

## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of Policy</b>	The Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2015
<b>Summary of aims and desired outcomes of Policy</b>	This policy makes sure that there is clear legal aid provision for the Sheriff Appeal Court (Civil) opening in January 2016 as part of implementation of the Courts Reform (Scotland) Act 2014
<b>Directorate: Division: team</b>	Justice: Civil Law and Legal System: Access to Justice

### Executive summary

The Scottish Government undertook an EQIA as part of the process to develop policy that make sure that there is clear legal aid provision in place for the Sheriff Appeal Court (Civil) opening in January 2016.

This policy will affect solicitors providing publicly-funded legal assistance for proceedings in the Sheriff Appeal Court (Civil) and, to a lesser extent, counsel. This is a positive effect in that the policy makes sure that clear and flexible legal aid fees are specified for this work.

While solicitors providing civil legal aid are more likely to be male and aged between 35 and 44 than than the general population, no issues were identified that would have a detrimental impact on protected groups.

### Background

Legal aid is currently available for a wide range of proceedings in Scottish courts. Changes are being made to Scottish courts through the Courts Reform (Scotland) Act 2014 ("the 2014 Act"). Provisions relating to the Sheriff Appeal Court (Civil) in the 2014 Act are being implemented in January 2016.

Most of the appeals to be heard in the new court are cases currently heard by the sheriff principal and conducted by a solicitor, for which legal aid is available. The new court may sit with up to three sheriffs and be held in a different a different sheriffdom from the one in which the decision being appealed was taken, depending on the circumstances. There is an opportunity to appeal the decision of the Sheriff Appeal Court, with permission, to the Court of Session.

The policy objective of this instrument is to adapt the framework and arrangements in existing legal aid regulations to accommodate the changes coming into force in January by:

- recognising the new court and requiring a fresh application and grant of civil legal aid for an appeal to the Sheriff Appeal Court following any civil legal aid that may have been granted for the proceedings in which a sheriff made a decision in the case, and for appeals and references from the Sheriff Appeal Court to the Court of Session;
- making specific provision for fees and taxation of accounts, including a percentage increase in fees where the case is particularly complex (“additional fees”), and allowing solicitors to choose whether to be paid the block fees currently available for appeals to the sheriff principal, or to be paid the detailed fees available for Court of Session work ;
- clarifying the circumstances in which solicitors require to submit a single account to the Scottish Legal Aid Board where a second solicitor has been instructed – for example, in order to provide representation in another location so that the first solicitor does not have to travel –as already happens for criminal legal aid, (and making an exception for proceedings in the Sheriff Appeal Court, the Court of Session and the UK Supreme Court); and
- requiring prior approval of the Scottish Legal Aid Board before employing counsel in the Sheriff Appeal Court and, where approval is given, allowing counsel or a solicitor advocate to be paid at the same counsel rates currently paid for appeals to the sheriff principal.

The legal aid system contributes to the ‘Safer and Stronger’ Strategic Objective. In particular, it contributes to the national outcome of “strong, resilient and supportive communities where people take responsibility for

their own actions and how they affect others” by ensuring that individuals can enforce their own legal rights through the effective function of the courts.

This proposal is aimed at making sure that legal aid continues to be appropriately available under the new structures being brought in by the 2014 Act.

### **The Scope of the EQIA**

This policy was examined against each of the protected groups. A number of different data sources were used to inform the EQIA, which included: the 2011 Census records; Scottish Legal Aid Board reports; and a survey on solicitors conducted for the Law Society of Scotland.

An EQIA was carried out for the Courts Reform (Scotland) Bill at introduction. This EQIA therefore focuses only on the effects of clear legal aid provision for the Sheriff Appeal Court (Civil) due to open in January 2016.

Solicitors providing publicly-funded legal assistance in the Sheriff Appeal Court (Civil) are most likely to be affected and, to a lesser extent, counsel. This is expected to be a positive effect in that clear and flexible legal aid fees will be specified for this work.

Following screening, a child rights and wellbeing impact assessment was not completed. Although children and young people may be involved in civil proceedings before the Sheriff Appeal Court, the availability of publicly-funded legal assistance to them is not affected by this policy.

### **Key Findings**

Equalities issues have centred on whether this policy would impact on any group with protected characteristics. The framing exercise suggested that a positive effect would be felt by solicitors providing publicly-funded legal assistance in the Sheriff Appeal Court (Civil). Clear and flexible fees will be specified for this work.

This means that men and those aged between 35 and 44 are more likely to benefit from the policy.

### **Recommendations and Conclusion**

The EQIA process did not identify any issues which would have a detrimental impact on protected groups. We have therefore taken this policy to its conclusion by laying the Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2015.

The Scottish Government and the Scottish Legal Aid Board will review the impact of this legislation within 10 years through consideration of analysis of data which is collected routinely by the Board.