

Business and Regulatory Impact Assessment

September 2023

Final Business and Regulatory Impact Assessment

Title of Proposal

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No 4) Regulations 2023

Purpose and intended effect

Background and Objectives

- *National Security Act 2023*

An SSI is required to provide for advice and assistance and assistance by way of representation (ABWOR) to be available to individuals arrested under section 27 of the National Security Act 2023 on the grounds of being involved, or suspected of being involved, in 'foreign power threat activity'.

- *The Civil Legal Aid (Scotland) (Fees) Regulations 1989 and Criminal Legal Aid (Scotland) (Fees) Regulations 1989*

Minor corrections are needed to the above instruments in relation to Counsel fees.

- *The Civil Legal Aid (Scotland) Regulations 2002 and Children's Legal Assistance (Scotland) Regulations 2013*

Provision is required for the new form of social security assistance known as carer support payment to be disregarded for the purposes of financial assessment in relation to eligibility for Civil Legal Aid and Children's Legal Assistance, and excluded from being used to repay a recipient's liability to the Scottish Legal Aid Fund.

- **Rationale for Government intervention**

If enacted individuals arrested under the terms set out in the National Security Act 2023 will not be able to access legal advice, assistance and representation.

Individuals in receipt of carer support payments may not be able to access Civil Legal Aid and Children's Legal Assistance due to financial eligibility limits or may find their payment used to repay a recipient's liability to the Scottish Legal Aid Fund.

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**

There has been consultation with the the Faculty of Advocates (the FoA). It was not considered necessary to consult on the disregard and is not considered controversial.

Options

Option 1: Do Nothing

Legal advice and assistance and ABWOR would not be available for persons detained under the National Security Act 2023.

Individuals in receipt of carer support payments may not be able to access Civil Legal Aid and Children's Legal Assistance due to financial eligibility limits or may find their payment used to repay a recipient's liability to the Scottish Legal Aid Fund.

Option 2: Bring forward Regulations

Legislate for amended provisions, as noted above.

Benefits

Option 1: Do Nothing

The current arrangements for legal aid will remain in place. There are no benefits to this option.

Option 2: Bring forward Regulations

Persons detained under the National Security Act 2023 would have the full range of legal assistance available to them as they would had they been detained under other similar legislation, such as the Terrorism Act 2000 or Criminal Justice (Scotland) Act 2016.

Individuals in receipt of carer support payments would have that payment disregarded when financial eligibility is calculated for Civil Legal Aid and Children's Legal Assistance and it would be excluded from being used to repay a recipient's liability to the Scottish Legal Aid Fund.

Costs

Option 1: Do Nothing

No costs are associated with this option.

Option 2: Bring forward Regulations

National Security Act 2023

Based on an analysis of relevant cases between 2018 and 2023, SLAB have estimated the annual cost to be under £10,000.

The Civil Legal Aid (Scotland) Regulations 2002 and Children's Legal Assistance (Scotland) Regulations 2013

Negligible impact on the Legal Aid Fund is expected as result of this disregard.

Scottish Firms Impact Test

It has been assessed that there is likely to be minimal impact on firms or sole practitioners as a result of these amendments.

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:

National Security Act 2023

Based on an analysis of relevant cases between 2018 and 2023, SLAB have estimated the annual cost to be under £10,000.

The Civil Legal Aid (Scotland) Regulations 2002 and Children's Legal Assistance (Scotland) Regulations 2013

Negligible impact on the Legal Aid Fund is expected as result of this disregard.

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 Scottish Government is seeking commencement on 15 November 2023

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: Siobhian Brown

Date: 5th September 2023

Scottish Government contact point:

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