

CRWIA – Stage 3

Publication Template

CRWIA title: The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023	
Date of publication: November 2022	
Executive summary	<p>The purpose of this SSI is to make the required regulatory changes to a number of areas of legal aid policy. These are: publicly funded legal assistance (PFLA) provision for individuals with participation rights in children’s hearings (the focus of this CRWIA)</p> <p>This SSI will also ensure compensatory payments made through the Scottish Infected Blood Support Scheme (SIBSS) will be disregarded for the purposes of financial assessment when a person is seeking PFLA and allow payments made in connection to The Social Security (Additional Payments) Act 2022 to be disregarded for the purposes of financial assessment when a person is seeking PFLA. As these payments will not directly impact on children and young people, this aspect of the SSI will not be considered in this CRWIA.</p>
Background	<p>The Scottish Government amended the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (“the 2013 Rules”) in July 2021 to afford persons with a sibling type relationship to the subject child an opportunity to participate in children’s hearings, subject to certain criteria being met. Further to this change, a significant number of requests have been made to Scottish Ministers to make a determination under section 4(2)(c) of the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) that payment be made from the Scottish Legal Aid Fund (“the Fund”) for legal assistance for sibling participants, as no legal aid provision currently exists. The Scottish Government wishes to provide powers to the Scottish Legal Aid Board (“SLAB”) to determine applications from individuals with participation rights at Children’s Hearings.</p> <p>The UK Government recently announced that it will pay victims of infected blood and their bereaved partners £100k each as an interim payment, in advance of the outcome of the ongoing Infected Blood Inquiry. In Scotland, these payments will be made through the SIBSS. The UK policy intention, which we support, is that the payments should be tax free and should not affect benefits. By extension, the risk of removing a recipient from being eligible for legal aid on the basis of a payment should be mitigated.</p> <p>Finally, the UK Government has, through The Social Security (Additional Payments) Act 2022, provided that additional payments be legislated for as a new benefit. The Act makes provisions for Means-tested Additional Payments and for Disability Additional Payment. These new payments are part of the UK Government’s response to increases in the cost of</p>

	<p>living. SLAB does not have discretion to disregard these payments when assessing financial eligibility across all aid types, and this instrument will enable this.</p>			
Scope of the CRWIA	<p>Persons with participation rights in respect of children and young people involved in Children's Hearings will be affected by these regulations. These regulations make provision, where none currently exist, for SLAB to receive, assess and approve related applications, which will be of benefit to children and young people involved in Children's Hearings.</p>			
Children and young people's views and experiences	<p>Children and young people's views and experiences were considered as part of the work to amend the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 in 2021. More information can be found in the Impact Assessments that accompany the 2021 regulations.</p> <p>Information on children and young people's views can also be found in the Impact assessments that accompany the establishment of the SIBSS payment, The Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2022 and The Social Security (Additional Payments) Act 2022</p>			
Key Findings	<p>Framing exercises carried out as part of the Equality Impact Assessment have identified that there are no specific negative impacts, either direct or indirect, on protected groups.</p>			
Monitoring and review	<p>SLAB monitor changes and report to the Scottish Government any negative impacts.</p> <p>The Law Society of Scotland will also report any negative impacts on the legal profession to both SLAB and the Scottish Government.</p>			
Bill - Clause	Aims of measure	Likely to impact on . . .	Compliance with UNCRC requirements	Contribution to local duties to safeguard, support and promote child wellbeing
Amendment of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003	Provide SLAB with the power to assess applications from individual with participation rights at Children's Hearings and, subject to its prior approval and statutory tests being satisfied, to make publicly funded legal representation available.	Children and young people involved in Children's Hearings	Yes	Will support and promote child wellbeing through the legal system

CRWIA Declaration

Authorisation

Policy lead

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Civil Law and Legal System – Access to Justice

Date

09/11/2022

Deputy Director or equivalent

Denise Swanson
Deputy Director of Justice

Date

9/11/22