private practice provision of family law in the area.

Access to Justice Team  
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