

2007 No. 14

LEGAL AID AND ADVICE

**The Civil Legal Aid (Scotland) (Fees) Amendment
Regulations 2007**

<i>Made</i> - - - -	<i>18th January 2007</i>
<i>Laid before the Scottish Parliament</i>	<i>19th January 2007</i>
<i>Coming into force</i> - -	<i>10th February 2007</i>

The Scottish Ministers, in exercise of the powers conferred by sections 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 Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2007 and shall come into force on 10th February 2007.

Application

2.—(1) Subject to paragraph (2), these Regulations shall apply only to fees for work done and outlays incurred on or after 10th February 2007.

(2) In relation to proceedings commenced, and not concluded, before 10th February 2007, where on that date work for which a fee is payable under Chapter III of Schedule 2 or Chapter I or II of Schedule 6 to the Civil Legal Aid (Scotland) (Fees) Regulations 1989(b) has not come to an end then the fee for that work shall be in accordance with these Regulations.

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

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

4. In regulation 5(2D)(c), for “40” substitute “50”.

5. In the Table of Fees in Chapter III of Schedule 2—

(a) in Part I—

(i) in paragraph 1, for “£44.20” substitute “£53.50”;

(ii) in paragraph 2, for “£5.05” and “£14.20” substitute “£6.10” and “£17.20” respectively; and

(iii) in paragraph 3, for “£14.20” substitute “£17.20”; and

(a) 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).

(b) S.I. 1989/1490; relevant amendments were made by S.I. 1995/1044, S.S.I. 2003/178 and S.S.I. 2004/281.

(c) inserted by S.S.I. 2003/178.

- (b) in Part II–
- (i) in paragraph 1, for “£60.70” substitute “£73.45”;
 - (ii) in paragraph 2, for “£5.05”, “£10.80”, “£5.05” and “£15.80” substitute “£6.10”, “£13.05”, “£6.10” and “£19.10” respectively;
 - (iii) in paragraph 3, for “£15.80” substitute “£19.10”;
 - (iv) in paragraph 4, for “£54.80” substitute “£66.30”;
 - (v) in paragraph 5, for “£27.40” substitute “£33.15”;
 - (vi) in paragraph 6, for “£23.40” and “£10.80” substitute “£28.30” and “£13.05” respectively;
 - (vii) in paragraph 7, for “£23.40” and “£10.80” substitute “£28.30” and “£13.05” respectively;
 - (viii) in paragraph 8, for “£33.30” and “£20.00” substitute “£40.30” and “£24.20” respectively;
 - (ix) in paragraph 9, for “£27.40” and “£15.80” substitute “£33.15” and “£19.10” respectively;
 - (x) in paragraph 10, for “£15.80” and “£8.40” substitute “£19.10” and “£10.15” respectively;
 - (xi) in paragraph 11, for “£33.30”, “£23.40”, “£23.40” and “£54.80” substitute “£40.30”, “£28.30”, “£28.30” and “£66.30” respectively;
 - (xii) in paragraph 12, for “£27.40”, “£25.00”, “£15.80” and “£10.80” substitute “£33.15”, “£30.25”, “£19.10” and “£13.05” respectively;
 - (xiii) in paragraph 13, for “£33.30”, “£20.00”, “£27.40”, “£15.80”, “£15.80”, “£10.80”, “£15.00” and “£10.00” substitute “£40.30”, “£24.20”, “£33.15”, “£19.10”, “£19.10”, “£13.05”, “£18.15” and “£12.10” respectively;
 - (xiv) in paragraph 14, for “£10.80” substitute “£13.05”;
 - (xv) in paragraph 15, for “£74.90” and “£15.80” substitute “£90.65” and “£19.10” respectively; and
 - (xvi) in paragraph 16, for “£33.30”, “£33.30” and “£15.80” substitute “£40.30”, “£40.30” and “£19.10” respectively.

6. For Chapter I of Schedule 6 substitute the Schedule to these Regulations.

7. In Chapter II of Schedule 6–

- (a) in paragraph 7–
 - (i) for “either paragraph 2(a) or paragraph 2(b); both fees” substitute “paragraph 2(a)(i), (ii) or (iii); more than one fee”; and
 - (ii) for “paragraph 2(b)”, where it second occurs, substitute “paragraph 2(a)(ii)”;
- (b) after paragraph 7, insert–

“7A. The fee under paragraph 2(a)(iii) is payable only where–

 - (a) no settlement is achieved but an outcome or disposal is reached and the solicitor can demonstrate that an exercise of sustained negotiation involving a significant level of discussion between the solicitor, the client and, as the case may be, the opponent (or the opponent’s agent) took place;
 - (b) the Board is satisfied that all the additional work carried out by the solicitor was reasonable and necessary in all the circumstances of the case; and
 - (c) the work is clearly documented on the file and may be perused by the Board as required.”;
- (c) in paragraph 8–
 - (i) before “Auditor” insert “Board or, as the case may be, the”; and

- (ii) for “paragraph 2(b)” substitute “paragraph 2(a)(ii) or (iii)”;
- (d) in paragraph 9, after “any continued hearing” insert “including a hearing under Rule 18.3 of the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907(a)”;
- (e) after paragraph 14, insert–

“**14A.** The fee under paragraph 4(k) in contentious contact dispute cases is payable only where the additional work is necessary as a result of a material issue and not due to one party’s refusal to resolve any contact issue.

14B. The fee under paragraph 4(k) is payable in respect of each of the circumstances specified in that sub-paragraph.”;

- (f) omit paragraph 17;
- (g) for paragraph 19, substitute–

“**19.** The fee under paragraph 6 is payable on the total time engaged per day and is payable cumulatively between waiting and conduct time, rounded up to the nearest 15 minutes. The fee is payable–

- (a) from the time appointed by the court for the hearing; or
- (b) from the conclusion of any other business (including non legal aid cases) ending prior to the hearing,

whichever is the shorter.”;

- (h) in paragraph 21–
 - (i) for “Excess travel time, in addition to the fees payable under this chapter,” substitute “In addition to the fees payable under this chapter, travel time”;
 - (ii) in paragraph (b), for “was” substitute “is”;
 - (iii) in paragraph (c), omit “(and no travel time shall be payable in respect of the first 10 miles travelled in each direction)”;
 - (iv) in paragraph (d), for “between” substitute “among”; and
 - (v) at the end, for “; and” substitute “.”; and
- (i) for paragraph 24, substitute–

“**24.** Unless otherwise prescribed no fee is allowable unless the work for which the fee is payable has been completed in its entirety.”.

8. In the Table of Fees in Chapter II of Schedule 6–

- (a) in paragraph 1–
 - (i) for sub-paragraph (a), substitute–

“(a) To cover all work from the taking of instructions to the conclusion of proceedings where no fee is payable under paragraph (b). 10”;

(a) 1907 c.51. Schedule 1 was substituted by S.I. 1993/1956 and relevantly amended by S.I. 1996/2445 and S.S.I. 2000/239.

(ii) for sub-paragraph (b), substitute–

- “(b) To cover all work from the taking of instructions to– 20
- (i) commence proceedings until the lodging of a Notice of Intention to Defend or the first appearance of the defender; or
 - (ii) to defend proceedings until the date appointed for the lodging of defences, the making of an order dispensing with written defences, the first appearance of the defender or the issue of the usual procedural timetable (except as specifically provided below). ”;

(b) for paragraph 2 substitute–

“2. Progress Fees–

- (a)(i) To cover all additional work (including adjustment and attendance at Options Hearing) from the conclusion of the work in Paragraph 1 until the allowance of a Proof or Debate or other court hearing fixed for the purpose of settlement (except as specifically provided below); 19
- (ii) To cover all additional work (e.g. negotiation, discussion, voluntary disclosure and all meetings and correspondence) involving the active participation of agents and resulting, prior to the allowance of a Proof, Debate, or other court hearing fixed for the purpose of settlement, in the negotiated settlement of the action (except as specifically provided below); or 19
- (iii) To cover all additional work (e.g. negotiation, discussion, voluntary disclosure and all meetings and correspondence) involving the active participation of agents where, prior to the allowance of a Proof or Debate, or other court hearing fixed for the purpose of settlement, an outcome or disposal is effected (subject to a maximum charge of 10 units) (except as specifically provided below); 10
- (b) Fee to cover all work for the preparation and attendance at any Continued Options Hearing including the preparation of an amended Record. 2 ”;

(c) in paragraph 4–

- (i) in sub-paragraph (i) after “invoked” insert “in terms of Chapter 10 of the Ordinary Cause Rules in Schedule 1 to the Sheriff Courts (Scotland) Act 1907”; and

(ii) at the end, insert–

- “(k) Additional fee where the action involves– 4
(i) a complex financial dispute leading to protracted negotiations;
(ii) a complex pension sharing arrangement; or
(iii) a contentious contact dispute.

(l) Peremptory diet – fee to cover all work in connection 3
with a peremptory diet (excluding attendance at court). ”;

(d) in paragraph 5–

- (i) for “(a) *Preparation for proof fee*” substitute “(a) *Preparation for proof or evidential child welfare hearing*”;
(ii) in sub-paragraph (a)(i) and (ii) after “proof”, insert “or evidential child welfare hearing”;
(iii) in sub-paragraph (a)(iii) for “lead” substitute “led”;
(iv) after sub-paragraph (a), insert–

“(aa) *Preparation for Child Welfare Hearing*

- (i) Fee to cover all work preparing for first hearing. 6
(ii) Fee to cover all work preparing for each subsequent 3
hearing. ”;

(v) omit sub-paragraph (c); and

(e) in paragraph 6 for “referred to in paragraphs 5(a) to (e) above” substitute “not otherwise prescribed”.

9. In Chapter III of Schedule 6–

(a) after paragraph 6, insert–

“7. That the case raised unusually complex issues of fact, including detailed consideration of extensive documentary evidence.”; and

(b) at the end, insert–

“(c) An uplift may not be granted on ground 7 above where a fee under paragraph 4(k) of the table of fees in Chapter II of Schedule 6 is claimed.”.

10. In Schedule 7–

(a) at the appropriate places, insert–

“division and sale of heritable property;”;

“proceedings arising under the Mortgage Rights (Scotland) Act 2001(a);”;

“work in connection with the registration and enforcement of a decree;”; and

“work in connection with letters of inhibition;”; and

(b) before “drafting and submitting an account of expenses,” insert “a motion for modification of expenses of the assisted person,”.

(a) 2001 asp 11.

Saving

11. Notwithstanding commencement of regulation 7(g), in relation to proceedings commenced and not concluded before 10th February 2007, Rule 19 of Chapter II of Schedule 6 to the Civil Legal Aid (Scotland) (Fees) Regulations 1989 shall continue to have effect on or after that date as it had effect immediately before that date in relation to the waiting for and attending at the conduct of any hearing referred to in paragraphs 5(a) to (e) of the table of fees in that chapter of Schedule 6 which hearing was held before 10th February 2007.

JOHANN MLAMONT

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
18th January 2007

SCHEDULE

Regulation 6

“CHAPTER I

SHERIFF COURT CIVIL FEES (UNDEFENDED)

Notes on the operation of Chapter I

Payment of the fees set out in the table in this chapter is subject to the following provisions.

1. A fee is payable under paragraph 2 of Part I where it can be demonstrated that following the grant of legal aid significant work was undertaken by the solicitor by way of negotiation with the opponent and/or the opponent’s solicitor. Where this fee is claimed the work done must be clearly documented on the file, for perusal, if required, by the Board.

2. The factors that the Board or, as the case may be, the Auditor shall take into account in assessing a claim based on any of the paragraphs within Part I are a lengthy meeting or series of meetings or correspondence or other communication between the parties which, together, justify the conclusion that, but for this significant work, the case would have proceeded further at potential cost to the Fund or the parties.

3. The fee provided in paragraph 2 of Tables A to C includes all the costs incurred in the swearing of affidavits, including defender’s affidavits where appropriate.

4. A fee is payable under either Table A or Table B. The fee under Table C relating to matters ancillary to those in Tables A and B is payable only once.

5. The fees payable under this chapter include all travel to court, except as otherwise provided for by paragraph 6.

6. In addition to the fees payable under Part II of this chapter, travel time is payable at 0.8 units per 15 minutes and is allowable only in relation to an attendance at court, subject to the following conditions:–

- (a) the solicitor claiming travel time is a solicitor with whom the client has had significant contact in relation to the conduct of the case;
- (b) the solicitor’s attendance is necessary for the advancement of the case;
- (c) the distance travelled is at least 10 miles in each direction from the solicitor’s normal place of work;
- (d) when payment for travel time is claimed for more than one case, the time shall be apportioned equally among the various cases for which the solicitor attended court (including non legally aided cases).

7. Travel expenses may be incurred only where travel time is chargeable.

8. Where it would be more cost effective to travel by public transport the solicitor shall do so.

Work done

Inclusive Fee in Units

Part I – Negotiation

- | | |
|---|-------|
| 1. Cases where settlement is effected without an action being raised where through negotiation, discussion, voluntary disclosure, meetings, correspondence and, as the case may be, other forms of participation by the solicitor a negotiated settlement is reached and minute of agreement or separation agreement, as the case may be, is entered into (subject to a maximum charge of 19); or | 10-19 |
| 2. Cases where settlement is not effected but where without an action being raised the outcome or disposal is effected through negotiation, discussion, voluntary disclosure, meetings, correspondence and, as the case may be, other forms of participation by the solicitor (subject to a maximum charge of 10). | 5-10 |

Part II – All actions except those actions of divorce or separation and alimant to which Part III applies

Inclusive Fee in Units

- | | |
|---|---|
| 1. Actions (other than those specified in paragraph 2 of this Part) in which decree is granted without proof– | |
| Inclusive fee to cover all work from taking instructions up to and including obtaining extract decree. | 6 |
| <i>Note:</i> In cases where settlement is effected after service of a writ but before the expiry of the period of notice. | 5 |
| Additional fee to cover– | |
| (a) drawing, intimating and lodging any written motion for interim orders or diligence, including the first quarter hour of argument, even if involving appearances on different dates (to include instructing service and implementation); | 6 |
| (b) thereafter, attendance fee at any hearing (including any continuation of the diet) per quarter hour (payable only in relation to time engaged in the conduct of the hearing) | 1 |
| To framing all necessary affidavits per sheet (to include notarial fee unless on cause shown the affidavit cannot be notarised within the principal agent's firm, in which case a fee to the external notary is 1 unit). | 1 |

Note: Charges levied by notaries outwith the United Kingdom shall be payable according to the circumstances of the case; and

affidavits in this Part do not include those required to prove a divorce.

2. Actions of separation and aliment (not being actions to which Part III of this chapter applies) or residence and aliment where proof takes place—

inclusive fee to cover all work from taking instructions up to and including obtaining extract decree. 20

Part III – Actions of divorce or separation and aliment where proof is by means of affidavits

1. In any undefended action of divorce or separation and aliment where—
 - (a) the facts set out in section 1(2)(b) (unreasonable behaviour) of the Divorce (Scotland) Act 1976(a) are relied upon; and
 - (b) the pursuer seeks to prove those facts by means of affidavits,

the pursuer’s solicitor may in respect of the work specified in column 1 of Table A in this paragraph charge the inclusive fee specified in respect of that work in column 2 of that Table.

TABLE A

<i>Column 1</i>	<i>Column 2</i> <i>Inclusive Fee in Units</i>
1. All work to and including the period of notice.	16
2. All work from the period of notice to and including swearing affidavits.	13
3. All work from swearing affidavits to and including sending extract decree.	3
4. All work to and including sending extract decree.	32

2. In any undefended action of divorce or separation and aliment where—
 - (a) the facts set out in section 1(2) (adultery), 1(2)(d) (one year’s non-cohabitation and consent) or 1(2)(e) (two years’ non-cohabitation) of the Divorce (Scotland) Act 1976(b) are relied on; and
 - (b) the pursuer seeks to prove those facts by means of affidavits,

the pursuer’s solicitor may, in respect of the work specified in column 1 of Table B in this paragraph, charge the inclusive fee specified in respect of that work in column 2 of that Table.

(a) 1976 c.39.

(b) Section 1(2)(d) and (e) was amended by the Family Law (Scotland) Act 2006 (asp 2), section 11.

TABLE B

<i>Column 1</i>	<i>Column 2</i> <i>Inclusive Fee in Units</i>
1. All work to and including the period of notice.	13
2. All work from the period of notice to and including swearing affidavits.	8
3. All work from swearing affidavits to and including sending extract decree.	3
4. All work to and including sending extract decree.	24

3. If–

- (a) the pursuer’s solicitor charges an inclusive fee under paragraph 1 or 2 of this Part; and
- (b) the action to which the fee relates includes a crave relating to an ancillary matter,

in addition to that fee, he may charge in respect of the work specified in column 1 of Table C in this paragraph the inclusive fee specified in respect of that work in column 2 of that Table.

TABLE C

<i>Column 1</i>	<i>Column 2</i> <i>Inclusive Fee in Units</i>
1. All work to and including the period of notice.	6
2. All work from the period of notice to and including swearing affidavits.	3.5
3. All work under items 1 and 2.	9.5

”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (“the 1989 Regulations”) providing an increase in the fees for solicitors laid down in Schedule 2 in respect of summary cause proceedings and updating the tables of fees in Chapter I and II of Schedule 6 to provide solicitors with increased fees for the more detailed and complex cases.

These Regulations generally apply to fees for work done and outlays incurred on or after 10th February 2007. They also apply to specified inclusive fees for work started before 10th February 2007 but not yet completed (regulation 2).

The main changes made to the 1989 Regulations are as follows.

The maximum percentage by which the Board may allow a fee additional to the fees prescribed in Chapter II of Schedule 6 for defended sheriff court cases in which it is satisfied that any of the circumstances specified in Chapter III of that Schedule exists is increased from 40 to 50 (regulation 4).

Schedule 2 is amended to provide for an increase of 21% in the fees for solicitors in respect of summary cause proceedings (regulation 5).

A new Chapter I of Schedule 6 is substituted providing for fees in undefended sheriff court actions and including notes on the operation of the chapter (regulation 6 and the Schedule to the Regulations).

The new Chapter I makes amendments to provide, at Part I, that a fee is payable for all of a solicitor’s work in negotiating cases where, as a result of that negotiation, no court proceedings are raised. Part II of the Chapter (previously Part I) omits the reference to actions for adherence and aliment which were abolished by the Family Law (Scotland) Act 2006. The inclusive fees in Part III (previously Part II) are, in the main, increased and drafting changes are made consequential on the reduction of the minimum periods of non-cohabitation as a ground of divorce brought in by the Family Law (Scotland) Act 2006.

Chapter II of Schedule 6 (fees in defended sheriff court actions) is amended (regulation 7) to provide—

- (a) in paragraph 7 for new paragraph 2(a)(iii) of the table of fees (paragraph 2(a) and (b) is substituted by paragraph 2(a)(i) and (ii)). This paragraph provides that a fee shall be payable for all of a solicitor’s additional work where prior to the allowance of a hearing fixed for the purpose of settlement an outcome or disposal is reached. This amendment provides that in relation to the progress fee only one fee under paragraph 2(a)(i), (ii) or (iii) is payable;
- (b) for a new paragraph 7A which lays down when the fee under paragraph 2(a)(iii) is payable;
- (c) for new paragraphs 14A and 14B dealing with the fee payable under paragraph 4(k) in contentious contact dispute cases;
- (d) in paragraph 19, concerning payment for waiting time, that the fee for the total time engaged per day is payable cumulatively between waiting and conduct time rounded up to the nearest 15 minutes. The fee is payable from the time appointed by the court for the hearing or from the conclusion of any other business before the hearing;
- (e) in paragraph 24 that unless otherwise prescribed no fee shall be allowable unless the work for which the fee is payable has been completed in its entirety.

The Table of Fees in Chapter II of Schedule 6 is amended (regulation 8) at—

- (a) paragraph 2, concerning progress fees, to refer in paragraphs 2(a)(i) and (ii) to court hearings fixed for the purposes of settlement and to insert new paragraphs 2(a)(iii) and (b). Paragraph 2(a)(iii) provides for a fee for all of a solicitor's additional work where prior to the allowance of a hearing fixed for the purpose of settlement an outcome or disposal is reached. Paragraph 2(b) provides for a fee for all work in the preparation and attendance at any continued options hearing; and
- (b) paragraph 4, where an additional fee for complex financial disputes, complex pensions sharing arrangements and for contentious contact disputes is made available through the insertion of paragraph 4(k) and where a fee is made available for all work in connection with peremptory diets through the insertion of paragraph 4(l).

Chapter III of Schedule 6 is amended to provide that cases which raise unusually complex issues of fact, including detailed consideration of extensive documentary evidence, may be allowed a fee additional to the fee prescribed in Chapter II (regulation 9).

Schedule 7 which lists the sheriff court proceedings for which fees for work shall only be payable under Schedule 5 is amended to include a solicitor's work in proceedings relating to the division and sale of heritable property or those arising under the Mortgage Rights (Scotland) Act 2001 and work in connection with the registration and enforcement of a decree or in connection with letters of inhibition (regulation 10).

The operation of Rule 19 of Chapter II of Schedule 6 to the 1989 Regulations in relation to certain cases commenced but not concluded before 10th February 2007 is preserved (regulation 11). This concerns the waiting fee in cases where a solicitor has conducted any hearing listed in paragraph 5 of Chapter II of the table of fees before 10th February 2007.

£3.00

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