

## EQUALITY IMPACT ASSESSMENT - RESULTS

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| <b>Title of Policy</b>                                | The Legal Aid (Scotland) Act 1986 Amendment Regulations 2016 and<br><br>The Civil Legal Aid - (Miscellaneous Amendments) (Scotland) Regulations 2016 -  |
| <b>Summary of aims and desired outcomes of Policy</b> | The policy ensures that when appeals from Tribunals, formerly heard in the Sheriff Court/Court of Session, transfer to the Upper Tribunal there will be legal aid provision and relevant fees will be made available to solicitors and counsel. |
| <b>Directorate: Division: team</b>                    | Justice: Civil Law and Legal System: Access to Justice  |

### Executive summary

This Equality Impact Assessment (EQIA) applies to two sets of regulations making provision for legal aid in the Upper Tribunal for Scotland. The Legal Aid (Scotland) Act 1986 Amendment Regulations 2016 make legal aid available in the Upper Tribunal. The Civil Legal Aid (Miscellaneous Amendments) (Scotland) Regulations 2016 make provision for administrative arrangements and payment of fees to solicitors and counsel for legal aid work at the Upper Tribunal. These changes are being made to accommodate Tribunals transferring into the Scottish Tribunals. Existing tribunals will transfer into the Scottish Tribunals in a phased process commencing in December 2016

The Regulations will impact on tribunal users, solicitors and counsel providing representation at the Upper Tribunal. Tribunal users will have access to publically funded legal assistance to pursue an appeal and solicitors and counsel will have clear arrangements in place for the payment and administration of fees for work undertaken in the Upper Tribunal.

During the course of development of the Equality and Impact Assessment for the 2014 Act, work was done to try to identify the profile of tribunal users with regards to protected characteristics. No information was available except in relation to gender balance. There was a 50:50 balance between male and female tribunal members.

Children and young people may bring a case in certain tribunals that will transfer into the First-tier Tribunal and will be able to appeal a decision to the Upper Tribunal. In these circumstances, the regulations will support children's rights by giving them access to publicly-funded legal representation. This will ensure their best interests, in accordance with Article 3 of the UN Convention on the Rights of the Child (UNCRC) and their views, in accordance with Article 12 of the UNCRC, are an integral part of the process.

Solicitors providing this advice will also be affected. They are most likely to be men between the age of 35 and 55. No issues were identified that would have a detrimental impact on protected groups.

## **Background**

The Tribunals (Scotland) Act 2014 ('the Tribunals Act') creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The Act creates two tribunals, the First-tier Tribunal for Scotland for first decisions and the Upper Tribunal for Scotland, primarily for appeals from the First-tier Tribunal. They will be known collectively as 'the Scottish Tribunals'.

Existing tribunal jurisdictions will transfer into the Scottish Tribunals structure in a phased process with their existing membership, functions and rules of procedure where possible. In the new structure appeals will be decided by the Upper Tribunal, as opposed to the Sheriff Court or Court of Session where the majority of appeals are currently heard. Civil legal aid is currently available in both the Court of Session and the Sheriff Court by virtue of Schedule 2 of the Legal Aid (Scotland) Act 1986 ("the 1986 Act"). These regulations mean that civil legal aid will be retained for cases that are currently heard in the Sheriff Court and Court of Session.

The policy objective of these instruments is to adapt the framework and arrangements in existing legal aid regulations to accommodate the new tribunal structure being implemented from 1 December 2016.

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.

## **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, the Scottish Legal Aid Board, a survey on solicitors conducted for the Law Society of Scotland, NRS Registration Division, the Scottish Household Survey 2012, and the Integrated Household Survey 2013. We did not have access to information on tribunal users.

The policy is concerned only with adapting the framework and arrangements in the current legal aid regulations to accommodate the new tribunal structure. This EQIA therefore focuses only on the effects of the adaptation for the new framework.

The legal aid policy aim is aimed at making sure that legal aid continues to be available as appropriate within the Scottish Tribunals structure.

Following screening, a child rights and wellbeing impact assessment was required and it was combined within the Equality Impact Assessment.

## **Key Findings**

Equalities issues have centred on whether this policy would impact on any group with protected characteristics. The framing exercise suggested that there are no specific negative impacts, either direct or indirect, on protected groups.

This policy will create certainty for those tribunal users and solicitors acting on behalf of clients appealing a decision to the Upper Tribunal because there will be a clear legal aid provision in place. Solicitors will have clear guidance on fees and procedures within the The Civil Legal Aid

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(Miscellaneous Amendments) (Scotland) Regulations 2016. This will have a positive impact on access to justice as the tribunal users will be able to access legal aid to gain advice and representation for an appeal.

Those tribunal users that are appealing to the Upper Tribunal and solicitors representing them at these hearings are most likely to be affected. Initially, those attending the Scottish Tribunals will be those appearing before the Private Rented Housing Panel and Homeowner Housing Panel and their relevant committees as these are the first tribunals to transfer to Scottish Tribunals in December 2016. Some tribunals are more likely to have users who are under 18, such as the Additional Support Needs Tribunals (ASNTS) and Mental Health Tribunal (MHTS). Children or young people may also be affected by tribunal decisions on issues such as housing even if they are not the direct party to a case. Solicitors providing this advice will also be affected. They are most likely to be men between the age of 35 and 55.

As it is possible for a child or young person up to the age of 18 to bring a case to a tribunal in the Scottish Tribunals, the policy will support childrens' rights by giving them access to publically funded legal representation which will enable their best interests (in accordance with Article 3 of the UNCRC) and their views (article 12 of UNCRC) to be considered. Children who are eligible for civil legal aid will need to be considered old enough to instruct a solicitor, these are more likely to be children between 12 and 17, however, children under the age of 12 have been known to have the capacity to instruct a solicitor but this is not a common occurrence. Through a sampling method, the Scottish Legal Aid Board have suggested that for appeals, an annual figure of between two and four cases will involve those applicants/appellants under 18.

### **Recommendations and Conclusion**

The EQIA process did not identify any issues which would have a detrimental impact on protected groups.

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