

Business and Regulatory Impact Assessment

April 2022

Final

Business and Regulatory Impact Assessment

Title of Proposal

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2022

Purpose and intended effect

- **Background**

2020 Coronavirus Regulations

The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020 (“the 2020 Regulations”) made provision for temporary amendments to legal aid regulations during the “emergency period” to facilitate interim payments of legal aid fees, as well as to support adherence to travel restrictions and social distancing guidance and support access to justice for appeals against special restrictions or requirements. These measures are contingent upon and so will be expired with the Coronavirus (Scotland) Act 2020 in September 2022. Provision is made in these Regulations to replace the temporary measures relating to interim payments and the delegation of matters by solicitors to assist with management of cases and court appearances with permanent provisions with equivalent effect.

This instrument amends of the following legal aid regulations –

- The Civil Legal Aid (Scotland) (Fees) Regulations 1989
- The Criminal Legal Aid (Scotland) (Fees) Regulations 1989
- The Advice and Assistance (Scotland) Regulations 1996
- The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999
- The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003
- The Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011

- **Objective**

Measures in the 2020 Regulations

The Scottish Government wishes to put in place permanent measures equivalent to those introduced by the 2020 Regulations as these align with and support wider legal aid reforms and provisions under the Coronavirus (Recovery and Reform) (Scotland) Bill 2022.

- **Rationale for Government intervention**

The Scottish Government wishes to implement these measures in order to support the legal profession and the operation of the courts.

Consultation

- **Within Government**

The Scottish Legal Aid Board (SLAB) is a non-departmental public body which administers legal aid in Scotland and is accountable to the Scottish Government. SLAB have been consulted in the development of these draft Regulations.

- **Public Consultation**

No public consultation was carried out due to the technical nature of the proposed regulations.

- **Business**

The representative body for solicitors in Scotland is the Law Society of Scotland (the LSS) and the representative body for advocates in Scotland is the Faculty of Advocates (the FoA). Engagement took place with these bodies on The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020

Options

Option 1: Do Nothing

Provisions made in the 2020 Regulations which enable solicitors to delegate certain matters and claim payment of interim fees will expire at the end of September 2022.

Option 2: Bring forward Regulations

Legislate for amended provisions, as noted above.

Benefits

Option 1: Do Nothing

The existing provisions which assist solicitors will expire. There are no benefits to this option.

Option 2: Bring forward Regulations

The measures will assist legal aid providers and the court system

Costs

Option 1: Do Nothing

No costs are associated with this option. However, should legally aided advice provision be reduced, due to cash-flow issues, there would potentially be increased costs to the Scottish Government in increased funding to the Civil Law Assistance Office and Public Defence Solicitors Office.

Option 2: Bring forward Regulations

The new provisions will maintain the earlier temporary changes permitting solicitors to elect to claim interim payments. The number of cases in which this can be done will stay the same. The decision whether to make an interim claim is entirely with the solicitor and numbers cannot be predicted.

Scottish Firms Impact Test

These regulations impact on legal aid providers such as solicitors employed in firms, partners and sole practitioners.

Maintaining the option for solicitors to claim interim payments of legal aid fees will positively impact on legal aid providers by assisting with cash flow.

Competition Assessment

Having applied the Competition and Markets Authority competition filter, these proposals will not impact on competition within the 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.

Consumer Assessment

These regulations will not have an impact on consumers.

Test run of business forms

All legal aid applications are currently submitted online through SLAB's Legal Aid Online. Guidance and application updates will be incorporated ahead of commencement.

Digital Impact Test

These regulations will not have a digital impact.

Legal Aid Impact Test

Additional cost to the Scottish Legal Aid Fund:

The provisions make permanent provision equivalent to the measures already in place. The costs for interim payment for legal services would be met at the conclusion of the case in any event, and therefore there will be no additional cost.

Enforcement, sanctions and monitoring

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

Implementation and delivery plan

The provisions in these Regulations will take effect on 1 October 2022. The equivalent measures in place at the moment will expire in accordance with section 12 of the Coronavirus (Scotland) Act 2022 on 30 September 2022.

Post-implementation review

The Scottish Legal Aid Board monitors changes and reports any negative impacts to the Scottish Government. The Law Society of Scotland will also report any negative impacts on the legal profession to both Scottish Legal Aid Board and the Scottish Government.

Summary and recommendation

It is recommended that the amendments to the current legal aid regulations in Scotland are implemented (**Option 2**).

Declaration and publication

Sign-off for Final BRIAs:

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: Ash Regan

Title: Minister for Community Safety

Date: 3 May 2022

Scottish Government contact point:

Kieran Burke



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2018

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/opengovernment-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78781-353-3 (web only)

Published by The Scottish Government, November 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA PPDAS489486 (11/18)

w w w . g o v . s c o t