

**2004 No. 263**

**LEGAL AID AND ADVICE**

**The Criminal Legal Aid (Fixed Payments) (Scotland)  
Amendment (No. 3) Regulations 2004**

<i>Made</i> - - - -	<i>3rd June 2004</i>
<i>Laid before the Scottish Parliament</i>	<i>7th June 2004</i>
<i>Coming into force</i> - -	<i>28th June 2004</i>

The Scottish Ministers, in exercise of the powers conferred by sections 33 and 41A of the Legal Aid (Scotland) Act 1986(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment (No. 3) Regulations 2004 and shall come into force on 28th June 2004.

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

2. The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(b) are amended in accordance with the following Regulations.

3. In regulation 4—

(a) for paragraph (3) substitute—

“(3) Except where proceedings have been brought under section 185 of the 1995 Act, for the purposes of the reference to summary proceedings in paragraph (1) above the following are to be treated as a single matter—

(a) a single summary complaint or complaints which arise out of the same incident; and

(b) proceedings under sections 27(1)(a) and 28 of the 1995 Act (breach of bail conditions) arising out of the complaint or complaints referred to in sub-paragraph (a).”; and

(b) for paragraph (7) substitute—

“(7) Where the Board grants an application for a change of solicitor under regulation 17(3) of the Criminal Legal Aid (Scotland) Regulations 1996(c) there shall be paid to each of the solicitors who act for the assisted person in the relevant proceedings—

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(a) 1986 c.47. Sections 33(3A) and 41A were inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), sections 51 and 54 respectively. Sections 33(3C) to (3K) and section 33(3AA) to (3AC) were inserted by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), sections 7 and 8 respectively. 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).

(b) S.I. 1999/491, as amended by S.I. 1999/1820 and S.S.I. 1999/48, 2001/307, 2002/247 and 442, 2003/249 and 2004/51 and 126.

(c) S.I. 1996/2555, as amended by S.I. 1999/1042 and S.S.I. 2001/306, 2002/441 and 2003/249.

- (a) an equal part of the total amount payable under paragraph 1 of Part 1 of Schedule 1; and
- (b) the amounts payable under paragraphs 2 to 13 of Part 1 of Schedule 1 shall be payable to the solicitor who carries out the work described in those paragraphs.”.

4. For Part 1 of Schedule 1 substitute the Schedule to these Regulations.

St Andrew's House,  
Edinburgh  
3rd June 2004

*HUGH HENRY*  
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 4

PROVISIONS SUBSTITUTED FOR THE TABLE SET OUT IN PART  
1 OF SCHEDULE 1 OF THE CRIMINAL LEGAL AID (FIXED  
PAYMENTS) (SCOTLAND) REGULATIONS 1999

“Regulation 4

SCHEDULE 1

PART 1

	<i>Where professional services are provided in relation to proceedings in the District Court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court (other than proceedings in a Court specified in Schedule 2) or the District Court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
1. All work up to and including:  (i) any diet at which a plea of guilty is made and accepted or plea in mitigation is made;	£300 (where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 below £275)	£500 (where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 below £475)	£550 (where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 below £525)

	<i>Where professional services are provided in relation to proceedings in the District Court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court (other than proceedings in a Court specified in Schedule 2) or the District Court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
(ii) the first 30 minutes of conducting a proof in mitigation, or a proof of a victim statement, other than in the circumstances where paragraph 3 below applies;			
(iii) the first 30 minutes of conducting any trial; and			
(iv) advising, giving an opinion and taking final instructions on the prospects of an appeal against conviction, sentence, other disposal or acquittal,			
together with any subsequent or additional work other than that specified in paragraphs 2-13 below.			

	<i>Where professional services are provided in relation to proceedings in the District Court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court (other than proceedings in a Court specified in Schedule 2) or the District Court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
2. All work done in connection with a complaint under section 27(1)(b) of the 1995 Act up to and including the first 30 minutes of conducting a trial or proof in mitigation.	£150	£250	£250
3. All work done in connection with a grant of legal aid under section 23(1)(b) of the Act including the first 30 minutes of conducting a proof in mitigation, or a proof of a victim statement.	£25	£50	£50
4. Conducting a trial or proof in mitigation for the first day (after the first 30 minutes)	£50	£100	£100
5. Conducting a trial or proof in mitigation for the second day.	£50	£200	£200
6. Conducting a trial or proof in mitigation for the third and subsequent days (per day).	£100	£400	£400

	<i>Where professional services are provided in relation to proceedings in the District Court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court (other than proceedings in a Court specified in Schedule 2) or the District Court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
7. Representation in court at a continued diet following a victim statement having been laid before the court where the court determines sentence or fixes a proof of a victim statement, or adjourns such a proof without hearing evidence.	-	£50	-
8. Conducting a proof of a victim statement where there has been no trial or proof in mitigation for the first day (after the first 30 minutes), and thereafter for subsequent days (per day).	-	£200	-
9. Conducting a proof of a victim statement at a continued diet following a concluded trial or proof in mitigation (per day).	-	£200	-

	<i>Where professional services are provided in relation to proceedings in the District Court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court (other than proceedings in a Court specified in Schedule 2) or the District Court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
10. Representation in court at a diet of deferred sentence or per appearance in a court which has been designated as a youth court by the sheriff principal, at a hearing in respect of a community supervision order, or per appearance at a hearing in a court which has been designated as a domestic abuse court by the sheriff principal.	£25	£50	£50
11. All work done where the accused is in custody and has tendered a plea of not guilty until determination of the application for legal aid.	£25	£25	£25
12. All work done by virtue of section 24(7) of the Act until determination of the application for legal aid.	£25	£25	£25
13. All work done in connection with a bail appeal under section 32 of the 1995 Act, or an appeal under section 201(4) of the 1995 Act.	£50	£50	£50

”.

## EXPLANATORY NOTE

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

These Regulations amend the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“the principal regulations”) to provide that—

- (a) for the purposes of the fixed payments specified in Part 1 of Schedule 1 of the principal regulations, proceedings under sections 27(1)(a) and 28 of the Criminal Procedure (Scotland) Act 1995 are to be regarded as part of the same matter as the summary proceedings in respect of which criminal legal aid was originally granted (regulation 3(a));
- (b) where the Scottish Legal Aid Board grants an application for a change of solicitor, the solicitors who act on behalf of an assisted person will each be paid an equal share of the core payment payable under paragraph 1 of Part 1 of Schedule 1 of the principal regulations. In respect of the remaining paragraphs in Part 1 of Schedule 1, payment will be made to the solicitor who carries out the work (regulation 3(b));
- (c) advising and taking instructions on the prospects of an appeal are included within the core payment in paragraph 1 of Part 1 of Schedule 1 of the principal regulations (regulation 4 and the Schedule);
- (d) there shall be fixed payments of £150 in the district court and £250 in the sheriff court for all work done up to and including the first 30 minutes of a trial or proof in mitigation where the assisted person is the subject of a complaint under section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995 (regulation 4 and the Schedule); and
- (e) there shall be a fixed payment of £50 in respect of each appearance at a hearing on behalf of an assisted person in a sheriff court which has been designated as a domestic abuse court by the sheriff principal (regulation 4 and the Schedule).

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