FINANCE COMMITTEE CALL FOR EVIDENCE

COURTS REFORM (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM THE SCOTTISH LEGAL AID BOARD

Did you take part in the consultation exercise which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. The Scottish Legal Aid Board (“SLAB”) did take part in the consultation exercise and commented on the likely financial impact to the Legal Aid Fund of the issues consulted upon. SLAB also provided information to the Scottish Government in the development of the FM.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Yes, SLAB’s comments on the likely financial impact, where these are known, have been included in the FM.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes, SLAB had sufficient time to contribute to the consultation exercise.

Costs
If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
4. The Bill has financial implications for the Legal Aid Fund. The estimated impact of the significant changes are reflected in the FM under the:
   - The financial implications for the creation of the Personal Injury Court and changes to the Exclusive Competence of the Sheriff Court.
   - The financial implications of the creation of the Sheriff Appeals Court.

5. There are some consequential changes to legal aid fee structures that will be required to support the provisions of the Bill. It is not envisaged that these fee structures will place any significant additional financial burden on the Legal Aid Fund. These changes to fee structures may be required to facilitate the operation of the new court rules for the new Sheriff Appeal Court and the new Personal Injury Court. However, these new procedures replace existing, more expensive procedures in higher courts. A new fee structure will also be required for the new simple procedure in the sheriff court to replace the summary cause procedure. We will work with the Scottish Government as the work of the Scottish Civil Justice Council on rules is progressed to ensure that the legal aid system facilitates the operation of the justice system.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
6. Yes, the savings set out in the FM in relation to the impact on the Legal Aid Fund reflect our estimates on the basis of the information available at this time. There are many assumptions we need to make when forecasting legal aid expenditure and possible savings. The information included in the FM is based on a
range of assumptions and our knowledge of the operation of the legal aid system and its interaction with the justice system.

7. Estimating the legal aid savings which will result from the changes proposed in the Bill is fairly complex. Savings in any year can be affected by small numbers of very expensive cases and the outcome of those cases. Not every case supported by legal aid is won and we are not able to recover the costs in every case that is unsuccessful. Overall costs and savings in any year can fluctuate considerably. We have reviewed further the data supporting the legal aid savings using the most up to date information available. This suggests that the savings in a full year could range from £800,000 to £1.2m after taking account of contributions, recoveries and judicial expenses. The legal aid figures in Table 14 represent the savings from a reduction in the use of counsel, the lower fees paid to counsel in the sheriff court and associated reductions in the cost of cases. As indicated in the FM, the savings may be lower in the first few years primarily because of the often lengthy durations of such cases and the timescales required to make recoveries which can take a number of years.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which it will incur? If not, how do you think these costs should be met?

8. Funding for legal aid cases in Scotland is non-cash limited. The Scottish Government is under a statutory obligation to meet the cost of cases that meet the statutory tests. Therefore, any costs incurred to the Legal Aid Fund as a result of the Bill provisions, must be met. However, we forecast that the Bill will result in savings for the Legal Aid Fund.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

9. The FM indicates that the maximum savings for legal aid may reach £1.32m and that the savings are likely to be lower in the earlier years.

Wider Issues

Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

10. Yes, the FM appears to capture the known costs associated with the Bill.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

11. Legal aid fee changes will be made through subordinate legislation. It is not anticipated that these will lead to significant additional legal aid expenditure.