

PE1695/F

Scottish Government submission of 5 February 2019

Legal Aid allows people who would not otherwise be able to afford it to get help from a solicitor with their legal problems, on both civil and criminal matters. In cases where access to legal advice and support on human rights law is being sought the two types of legal assistance available are Advice and Assistance and Civil Legal Aid. There is no distinction between cases where an impact on human rights is claimed and other civil matters. Any application for legal assistance is subject to statutory tests.

There is a recognition that some individuals may experience difficulties in accessing publicly funded legal assistance in some subject area. The Scottish Government works closely with the Scottish Legal Aid Board (SLAB) and the Law Society of Scotland to provide as wide a range of legal aid as possible. The Scottish Government cannot compel a law firm to take on a particular case. Although a firm is registered for legal aid they are not obligated to provide services to any client or take on a case on a legal aid basis.

The 2018 independent strategic review of legal aid in Scotland, Rethinking Legal Aid, stated that the use of a means test for legal aid complies with the European Convention on Human Rights, and the 'undue hardship' test ensures that there is also provision for taking account of the wide range of circumstances of the individual and the case.

In November 2018 the Scottish Government issued their response to the independent review. The Scottish Government has made it clear that the wide scope of actions for which legal aid is available in Scotland should continue. A new legal aid system in Scotland will be developed that is user-focused and has the flexibility to adapt according to emerging situations and developments.

The Scottish Government recognises that legal aid is often a contentious issue, with a wide range of interests and perceptions on how it should operate, and for whom. During the course of 2019 the Scottish Government has committed to publishing a public consultation on future reforms that will deliver an improved, user-focused legal aid service for Scotland that will be used to develop primary legislation for introduction to the Scottish Parliament in this session.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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