

POLICY NOTE

THE LEGAL AID AND ADVICE AND ASSISTANCE (FINANCIAL LIMIT) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/116

The above instrument was made in exercise of the powers conferred by sections 9(2)(e) and 33(2), (3)(b) and (f) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Purpose of the instrument. This instrument makes provision to increase the maximum total fees per court session allowable to duty solicitors representing accused persons in the sheriff or district courts, and to increase the financial limits for payments for advice and assistance under the Legal Aid (Scotland) Act 1986, beyond which solicitors are required to seek prior approval of the Scottish Legal Aid Board before undertaking further work.

Policy Objectives

These Regulations are considered necessary as a consequence of the increases to all legal aid and advice and assistance fees payable to solicitors and counsel by 5% introduced in 2021 and the further 5% increase which will be made in April 2022 (by the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2022 which are being brought forward concurrently with these Regulations). The existing limits of initial authorised expenditure for advice and assistance would be likely to be frequently exceeded as a result of increased fees, meaning that solicitors would require to seek the prior approval of the Scottish Legal Aid Board to ensure full payment for the work undertaken. To require such approval for payment that would otherwise be permitted would result in additional time, resource and bureaucracy for both legal aid providers and the Scottish Legal Aid Board.

Amendments are also being made to the “session limits” that apply to duty work under Criminal Legal Aid (Scotland) (Fees) Regulations 1989 – the maximum fees that may be accrued by a solicitor in a court session.

Consultation

No formal consultation has been conducted on these regulations, the purpose of which is support the introduction of additional fee increases to legal aid rates (following the previous increase effected by S.S.I. 2021/56), further to a commitment made by the Scottish Government in 2020. However, throughout 2021 the Scottish Government has been involved in substantial engagement with representatives of the Law Society of Scotland, Bar Associations and the Scottish Legal Aid Board regarding support to legal aid providers and legal aid fee reform.

Impact Assessments

The following impact assessments were considered:

Child Rights & Wellbeing Impact Assessment – these Regulations are not considered to have a significant impact on children and young people.

Equality Impact Assessment – no negative impacts on groups with protected characteristics are anticipated. Stage 1 completed.

Business & Regulatory Impact Assessment – these regulations do not introduce additional spend to the Legal Aid Fund so a BRIA is not considered necessary.

Fairer Scotland Duty – not required

Strategic Environmental Assessment – not required

Data Protection Impact assessment – not required

Financial Effects

The Minister for Community Safety confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. It is a technical instrument to facilitate payment of increased fees in full, to support the introduction of the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2022, for which a BRIA has been completed.

Scottish Government
Justice Directorate

January 2022