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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 438**

**LEGAL AID AND ADVICE**

**The Civil Legal Aid (Scotland) (Fees)  
Amendment (No. 3) Regulations 2007**

*Made* - - - - 24th September 2007  
*Laid before the Scottish  
Parliament* - - - - 24th September 2007  
*Coming into force* - - 1st November 2007

The Scottish Ministers make the following Regulations, in exercise of the powers conferred by sections 33(2)(a) and (3), 36(1) and (2)(a) of the Legal Aid (Scotland) Act 1986(1) and all other powers enabling them to do so:

**Citation and commencement**

1. These Regulations may be cited as the Civil Legal Aid (Scotland) (Fees) Amendment (No. 3) Regulations 2007 and shall come into force on 1st November 2007.
2. These Regulations shall apply only in relation to fees for work done and outlays incurred on or after 1st November 2007.

**Amendment of the Civil Legal Aid (Scotland) (Fees) Regulations 1989(2)**

3. The Civil Legal Aid (Scotland) (Fees) Regulations 1989 are amended in accordance with the following regulations.
4. In regulation 5(2D) for the existing words there shall be substituted—

“The additional fee allowable in accordance with paragraph (2C) shall be 15% of the fee authorised by Chapter II of Schedule 6 in respect of each of the circumstances specified in paragraphs 1 to 5A of Chapter III of that Schedule and 20% of the said fee authorised in respect of each of the circumstances specified in paragraphs 6 and 7 of said Chapter III, up to a maximum in any case of 50% of that fee.”.
5. In Schedule 6, Chapter I, Part II, paragraph 1—

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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 amended by S.I. 1990/473, as amended by S.I. 1991/565, S.I. 1993/531, S.I. 1994/1015, S.I. 1999/1042, S.S.I. 2002/496, S.S.I. 2003/178, S.S.I. 2004/281, S.S.I. 2007/14 and S.S.I. 2007/181.

- (a) after “Inclusive fee to cover all work from taking instructions up to and including obtaining extract decree.” For “6” substitute “10”;
- (b) for “for interim orders” substitute “or minute (including any Motion for an interim Order)”;
- (c) for “(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)” substitute “(b) thereafter, waiting for or attending by solicitor at the conduct of any hearing not otherwise prescribed (including any continued hearing and ancillary hearing on expenses or other miscellaneous subsequent hearing) per quarter hour.”; and
- (d) at the end of the paragraph, insert–
  - “Report Fee – to instructing (if required) perusing and taking instructions on any report extending to at least four sheets obtained from a professional or expert person, either–
  - (i) where the report is commissioned by the solicitor for the assisted person; or
  - (ii) where the report is commissioned by order of Court.

Attendance at Hearing – Paragraph 19 of the Notes on the operation of Chapter II in relation to the calculation of time shall apply in relation to attendance of a hearing under Part II of Chapter I.”.

**6. In Schedule 6, Chapter III–**

- (a) after paragraph 5, insert–
  - “**5A.** That the assisted person or any other witness in the case is a vulnerable witness in terms of section 11 of the Vulnerable Witnesses (Scotland) Act 2004 and this has necessitated significant additional work in seeking, or opposing, or implementing a special measure for the taking of evidence from a vulnerable witness by virtue of sections 11, 12, 13 and 18(1)(a) and/or (b) of that Act(3).”;
- (b) in paragraph (a) of the Note on the application of Chapter III, for “on ground” substitute “under paragraph” and delete “travelling to, or”;
- (c) in paragraph (c) of the Note on the application of Chapter III, for “on ground 7” substitute “under paragraph 7”; and
- (d) after paragraph (c) of the Note on the application of Chapter III, insert–
  - “(d) the solicitor of an assisted person, who is a vulnerable witness, may not claim in respect of the assisted person the additional fee under paragraphs 2, 3 or 4, if there is a claim under paragraph 5A in respect of the assisted person as a vulnerable witness.”.

St Andrew’s House,  
Edinburgh  
24th September 2007

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A member of the Scottish Executive

## EXPLANATORY NOTE

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

These Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 19889 to allow increased fees where in civil cases following the coming into force of the Vulnerable Witnesses (Scotland) Act 2004 an assisted person or a witness is a vulnerable witness (articles 4 and 6).

They also make amendments–

- (a) to increase the number of units to reflect the negotiation fee paid where a legal aid certificate is granted but where settlement is reached without an action being raised;
- (b) to extend the scope of payment to include any written motions (currently only interim motions attract payment although scope is wider for defended actions);
- (c) to make provision to ensure solicitors are paid for all necessary court time; and
- (d) to make provision to allow for a fee to be paid for considering reports ordered by the court (article 5).