

EXECUTIVE NOTE

THE ADVICE AND ASSISTANCE AND CIVIL LEGAL AID (PRIORITY OF DEBTS) (SCOTLAND) REGULATIONS 2010 (SSI 2010/57)

The Advice and Assistance and Civil Legal Aid (Priority of Debts) (Scotland) Regulations 2010 (“the Regulations”) are made in exercise of the powers conferred on the Scottish Ministers by sections 12(3) and 17(2B) of the Legal Aid (Scotland) Act 1986 and all other powers enabling them to do so.

The Regulations are subject to the negative resolution procedure.

Policy Objective

Together with the Advice and Assistance and Civil Legal Aid (Financial Conditions and Contributions) (Scotland) Regulations (which are subject to the affirmative resolution procedure), the Regulations form part of an annual package of amendments which increase key figures in legal aid and advice legislation broadly in line with inflation.

The rules governing advice and assistance specify that before payment of fees or outlays are made to a solicitor from the Scottish Legal Aid Fund (“the Fund”), payment should be made from contributions payable by the client, from expenses payable to the client or from property recovered or preserved for the client. There are certain exceptions to the requirement that the solicitor’s fees and outlays be met from property recovered or preserved for the client, including an exception for the first £5,259 of property recovered or preserved by virtue of certain family law actions (i.e. an order for the payment of a capital sum under section 5 of the Divorce (Scotland) Act 1976; an order for payment of a capital sum or transfer of property, or an incidental order, under section 8 of the Family Law (Scotland) Act 1985; or any settlement arrived at to prevent or bring to an end any proceedings in which such orders may be granted).

In the case of civil legal aid, the fees and outlays of legal representatives are met from the Fund in the first instance, but contributions towards the cost of the case may be subsequently required from the client. Contributions received are paid back into the Fund. Contributions are to be paid in priority to any of the client’s other debts out of any property recovered or preserved in the proceedings for which legal aid was made available or in settlement of those proceedings. Again there are exceptions to the requirement to pay back moneys recovered or preserved, including an exception for the first £5,259 of property recovered or preserved in the context of family law actions as discussed above.

The Regulations increase the figure of £5,259 in relation to both advice and assistance and civil legal aid. With effect from 12th April 2010 it will be increased, broadly in line with inflation, to £5,338.

Consultation

This increase takes place annually and is designed to reflect inflation. Formal consultation is not normally carried out.

Financial Implications

It is not expected that the Regulations will have a significant impact on expenditure, given that, they are intended to reflect inflation.

Scottish Government
18 February 2010