

POLICY NOTE

THE LEGAL AID AND ADVICE AND ASSISTANCE (MISCELLANEOUS AMENDMENT) (SCOTLAND) (NO. 2) REGULATIONS 2023

SSI 2023/135

The above instrument was made in exercise of the powers conferred by sections 9(1) and (2)(e), 33(2), (3)(a), (b), (c), (d) and (f) and (3A) and 36(1), (2)(a) and (b) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Purpose of the instrument.

This instrument makes provision to (i) implement an increase of 10.2% to non-reformed legal aid and advice and assistance fees, and (ii) reform and simplify the criminal legal aid fee structure in solemn cases, with the aim of targeting fee rates more appropriately, reducing administrative costs to both legal provider and the Scottish Legal Aid Board, encouraging early preparation and resolution of criminal cases.

Policy Objectives

This instrument seeks to deliver a long-standing commitment by Scottish Government to significantly simplify the fee system and to ensure that the system appropriately compensates solicitors for the work involved in the early preparation and resolution of cases where this is both possible and in the best interests of clients. As well as delivering an increase in payment for cases that resolve prior to trial, the reforms reduce administrative costs for solicitors associated with the preparation of bespoke and often complex accounts.

The instrument seeks improvements in service delivery, improved outcomes for service users, and deliver longer term efficiencies. Therefore, reform of summary and solemn fees alongside support for other aid types are both essential elements of the instrument.

Summary

The instrument provides for a 10.25% overall uplift in fees, distributed via a combination of targeted fee reforms and uplifts and overall increases. In summary:

- The solemn and summary fee reforms have been revised to ensure that the reforms themselves, augmented by increases in specific fees, delivers an overall increase in fees payable for these case of 10.3%
- All other criminal fees not affected by fee reforms will be uplifted by 10.2%
- All civil and children's fees will be uplifted by 10.2%

This model of distribution ensures that there is an equitable uplift across all legal aid types while also making targeted increases requested by representatives of the legal profession and delivering reforms.

The solemn reforms combine several existing fees into new case disposal fees, payable in every case. The disposal fees are then set at a level to deliver an overall increase in funding which is focused on cases that resolve prior to trial. Overall the changes proposed are calculated to increase the average fee payable in a solemn case from £2110 to £2326.

The summary reforms simplify the summary criminal fixed payment arrangements so that full payment can be achieved in the majority of cases via a single all-encompassing fee. It also reverses many of the fee changes and complexities introduced by regulations in 2011. The package removes reduced fees so that a full core fee is now payable in most situations i.e. the core fee in these cases is at least doubled. Overall, the changes proposed are calculated to increase the average fee payable in a summary case from £628 to £693.

Consultation

No formal consultation has been conducted on these Regulations but the content is the result of extensive engagement by Ministers (both the Cabinet Secretary for Justice and Veterans and Minister for Community Safety) and Scottish Government officials with representatives of the Law Society of Scotland, the Scottish Solicitors Bar Association and the Scottish Legal Aid Board. Draft regulations have been shared with the main representative bodies of the legal profession: the Law Society of Scotland and the Faculty of Advocates.

Impact Assessments

The following impact assessments were considered:

Child Rights & Wellbeing Impact Assessment – no CRWIA required.

Equality Impact Assessment – no negative impacts on groups with protected characteristics.

Business & Regulatory Impact Assessment – additional spend to the legal aid fund identified and a BRIA has been completed.

Fairer Scotland Duty – not required

Strategic Environmental Assessment – not required

Data Protection Impact assessment – not required

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

For financial impact

Although some of the new fees can apply to existing cases in the system, it will take time for the full impact of the revised fees to feed through. Taking account of the impact of the revised fees, Scottish Legal Aid Board has estimated total costs for the Legal Aid Fund in 2023-24 will be £141m. The total Fund expenditure in 2021-2022 was £118.2m

The restructure of fees for solemn criminal legal assistance will have a positive impact in reducing bureaucracy for legal professionals delivering legal aid services and for the Scottish Legal Aid Board in administering the Legal Aid Fund.

Scottish Government
Justice Directorate

February 2023