



Children's Legal Assistance Update

17 February 2012

To all criminal legal aid practitioners

CHILDREN'S HEARINGS (SCOTLAND) ACT 2011 UPDATE FEBRUARY 2012

This update provides important information about The Children's Hearings (Scotland) Act 2011 and its legal aid implications.

The Children's Hearings (Scotland) Act 2011 (the 2011 Act) makes major changes to the operation of children's hearings and to the bodies responsible for their administration and management. It also makes significant changes to the legal aid provisions and this update addresses those aspects of the 2011 Act.

The Board is currently involved in discussions with the government about the implementation of the 2011 Act and has had a number of helpful meetings with the Law Society of Scotland, The Family Law Association, The Scottish Children's Reporter Administration (SCRA) and Children's Hearings Scotland (CHS). We intend to continue with that engagement in the lead up to the commencement of the Act's main provisions, but it is important to note that the timescales concerned are set by the Scottish Government. The Scottish Government intends that the main provisions of the 2011 Act will come into effect from 25 September 2012.

Under the current arrangements no form of legal aid or advice and assistance (including ABWOR) is available to enable a solicitor or counsel to represent a child or any relevant person at a children's hearing. The 2011 Act changes that and introduces a number of other changes which can be summarised as follows:

- The establishment of a scheme within the legal aid and assistance scheme for legal representation to be provided, subject to certain tests, at children's hearings and associated court proceedings under the label "children's legal assistance".
- Transfer of responsibility for assessing entitlement to children's legal aid in the sheriff court from sheriffs to the Board. In some circumstances children's legal aid will be made available automatically to a child without application of the merits and means tests.

- The establishment of a contributions regime for those who can afford to contribute to the costs of children's legal aid.
- The establishment of a Registration scheme and a Code of practice and an associated scheme for quality assurance for solicitors who are paid under the children's legal assistance scheme.

As a result of this legislation, children's legal assistance will be made available as follows:

- For certain prescribed hearings the child can apply for and will automatically be granted Children's Legal Aid.
- For the same prescribed hearings a relevant person can apply for ABWOR. This will be considered and granted by the solicitor if the application meets the means and merits tests.
- For other hearings the child and any relevant person can apply for ABWOR, where it is important to note that the regulations require that the solicitor obtains the Board's prior authority. The solicitor considers the means tests and the Board applies post-grant checks to ensure it is satisfied these have been applied correctly. The Board considers the merits tests and decides if they have been met.
- Advice and Assistance will be available as is it is currently to children and relevant persons before or after a hearing and applications are considered and if appropriate granted by the solicitor.
- Children's legal aid will be available, subject to certain tests, for court proceedings. Applications will considered by SLAB.

The Scottish Government intends that the main provisions of the 2011 Act will come into effect from 25 September 2012. In order for that to happen there are a number of important and major pieces of work to be undertaken between now and then:

- Establishment of a Code of Practice which solicitors will be required to abide by when providing children's legal assistance and a registration scheme to register solicitors eligible to provide children's legal assistance. The relevant sections of the 2011 Act were commenced from 31 January 2012 to allow us to commence formal consultation with the Law Society and other appropriate bodies and we plan to commence that in early March 2012. Following that consultation the Board is empowered after 26 March 2012 to commence applications for registration, including an appeals process and development and publication of the register. We will issue further updates to inform practitioners of developments and key dates in these matters.
- Establishment of a quality assurance process to ensure compliance with the Code of Practice. This part of the Act commences on 25 September 2012. The Act does not prescribe how this should be done. There is already a scheme in place for children's work under the auspices of the civil scheme convened by the Law Society, but when this part of the Act commences in September there will be a committee under the Board's convenorship. We are working on this in consultation with the Law Society and will keep practitioners advised.
- Introduction of a Duty scheme to ensure that solicitors are available for those prescribed Children's Hearings where legal aid is automatically available. We are liaising with the SCRA, CHS and local authorities about the arrangements currently in place, particularly with a view to identifying any areas where there may be insufficient supply of solicitors available in order that we can consider how to address such issues.

Participants will generally only be expected to be available for hearings within normal office hours. If a child is kept in custody for alleged commission of an offence this will fall under the criminal duty scheme until the Crown refers the matter to a Reporter.

- Development of a methodology for contributions/means test and application of an “undue hardship” test.

We expect to receive draft regulations from the Scottish Government soon, which will allow us to further develop our proposals for the matters noted above. We will continue actively consulting with relevant bodies such as the Law Society of Scotland, The Family law Association, SCRA and CHS and will issue further information and updates to practitioners as matters progress.

If you have any queries regarding the legal aid aspects of The Children’s Hearings (Scotland) Act 2011 please contact Joe Kelly, Head of Civil Legal Assistance, DDI 0131 240 2031, e-mail kellyjo@slab.org.uk