

# **Business and Regulatory Impact Assessment**

**June 2024**

Final

## Business and Regulatory Impact Assessment

### **Title of Proposal**

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2024

### **Purpose and intended effect**

#### **Background and Objectives**

##### Carer's Allowance Supplement

Carer's Allowance Supplement is an extra payment made to people in Scotland who are in receipt of Carer Support Payment or Carer's Allowance on a particular date. It was introduced by s.81 of the Social Security (Scotland) Act 2018. It is paid twice a year as a lump sum (currently £288.60).

Carer Support Payment is currently disregarded when the Scottish Legal Aid Board (SLAB) assesses financial eligibility for civil and children's legal aid and advice and assistance, but Carer's Allowance Supplement is not. This SSI will provide for Carer's Allowance Supplement to also be disregarded.

##### Care-Experienced Students Bursary

The Care-Experienced Students Bursary is a non-repayable allowance of £9000 which is paid to those completing an eligible course of further or higher education who have been looked after before they were 18 by a local authority in the UK. This SSI will also provide for the Care-Experienced Students Bursary to be disregarded by SLAB when assessing financial eligibility for these types of legal assistance.

#### **Legislative amendments**

- The Advice and Assistance (Scotland) Regulations 1996
- The Civil Legal Aid (Scotland) Regulations 2002
- The Children's Legal Assistance (Scotland) Regulations 2013

Amendments are needed to the above instruments to provide for the above payments to be disregarded by SLAB when calculating an individual's financial eligibility for civil and children's legal aid and advice and legal assistance. Such payments are also excluded from "clawback" to the Scottish Legal Aid Fund.

## **Rationale for Government intervention**

Current provision does not allow for these payments to be disregarded when SLAB assesses financial eligibility for these types of legal assistance. Without provision to allow for these payments to be disregarded, individuals in receipt of these payments might find that they are required to make a contribution to legal fees or costs. They may even become ineligible for any publicly funded legal assistance by virtue of receiving such payments, threatening their access to justice.

## **Consultation**

### **Within Government**

SLAB is a non-departmental public body which administers legal aid in Scotland and is accountable to the Scottish Government. SLAB have been consulted in the development of these draft Regulations.

### **Public Consultation**

No public consultation was carried out due to the technical nature of the proposed regulations.

### **Business**

There has been consultation with the Faculty of Advocates (the FoA), the Law Society of Scotland (LSS) and SLAB in developing these regulations.

## **Options**

### **Option 1: Do Nothing**

Current provision will remain in place and those in receipt of payments of Carer's Allowance Supplement or Care-Experienced Students Bursary will have these payments considered as part of SLAB's assessment for financial eligibility for legal assistance. This may result in them becoming ineligible for any publicly funded legal assistance by virtue of them receiving such payments.

### **Option 2: Bring forward Regulations**

Legislate for amended provisions, as noted above.

## **Benefits**

### **Option 1: Do Nothing**

The current arrangements for legal aid will remain in place. There are no benefits to this option.

## **Option 2: Bring forward Regulations**

Those in receipt of payments of Carer's Allowance Supplement or Care-Experienced Students Bursary will have these payments disregarded from SLAB's calculations for financial eligibility for legal assistance. This ensures that access to justice is maintained and those in receipt of these payments are not prevented from accessing the publicly funded legal assistance they may be entitled to, as a consequence of receiving these payments.

### **Costs**

#### **Option 1: Do Nothing**

No costs are associated with this option.

#### **Option 2: Bring forward Regulations**

There may be a minor impact on the Legal Aid Fund as a result of these regulations (see 'Legal Aid Impact Test' below).

### **Scottish Firms Impact Test**

It has been assessed that there is likely to be minimal impact on firms or sole practitioners as a result of these amendments.

### **Competition Assessment**

Having applied the Competition and Markets Authority competition filter, these proposals will not impact on competition within the legal aid market. These Regulations do not directly or indirectly limit the number or range of suppliers. They do not limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

### **Consumer Assessment**

These regulations will not have an impact on consumers.

### **Test run of business forms**

All legal aid applications are currently submitted online through SLAB's Legal Aid Online. Guidance and application updates will be incorporated ahead of commencement.

### **Digital Impact Test**

These regulations will not have a digital impact.

### **Legal Aid Impact Test**

#### Carer's Allowance Supplement

While the cost to the legal aid fund as a consequence of disregarding the Carer's Allowance Supplement is unknown, SLAB have estimated that the impact is likely to be minimal due to the relatively low value of the payments to be disregarded.

#### Care-Experienced Students Bursary

SLAB have estimated that the impact on the legal aid fund as a consequence of disregarding the Care-Experienced Students Bursary is likely to be minimal due to the likely small number of individuals in receipt of these payments in Scotland.

### **Enforcement, sanctions and monitoring**

The proposals will be set down in secondary legislation. The proposals do not, otherwise, create any new enforcement or monitoring mechanisms. SLAB has responsibility for administering the Scottish Legal Aid Fund and will monitor the implications of these measures.

### **Implementation and delivery plan**

The SSI is due to come into force on 3 October 2024.

#### **Post-implementation review**

The Scottish Legal Aid Board will monitor changes and reports impacts to the Scottish Government.

## **Summary and recommendation**

It is recommended that the amendments to the current legal aid regulations in Scotland are implemented (**Option 2**).

## **Declaration and publication**

### **Sign-off for Final BRIAs:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: Siobhian Brown**

**Date: 18th June 2024**

**Scottish Government contact point:**

**Katie Case**

Legal Aid Policy Officer

CLLS: Access to Justice Unit



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

© Crown copyright 2018

**OGL**

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit

[nationalarchives.gov.uk/doc/opengovernment-licence/version/3](https://nationalarchives.gov.uk/doc/opengovernment-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at

The Scottish Government

St Andrew's House

Edinburgh

EH1 3DG

ISBN: 978-1-78781-353-3 (web only)

Published by The Scottish Government, November 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA PPDAS489486  
(11/18)

W W W . g o v . s c o t