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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 181**

**LEGAL AID AND ADVICE**

**The Civil Legal Aid (Scotland) (Fees)  
Amendment (No. 2) Regulations 2007**

<i>Made</i>	- - - -	<i>6th March 2007</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>7th March 2007</i>
<i>Coming into force</i>	- -	<i>29th March 2007</i>

The Scottish Ministers, in exercise of the powers conferred by sections 33(2)(a), (3)(a), (b), (c) and (f) and 36(1) and (2)(a) of the Legal Aid (Scotland) Act 1986(1) 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 (No. 2) Regulations 2007 and shall come into force on 29th March 2007.

**Application**

2.—(1) Subject to paragraph (2), these Regulations shall apply only in respect of proceedings commenced on or after 29th March 2007.

(2) Regulation 4(a) shall apply in respect of proceedings concluded before 29th March 2007 which are referred for taxation after that date and proceedings concluded on or after that date.

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

3. The Civil Legal Aid (Scotland) (Fees) Regulations 1989(2) are amended in accordance with the following Regulations.

4. In regulation 2—

- (a) in paragraph (1) in the definition of “auditor”—
  - (i) after sub paragraph (c), omit “and”; and
  - (ii) at the end, insert— “and

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(1) 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).  
(2) S.I.1989/1490, as relevantly amended by S.S.I. 2002/496 and 2003/178.

- (e) in relation to proceedings in the Judicial Committee of the Privy Council, the Registrar of the Judicial Committee of the Privy Council;” and
- (b) in paragraph (1A), after “House of Lords” insert “or the Judicial Committee of the Privy Council”.
- 5. In regulation 5(3), for “or 13(b)” substitute “, 13(b), 32 or 33”.
- 6. In regulation 10(2A), after “House of Lords”, insert “or the Judicial Committee of the Privy Council”.
- 7. In regulation 12(3), at the beginning, insert “Subject to regulation 12A,”.
- 8. After regulation 12, insert–

“**12A.**—(1) In relation to proceedings in the Judicial Committee of the Privy Council, the Board and any other party to a reference to the auditor who is dissatisfied with all or part of a taxation shall have the right to lodge a petition to the Judicial Committee of the Privy Council within 14 days of the taxation setting out the items objected to and the nature and grounds of the objections.

(2) The petition shall be served on the Board, any such other party who attended the taxation and any other party to whom the auditor directs that a copy should be delivered.

(3) Any party upon whom such a petition is delivered may within 14 days after such delivery lodge a response to the petition which shall be served on the Board, any such other party who attended the taxation and any other party to whom the auditor directs that a copy should be delivered.

(4) The petition and responses, if any, shall be considered by a Board of the Judicial Committee of the Privy Council which may allow or dismiss the petition without a hearing, invite any or all of the parties to lodge submissions or further submissions in writing or direct that an oral hearing be held.”.

St Andrew’s House,  
Edinburgh  
6th March 2007

*JOHANN M LAMONT*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

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

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

They provide that, in cases where civil 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 the solicitor, or as to the amount of fees allowable to counsel from the Fund under the principal Regulations the matter shall be referred for taxation to the Registrar of the Judicial Committee of the Privy Council (‘the Registrar’) (regulation 4).

The [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), by section 73, amended the Legal Aid (Scotland) Act 1986 to extend the availability of civil legal aid in proceedings before the Judicial Committee of the Privy Council to include proceedings raised under paragraphs 32 and 33 of Schedule 6 to the Scotland Act 1998. The principal Regulations are amended so as to include reference to such proceedings to provide that a solicitor’s fees shall be calculated in accordance with Schedule 5 to the principal Regulations (regulation 5).

The Regulations insert a reference to Judicial Committee of the Privy Council proceedings in regulation 2(1A) of the principal Regulations. This provides that for the purposes of the principal Regulations a solicitor-advocate shall be a senior solicitor-advocate where he is undertaking work equivalent to that which would be done by a senior counsel in a case in the Judicial Committee of the Privy Council (regulation 4).

The Regulations insert a reference to Judicial Committee of the Privy Council proceedings in regulation 10(2A) of the principal Regulations. This provides that the fees of a solicitor-advocate for any work in relation to proceedings in the Judicial Committee to the Privy Council shall be 90 per cent of the amount of fees which would be allowed for that work on a taxation of expenses between solicitor and client, third party paying, if the work done were not legally aided (regulation 6).

The Regulations provide that persons who are dissatisfied with a taxation decision by the Registrar may lodge a petition to the Judicial Committee to the Privy Council which shall be considered by a Board of the Judicial Committee of the Privy Council (regulation 8).

With the exception of regulation 4(a), the Regulations apply in respect of proceedings commenced on or after 29th March 2007. Regulation 4(a), which provides that references for taxation shall be remitted to the Registrar, applies in respect of proceedings concluded before 29th March 2007 which are referred for taxation after that date and proceedings concluded on or after that date (regulation 2).