

# THE SCOTTISH LEGAL AID BOARD

## RESPONSE TO THE CONSULTATION PAPER WITH REGARD THE INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) BILL

### INTRODUCTION

The Scottish Legal Aid Board welcomes the opportunity to respond to proposed provisions of the Interpretation and Legislative Reform (Scotland) Bill. The Board's response is limited to the way in which these proposals will affect regulations pertaining to legal aid.

### PURPOSE OF CONSULTATION

The Draft Bill deals with six main topics. The first three topics contained in Parts 1 to 3 of the Bill contain provisions for the interpretation and operation of Acts of the Scottish Parliament and instruments made under those Acts; the scrutiny of subordinate legislation by the Scottish Parliament; and the publication of Acts of the Scottish Parliament and instruments made under those Acts. Parts 4 to 6 make provision for a new power to make amendments of enactments in advance of a consolidation of the law, provision for laying of documents other than certain statutory instruments before the Scottish Parliament.

For the Board's purposes, the only relevant parts of the Draft Bill upon which we would offer brief comment are contained within Parts 1 and 2.

### RESPONSE TO CONSULTATION QUESTIONS

#### Part 1 Interpretation

*1 Do you agree that it would be helpful to continue to have general interpretive provisions which apply to ASPs and instruments?*

The Legal Aid (Scotland) Act 1986<sup>1</sup> (the 1986 Act) is a Westminster Act which is subject to the interpretation provisions in the Interpretation Act 1978 (1978 Act). Functions of the Secretary of State were transferred to Scottish Ministers by virtue of section 53 of the Scotland Act 1998<sup>2</sup>. Scottish Ministers can therefore exercise regulation making powers under the 1986 Act for both affirmative and negative instruments relating to legal aid. Effectively this means that the new proposals with regard interpretive provisions do not affect the 1986 Act.

The only relevant question therefore is:

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<sup>1</sup> C.47

<sup>2</sup> C.46

***2 (b) Should these provisions also apply to Westminster Acts or instruments which relate to devolved matters or to provisions in ASPs or Scottish instruments which amend or repeal Westminster Acts or instruments made under them?***

The Board accepts the Scottish Government's view that the changes in Part 1 should not apply to Westminster Acts of Parliament because of the resulting confusion and uncertainty for the reader, where some Westminster Acts are interpreted in accordance with Part 1 of the Draft Bill and some in accordance with the 1978 Act.

***13(a) Should provision be made for serving documents by electronic means?***

The Board supports the provision of an online service. Legal aid online is available for solicitors to submit advice and assistance intimations, increases and accounts to the Board. Currently 65% of intimations and increases are done this way. We will shortly be rolling out civil legal aid online to allow the online submission of civil legal aid applications and accounts which will be followed by the roll out of criminal legal aid online from summer 2009. A recent survey of online users was very positive about legal aid online with users saying that they would not go back to paper-based applications. By the end of 2010-11, we expect virtually all legal aid business with solicitors to be online.

## **Part 2 Scottish Statutory Instruments**

Part 2 applies to the regulations that Scottish Ministers can make under the 1986 Act with regard to legal aid.

Section 26(2) of the Draft Bill proposes to lengthen the laying period for negative instruments from 21 one days to 28.

The relevant question for the Board is:

***20(a) Do you agree with the main features of the negative procedure and, in particular, with the proposal to extend from 21 days to 28 days the minimum period for the instrument to be laid before it can come into force?***

The extension of the laying time period is not a major change and should not affect the Board.

***21(a) Do you agree with what is proposed to be provided as the affirmative procedure?***

In relation to affirmative instruments, the Draft Bill proposes that there should be a deadline for the Parliament to approve a motion and that this should be ten days after the expiry of the forty day period. This does not affect the Board as the same forty day period of laying before the Parliament applies. The time limit that the Draft Bill proposes

to be effected by Standing Order similarly does not affect the Board as a fifty day period is the ideal amount of time to allow for regulations of this type to come into force.

Question 21(b):

*Do you agree that the time limit of the Parliament to approve a draft instrument should be left to the Parliament to lay down in Standing Orders?*

is essentially a neutral change from the Board's perspective.

**What are the financial/administrative /legislative implications of proposed changes?**

There are no financial or administrative implications. The only legislative implication is the lengthening of the laying period of negative instruments from twenty one to twenty eight days.

**Conclusion**

There are no significant legal aid issues raised in the Draft Bill.