

Draft Regulations laid before the Scottish Parliament under section 37 of the Legal Aid (Scotland) Act 1986, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

LEGAL AID AND ADVICE

The Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014

Made - - - -

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9, 33(3A), (3C), (3D), (3F) to (3H), and 36(1) and (2)(a), (c) and (e) of the Legal Aid (Scotland) Act 1986(1) and all other powers enabling them to do so.

In accordance with section 37 of the Legal Aid (Scotland) Act 1986, a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and application

1. These Regulations may be cited as the Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 and come into force the day after the day on which they are made.

2. These Regulations apply only in respect of proceedings commenced on or after the day on which they come into force.

Amendment of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999

3. The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(2) are amended as follows.

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- (1) 1986 c.47; subsection (3A) was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 51. Subsections (3C), (3D) and (3F) to (3J) were inserted by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), section 7. Subsections (3AC) and (3E) contain definitions relevant for the purpose of subsections (3C) and (3D). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53. The powers to make these Regulations were modified by paragraphs 2 and 5 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and are exercised together by virtue of section 33(2) of that Act. These Regulations are subject to the affirmative procedure.
- (2) S.I. 1999/491; regulation 2 was amended by S.S.I. 1999/48; regulation 4(3) was substituted by S.S.I. 2004/263 and amended by S.S.I. 2010/237; regulation 4(5A) and (5B) was inserted by S.S.I. 2011/162, regulation 4A(1) was inserted by S.S.I. 2002/247

4. In regulation 2(1) (interpretation), in the definition of “diet of deferred sentence” for the words from “sections 201” to the end of the definition substitute “section 201 (power of court to adjourn case before sentence), section 202 (deferred sentence) or section 203 (reports) of the 1995 Act;”.
5. For regulation 4(3)(b) (fixed payments allowable to solicitors) substitute—
- “(b) proceedings under section 22, 22ZA(1)(a), 27(1)(a), 28 or 150(8) of the 1995 Act arising out of the complaint or complaints referred to in sub-paragraph (a).”.
6. For regulation 4(5A)(b) substitute—
- “(b) a guilty plea is tendered to a charge labelled in any of the complaints at the first diet at which the assisted person was called upon to plead, resulting in the disposal of the case.”.
7. For regulation 4(5B) substitute—
- “(5B) The amount payable under paragraph 1 of Part 1 of Schedule 1 or, as the case may be, paragraph 1 of Schedule 1A is half the amount that would otherwise be payable if the assisted person—
- (a) was represented by a solicitor arranged by the Board to provide criminal legal aid in accordance with regulation 7(1) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011;
 - (b) tendered a plea of not guilty to any charge labelled in a complaint at the first diet at which the assisted person was called upon to plead; and
 - (c) before the commencement of the trial tendered a plea of guilty to that charge or any other charge in that complaint resulting in the disposal of the case.”.
8. In regulation 4A(1) (exceptional cases), after “Schedule 1” insert “, Schedule 1A”.
- 9.—(1) Part 1 of Schedule 1 is amended as follows.
- (2) In the headings to the second and third columns—
 - (a) for “District Court” in each case substitute “JP court”; and
 - (b) for “set down to proceed” in each case substitute “marked for prosecution”.
 - (3) In paragraph 2—
 - (a) after “section” insert “22ZA(1)(b), 22ZB or”;
 - (b) in the second column (proceedings in the district court), for “£157.50” substitute “£147.50”;
 - (c) in the third column (proceedings before a Stipendiary Magistrate or in the sheriff court), for “£257.50” substitute “£195.00 in relation to proceedings before a Stipendiary Magistrate; £242.50 in relation to proceedings in the sheriff court”; and
 - (d) in the fourth column (proceedings in the sheriff court) for “£257.50” substitute “£242.50”.
 - (4) In paragraph 10ZA, after “deferred sentence hearing”, insert “other than where a fee is payable by virtue of paragraph 1(iiiia) in respect of a first or second diet of deferred sentence”.
- 10.—(1) Schedule 1A is amended as follows.
- (2) In the heading to the second column, for “set down to proceed” substitute “marked for prosecution”.
 - (3) In paragraph 2—

- (a) after “section” insert “22ZA(1)(b), 22ZB or”;
- (b) in the second column (proceedings before a Stipendiary Magistrate or in the sheriff court) for “£257.50” substitute “£195.00 in relation to proceedings before a Stipendiary Magistrate; £242.50 in relation to proceedings in the sheriff court”; and
- (c) in the third column (proceedings in the sheriff court) for “£257.50” substitute “£242.50”.

11.—(1) Part 1 of Schedule 1B is amended as follows.

(2) In the headings to the second and third columns, for “set down to proceed” in each case substitute “marked for prosecution”.

(3) In paragraph 1 after “8” insert “, 8A”.

(4) In paragraph 2(c), after “1995 Act” insert “(including preparation for such a diet where the diet has not subsequently taken place)”.

(5) In paragraph 3—

- (a) after “section” insert “22ZA(1)(b), 22ZB or”;
- (b) in the third column (proceedings before a Stipendiary Magistrate or in the sheriff court) for “£257.50” substitute “£195.00 in relation to proceedings before a Stipendiary Magistrate; £242.50 in relation to proceedings in the sheriff court”.

(6) In paragraphs 4 to 7, 12 and 13, omit the fees shown in the third column (proceedings before a Stipendiary Magistrate or in the sheriff court).

(7) In paragraph 8A, after “deferred sentence hearing” insert “, other than where a fee is payable by virtue of paragraph 1(c) in respect of a first or second diet of deferred sentence”.

Amendment of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003

12. In the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003(3), in regulation 6(1)(ba) (summary criminal proceedings), for “at any diet” substitute “in relation to any diet”.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 No. 366*

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“the 1999 Regulations”) and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 (“the 2003 Regulations”).

The amendments reduce the fees payable for criminal legal aid work by solicitors in summary criminal proceedings, clarify some fees and ensure the availability of assistance by way of representation in relation to certain hearings.

Regulation 6 of the Regulations amends the 1999 Regulations to provide the level of the prescribed amount when pleading guilty to multiple charges in a complaint at first diet.

Regulation 7 of the Regulations substitutes a new regulation 4(5B) of the 1999 Regulations to allow for the reduction of the prescribed amount in certain circumstances detailed in new sub-paragraphs (a) to (c).

Regulation 8 expands the availability under the 1999 Regulations of exceptional case status so that a solicitor may be paid, when a case has that status, detailed fees from any of the Schedules to the 1999 Regulations.

Regulation 12 amends the 2003 Regulations to ensure that assistance by way of representation is available in relation to any diet to which the summary criminal proceedings has been adjourned, not just at any diet to which the case has been adjourned. A similar amendment is made in regulation 11(4) as regards the fee payable under the 1999 Regulations to ensure they are payable in relation to preparation of such diets not just for attendance at them.

A business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the BRIA Final Assessment page on the Scottish Government Publications website: <http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/partial-assessments/full/2014>.