

## POLICY NOTE

### THE LEGAL AID AND ADVICE AND ASSISTANCE (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2024

#### SSI 2024/178

The above instrument was made in exercise of the powers conferred by sections 12(3), 17(2B), 36(1) and (2)(a) and 42 of the Legal Aid (Scotland) Act 1986. The instrument is subject to negative procedure.

#### **Purpose of the instrument.**

This instrument amends existing legal aid regulations to provide that payments in respect of (i) Carer's Allowance Supplement and (ii) any Care-Experienced Students Bursary are to be disregarded by the Scottish Legal Aid Board (SLAB) when calculating financial eligibility for civil or children's legal aid or advice and assistance. Certain of these payments are also excluded from 'clawback' to the Scottish Legal Aid Fund.

#### **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

#### **Policy Objectives**

This instrument amends existing regulations to provide that payments in respect of Carer's Allowance Supplement and any Care-Experienced Students Bursary are to be disregarded when SLAB is calculating a person's disposable capital and income for the purposes of assessing their financial eligibility for civil or children's legal aid or advice and assistance. The regulations relating to civil legal aid and advice and assistance are also amended to the effect that any such payments are excluded from bearing fees and outlays when forming part of any recovered or preserved property in proceedings.

Carer's Allowance Supplement is an extra payment for 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 SLAB assesses financial eligibility for legal assistance, but Carer's Allowance Supplement is not. The Carer's Allowance Supplement is a means tested payment and those in receipt would almost certainly meet the financial requirements for full civil or children's legal aid or advice and assistance. This instrument acknowledges that and removes the requirement for unnecessary consideration by SLAB.

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. Care experienced people are often disproportionately disadvantaged in comparison to their peers. This bursary provides financial support in accessing further education opportunities and closing the attainment gap. This instrument will allow SLAB to disregard the bursary when assessing financial eligibility.

## **Summary**

This instrument provides that:

- Carer's Allowance Supplement payments are to be disregarded in the assessment of a person's financial eligibility for civil or children's legal aid and advice and assistance.
- Care-Experienced Students Bursary payments are to be disregarded in the assessment of a person's financial eligibility for civil or children's legal aid and advice and assistance.
- Such payments are also excluded from bearing fees and outlays when forming part of any recovered or preserved property in civil legal aid and advice and assistance proceedings.

## **Consultation**

No formal consultation has been conducted on these regulations, but the content is the result of extensive engagement with representatives of the Scottish Legal Aid Board. Draft regulations have been shared with the Scottish Legal Aid Board, the Faculty of Advocates and Law Society of Scotland.

## **Impact Assessments**

The following impact assessments were considered:

Child Rights & Wellbeing Impact Assessment – no negative impacts on children and young people.

Equality Impact Assessment – no negative impacts on groups with protected characteristics.

Business & Regulatory Impact Assessment – additional spend to the legal aid fund identified and a BRIA has been completed.

Fairer Scotland Duty – not required.

Strategic Environmental Assessment – not required.

Data Protection Impact assessment – not required.

## **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

SLAB have estimated that the impact on the legal aid fund will be minimal.

Scottish Government  
Justice Directorate  
*14 June 2024*