

2005 No.656

LEGAL AID AND ADVICE

**The Criminal Legal Aid (Scotland) (Fees) Amendment (No. 3)
Regulations 2005**

Made - - - - - *21st December 2005*

Laid before the Scottish Parliament *22nd December 2005*

Coming into force - - - *29th January 2006*

The Scottish Ministers, in exercise of the powers conferred on them by section 33(2)(a) and (3), and 36(1) and (2)(a) 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 (Scotland) (Fees) Amendment (No. 3) Regulations 2005 and shall come into force on 29th January 2006.

Application

2. These Regulations apply only in respect of proceedings commenced on or after 4th April 2005.

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

3. The Criminal Legal Aid (Scotland) (Fees) Regulations 1989(b) are amended in accordance with the following Regulations.

4. In regulation 2(1) after the definition of “the 1986 Act” insert—

““the 1988 Act” means the Road Traffic Act 1988(c);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(d);

“the 1995 Consolidation Act” means the Criminal Law (Consolidation) (Scotland) Act 1995(e);

“the 2000 Act” means the Terrorism Act 2000(f);”.

(a) 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).

(b) S.I. 1989/1491 as relevantly amended by S.I. 1990/1035, 1991/566, 1992/374 and 1997/719, and by S.S.I. 2004/264, 2005/113 and 2005/584.

(c) 1988 c.52.

(d) 1995 c.46, as relevantly amended by sections 1, 2 and 25 of, and paragraph 24 of the schedule to, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(e) 1995 c.39.

(f) 2000 c.11.

5. In regulation 10(1) after “appears to” insert—
“the Board, or at taxation”.
6. For paragraph 5(b) of Schedule 1 substitute—
“(b) Short formal letters, letters each having a similar nature, intimations and letters confirming telephone calls;”.
7. For Schedule 2 substitute the Schedule to these Regulations.

Revocation and savings

8.—(1) Subject to paragraph (2), the following Regulations are hereby revoked:—

The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005(a); and

The Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2005(b).

(2) The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005 and the Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2005 will continue to have effect only 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.

St Andrew’s House,
Edinburgh
21st December 2005

HUGH HENRY
Authorised to sign by Scottish Ministers

(a) S.S.I. 2005/113.
(b) S.S.I. 2005/584.

SCHEDULE

Regulation 7

FEES OF COUNSEL

“SCHEDULE 2

Regulation 10

FEES OF COUNSEL

Notes on the operation of Schedule 2

1. Subject to the following provisions of this Schedule, fees shall be calculated by the Board, and in the event of a question or dispute by the auditor, in accordance with the Table of Fees in this Schedule.

2. Where the Table of Fees does not prescribe a fee for any item of work the Board, or as the case may be the auditor, shall allow such fee as appears appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the Table of Fees.

3. In the taxation of counsel's fees—

- (a) counsel's fees are allowed only where the Board has sanctioned the employment of counsel or counsel is automatically available;
- (b) junior counsel shall only be allowed the fees prescribed in Chapter 1 of Parts I to III of the Table of Fees even where sanction has been granted for the employment of senior counsel in the case, except in any case to which sub-paragraph (c) below applies;
- (c) where a senior junior is representing an accused person in a multiple accused case at first instance and where any co-accused is represented by senior counsel, the fees payable to senior junior shall be those prescribed in the Table of Fees for junior as leader, and the fees payable to any junior counsel assisting senior junior shall be those of junior with leader;
- (d) except on cause shown, fees for only two consultations in the case shall be allowed;
- (e) except on cause shown, fees for senior counsel or, as the case may be, for both senior and junior counsel shall not be payable for attendance at hearings which do not require the attendance of senior or, as the case may be, both senior and junior counsel;
- (f) the auditor shall not have regard to any information produced by counsel at taxation which was not made available to the Board at the time the Board made the offer to counsel which is subject to taxation;
- (g) although counsel may keep records of professional services based on the number of hours expended on the work, counsel shall not be entitled to fees at an hourly rate in addition to the fees prescribed in the Table of Fees; and
- (h) correspondence, telephone calls, written work (other than work for which fees are prescribed in the Table of Fees) and meetings between counsel acting for the same assisted person are not allowable as separate items and shall be subsumed within the fees set out for the conduct of a hearing.

Appeals in the High Court of Judiciary

4. The Board, or as the case may be the auditor, shall have power to increase any fee prescribed in Part II of the Table of Fees where satisfied that, because of the particular complexity or difficulty of the work or any other particular circumstances, such an increase is necessary to provide reasonable remuneration for the work. This power shall only be exercised in the following circumstances and subject to the following conditions:—

- (a) the Board, or as the case may be the auditor, shall have regard to the general level of fees in Part II of the Table of Fees;
- (b) the fees prescribed in Part II of the Table of Fees are the fees for a case of average complexity or difficulty requiring the involvement of junior counsel or, where appropriate, senior counsel and includes the level of preparation which would not be considered unusual for such a case;
- (c) the factors which shall be taken into account in considering an increase in any fee are—
 - (i) novelty of the issues of law;
 - (ii) unusually complex issues of fact;
 - (iii) issues of considerable legal significance; and
 - (iv) unusually high level of preparation;
- (d) counsel seeking an enhanced fee shall identify and vouch such factors under sub-paragraph (c) above as apply to the case, and the Board, or as the case may be the auditor, shall require to be satisfied that the factors identified and vouched had a significant effect on the conduct of the case before allowing such a fee;
- (e) in the event of an enhanced fee being allowed after taxation, the auditor shall specify each of the factors in sub-paragraph (c) above which justify the enhanced fee, and the extent to which each of those factors justify the fee.

5. Subject to the provisions of paragraphs 6 to 10 below, the maximum fee which the Board, or as the case may be the auditor, can allow for an item of work, set out in paragraphs 1 and 2 of Chapters 1 and 2 of Part II of the Table of Fees, in a case involving the most complex or difficult work, and whatever the circumstances, shall be that set out in Chapter 3 of Part II of the Table of Fees.

6. Where a hearing as specified in paragraph 2(b) or (c) of Chapter 1 or 2 of Part II of the Table of Fees is set down for half a day, or longer, then the fee allowable for that hearing shall be the same as that specified in paragraph 2(a) of Chapter 1 or 2 of Part II of the Table of Fees. For cases in which the provisions of paragraph 5 above apply, the maximum fee allowable shall be as prescribed in paragraph (f) of Chapter 3 of Part II of the Table of Fees.

7. For a fee set out in paragraph 3 of Chapters 1 and 2 of Part II of the Table of Fees, the Board, or as the case may be the auditor, may allow a percentage increase not exceeding 100 per cent of the fees prescribed for a consultation, subject to the following conditions:—

- (a) in determining an appropriate level of fee, regard shall be had to the length of the consultation and any unusually high level of preparation required which has not otherwise been reflected in a claim for an enhanced fee under paragraph 4 above, or for a separate fee for preparation claimed under paragraph 10 below; and
- (b) no increase shall be allowed in respect of the travel element of the fees prescribed in paragraph 3 of Chapters 1 and 2 of Part II of the Table of Fees.

8. Any enhanced fee allowed by the Board, or as the case may be the auditor, in respect of paragraphs 4 and 5 above shall be proportionate to the maximum fee, and shall be set between the fee prescribed in Part II of the Table of Fees up to the maximum fee for the most complex and difficult case, the amount by which the fee is enhanced depending on the circumstances of the case.

9. Subject to paragraph 10 below, in any case where an unusually high level of preparation was required because of the particular complexity or difficulty of the work, this preparation shall be included within a claim for an enhanced fee under paragraph 4 above, and the Board, or as the case may be the auditor, shall only consider a claim for an enhanced fee in respect of preparation if the following apply:–

- (a) counsel seeking an enhanced fee in respect of preparation shall–
 - (i) identify which part of the claim for an enhanced fee relates to the factors specified in paragraph 4(c)(i) to (iii) above, and which part relates to preparation; and
 - (ii) produce 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
 - (iii) retain and produce, if requested, any contemporaneous record or notes made in the course of preparation; and
- (b) in allowing an enhanced fee for preparation the Board, or as the case may be the auditor, must be satisfied that the level of preparation was necessary, reasonable and proportionate in all the circumstances of the case.

10. In exceptional cases involving extraordinary preparation, a separate fee in respect of that preparation may be allowed at the discretion of the Board, or as the case may be the auditor, but subject to the following conditions:–

- (a) such a fee shall only be payable to the extent that the preparation in respect of which the fee is claimed is not included in an enhanced fee for preparation under paragraph 9 above;
- (b) in allowing such a fee the Board, or as the case may be the auditor, must be satisfied that the level of preparation was necessary, reasonable and proportionate in all the circumstances of the case;
- (c) counsel shall produce 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 shall retain and produce, if requested, any contemporaneous record or notes made in the course of preparation; and
- (d) where such a fee is allowed it shall be calculated by dividing the total time allowed into units of 6 hours, each unit payable at the rate of two-thirds of the fee prescribed at paragraph 2(a) of Chapters 1 and 2 of Part II of the Table of Fees in this Schedule.

11. The Board, or as the case may be the auditor, shall have power to reduce any fee set out in Part II of the Table of Fees in this Schedule where satisfied that, because of any particular circumstances, a reduced fee is sufficient to provide reasonable remuneration for the work having regard to the general level of fees in the said Part II.

Proceedings in the High Court of Justiciary (other than appeals) and the Sheriff Court

12. Subject to paragraphs 13 to 15 below, the fees prescribed in Parts I and III of the Table of Fees in this Schedule shall include all preparation.

13. A fee for separate preparation shall be allowed only on the following conditions:–

- (a) such a fee is allowable only once in any case to junior or senior, or as the case may be junior and senior, counsel representing an applicant or assisted person, notwithstanding that the applicant or assisted person is represented by more than one junior or senior counsel during the course of the case;
- (b) in allowing such a fee the Board, or as the case may be the auditor, must be satisfied that the level of preparation was necessary, reasonable and proportionate in all the circumstances of the case; and

- (c) counsel shall produce 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 shall retain and produce, if requested, any contemporaneous record or notes made in the course of preparation.

14. A fee for separate preparation shall be allowed only in any case—

- (a) where—
 - (i) the case is disposed of at a hearing under section 76 of the 1995 Act^(a); or
 - (ii) the case proceeds to trial,

and the level of preparation is that to which paragraph 15 (d) or (e) below applies; or

- (b) where a plea of guilty is tendered, or a plea of not guilty is accepted, up to and including the first day of trial and the case does not proceed to trial, and the level of preparation is that to which paragraph 15 (c) or (e) below applies.

15. A fee for separate preparation allowed under paragraphs 13 and 14 above shall be calculated by reference to the total number of sheets of documentation as follows:—

- (a) no fee for separate preparation for the first 1,000 sheets shall be allowed under any circumstances;
- (b) each range set out in sub-paragraphs (c) and (d) below specifies a total number of days which may be allowed per total number of sheets within the range, and each day shall be paid at the rate of two-thirds of the fee prescribed for the conduct of a trial at paragraph 3 of Chapters 1 and 2 of Part I, or as the case may be, paragraph 2 of Chapters 1 and 2 of Part III of the Table of Fees in this Schedule depending on the nature of the charges and the status of counsel;
- (c) the ranges are—
 - (i) 3 days are allowable for 1,001-3,500 sheets;
 - (ii) 5.5 days are allowable for 1,001-7,000 sheets;
 - (iii) 7.5 days are allowable for 1,001-10,000 sheets;
 - (iv) 10 days are allowable for 1,001-12,500 sheets;
- (d) 2.5 days are allowable for 10,001-12,500 sheets;
- (e) where the total number of sheets exceeds 12,500 counsel shall be entitled to a fee in respect of the total preparation reasonably undertaken having regard to all the circumstances, including the general level of fees prescribed in this paragraph; and
- (f) a fee for separate preparation allowed under—
 - (i) paragraph 14(a) above shall be calculated on the basis of sub-paragraph (d) or the proportion of the fee allowable under sub-paragraph (e) which is attributable to over 10,000 sheets; or
 - (ii) paragraph 14(b) above shall be calculated on the basis of sub-paragraph (c) or (e) above.

16. Where a fee is claimed in respect of paragraph 1(c) of Chapter 1 or 2 of Part I of the Table of Fees—

- (a) information shall be provided by or on behalf of counsel as to the reason for the adjournment; and
- (b) no fee shall be allowed by the Board or the auditor where satisfied that an adjournment was caused because the defence was not prepared to proceed, or where the preliminary hearing could have been altered in advance under section 75A(5) of the 1995 Act.

^(a) 1995 c.46 as relevantly amended by sections 1, 2, and 25 of, and paragraph 24 of the schedule to, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

17. For the purposes of the fees prescribed in Parts I and III of the Table of Fees in this Schedule–

- (a) a trial shall be taken to commence when the jury is empanelled;
- (b) where the trial of an accused person proceeds in respect of more than one offence, the fee payable in terms of paragraphs 3 of Chapters 1 and 2 of Part I and paragraphs 2 of Chapters 1 and 2 of Part III shall be that for the offence for which the highest fee is prescribed;
- (c) where counsel conducts a number of deferred sentences on the same day the prescribed fee shall be reduced by half for a second deferred sentence, and by a further half for a third and any subsequent deferred sentence;
- (d) the fees allowed under Part III shall be no more than four-fifths of the fees prescribed in Part I of the Table of Fees in this Schedule, and except on cause shown, fees for counsel in the Sheriff Court shall not be allowable for attendance at hearings which are routine or procedural only or which do not materially advance the case;
- (e) the prescribed fees shall include all work undertaken in the case that day;
- (f) fees for a waiting day shall be allowed on the basis of paragraph 18 below; and
- (g) the fees prescribed in Parts I and III cannot be increased or reduced in terms of paragraphs 4 to 11 above.

18. Where counsel claims a fee for a waiting day–

- (a) the fee payable to junior counsel, depending on the status of counsel in the case, for such a day shall be–
 - (i) half of the fee prescribed at paragraph 4(a) of Chapter 1 of Part I of the Table of Fees or at paragraph 3(a) of Chapter 1 of Part III depending on the applicable court, where no travel for the purposes of paragraph 7 of Chapter 2 of Part I or paragraph 6 of Chapter 2 of Part III is incurred; or
 - (ii) two-thirds of the fee prescribed at either paragraph referred to in sub-paragraph (a)(i) above, depending on the applicable court, where such travel is incurred;
- (b) the fee payable to senior counsel for such a day shall be–
 - (i) half the fee prescribed at paragraph 4(a) of Chapter 2 of Part I of the Table of Fees or at paragraph 3(a) of Chapter 2 of Part III depending on the applicable court, where no travel for the purposes of paragraph 7 of those Chapters is incurred; or
 - (ii) two-thirds of the fee prescribed at either paragraph referred to in sub-paragraph (b)(i) above, depending on the applicable court, where such travel is incurred;
- (c) no other chargeable work shall be undertaken in the case that day; and
- (d) provided that counsel remains available at court in case the trial proceeds that day, chargeable work in respect of other cases may be undertaken on that day, other than conducting a hearing or trial.

19. Where counsel claims a fee in respect of paragraph 2 of Chapter 1 or 2 of Part I, or paragraph 1 of Chapter 1 or 2 of Part III, of the Table of Fees–

- (a) subject to sub-paragraph (b) below, no fee shall be payable under paragraph 1, 3 or 4 of each Chapter of Part I, or paragraph 2 or 3 of each Chapter of Part III, of the Table of Fees; but
- (b) a fee shall be payable for all post conviction hearings including hearings for which a prescribed fee is set out in paragraphs 4(j), (k), (l) and (m) of each Chapter of Part I, and paragraphs 3(j), (k), (l) and (m) of each Chapter of Part III, of the Table of Fees.

20. The supplementary fee for necessary travel specified in paragraph 7 of Chapters 1 and 2 of Part I and paragraph 6 of Chapters 1 and 2 of Part III of the Table of Fees is chargeable only as follows:-

- (a) the travel undertaken must exceed 90 miles in either direction (180 mile round trip);
- (b) the fee excludes travel costs which shall be a chargeable outlay;
- (c) counsel shall, if required, produce records certifying the travel undertaken;
- (d) the fee is chargeable only once per day in respect of the same journey irrespective of the number of cases for which the travel is undertaken;
- (e) the fee is chargeable only once where counsel makes the outward and return journeys on the same day; and
- (f) the fee is chargeable twice where, on cause shown and subject to the provisions of the other sub-paragraphs of this paragraph, counsel is required to travel and make the return journey on different days.

21. The payment for necessary accommodation and subsistence specified under paragraph 8 of Chapters 1 and 2 of Part I, and paragraph 7 of the Chapters of Part III, of the Table of Fees is chargeable only in circumstances where a supplementary fee for travel is chargeable and on cause shown. Counsel shall, if required, produce records certifying the accommodation and subsistence costs incurred.

Interpretation

22. In this Schedule-

“documentation” means Crown statements, precognitions, productions and labels;

“waiting day” means a day where counsel is required to attend court and does so but the trial does not proceed; and

“sheet” shall consist of 250 words and numbers, or each minute of an un-transcribed tape.

TABLE OF FEES

PART I

FEES OF COUNSEL FOR PROCEEDINGS IN THE HIGH COURT OF JUSTICIARY

CHAPTER 1 – JUNIOR COUNSEL

1. *Preliminary Hearing*

- | | |
|---|---|
| (a) preliminary hearing including managed meeting or equivalent communication with the Crown by whatever means and including any note on the line of evidence | Payable at the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel. |
| (b) further diet under Section 72A of the 1995 Act | Two-thirds of the fee prescribed in paragraph 1(a) above. |

(c) adjourned diet under Section 75A of the 1995 Act, or continued diet	Half the fee prescribed in paragraph 1(a) above.		
(d) attendance at managed meeting or work in connection with equivalent communication with the Crown by whatever means and including any note on the line of evidence where counsel does not attend preliminary hearing	Half the fee prescribed in paragraph 1(a) above.		
(e) conduct of preliminary hearing on receipt of detailed instructions not having been involved in pre-hearing communication with the Crown	Half the fee prescribed in paragraph 1(a) above.		
	<i>Junior as leader</i>	<i>Junior Alone</i>	<i>Junior with leader</i>
2. <i>Early Plea</i>			
Hearing under section 76 of the 1995 Act	£1,250.00	£1,250.00	£625.00
3. <i>Trial per day</i>			
<i>Category Charges Prosecuted in the High Court</i>			
(a) Murder, Multiple attempted murder, Culpable homicide, Rape, Assault and Robbery (involving commercial premises), Importation of controlled drugs, Fraud and related offences, Section 1 of the 1988 Act(a) (causing death by dangerous driving), Section 3A of the 1988 Act (causing death by careless driving when under the influence of drink or drugs)(b), Sedition, Treason, Offences under the 2000 Act(c), Torture, War crimes	£750.00	£650.00	£450.00

(a) 1988 c.52.

(b) Section 3A of the Road Traffic Act 1988 (c. 52) was inserted by section 3 of the Road Traffic Act 1991 (c. 40).

(c) 2000 c.11.

	<i>Junior as leader</i>	<i>Junior Alone</i>	<i>Junior with leader</i>
(b) Attempted Murder, Assault to severe injury (with aggravations), Indecent Assault, Assault and Robbery (involving retail premises), Possession with intent to supply or being concerned in the supply of a Class A drug, Attempted Rape, Lewd and libidinous behaviour, Incest, Sodomy, Offences under the Sexual Offences Act(a), Offences against Children under the 1995 Consolidation Act(b), Offences under section 16A of the 1995 Consolidation Act, Abduction and/or unlawful imprisonment, Extortion, Counterfeiting, Bribery and Corruption, Mobbing and rioting, Indecent or Obscene Publications, Environmental Protection prosecutions, Health and Safety offences, Intellectual Property offences	£617.50	£535.00	£375.00
(c) Possession with intent to supply or being concerned in the supply of a Class B or Class C drug, Assault to severe injury, Assault and Robbery, Mobbing, Embezzlement, Fire Raising, Housebreaking, Opening lockfast places, Bigamy, Contempt of Court, Perjury, Firearms offences	£455.00	£395.00	£275.00
(d) Theft, Forgery, Concealing a pregnancy, Deforcement of Sheriff's Officers, Malicious Mischief, Brothel Keeping, Public Order Offences (stirring up racial hatred, wearing of uniforms, disrupting lawful meetings), Harassment, Road Traffic Offences (other than section 1 or 3A of the 1988 Act), Possession of Offensive Weapons, Violation of Sepulchres	£362.50	£315.00	£225.00
4. <i>Miscellaneous Hearings</i>			
(a) fee for a day in court for miscellaneous hearings other than those for which a fee is prescribed	£360.00	£315.00	£225.00
(b) preliminary diet	£360.00	£315.00	£225.00
(c) hearing under section 275 of the 1995 Act(c)	£360.00	£315.00	£225.00

(a) 2003 c.42.

(b) 1995 c.39.

(c) 1995 c.46, as relevantly amended by sections 1, 2 and 25 of, and paragraph 24 of the schedule to, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

	<i>Junior as leader</i>	<i>Junior Alone</i>	<i>Junior with leader</i>
(d) hearing on specification of documents	£360.00	£315.00	£225.00
(e) hearing on a devolution minute	£360.00	£315.00	£225.00
(f) hearing on an application by the Crown for an extension of time	£360.00	£315.00	£225.00
(g) hearing under section 72 of the 1995 Act	£180.00	£157.50	£112.50
(h) hearing on a motion to adjourn	£180.00	£157.50	£112.50
(i) hearing on an application for special measures	£180.00	£157.50	£112.50
(j) confiscation diet in which substantial evidence is led or where full settlement is agreed where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges categorised as below or follow a trial as specified in this Chapter in–			
(i) paragraph 3(a)	£750.00	£650.00	£450.00
(ii) paragraph 3(b)	£617.50	£535.00	£375.00
(iii) paragraph 3(c)	£455.00	£395.00	£275.00
(iv) paragraph 3(d)	£362.50	£315.00	£225.00
(k) confiscation diet where no substantial evidence is led	£360.00	£315.00	£225.00
(l) deferred sentence where mitigation is led	£360.00	£315.00	£225.00
(m) deferred sentence where no mitigation is led	£180.00	£157.50	£112.50
(n) remit for sentence	£360.00	£315.00	£225.00
(o) adjourned trial diet	£180.00	£157.00	£112.00
(p) adjourned trial diet (trial having commenced)	£360.00	£315.00	£225.00
5. <i>Fee for consultations, accused and counsel meetings and locus visits</i>	£177.00	£154.00	£108.00
6. <i>Fee for a necessary Note</i>	£50.00	£50.00	£50.00
7. <i>Travel</i>			
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken	£100.00	£100.00	£100.00

	<i>Junior as leader</i>	<i>Junior Alone</i>	<i>Junior with leader</i>
8. <i>Accommodation and associated subsistence</i>			
Payment of necessary accommodation and associated subsistence per day	£75.00	£75.00	£75.00

CHAPTER 2 - SENIOR COUNSEL

1. *Preliminary Hearing*

(a) preliminary hearing including managed meeting or equivalent communication with the Crown by whatever means and including any note on the line of evidence	Payable at the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(b) further diet under Section 72A of the 1995 Act	Two-thirds of the fee prescribed at paragraph 1(a) above.
(c) adjourned diet under Section 75A of the 1995 Act, or continued diet	Half the fee prescribed at paragraph 1(a) above.
(d) attendance at managed meeting or work in connection with equivalent communication with the Crown by whatever means and including any note on the line of evidence where counsel does not attend preliminary hearing	Half the fee prescribed at paragraph 1(a) above.
(e) conduct of preliminary hearing on receipt of detailed instructions not having been involved in pre-hearing communication with the Crown	Half the fee prescribed at paragraph 1(a) above.

2. *Early Plea*

Hearing under section 76 of the 1995 Act	£1,250.00
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3. Trial (per day)

Category Charges Prosecuted in the High Court

- | | |
|--|---------|
| (a) Murder, Multiple attempted murder, Culpable homicide, Rape, Assault and Robbery (involving commercial premises), Importation of controlled drugs, Fraud and related offences, Section 1 of the 1988 Act(a) (causing death by dangerous driving), Section 3A of the 1988 Act (causing death by careless driving when under the influence of drink or drugs)(b), Sedition, Treason, Offences under the 2000 Act(c), Torture, War crimes | £900.00 |
| (b) Attempted Murder, Assault to severe injury (with aggravations), Indecent Assault, Assault and Robbery (involving retail premises), Possession with intent to supply or being concerned in the supply of a Class A drug, Attempted Rape, Lewd and libidinous behaviour, Incest, Sodomy, Offences under the Sexual Offences Act(d), Offences against Children under the 1995 Consolidation Act(e), Offences under section 16A of the 1995 Consolidation Act, Abduction and/or unlawful imprisonment, Extortion, Counterfeiting, Bribery and Corruption, Mobbing and rioting, Indecent or Obscene Publications, Environmental Protection prosecutions, Health and Safety offences, Intellectual Property offences | £700.00 |
| (c) Possession with intent to supply or being concerned in the supply of a Class B or Class C drug, Assault to severe injury, Assault and Robbery, Mobbing, Embezzlement, Fire Raising, Housebreaking, Opening lockfast places, Bigamy, Contempt of Court, Perjury, Firearms offences | £515.00 |
| (d) Theft, Shameless Indecency, Offences under the Sexual Offences Act, Forgery, Concealing a pregnancy, Deformation of Sheriff's Officers, Malicious Mischief, Brothel Keeping, Public Order Offences (stirring up racial hatred, wearing of uniforms, disrupting lawful meetings), Harassment, Road Traffic Offences (other than section 1 or 3A of the 1988 Act), Possession of Offensive Weapons, Violation of Sepulchres | £410.00 |

4. Miscellaneous Hearings

- | | |
|--|---------|
| (a) fee for a day in court for miscellaneous hearings other than those for which a fee is prescribed | £410.00 |
| (b) preliminary diet | £410.00 |
| (c) hearing under section 275 of the 1995 Act(f) | £410.00 |
| (d) hearing on specification of documents | £410.00 |
| (e) hearing on a devolution minute | £410.00 |

(a) 1988 c.52.

(b) Section 3A of the Road Traffic Act 1988 (c. 52) was inserted by section 3 of the Road Traffic Act 1991 (c.40).

(c) 2000 c.11.

(d) 2003 c.42.

(e) 1995 c.39.

(f) 1995 c.46, as relevantly amended by sections 1, 2 and 25 of, and paragraph 24 of the schedule to, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(f) hearing on an application by the Crown for an extension of time	£410.00
(g) hearing under section 72 of the 1995 Act	£205.00
(h) hearing on a Motion to adjourn	£205.00
(i) hearing on an application for special measures	£205.00
(j) confiscation diet in which substantial evidence is led or where full settlement is agreed where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges categorised as below or follow a trial as specified in this Chapter in–	
(i) paragraph 3(a)	£900.00
(ii) paragraph 3(b)	£700.00
(iii) paragraph 3(c)	£515.00
(iv) paragraph 3(d)	£410.00
(k) confiscation diet where no substantial evidence is led	£410.00
(l) deferred sentence where mitigation is led	£410.00
(m) deferred sentence where no mitigation is led	£205.00
(n) remit for sentence	£410.00
(o) adjourned trial diet	£205.00
(p) adjourned trial diet (trial having commenced)	£410.00
5. <i>Fee for consultations, accused and counsel meetings and locus visits</i>	£200.00
6. <i>Fee for a necessary Note</i>	£50.00
7. <i>Travel</i>	
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken	£100.00
8. <i>Accommodation and associated subsistence</i>	
Payment of necessary accommodation and associated subsistence per day	£75.00

PART II
FEES OF COUNSEL IN APPEAL PROCEEDINGS
CHAPTER 1 - JUNIOR COUNSEL

	<i>Junior with leader</i>	<i>Junior alone</i>
1. <i>Appeals, written work</i>		
(a) Opinion on appeal		£60.00
(b) drafting grounds of appeal against conviction, including any note of appeal	£58.00	£82.00
(c) drafting bill of suspension		£60.00
(d) note of adjustments to stated case	£58.00	£82.00
(e) revisal of stated case		£60.00
2. <i>Appeals, conduct</i>		
(a) hearing in appeal against conviction (per day)	£223.00	£315.00
(b) hearing on stated case or bill of suspension related to conviction or conviction and sentence	£101.00	£132.00
(c) hearing in appeal against sentence including fee for drafting note of appeal	£41.00	£91.00
(d) appeal relating to granting of bail	£30.00	£30.00
3. <i>Consultations</i>		
(a) in Edinburgh	£71.00	£101.00
additional fee if held in prison	£11.00	£11.00
(b) elsewhere within 60 miles journey by road from Edinburgh	£132.00	£173.00
(c) in Aberdeen, Inverness or Dumfries	£264.00	£315.00
(d) elsewhere beyond 60 miles journey by road from Edinburgh, such fee as the Board or the auditor considers appropriate with regard to the journey involved and the level of fees prescribed in this paragraph		

CHAPTER 2 - SENIOR COUNSEL

1. <i>Appeals, written work</i>	
(a) Opinion on appeal	£91.00
(b) revising grounds of appeal against conviction, including any note of appeal	£112.00
(c) revisal of bill of suspension	£91.00
(d) note of adjustments to stated case	£112.00
(e) revisal of stated case	£91.00
2. <i>Appeals, conduct</i>	
(a) hearing in appeal against conviction (per day)	£409.00
(b) hearing on stated case or bill of suspension related to conviction or conviction and sentence	£203.00
(c) hearing in appeal against sentence including revisal of note of appeal	£132.00
(d) appeal relating to granting of bail	£30.50
3. <i>Consultations</i>	
(a) in Edinburgh	£153.00
additional fee if held in prison	£11.00
(b) elsewhere within 60 miles journey by road from Edinburgh	£244.00
(c) in Aberdeen, Inverness or Dumfries	£469.00
(d) elsewhere beyond 60 miles journey by road from Edinburgh, such fee as the Board or the auditor considers appropriate with regard to the journey involved and the level of fees prescribed in this paragraph	

CHAPTER 3 – MAXIMUM FEES

	<i>Junior with leader</i>	<i>Junior alone</i>	<i>Senior</i>
(a) Opinion on appeal	£100.00	£132.00	£200.00
(b) drafting or revising grounds of appeal against conviction, including any note of appeal	£150.00	£200.00	£300.00

	<i>Junior with leader</i>	<i>Junior alone</i>	<i>Senior</i>
(c) drafting bill of suspension	£75.00	£100.00	£150.00
(d) note of adjustments to stated case	£75.00	£100.00	£150.00
(e) revisal of stated case	£75.00	£100.00	£150.00
(f) hearing in appeal against conviction (per day)	£625.00	£825.00	£1,250.00
(g) hearing on stated case or bill of suspension related to conviction or conviction and sentence	£225.00	£300.00	£475.00
(h) appeal against sentence including drafting note of appeal	£225.00	£300.00	£475.00
(i) appeal relating to granting of bail	£30.50	£30.50	£30.50

PART III
FEES OF COUNSEL FOR PROCEEDINGS IN THE SHERIFF AND
DISTRICT COURT

CHAPTER 1 - JUNIOR COUNSEL

	<i>Junior as leader</i>	<i>Junior alone</i>	<i>Junior with leader</i>
<i>1. Early Plea</i>			
Hearing under section 76 of the 1995 Act(a)	£1,250.00	£1,250.00	£625.00
<i>2. Trial (per day)</i>			
<i>Category Charges Prosecuted in the Sheriff Court</i>			
(a) Culpable Homicide, Assault and Robbery (involving commercial premises), Importation of controlled drugs, Fraud and related offence, Section 1 of the 1988 Act(b) (causing death by dangerous driving), Section 3A of the 1988 Act (causing death by careless driving when under the influence of drink or drugs)(c) Sedition, Treason, Offences under the 2000 Act(d), Torture, War crimes, Rape, Multiple attempted murder	£647.50	£575.00	£360.00
(b) Attempted Murder, Assault to severe injury (with aggravations), Indecent Assault, Assault and Robbery (involving retail premises), Possession with intent to supply or being concerned in the supply of a Class A drug, Attempted Rape, Lewd and Libidinous behaviour, Incest, Sodomy, Offences under the Sexual Offences Act(e), Offences against Children under the 1995 Consolidation Act(f), Offences under section 16A of the 1995 Consolidation Act, Abduction and/or unlawful imprisonment, Extortion, Counterfeiting, Bribery and Corruption, Mobbing and rioting, Environmental Protection prosecutions, Health and Safety offences, Intellectual Property offences, Firearms offences	£495.00	£430.00	£300.00

(a) 1995 c.46, as relevantly amended by sections 1, 2 and 25 of, and paragraph 24 of the schedule to, the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(b) 1988 c.52.

(c) Section 3A of the 1988 Act (c. 52) was inserted by section 3 of the Road Traffic Act 1991 (c. 40).

(d) 2000 c.11.

(e) 2003 c.42.

(f) 1995 c.39.

	<i>Junior as leader</i>	<i>Junior alone</i>	<i>Junior with leader</i>
(c) Indecent or Obscene Publications, Possession with intent to supply or being concerned in the supply of a Class B or Class C drug, Assault to severe injury, Assault and Robbery, Mobbing, Embezzlement, Fire Raising, Housebreaking, Opening lockfast places, Bigamy, Contempt of Court Perjury etc. Theft, Forgery, Concealing a pregnancy, Deforcement of Sheriff's Officers, Malicious Mischief, Brothel Keeping, Public Order Offences (stirring up racial hatred, wearing of uniforms, disrupting lawful meetings) Harassment, Road Traffic Offences (other than section 1 or 3A of the 1988 Act), Possession of Offensive Weapons, Violation of Sepulchres	£345.00	£300.00	£210.00
3. Miscellaneous Hearings			
(a) fee for a day in court for miscellaneous hearings other than those for which a fee is prescribed	£288.00	£252.00	£180.00
(b) preliminary diet	£288.00	£252.00	£180.00
(c) hearing under section 275 of the 1995 Act	£288.00	£252.00	£180.00
(d) hearing on specification of documents	£288.00	£252.00	£180.00
(e) hearing on a devolution minute	£288.00	£252.00	£180.00
(f) hearing on an application by the Crown for an extension of time	£288.00	£252.00	£180.00
(g) hearing under section 72 of the 1995 Act	£144.00	£126.00	£90.00
(h) hearing on a Motion to adjourn	£144.00	£126.00	£90.00
(i) hearing on an application for special measures	£144.00	£126.00	£90.00
(j) confiscation diet in which substantial evidence is led or where full settlement is agreed where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges categorised as below or follow a trial as specified in this Chapter in–			
(i) paragraph 2(a)	£647.50	£575.00	£360.00
(ii) paragraph 2(b)	£495.00	£430.00	£300.00
(iii) paragraph 2(c)	£345.00	£300.00	£210.00
(k) confiscation diet where no substantial evidence is led	£288.00	£252.00	£180.00
(l) deferred sentence where mitigation is led	£288.00	£252.00	£180.00
(m) deferred sentence where no mitigation is led	£144.00	£126.00	£90.00

	<i>Junior as leader</i>	<i>Junior alone</i>	<i>Junior with leader</i>
(n) adjourned trial diet	£144.00	£126.00	£90.00
(o) adjourned trial diet (trial having commenced)	£288.00	£252.00	£180.00
4. Fee for <i>consultations, accused and counsel meetings and locus visits</i>	£142.00	£123.00	£86.00
5. <i>Fee for a necessary Note</i>	£50.00	£50.00	£50.00
6. <i>Travel</i>			
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken	£100.00	£100.00	£100.00
7. <i>Accommodation and associated subsistence</i>			
Payment of necessary accommodation and associated subsistence per day	£75.00	£75.00	£75.00

CHAPTER 2 - SENIOR COUNSEL

1. <i>Early Plea</i>			
Hearing under section 76 of the 1995 Act(a)			£1,250.00
2. <i>Trial (per day)</i>			
<i>Category Charges Prosecuted in the Sheriff Court</i>			
(a) Culpable Homicide, Assault and Robbery (involving commercial premises i.e. banks, post offices, warehouses etc.), Importation of Controlled Drugs, Fraud and related offence. Section 1 of the 1988 Act (causing death by dangerous driving), Section 3A of the 1988 Act (causing death by careless driving when under the influence of drink or drugs)(b), Sedition, Treason, Offences under the 2000 Act, Torture, War crimes, Rape, Multiple attempted murder			£720.00
(b) Attempted Murder, Assault to severe injury (with aggravations), Indecent Assault, Assault and Robbery (involving retail premises), Possession with intent to supply or being concerned in the supply of a Class A drug, Attempted Rape, Lewd and Libidinous behaviour, Incest, Sodomy, Offences under the Sexual Offences Act, Offences against Children under the 1995 Consolidation Act, Offences under section 16A of the 1995 Consolidation Act (conspiracy or incitement to commit sexual acts outside the U.K.), Abduction and/or unlawful imprisonment), Extortion, Counterfeiting, Bribery and Corruption, Mobbing and rioting, Environmental Protection prosecutions, Health and Safety offences, Intellectual Property offences, Firearms offences			£560.00

(a) 1995 c.46, as relevantly amended by sections 1, 2 and 25 and paragraph 24 of the schedule to the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5).

(b) Section 3A of the Road Traffic Act 1988 (c. 52) was inserted by section 3 of the Road Traffic Act 1991 (c. 40).

(c) Indecent or Obscene Publications, Possession with intent to supply or being concerned in the supply of a Class B or Class C drug, Assault to severe injury, Assault and Robbery, Mobbing, Embezzlement, Fire Raising, Housebreaking, Opening lockfast places, Bigamy, Contempt of Court Perjury etc. Theft, Shameless Indecency, Offences under the Sexual Offences Act, Forgery, Concealing a pregnancy, Deforcement of Sheriff's Officers, Malicious Mischief, Brothel Keeping, Public Order Offences (stirring up racial hatred, wearing of uniforms, disrupting lawful meetings), Harassment, Road Traffic Offences (other than section 1 or 3A of the 1988 Act), Possession of Offensive Weapons, Violation of the Sepulchres	£325.00
3. <i>Miscellaneous Hearings</i>	
(a) fee for a day in court for miscellaneous hearings other than for which a fee is prescribed	£328.00
(b) preliminary diet	£328.00
(c) hearing under section 275 of the 1995 Act	£328.00
(d) hearing on specification of documents	£328.00
(e) hearing on a devolution minute	£328.00
(f) hearing on an application by the Crown for an extension of time	£328.00
(g) hearing under section 72 of the 1995 Act	£164.00
(h) hearing on a motion to adjourn	£164.00
(i) hearing on an application for special measures	£164.00
(j) confiscation diet in which substantial evidence is led or where full settlement is agreed where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges categorised as below or follow a trial as specified in this Chapter in–	
(i) paragraph 2(a)	£720.00
(ii) paragraph 2(b)	£560.00
(iii) paragraph 2(c)	£328.00
(k) confiscation diet where no substantial evidence is led	£328.00
(l) deferred sentence where mitigation is led	£328.00
(m) deferred sentence where no mitigation is led	£164.00
(n) adjourned trial diet	£164.00
(o) adjourned trial diet (trial having commenced)	£328.00
4. <i>Fee for consultations, accused and counsel meetings and locus visits</i>	£160.00

5. <i>Fee for a necessary Note</i>	£50.00
6. <i>Travel</i>	
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken	£100.00
7. <i>Accommodation and associated subsistence</i>	
Payment of necessary accommodation and associated subsistence per day	£75.00"

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (“the principal Regulations”) and revoke, subject to a saving provision, the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005 and the Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2005. They retain the substance of the revoked regulations by providing the following:–

- (a) Schedule 1 to the principal Regulations is amended to provide that where more than one letter, each of which has a similar subject matter, is sent the fee prescribed in paragraph 5(b) shall apply (regulation 6); and
- (b) regulation 10 of the principal Regulations is amended and Schedule 2 is substituted to provide that fees of Counsel will be determined by the Scottish Legal Aid Board, or after taxation by the Auditor of Court, in accordance with Schedule 2 (regulations 5 and 7).

The Regulations apply in respect of proceedings commenced on or after 4th April 2005 (regulation 2). The saving provision in regulation 8(2) preserves the application of the revoked regulations in respect of proceedings commenced before 4th April 2005 where that would result in counsel being entitled to a higher fee than would have been the case, had those regulations not been made.

2005 No.656

LEGAL AID AND ADVICE

**The Criminal Legal Aid (Scotland) (Fees) Amendment (No. 3)
Regulations 2005**

£4.00

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