

# Equalities, Human Rights and Civil Justice Committee

9th Meeting, 2024 (Session 6), Tuesday 26 March 2024

## Subordinate legislation

### Note by the Clerk

#### Purpose of the paper

1. This paper invites the Committee to consider the following draft affirmative instrument:

- [The Legal Aid \(Miscellaneous Amendment\) \(Scotland\) Regulations 2024 \[draft\]](#) - Policy Note and any associated documents are at [Annexe A](#).

#### 2024/Draft: The Legal Aid (Miscellaneous Amendment) (Scotland) Regulations 2024

2. This instrument amends the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) and existing regulations under that Act to:

- (i) provide for an increase to counsel accommodation allowances claims
- (ii) introduce specific counsel fees for written submissions when these are required by the court, and
- (iii) provide for automatic legal aid to be available to young people where a pre-hearing panel or children’s hearing is considering whether or not to impose a Compulsory Supervision Order (CSO) with Movement Restriction Conditions (MRC). The Children (Care and Justice) (Scotland) Bill seeks to ensure that 16 and 17 year olds will not be sent to Young Offender’s Institutions from 2024 onwards. In order to achieve this, it is likely that there will be an increased use of MRC.

3. Regulation 3 makes children’s legal aid available to qualifying persons for proceedings where a children’s hearing or a pre-hearing panel considers that it might be necessary to make a compulsory supervision order that includes a movement restriction condition (whether or not the order also includes a secure accommodation authorisation). Regulation 3 also makes equivalent provision to

make children's legal aid automatically available to the child for the purposes set out in section 28C(2)(b) and (c) of the 1986 Act.

4. Regulation 4 amends the Civil Legal Aid (Scotland) (Fees) Regulations 1989 to provide that costs incurred by counsel above the specified maximum amount for accommodation and associated subsistence when required to travel for a legal aid case are chargeable outlays, where suitable accommodation and subsistence was not available within that amount, and the Scottish Legal Aid Board has given prior approval and is satisfied that the amount charged is reasonable. Regulation 4 also increases the specified maximum amount.
5. Regulation 5 amends the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 to make equivalent provision to regulation 4. It also adds to the existing fee tables provision for payment of fees to counsel for the drafting of written submissions where this has been ordered by the court.

## Delegated Powers and Law Reform Committee Consideration

6. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on 27 February 2024 and agreed that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit. [Read the Official Report of the 7th meeting, 27 February 2024.](#)

## Equalities, Human Rights and Civil Justice Committee Consideration

### Procedure for Affirmative instruments

7. The draft instrument was laid on 19 February 2024 and referred to the Equalities, Human Rights and Civil Justice Committee. The instrument is subject to affirmative procedure (Rule 10.6) and due to come into force on 30 April 2024. It is for the Equalities, Human Rights and Civil Justice Committee to recommend to the Parliament whether the instrument should be approved.
8. The Minister for Victims and Community Safety has, by motion [S6M-12219](#), proposed that the Committee recommends the approval of the instrument.
9. The Minister for Victims and Community Safety is due to attend the Committee meeting on 26 March to answer any questions on the instrument and to move the motion for approval.
10. **It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 29 March 2024. Thereafter, the Parliament will be invited to approve the instrument.**

**11. The Committee is asked to delegate to the Convener authority to approve a short, factual report on the instrument for publication.**

Clerks to the Committee  
March 2024

# Annexe A

## Scottish Government Policy Note

The above instrument was made in exercise of the powers conferred by sections 28C(3), 33(2)(a) and (3)(a), (b) and (f) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

### Purpose of the instrument

This instrument makes provision to (i) provide for an uplift to counsel accommodation allowances, (ii) introduce counsel fees for written submissions when these are required by the court, and (iii) provide for automatic legal aid to be available to young people where a pre-hearing panel or children's hearing is considering whether or not to impose a Compulsory Supervision Order (CSO) with Movement Restriction Conditions (MRC).

### Policy objectives

Firstly, this instrument seeks to uplift the current counsel accommodation allowance.

Existing regulations provide that counsel who must travel to appear in cases may claim an accommodation allowance of £113.56. It has become apparent that in a number of instances this is insufficient for covering the costs of the hotel room, This SSI will raise the accommodation allowance to £125.14 for a hotel room and allow for the standard limit to be exceeded with prior approval of the Board. This will allow the Board the flexibility to approve hotel costs above the standard limit, although it is predicted that this would be a very rare occurrence.

Secondly, this instrument will introduce specific counsel fees for written submissions when these are required by the court. This SSI will amend the fee table to allow a fee of £350 for Junior Counsel and £500 for Senior Counsel (80% at Sheriff Court level) to be payable for criminal cases only where a written submission has been requested by the court *ex proprio motu*.

Finally, this instrument will provide for automatic legal aid to be available to young people where a pre-hearing panel or children's hearing is considering whether or not to impose a CSO with MRC. The Children (Care and Justice) (Scotland) Bill seeks to ensure that 16 and 17 year olds will not be sent to Young Offender's Institutions from 2024 onwards. In order to achieve this, it is likely that there will be an increased use of MRC. Legal aid is currently automatically available for children where a pre-hearing panel or children's hearing consider that it might be necessary to impose a CSO that will also include a Secure Accommodation Authorisation (SAA), however it is not available where a CSO is considered alongside an MRC (in the absence of a SAA). This SSI amends the Legal Aid (Scotland) Act 1986 to ensure that automatic legal aid is available where a pre-hearing panel or children's hearing consider that it might be necessary to impose a CSO with an MRC.

## Summary

This instrument provides for:

- Counsel accommodation allowances to be uplifted to from £113.56 to £125.14 with further allowance for the standard limit to be exceeded with prior approval of the Scottish Legal Aid Board if required.
- The introduction of counsel fees for written submissions when requested by the court of £350.00 for junior counsel proceedings in the High Court and £500.00 for senior counsel proceedings in the High Court (80% at Sheriff Court level).
- Automatic legal aid to be available for young people where a pre-hearing panel or children's hearing is considering whether or not to impose a CSO with MRC as set out in the Children (Care and Justice) (Scotland) Bill.

## 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 and the Faculty of Advocates. 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: [The Legal Aid \(Miscellaneous Amendment\) \(Scotland\) Regulations 2024 \(legislation.gov.uk\)](#)
- Fairer Scotland Duty – not required.
- Strategic Environmental Assessment – not required.
- Data Protection Impact assessment – not required.

## Financial effects

SLAB has estimated that increasing the accommodation allowance will increase costs to the legal aid fund by not more than £25,000.

In terms of written submission fees, SLAB has estimated that this will cost will not exceed £10,000 per annum.

Finally, in respect of legal aid being made automatically available for pre-hearing panels or children's hearings where the imposition of a CSO with a MRC is considered, it is estimated that the number of these cases will be very low so the impact to the legal aid fund is likely to be negligible.