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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 240**

**The Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008**

*Fees etc.*

**Criminal legal aid and assistance by way of representation**

2.—(1) The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999<sup>(1)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

- (a) in the definition of “assisted person”, after “aid” insert “or (as the case may be) assistance by way of representation”;
- (b) in the definition of “excluded proceedings”, after paragraph (k) insert—
  - “(l) proceedings in an appeal to the High Court under section 174(1) (appeals relating to preliminary pleas) of the 1995 Act<sup>(2)</sup>.”;
- (c) before the definition of “relevant criminal legal aid” insert—
  - ““relevant ABWOR” means assistance by way of representation provided by a solicitor in relation to summary criminal proceedings other than excluded proceedings.”.

(3) In regulation 3 (application)—

- (a) in paragraph (1), after “aid” insert “and relevant ABWOR”;
- (b) after paragraph (2) add—
  - “(3) These Regulations apply also in respect of relevant ABWOR.”.

(4) In regulation 4 (fixed payments allowable to solicitors)—

- (a) in paragraph (1) after “Schedule 1” insert “or 1A”;
- (b) after paragraph (1) insert—
  - “(1A) In the application of paragraph (1) above in relation to the assisted person’s case, fixed payments are payable under one of those Schedules only (as alternatives to each other) where—
    - (a) Schedule 1 is for the purpose of—
      - (i) cases in the JP court (other than before a stipendiary magistrate);
      - (ii) cases in the JP court (before a stipendiary magistrate) or the sheriff court which proceed beyond the first 30 minutes of a trial;
    - (b) Schedule 1A is for the purpose of cases in the JP court (before a stipendiary magistrate) or the sheriff court which do not so proceed.
  - (1B) Those Schedules are to be read and applied accordingly.

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(1) S.I.1999/491.

(2) Criminal Procedure (Scotland) Act 1995 (c. 46).

(1C) There is to be made (in accordance with the other provisions of this regulation) to a solicitor who provides relevant ABWOR in summary proceedings, in respect of the professional services provided by the solicitor and the outlays mentioned in paragraph (2) below, the fixed payments specified in Schedule 1B.

(1D) Schedule 1B is for the purpose of cases in the JP court (before a stipendiary magistrate or otherwise) or the sheriff court.”;

(c) in paragraph (5), omit “specified in Schedule 1”;

(d) in paragraph (7)–

(i) in sub paragraph (a), after “Schedule 1” insert “or (as the case may be) under paragraph 1 of Schedule 1A”;

(ii) at the beginning of sub-paragraph (b) insert “where Schedule 1 applies,”;

(iii) after sub paragraph (b) add–

“; and

(c) where Schedule 1A applies, the amounts payable under paragraph 1 of Schedule 1A so far as applying by reference to paragraphs 10 and 10AA of Part 1 of Schedule 1, or under paragraph 2 of Schedule 1A, are payable to the solicitor who carries out the work concerned (despite, in the case of paragraph 1 of Schedule 1A, the reference in sub paragraph (a) above to that paragraph).”;

(e) after paragraph (7) insert–

“(7A) Paragraph (7) above is subject to paragraph (1A) above (and, accordingly, does not affect the restriction imposed by it).

(7B) Where, in relation to relevant ABWOR, there is a change of solicitor by virtue of regulation 14A(2) and (3) of the Advice and Assistance (Scotland) Regulations 1996(3), there is to be paid–

(a) to each of the solicitors who act for the assisted person in the relevant proceedings, an equal part of the total amount payable under paragraph 1 or 2 of Part 1 of Schedule 1B; and

(b) to the solicitor who carries out work described in the other paragraphs of that Part of that Schedule, the amount payable under those paragraphs in respect of the work.”;

(f) in paragraph (9), after “person” in the first place where it occurs there is inserted “(having relevant criminal legal aid)”;

(g) after paragraph (9) insert–

“(10) Where a solicitor represents an assisted person (having relevant ABWOR) in a court which has been so designated–

(a) Part 1 of Schedule 1B does not apply; and

(b) the fixed payment specified in Part 2 of that Schedule is payable instead.”.

(5) In regulation 5 (submission of accounts)–

(a) in paragraph (1)–

(i) for “6 months” substitute “4 months”;

(ii) after “aid” insert “or assistance”;

(iii) after “1989” insert “or the Advice and Assistance (Scotland) Regulations 1996”;

- (b) in paragraph (2), for “6 months” substitute “4 months”.
- (6) In paragraph 1 of Part 1 of Schedule 1–
  - (a) in the first column,
    - (i) omit “and” at the end of sub paragraph (iii);
    - (ii) after sub paragraph (iii) insert–
      - “(iia) a first or second diet of deferred sentence; and”;
  - (b) in the second column (which relates to the JP court)–
    - (i) for the entry “£300” substitute “£315”;
    - (ii) for “£275” substitute “£290”;
  - (c) in the third column (which relates to the sheriff court or stipendiary magistrate)–
    - (i) for the entry “£500” substitute “£515”;
    - (ii) for “£475” substitute “£490”;
  - (d) in the fourth column (which relates to certain specified sheriff courts)–
    - (i) for the entry “£550” substitute “£565”;
    - (ii) for “£525” substitute “£540”.
- (7) For paragraph 2 of that Part of that Schedule substitute–

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“2. All work mentioned in paragraph 1 above that is done in connection with a complaint under section 27(1)(b) of the 1995 Act.	£157.50	£257.50	£257.50”.
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- (8) After paragraph 10 of that Part of that Schedule insert–

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“10AA. Representation at a first or second diet of deferred sentence (one only) at which the court considers a report required under section 203 of the 1995 Act and where the case is disposed of (as an additional payment).	£25	£25”.
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- (9) Omit paragraph 10A of that Part of that Schedule.
- (10) The Schedule to these Regulations inserts–

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (a) a Schedule 1A containing a table of payments for relevant criminal legal aid (as defined);
- (b) a Schedule 1B containing the table of payments for relevant ABWOR (as defined).