
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 312

LEGAL AID AND ADVICE

The Legal Aid (Supreme Court) (Scotland) Regulations 2009

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| <i>Made</i> | - - - - | <i>8th September 2009</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>9th September 2009</i> |
| <i>Coming into force</i> | - - | <i>1st October 2009</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 33(2) and (3) and 36(1) and (2)(a) and (c) of the Legal Aid (Scotland) Act 1986⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Legal Aid (Supreme Court) (Scotland) Regulations 2009 and come into force on 1st October 2009.

Application

2. These Regulations do not apply in respect of proceedings in the House of Lords where before 1st October 2009 the proceedings concluded and a question or dispute as to the amount of fees or outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, was referred for taxation to the Auditor of the Court of Session.

Amendment of the Civil Legal Aid (Scotland) (Fees) Regulations 1989

3.—(1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989⁽²⁾ are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2(1)—

(a) in the definition of “auditor”—

(i) in sub-paragraph (a) omit “, House of Lords”; and

(ii) for sub-paragraph (e) substitute—

(1) 1986 c.47. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) S.I. 1989/1490; amended by S.I. 1990/473, 1991/565, 1994/1015 and 1233, 1995/1044, 1997/689, 1999/1042 and S.S.I. 2002/496, 2003/178, 2004/281, 2005/449, 2007/14, 181 and 438 and 2009/203.

- “(e) in relation to proceedings in the Supreme Court, the Registrar of the Supreme Court;” and
- (b) in the definition of “right of audience” for “, the House of Lords and the Judicial Committee of the Privy Council” substitute “and the Supreme Court”.
- (3) In regulation 2(1A)(a) for “House of Lords or the Judicial Committee of the Privy Council” substitute “Supreme Court”.
- (4) In regulation 5(3)—
 - (a) for “Judicial Committee of the Privy Council” substitute “Supreme Court on appeal from the Court of Session or”; and
 - (b) omit “, 12, 13(b), 32” and “House of Lords,”.
- (5) In regulation 10(2) for “Judicial Committee of the Privy Council, House of Lords” substitute “Supreme Court”.
- (6) In regulation 10(2A) for “House of Lords or the Judicial Committee of the Privy Council” substitute “Supreme Court”.
- (7) In regulation 12A—
 - (a) in paragraph (1) for “Judicial Committee of the Privy Council” in both places it occurs substitute “Supreme Court”; and
 - (b) in paragraph (4) for “Board of the Judicial Committee of the Privy Council” substitute “panel of Justices, as defined by rule 3(2) of the Supreme Court Rules 2009(3),”.

Amendment of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989

- 4.—**(1) The Criminal Legal Aid (Scotland) (Fees) Regulations 1989(4) are amended in accordance with paragraphs (2) to (7).
- (2) In regulation 2(1), in the definition of “right of audience”, for “Judicial Committee of the Privy Council” substitute “Supreme Court”.
 - (3) For regulation 11(1)(b) substitute—
 - “(b) the Supreme Court, the matter shall be referred for taxation to the Registrar of the Supreme Court; or”.
 - (4) In regulation 11A—
 - (a) in paragraph (1), for “Judicial Committee of the Privy Council” in both places it occurs, substitute “Supreme Court”; and
 - (b) in paragraph (4), for “Board of the Judicial Committee of the Privy Council” substitute “panel of Justices, as defined by rule 3(2) of the Supreme Court Rules 2009,”.
 - (5) In the heading to Schedule 1 and in the definition of “court” in paragraph 7 of that Schedule, for “Judicial Committee of the Privy Council” substitute “Supreme Court”.
 - (6) In the heading to Schedule 3 for “Judicial Committee of the Privy Council” substitute “Supreme Court”.
 - (7) In Schedule 3—
 - (a) for “Judicial Committee” substitute “Supreme Court” in—
 - (i) paragraph 2(c)(vi) of the notes on operation; and
 - (ii) paragraph 1(c) of the Table of Fees; and

(3) [S.I. 2009/1603](#).

(4) [S.I. 1989/1491](#); amended by [S.I. 1990/474](#) and [1035](#), [1991/566](#), [1992/374](#), [1994/1019](#), [1997/719](#), [1999/491](#) and [1042](#) and [S.S.I. 2002/246](#), [2004/264](#) and [316](#), [2005/656](#), [2006/515](#), [2007/180](#) and [2008/240](#).

- (b) in paragraph 1(a) of the Table of Fees for “petition for leave to appeal” substitute “application for permission to appeal”.

Amendment of the Legal Aid in Contempt of Court Regulations 1992

5.—(1) The Legal Aid in Contempt of Court Proceedings (Scotland) Regulations 1992⁽⁵⁾ and the Legal Aid in Contempt of Court Proceedings (Scotland) (Fees) Regulations 1992⁽⁶⁾ are amended in accordance with paragraph (2).

(2) In regulation 2(1) of both sets of Regulations, in the definition of “right of audience” for “, the House of Lords and the Judicial Committee of the Privy Council” substitute “and the Supreme Court”.

Amendment of the Criminal Legal Aid (Scotland) Regulations 1996

6.—(1) The Criminal Legal Aid (Scotland) Regulations 1996⁽⁷⁾ are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(1) in the definition of “right of audience” and in regulation 14(1)(a), for “Judicial Committee of the Privy Council” substitute “Supreme Court”.

(3) For regulation 4(1)(k) substitute—

“(k) proceedings in the Supreme Court on appeal from the High Court of Justiciary under paragraph 13 of Schedule 6 to the Scotland Act 1998⁽⁸⁾ including any application for permission to appeal.”.

Amendment of the Legal Aid (Scotland) (Children) Regulations 1997

7.—(1) The Legal Aid (Scotland) (Children) Regulations 1997⁽⁹⁾ are amended in accordance with paragraph (2).

(2) In regulation 2(1), in the definition of “right of audience”, for “, the House of Lords and the Judicial Committee of the Privy Council” substitute “and the Supreme Court”.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

8.—(1) The Civil Legal Aid (Scotland) Regulations 2002⁽¹⁰⁾ are amended in accordance with paragraphs (2) to (9).

(2) In regulation 2(1), in the definition of “right of audience”, for “, the House of Lords and the Judicial Committee of the Privy Council” substitute “and the Supreme Court”.

(3) In regulation 2(2)(a) for “House of Lords or the Judicial Committee of the Privy Council” substitute “Supreme Court”.

(4) For regulation 4(1)(e) substitute—

“(e) proceedings in the Supreme Court—

(i) on appeal from the Court of Session; or

(ii) by way of application for permission to appeal in terms of paragraph 13 of Schedule 6 to the Scotland Act 1998;”.

(5) S.I. 1992/1227; amended by S.I. 1994/1016, 1995/2319, 96/2550 and S.S.I. 2005/451.

(6) S.I. 1992/1228; amended by S.I. 1994/1018 and 1997/718.

(7) S.I. 1996/2555; amended by S.I. 1999/1042 and S.S.I. 2001/306, 2002/441, 2003/249, 2004/282 and 2005/450.

(8) 1998 c.46; paragraph 13 of Schedule 6 was amended by the Constitutional Reform Act 2005 (c.4) Schedule 9, paragraph 103.

(9) S.I. 1997/690.

(10) S.S.I. 2002/494; amended by the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) schedule 3, paragraph 38 and S.S.I. 2003/49 and 486, 2004/491, 2005/112 and 448, 2006/325, 2007/59 and 425 and 2008/50, S.I. 2008/1879 and S.S.I. 2009/49.

- (5) Omit regulation 4(1)(j).
- (6) In regulation 18(2)(t) for “House of Lords or the Judicial Committee of the Privy Council” substitute “Supreme Court”.
- (7) In regulation 21(1)(a) for “Judicial Committee of the Privy Council or the House of Lords” substitute “Supreme Court”.
- (8) In regulation 43—
 - (a) in the heading to that regulation for “House of Lords” substitute “Supreme Court”; and
 - (b) for “Clerk of Parliaments” in both places it occurs substitute “Registrar of the Supreme Court”.
- (9) In regulation 45(3) for “, the House of Lords or the Judicial Committee of the Privy Council” substitute “or the Supreme Court”.

Transitional provision

- 9.** For the purposes of the Regulations amended by these Regulations, the following proceedings are to be treated as if they were proceedings in the Supreme Court:—
- (a) proceedings in the Judicial Committee of the Privy Council or the House of Lords which concluded before 1st October 2009; and
 - (b) proceedings which transferred from the House of Lords or the Judicial Committee of the Privy Council to the Supreme Court in accordance with paragraph 3 of Schedule 10 to the Constitutional Reform Act 2005⁽¹¹⁾.

St Andrew’s House,
Edinburgh
8th September 2009

KENNY MACASKILL
A member of the Scottish Executive

⁽¹¹⁾ 2005 c.4.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend legal aid legislation in consequence of the transfer of jurisdictions from the House of Lords and the Judicial Committee of the Privy Council to the Supreme Court. That transfer (provided for by virtue of section 40 of the Constitutional Reform Act 2005) and the amendments made by these Regulations will take effect on 1st October 2009.

Fees and outlays for work done in relation to proceedings in the House of Lords or the Judicial Committee of the Privy Council may not have been calculated or, as the case may be, subjected to taxation before 1st October 2009. Transitional scenarios are dealt with as follows:

Regulation 2 provides that these Regulations do not apply in respect of proceedings in the House of Lords where the proceedings were concluded and a reference for taxation made before the transfer of jurisdiction. Any dispute or question as to the amount of fees or outlays in respect of those proceedings will therefore continue to be dealt with by the Auditor of the Court of Session after 1st October 2009 as it would have been before that date.

Any dispute or question as to the amount of fees or outlays in respect of proceedings in the Judicial Committee of the Privy Council would, before 1st October 2009, be referred for taxation to the Registrar of that court. The effect of regulation 9(a) is that after 1st October 2009 any such dispute or question will be referred for taxation to the Registrar of the Supreme Court. So too will any dispute or question relating to proceedings in the House of Lords where a reference for taxation has not been made to the Auditor of the Court of Session before that date and regulation 2 therefore does not apply.

As a result of the transfer of jurisdictions, some proceedings begun in the House of Lords or the Judicial Committee of the Privy Council will continue in the Supreme Court. Regulation 9(b) provides that for the purposes of the legal aid legislation amended by these Regulations, such transferred proceedings are deemed to have been conducted wholly in the Supreme Court.