
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (“the principal Regulations”).

They provide that, in cases where criminal legal aid is made available for proceedings in the Judicial Committee of the Privy Council, where any question or dispute arises between the Scottish Legal Aid Board and a solicitor or counsel as to the amount of fees or outlays allowable to a solicitor, or as to the amount of fees allowable to counsel from the Fund, that the matter shall be referred for taxation to the Registrar of the Judicial Committee of the Privy Council (regulation 5).

Provision is made allowing persons who are dissatisfied with a taxation decision to lodge a petition to the Judicial Committee of the Privy Council which shall, in the first instance, be considered by a Board of the Judicial Committee of the Privy Council (regulation 5).

A new Schedule 3 is inserted in the principal Regulations providing for a table of fees for counsel for proceedings in the Judicial Committee of the Privy Council (regulations 4 and 8).

The Regulations make provision as regards the payment of fees for counsel for proceedings in the High Court (other than appeals) and in the sheriff and district courts by amending Schedule 2 to the principal Regulations (regulations 6 and 7).

Although the fees in the table of fees include all preparation there is a scheme in place allowing for the payment of separate preparation. The fee for separate preparation may be paid on a daily rate with reference to the total number of sheets of documentation. This scheme is amended so as to take away the upper most range and to lower the total number of sheets required before the payment may, in some cases, be made (regulation 6(c)).

Provision is made for the payment of fees for proceedings concerning the offence of attempting to pervert the course of justice. Where an accused pleads guilty at a hearing fixed for trial before the jury is empanelled, or where the case is brought to an end by the Crown’s acceptance of a plea of not guilty, or where, following the court deserting the trial, the indictment falls or, for any other reason is not brought to trial and where no order is made by the court to postpone or appoint a further trial diet, provision is made for fees to be payable at the rate of two-thirds the fee for a trial day (regulation 6(e)).

The criteria by which the supplementary fee for travel is payable is amended. The distance which must be travelled before the payment can be made is reduced from 90 miles single direction and 180 miles round trip to 60 and 120 miles respectively. Provision is made for the payment of a supplementary travel fee for travel furth of Scotland (regulations 6(h) and 7(g) and (h)).

Fees are provided for the written work relating to petitions to the Nobile Officium, and the drafting of devolution minutes, section 275 applications under the Criminal Procedure (Scotland) Act 1995, specification of documents and interrogatories (regulation 7(a)(i) and (d)(i)).

In High Court proceedings (other than appeals) the fee for preliminary hearings which includes the managed meeting or equivalent communication with the Crown and any note on the line of evidence is increased by one half (regulation 7(a)(i)).

Trials are paid on a daily basis with the rate being dependent upon the category of case and status of counsel. Category (a) charges are the most serious offences and attract the highest rate. Category (c) and (d) charges in High Court proceedings (other than appeals) are aggregated to become category (c). Category (b) and (c) charges in the sheriff and district courts are aggregated to become category

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(b). Category (a) is extended to include offences under the Explosive Substances Act 1883, money laundering and charges relating to lewd and libidinous behaviour against children under 12 years of age. Charges relating to firearms offences, incest, sodomy, embezzlement are uprated from category (b) to category (a). Category (b) is extended to include offences under the Immigration Act 1971 and offences under sections 52 and 52A of the

Civic Government (Scotland) Act 1982 (regulation 7(a)(ii) and (iii), (b)(i), (c)(i), (d)(ii), (e)(i) and (f)(i)).

Provision is made for the payment of fees for evidential hearings in solemn proceedings taking place outwith the presence of a jury (regulation 7(b)(ii), (c)(ii), (e)(ii) and (f)(ii)).

The fees for consultations, accused and counsel meetings and locus visits are increased (regulation 7(b)(iii), (c)(iii), (e)(iii) and (f)(iii)).

The fee for accommodation and associated subsistence is increased from £75 to £100 (regulation 7(b)(iv), (c)(iv), (e)(iv) and (f)(iv)).

Provision is made for the payment of first diets in sheriff court proceedings. The fee shall only be payable where a plea of guilty is tendered at that hearing or where the case is otherwise brought to an end by the Crown's acceptance of a plea of not guilty, withdrawal of the libel, desertion of the diet or by other means (regulations 6(f) and 7(e)(ii) and (f)(ii)).

The Regulations, where they make provision as regards the payment of fees for counsel for proceedings in the High Court (other than appeals) and in the sheriff and district courts, apply to fees for work done and outlays incurred on or after 2nd October 2006. Regulation 5, which makes provision as to references to taxation, applies in respect of proceedings concluded before 29th March 2007 which are referred to taxation after that date and proceedings concluded on or after 29th March 2007. Regulations 4 and 8, which provide for a table of fees for counsel in proceedings before the Judicial Committee of the Privy Council, apply in respect of proceedings commenced on or after 29th March 2007. Regulation 9, a savings provision, applies in respect of proceedings commenced before 29th March 2007 which are not concluded before that date (regulation 2).

Regulation 9 saves the operation of paragraph 15 of Schedule 2 to the principal Regulations in respect of proceedings commenced before 29th March 2007 where counsel would be entitled to a higher fee for work done in respect of those proceedings in relation to separate preparation than counsel would be entitled to had these regulations not been made.