

# Equalities, Human Rights and Civil Justice Committee

32<sup>nd</sup> Meeting, 2022 (Session 6), Tuesday 13 December 2022

## Subordinate legislation

### Note by the Clerk

#### Purpose of the paper

1. This paper invites the Committee to consider the following draft affirmative instrument:
  - [The Legal Aid and Advice and Assistance \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023](#)

#### 2022/Draft: The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023

2. This instrument makes provision for Assistance By Way of Representation (“ABWOR”) to be available, subject to an effective participation test, to individuals with or seeking participation rights in Children’s Hearing proceedings.
3. The instrument also provides for compensatory payments from the Scottish Infected Blood Support Scheme (SIBSS) and additional payments from the State for the purpose of responding to increases in the cost of living to be disregarded from financial assessment when applications are made for publicly funded legal assistance.
4. The objective will be delivered by amending the following Regulations:
  - the Advice and Assistance (Scotland) Regulations 1996
  - the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003
  - the Civil Legal Aid (Scotland) Regulations 2002
  - the Children’s Legal Assistance (Scotland) Regulations 2013

5. A copy of the Scottish Government Policy Note and links to relevant impact assessments is included at [Annexe A](#).

## Delegated Powers and Law Reform Committee Consideration

6. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on 22 November 2022. The DPLR Committee agreed that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit.

## Equalities, Human Rights and Civil Justice Committee Consideration

### Procedure for Affirmative instruments

7. The draft instrument was laid on 14 November 2022 and referred to the Equalities, Human Rights and Civil Justice Committee. The instrument is subject to affirmative procedure (Rule 10.6) and due to come into force on 23 January 2023. It is for the Equalities, Human Rights and Civil Justice Committee to recommend to the Parliament whether the instrument should be approved.
8. The Minister for Community Safety has, by motion [S6M-06777](#), proposed that the Committee recommends the approval of the instrument.
9. The Minister for Community Safety is due to attend the Committee meeting on 13 December to answer any questions on the instrument and to move the motion for approval.
10. **It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 23 December 2022. Thereafter, the Parliament will be invited to approve the instrument.**
11. **The Committee is asked to delegate to the Convener authority to approve a short, factual report on the instrument for publication.**

Clerks to the Committee  
December 2022

# Annexe A

## Scottish Government Policy Note

### The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023

The above instrument was made in exercise of the powers conferred by sections 9, 12(3), 17(2B), 36(2)(a) and 42 of the Legal Aid (Scotland) Act 1986 and all other powers enabling Scottish Ministers to do so. The instrument is subject to the affirmative procedure.

#### Purpose of the instrument

This instrument makes provision for Assistance By Way of Representation (“ABWOR”) to be available, subject to an effective participation test, to individuals with or seeking participation rights in Children’s Hearing proceedings; it also provides for compensatory payments from the Scottish Infected Blood Support Scheme (SIBSS) and additional payments from the State for the purpose of responding to increases in the cost of living to be disregarded from financial assessment when applications are made for publicly funded legal assistance.

#### Policy objectives

These Regulations have been brought forward in order that:

- i) siblings with, or seeking, participation rights at Children’s Hearing proceedings may apply to the Scottish Legal Aid Board for publicly funded legal assistance when there is a need to ensure effective participation.
- ii) individuals living in Scotland do not lose access to justice as a result of receiving a compensatory award from the SIBSS or receiving financial assistance from the State to support increases to cost of living. The Scottish Government considers that it would not be appropriate for low income families in receipt of such monies to be put in a position which could threaten their access to justice.

The objective will be delivered by amending the following Regulations:

- the Advice and Assistance (Scotland) Regulations 1996
- the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003
- the Civil Legal Aid (Scotland) Regulations 2002
- the Children’s Legal Assistance (Scotland) Regulations 2013

## Consultation

These Regulations were developed in consultation with Clan ChildLaw (a law centre for children and young people) and the Scottish Legal Aid Board. Draft regulations have been shared with the main representative bodies of the legal profession: Law Society of Scotland and Faculty of Advocates.

## Impact assessments

The following impact assessments were considered:

[Child Rights & Wellbeing Impact Assessment](#) – has been completed and no negative impacts on child rights and wellbeing have been identified.

[Equality Impact Assessment](#) – has been completed and no negative impacts on groups with protected characteristics have been identified.

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

[Fairer Scotland Duty](#) – has been completed and no negative impacts have been identified.

Strategic Environmental Assessment – not required.

Data Protection Impact assessment – not required.

## Financial effects

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

The impact of this policy on business is that it will facilitate publicly funded legal representation to be available for individuals with or seeking participation rights at children's hearings, subject to prior approval by the Scottish Legal Aid Board. It is estimated that the cost of such cases may be around £469 with around ten per year. It will also ensure that individuals who would currently be eligible for publicly funded legal assistance will not be removed from scope due to awards and payments from the State, therefore no additional costs will be incurred.

It is not foreseen, however, that there will be any negative effect on the Scottish Legal Aid Fund as a result of these regulations. The impact of this policy on business is minimal, but is likely to be positive to the relevant stakeholders.

Scottish Government  
Justice Directorate

*November 2022*