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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 63**

**LEGAL AID AND ADVICE**

**The Criminal Legal Aid (Scotland)  
(Fees) Amendment Regulations 2010**

*Made* - - - - 24th February 2010  
*Laid before the Scottish  
Parliament* - - - - 25th February 2010  
*Coming into force* - - 23rd March 2010

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

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2010 and come into force on 23rd March 2010.

(2) In these Regulations “the 1989 Regulations” means the Criminal Legal Aid (Scotland) (Fees) Regulations 1989(2).

**Application**

2.—(1) Subject to paragraph (2) and to regulation 3, these Regulations apply only in relation to proceedings commenced on or after 23rd March 2010.

(2) If the counsel involved so requests, in determining the fees chargeable in respect of proceedings commenced on or after 2nd October 2006 and before 23rd March 2010 the 1989 Regulations are to be read and have effect as if amended in accordance with regulation 4.

**Amendment of the 1989 Regulations for the period from 4th April 2005 to 2nd October 2006**

3. For the period from 4th April 2005 to 2nd October 2006 paragraph 10(d) of Schedule 2 (notes on the operation of Schedule 2) to the 1989 Regulations is amended as follows:-

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- (1) 1986 c.47. Sections 33 and 36 were amended for purposes not relevant to these Regulations. 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. 1989/1491, as relevantly amended by S.S.I. 2005/656 and S.S.I. 2007/180; Regulation 8 of S.S.I. 2005/656 saves the effect of S.S.I. 2005/113 and S.S.I. 2005/584 in respect of proceedings which commenced before 4th April 2005 where counsel would be entitled to a higher fee for work done in respect of those proceedings under the Table of Fees in Schedule 2 as amended by those Regulations than counsel would be entitled to had those Regulations not been made.

- (a) after “two thirds of” insert “either (i)”; and
- (b) at the end add—
  - “or;
  - (ii) such higher figure as was allowed by the Board, or as the case may be the auditor, up to the maximum fee prescribed in Chapter 3 of Part II of the Table of Fees in this Schedule.”.

### **Amendment of the 1989 Regulations**

- 4.—(1) Schedule 2 to the 1989 Regulations is amended as follows.
- (2) In the notes on the operation of Schedule 2—
- (a) in paragraph 1 for “fees shall be calculated” substitute “fees including those within a range of fees, shall be determined or calculated”;
  - (b) in paragraph 3—
    - (i) in subparagraph (b) for “counsel shall only be allowed the fees” substitute “counsel’s fees shall be allowable as”;
    - (ii) in subparagraph (e) after the words “junior counsel” where they first appear insert “or for more than one junior counsel” and at the end insert “or more than one junior counsel”;
    - (iii) in subparagraph (f), at the beginning insert “except on cause shown,”;
  - (c) for paragraphs 4 to 11 substitute the text in Schedule 1 to these Regulations;
  - (d) in paragraph 17—
    - (i) in subparagraph (i) after “paragraph 3” insert “(a) or (b)”;
    - (ii) after subparagraph (i) insert—
      - “; and
      - (j) in the same circumstances as those described at paragraph (i) above, but where the category of charge falls under paragraph 3(c) of Chapter 1 or 2 of Part I, the fee payable shall be that prescribed in paragraph 4(a) of Chapter 1 or 2 of Part I.”;
  - (e) in paragraph 17A for “(u)” substitute “(t)”;
  - (f) in paragraph 20 after “Chapters 1 and 2 of Part 1” insert “, paragraph 9 of Chapters 1 and 2 of Part II”;
  - (g) in paragraph 21 after “Chapters 1 and 2 of Part 1” insert “, paragraph 10 of Chapters 1 and 2 of Part II”.
- (3) In Part 1 of the Table of Fees (fees of counsel for proceedings in the High Court of Justiciary)
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- (a) in Chapter 1 (junior counsel)—
    - (i) after paragraph 1B (a), insert—
      - “(aa) preliminary hearing, adjourned or Payable at the full rate for a trial continued in which witnesses called to give (paragraph 3 below) depending on category of evidence of case and status of counsel.”;
    - (ii) in paragraph 4(j)(iii), for “£455 £395 £275” substitute “£495 £430 £305” respectively;
  - (b) in Chapter 2 (senior counsel)—

(i) after paragraph 1B (a), insert—

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“(aa) preliminary hearing, adjourned or Payable at the full rate for a trial continued in which witnesses called to give (paragraph 3 below) depending on category of case and status of counsel.”;

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(ii) in paragraph 4(j)(iii) for “£515” substitute “£560”.

(4) In Part II of the Table of Fees (fees of counsel in appeal proceedings)—

(a) for Chapters 1 and 2 substitute the text in Schedule 2 to these Regulations; and

(b) delete Chapter 3.

(5) In Part III of the Table of Fees (fees of counsel for proceedings in the sheriff and district court), in Chapter 1 (junior counsel), paragraph 3(j)(ii), for the fee “£300” substitute “£305”.

St Andrew’s House,  
Edinburgh  
24th February 2010

*KENNY MACASKILL*  
A member of the Scottish Executive

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## SCHEDULE 1

Regulation 4(c)

### FEES OF COUNSEL

#### Appeals in the High Court of Justiciary

“4. In a hearing as specified in paragraph 1(c) or 2(b) of Chapter 1 or 2 of Part II of the Table of Fees which is set down for half a day or longer or where the appellant has been sentenced to a period of imprisonment of 10 years or more, to life imprisonment or where an order for lifelong restriction has been made, the fee payable shall be that in the range specified in paragraph 3(d) of Chapter 1 or 2 of Part II respectively.

5. Subject to paragraphs 9 to 11B below, the fees including those within a range of fees, as prescribed in Part II of the Table of Fees, shall include all preparation.

6. Where counsel is seeking a higher fee within the range under paragraph 3(d), 6(a), (b) or (c) (hearings) of Chapter 1 or 2 of Part II he or she will need to justify this by establishing that due to the nature of the case an unusually high level of preparation was required or that any of the factors below exist and that they have had a significant effect on the conduct of the case:—

- (a) novelty of the issues of law;
- (b) unusually complex issues of fact;
- (c) issues of considerable legal significance.

7. Where the Auditor determines the appropriate fee he or she shall specify which of the factors in paragraph 6 justify such a fee and the extent to which each of those factors contribute to that fee.

8. Where counsel is seeking a higher fee within the range under paragraph 2(a), 3(a), (b), (e) or 6(d) (written work) of Chapter 1 or 2 of Part II he or she will need to justify this by reference to either or both of the following factors:—

- (a) the content rather than the length of the document; and
- (b) the amount of documentation necessarily referred to.

9. Where a hearing has been fixed in an appeal under paragraph 3, 4 or 6 of Chapter 1 or 2 of Part II of the Table of Fees counsel may claim an additional fee for preparation for the hearing only where:—

- (a) it is set down for a day or more and counsel has spent more than 2 hours per day on preparation; or
- (b) the case is abnormal in magnitude, or difficulty, or in any other material respect.

10. Where an additional fee for preparation is claimed counsel must provide the Board with details of the nature of the preparation including:—

- (a) where a higher fee has been claimed or received within a range of fees, identification of the part or parts of that fee which relate to those factors mentioned in subparagraphs (a) to (c) of paragraph 6 above or to the factor of an unusually high level of preparation;
- (b) records providing a detailed summary of the nature of the work or, if applicable, the nature of the documentation perused at each stage of the process, the time taken and when and where the work was undertaken and the details of authorities referred to in the course of preparation; and
- (c) any contemporaneous record or notes made in the course of preparation.

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**11.** Except on cause shown, an additional fee for preparation shall only be allowable once to both junior and senior counsel notwithstanding that the assisted person may be represented by more than one junior or senior counsel or both during the course of the case.

**11A.** In assessing the amount of time for which an additional fee for preparation is payable the Board, or the Auditor as the case may be, will consider the amount of time that is reasonable having regard to the following factors:—

- (a) the facts and circumstances of the case; and
- (b) the extent to which payment for preparation is already covered by the prescribed fee or the fee deemed appropriate within the range of fees, taking into account that in cases set down for a day or more 2 hours preparation is covered by that fee by virtue of paragraph 9(a).

**11B.** The additional fee shall be calculated by dividing the time allowed for additional preparation in terms of paragraph 11A above into units of 6 hours, each unit payable at the rate of two thirds of the prescribed fee or the fee deemed appropriate within the range of fees in Chapter 1 or 2 of Part II of the Table of Fees.”

SCHEDULE 2

Regulation 4(4)(a)

FEEs OF COUNSEL IN APPEAL PROCEEDINGS

“PART 2

FEEs OF COUNSEL IN APPEAL PROCEEDINGS

CHAPTER 1 — JUNIOR COUNSEL

		<i>Junior as Leader</i>	<i>Junior Alone</i>	<i>Junior with Leader</i>
1.	Appeal against Sentence			
(a)	drafting Grounds or Note of Appeal against sentence	£82	£82	£82
(b)	written Submissions in Appeal against Sentence	£125	£100	£75
(c)	any hearing under sections 107 and 187 of the Criminal Procedure (Scotland) Act 1995, including any consultation on the day of the appeal	£201	£150	£112
(d)	any hearing on appeal against sentence, including any consultation on the day of the appeal	£201	£150	£112
(e)	opinion (or note) on appeal against sentence (where not otherwise prescribed)	£75	£75	£75
2.	Appeal by way of Bill of Suspension, Bill of Advocation or Stated Case			

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		<i>Junior as Leader</i>	<i>Junior Alone</i>	<i>Junior with Leader</i>
	(a) drafting Bill of Suspension or Bill of Advocation or adjustment of Stated Case	£85-£266	£82-£200	£75-£150
	(b) appearance at any hearing on Stated Case, Bill of Suspension or Advocation	£335	£250	£187
	(c) opinion	£125	£125	£125
3.	Appeal against Conviction or Conviction and Sentence			
	(a) drafting Grounds of Appeal against conviction or conviction and sentence	£250-£420	£200-£350	£140-£300
	(b) written Submissions in Appeal against conviction or conviction and sentence	£250-£420	£200-£350	£140-£300
	(c) completion of Form 15 (available once per case)	£150	£150	£150
	(d) Hearing on Appeal against conviction or conviction and sentence	£700-£1,089	£500-£825	£400-£625
	(e) opinion	£250-£400	£200-£350	£140-£300
4.	Appeal Hearing before a Full Bench (5 or more Judges)	£1,300	£1000	£750
5.	Appeals in relation to Bail or Interim Liberation			
	(a) all work in connection with an appeal relating to granting of bail or interim liberation, except (b) below	£30	£30	£30
	(b) all work in connection with an application for interim liberation before 3 judges	£140	£100	£75
6.	Appeals Conduct Other			
	(a) hearing on petition to the Nobile Officium	£700-£1,089	£500-£825	£305-£625
	(b) reference to the High Court (devolution issue)	£700-1,089	£500-825	£400-£625
	(c) appeal arising from pre-trial or continuing trial hearing	£700-£1,089	£500-£825	£400-£625
	(d) opinion	£250-£400	£200-£350	£140-£300
7.	Appeals Written Work Other			
	(a) drafting Devolution Minute	£150	£150	£150
	(b) drafting Petition to the Nobile Officium	£225	£225	£225
8.	Consultations	£210	£184	£135

	<i>Junior as Leader</i>	<i>Junior Alone</i>	<i>Junior with Leader</i>
9. Travel			
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken within Scotland, including travel to a Procurator Fiscal's office or elsewhere to view productions	£100	£100	£100
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken furth of Scotland	£200	£200	£200
10. Accommodation and associated subsistence			
Payment of necessary accommodation and associated subsistence per day	£100.00	£100.00	£100.00

## CHAPTER 2 – SENIOR COUNSEL

	<i>Senior</i>
1. Appeal against Sentence	
(a) drafting Grounds or Note of Appeal against sentence	£124
(b) written Submissions in Appeal against Sentence	£152
(c) any hearing under sections 107 and 187 of the Criminal Procedure (Scotland) Act 1995, including any consultation on the day of the appeal	£228
(d) any hearing on appeal against sentence, including any consultation on the day of the appeal	£228
(e) opinion (or note) on appeal against sentence (where not otherwise prescribed)	£114
2. Appeal by way of Bill of Suspension, Bill of Advocation or Stated Case	
(a) drafting Bill of Suspension or Bill of Advocation or adjustment of Stated Case	£124-£300
(b) appearance at any hearing on Stated Case, Bill of Suspension or Advocation	£393
(c) opinion	£187.50
3. Appeal against Conviction or Conviction & Sentence	
(a) drafting Grounds of Appeal against conviction or conviction and sentence	£250-£506
(b) written Submissions in Appeal against conviction or conviction and sentence	£250-£506
(c) completion of Form 15 (available once per case)	£225

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		<b>Senior</b>
(d)	Hearing on Appeal against conviction or conviction and sentence	£900-£1,250
(e)	opinion	£350-£700
4.	Appeal Hearing before a Full Bench (5 or more Judges)	£1,500
5.	Appeals in relation to Bail or Interim Liberation	
(a)	all work in connection with an appeal relating to granting of bail or interim liberation, except (b) below	£50
(b)	all work in connection with an application for interim liberation before 3 judges	£150
6.	Appeals Conduct Other	
(a)	hearing on petition to the Nobile Officium	£900-£1,250
(b)	reference to the High Court (devolution issue)	£900-£1,250
(c)	any appeal arising from pre-trial or continuing trial hearing	£900-£1,250
(d)	opinion	£350-£700
7.	Appeals Written Work Other	
(a)	drafting Devolution Minute	£150
(b)	drafting Petition to the Nobile Officium	£225
8.	Consultations	£250
9.	Travel	
	Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken within Scotland, including travel to a Procurator Fiscal's office or elsewhere to view productions	£100
	Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken furth of Scotland	£200
10.	Accommodation and associated subsistence	
	Payment of necessary accommodation and associated subsistence per day	£100.00"

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend Schedule 2 to the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (“the 1989 Regulations”).

Regulation 2 provides for counsel to have the choice of whether to apply the amendments in these Regulations to the 1989 Regulations to fees they charge for work in relation to proceedings commenced between 2nd October 2006 and the coming into force date of these Regulations. This election must be for all work done after that date on a particular case.

Regulation 3 amends the 1989 Regulations for the period from 4th April 2005 to 2nd October 2006 to provide that where an additional fee is payable in exceptional cases involving extraordinary preparation the fee is to be calculated by reference to the main fee payable, rather than by reference to the minimum main fee payable.

Regulation 4(2), (4) and Schedules 1 and 2 amend fees of counsel in criminal appeals by:—

- substituting a new Part II in Schedule 2 to the 1989 Regulations which, in particular, introduces ranges of fees for certain hearings and written work;
- amending and substituting parts of the “Notes on the operation of Schedule 2” to reflect the changes in the new Part II and, in particular, setting out the circumstances in which a higher fee within a range of fees shall be payable and when an additional fee may be claimed; and
- making certain other minor amendments.

Regulation 4(3) amend fees of counsel in the High Court of Justiciary by:—

- inserting a new category of fee for hearings in which witnesses are called to give evidence following the adjournment or continuation of the preliminary hearing;
- uprating fees for certain confiscation diets.

Regulation 4(5) amends a fee for counsel for a particular confiscation diet in the sheriff or district court.