



# THE SCOTTISH LEGAL AID BOARD

44 Drumsheugh Gardens  
Edinburgh EH3 7SW  
Telephone (0131) 226 7061

Legal Services Department

Please ask for extension no 689

To: All legal aid firms

Please quote the department above and  
Our reference: JDH/cs

11 February 2010

Dear Colleague,

## TRANSFER OF TRIBUNAL FUNCTIONS: ASYLUM AND IMMIGRATION CHAMBER

### BACKGROUND

The Tribunals, Courts and Enforcement Act 2007 (the “2007 Act”) provides for the transfer of functions of various tribunals to the First-tier Tribunal and Upper Tribunal (“the Tribunals”).

### CURRENT ARRANGEMENTS

The current arrangements for funding legal representation before a tribunal fall partly under ABWOR:

- Asylum and Immigration Tribunal;
- VAT and Duties Tribunal;
- Pensions Regulator Tribunal;

and partly under civil legal aid

- Child Support Commissioners;
- Social Security Commissioners.

Proceedings before the Mental Health Tribunal for Scotland and the Employment Tribunal are unaffected by the new arrangements.

### STATE FUNDED LEGAL REPRESENTATION

The policy objective of the government is to ensure that state-funded legal representation continues to be available in relation to those proceedings for which it was available prior to the relevant transfer of functions to the Tribunals. To this end, draft regulations have been prepared and will be laid shortly. However, these have been delayed pending the resolution of a number of issues and will not be in place by 15 February 2010, the date on which the Asylum and Immigration Chamber of the Tribunals comes into being.

A Scottish Minister’s Determination has been signed to allow us to continue to make payment of fees properly incurred by solicitors (and, where appropriate, counsel) and necessary outlays in connection with representation before the Asylum and Immigration First-tier and Upper Tribunals. This will ensure continuity of representation until the regulations can come into force.

## **TRIBUNALS AFFECTED BY TRANSFER OF FUNCTIONS**

The relevant transfer of functions are:

- the transfer of the Social Security Commissioners' functions and the Child Support Commissioners' functions effective from 3rd November 2008 under the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833);
- the transfer of the VAT and Duties Tribunal's functions effective from 1st April 2009 under the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56);
- the transfer of the Asylum and Immigration Tribunal's functions, effective from 15th February 2010 under the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21); and
- the transfer of the Pensions Regulator Tribunal's functions, effective from 6th April 2010 under the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22).

Please note that it is intended that all work before the Tribunals will be covered by ABWOR once the regulations come into force. Where the Tribunals are dealing with functions formerly exercised by the Child Support or Social Security Commissioners' functions, these too will be covered by ABWOR and not civil legal aid.

Otherwise, the only difference between the former Tribunals and the First-tier and Upper Tribunals is the change of name.

The transfer of the Pension Regulator Tribunal's function is not effective until 6 April 2010.

## **INTERIM ARRANGEMENTS – ASYLUM AND IMMIGRATION TRIBUNALS**

You should continue to provide advice and assistance and ABWOR in connection with work before the Asylum and Immigration Tribunals, applying the usual tests and assessing any contribution payable by the client. You should continue to use the templates which we will be revising in due course. On conclusion of the matter, you should lodge your account in the normal way.

We are liaising with the Government to issue a similar Determination to provide interim cover for the other affected Tribunals.

## **COURT OF SESSION**

Civil legal aid continues to be available for all work before the Court of Session including appeals from the Tribunals and judicial review. You will be aware that the Court of Session has a discretion to remit a judicial review to the Upper Tribunal. In these circumstances the cover will revert to ABWOR.

## **FURTHER GUIDANCE**

We will provide further guidance on interim cover for the other Tribunals as soon as it is in place.

We are continuing to liaise with the Government to bring forward the new regulations as soon as possible and will provide further guidance on developments.