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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 276**

**LEGAL AID AND ADVICE**

**The Criminal Legal Aid (Scotland)  
(Fees) Amendment Regulations 2012**

*Made* - - - - *17th October 2012*  
*Laid before the Scottish*  
*Parliament* - - - - *19th October 2012*  
*Coming into force* - - *3rd December 2012*

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

**Citation, commencement, interpretation and application**

1.—(1) These Regulations may be cited as the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2012 and come into force on 3rd December 2012.

(2) In these Regulations “the principal Regulations” means the Criminal Legal Aid (Scotland) (Fees) Regulations 1989<sup>(2)</sup>.

2. These Regulations apply only to fees for work done and outlays incurred on or after 3rd December 2012.

**Amendment to principal Regulations**

3.—(1) The principal Regulations are amended in accordance with regulations 4(1) and 12 of these Regulations.

(2) Schedule 2 (fees of counsel) to the principal Regulations is amended in accordance with regulations 4(2) to 11, 13 and 14 of these Regulations.

**Definitions**

4.—(1) In regulation 2, after the definition of “the 2000 Act” insert—

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(1) 1986 c.47. Relevant amendments to section 33(2) were made by section 67 of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5).  
(2) S.I. 1989/1491. Relevant amendments were made by S.S.I. 2005/656, S.S.I. 2007/180, S.S.I. 2010/63 and S.S.I. 2011/135.

““the 2009 Act” means the Sexual Offences (Scotland) Act 2009(3);”.

(2) In paragraph 22—

(a) before the definition of consultation insert—

““the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010(4);

“commercial premises” means a bank, building society, post office, security vehicle, currency exchange or licensed gambling premises;”;

(b) in the definition of consultation, after “formal meeting” insert “, including meeting by means of a conference call;”;

(c) after the definition of documentation insert—

““retail premises” means any premises, other than commercial premises;”.

### Categories of charges

5.—(1) After paragraph 17(h) insert—

“(ha) where a trial of an accused person proceeds in respect of the offence of conspiracy to commit an offence, the fee payable in terms of paragraph 3 of Chapter 1 or 2 of Part 1 and paragraph 2 of Chapter 1 or 2 of Part 3 of the Table of Fees, is that for the offence to which the charge of conspiracy relates. Where the offence to which the charge of conspiracy relates is not prescribed in Schedule 2, the fee payable is in terms of paragraph 3(b) of Chapter 1 or 2 of Part 1 and paragraph 2(b) of Chapter 1 or 2 of Part 3 of the Table of Fees;”.

(2) In Part 1 of the Table of Fees, in Chapter 1 (fees of junior counsel in the High Court of Justiciary)—

(a) in paragraph 3(a), after “age of 12” insert “, Section 2B of the 1988 Act, Section 3ZB of the 1988 Act, Sections 1, 2, 3(2)(a) and 18 to 27 of the 2009 Act”;

(b) in paragraph 3(b), after “1982” insert “, Offences under section 12(1) of the Children and Young Persons (Scotland) Act 1937, All offences under the 2009 Act not otherwise prescribed in this Table of Fees”; and

(c) in paragraph 3(c), after “sepulchres” insert “, Robbery, Breach of the peace”.

(3) In Part 1 of the Table of Fees, in Chapter 2 (fees of senior counsel in the High Court of Justiciary)—

(a) in paragraph 3(a), after “age of 12” insert “, Section 2B of the 1988 Act, Section 3ZB of the 1988 Act, Sections 1, 2, 3(2)(a) and 18 to 27 of the 2009 Act”;

(b) in paragraph 3(b), after “1982” insert “, Offences under section 12(1) of the Children and Young Persons (Scotland) Act 1937, All offences under the 2009 Act not otherwise prescribed in this Table of Fees”; and

(c) in paragraph 3(c), after “sepulchres” insert “, Robbery, Breach of the peace”.

(4) In Part 3 of the Table of Fees, in Chapter 1 (fees of junior counsel in the sheriff and district court)—

(a) in paragraph 2(a), after “age of 12” insert “, Section 2B of the 1988 Act, Section 3ZB of the 1988 Act, Sections 1, 2, 3(2)(a) and 18 to 27 of the 2009 Act”; and

(b) in paragraph 2(b), after “1982” insert “, Offences under section 12(1) of the Children and Young Persons (Scotland) Act 1937, All offences under the 2009 Act not otherwise prescribed in this Table of Fees, Robbery, Breach of the peace”.

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(3) 2009 asp 9.

(4) 2010 asp 13.

(5) In Part 3 of the Table of Fees, in Chapter 2 (fees of senior counsel in the sheriff and district court)—

- (a) in paragraph 2(a), after “age of 12” insert “, Section 2B of the 1988 Act, Section 3ZB of the 1988 Act, Sections 1, 2, 3(2)(a) and 18 to 27 of the 2009 Act”; and
- (b) in paragraph 2(b), after “1982” insert “, Offences under section 12(1) of the Children and Young Persons (Scotland) Act 1937, All offences under the 2009 Act not otherwise prescribed in this Table of Fees, Robbery, Breach of the peace”.

### **Preliminary hearings, necessary notes and written work**

6.—(1) After paragraph 15 insert—

“**15A.**—(1) Where a case has more than one preliminary hearing, the fee payable for any further preliminary hearings as prescribed in paragraphs 1B(a) of Chapters 1 and 2 of Part 1 of the Table of Fees is reduced as specified in sub-paragraphs (2) and (3).

(2) Where charges in a case have been split into more than one indictment, the fee payable for any further preliminary hearings is half that prescribed.

(3) Where in a case an indictment is deserted and subsequently re-raised, the fee for any further preliminary hearings is two thirds that prescribed.

**15B.** For the purposes of the fees prescribed in paragraphs 1A and 6 of Chapters 1 and 2 of Part 1 and paragraphs 1A and 5 of Chapters 1 and 2 of Part 3 of the Table of Fees—

- (a) the fee for drafting defence statements is payable only once in any case, regardless of how many statements are drafted in that case;
- (b) a fee is only payable for a second necessary note in a case on cause shown and where counsel establishes there were exceptional circumstances in the case, and in any case fees for no more than two necessary notes are payable; and
- (c) where written work, for which there is a prescribed fee, or a necessary note is drafted and revised, the fee payable for the written work or necessary note is, if there is more than one counsel, shared equally between counsel who made the revisals.”.

(2) In Part 1 of the Table of Fees, in Chapter 1 (fees of junior counsel in the High Court of Justiciary)—

(a) after paragraph 1A(e), insert—

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“(f) drafting defence statement under section 70A of the 1995 Act or £125.00”;  
section 125 of the 2010 Act

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(b) in paragraph 1B(a)—

(i) for “managed meeting” substitute “all managed meetings”; and

(ii) for “the Crown” insert “Crown counsel or the Procurator Fiscal”; and

(c) in paragraph 1B(b), for “under section 72(9) of the 1995 Act” substitute “which involves substantive debate or the resolution of outstanding issues, preliminary pleas, objections to the admissibility of evidence by minute, devolution minutes or applications under section 275 of the 1995 Act”.

(3) In Part 1 of the Table of Fees, in Chapter 2 (fees of senior counsel in the High Court of Justiciary)—

(a) after paragraph 1A(e), insert—

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“(f) drafting defence statement under section 70A of the 1995 Act or £125.00”;  
section 125 of the 2010 Act

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(b) in paragraph 1B(a)—

(i) for “managed meeting” substitute “all managed meetings”; and

(ii) for “the Crown” insert “Crown counsel or the Procurator Fiscal”; and

(c) in paragraph 1B(b), for “under section 72(9) of the 1995 Act” substitute “which involves substantive debate or the resolution of outstanding issues, preliminary pleas, objections to the admissibility of evidence by minute, devolution minutes or applications under section 275 of the 1995 Act”.

(4) In Part 3 of the Table of Fees, in Chapter 1 (fees of junior counsel in the sheriff and district court), after paragraph 1A(e) insert—

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“(f) drafting defence statement under section 70A of the 1995 Act or £125.00”;  
section 125 of the 2010 Act

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(5) In Part 3 of the Table of Fees, in Chapter 2 (fees of senior counsel in the sheriff and district court), after paragraph 1A(e) insert—

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“(f) drafting defence statement under section 70A of the 1995 Act or £125.00”;  
section 125 of the 2010 Act

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## **Preparation**

7.—(1) In paragraph 13—

(a) in sub-paragraph (a), for “or as the case may be junior and senior” substitute “junior and senior or junior and junior”;

(b) omit “and” at the end of sub-paragraph (b); and

(c) after sub-paragraph (c) insert—

“; and

(d) such a fee is not payable until the case to which it relates has concluded.”.

(2) In paragraph 14—

(a) in sub-paragraph (a)—

(i) after “trial” insert “or for a hearing where a fee is payable at the full rate for a trial under paragraphs 4(q) to (t) of Chapters 1 and 2 of Part 1 or paragraphs 3(p) to (t) of Chapters 1 and 2 of Part 3 of the Table of Fees”; and

(ii) omit “or (e)”; and

(b) in sub-paragraph (b),

(i) after “accepted” insert “ or where a case is deserted simpliciter or deserted and the Crown does not intend to re-raise proceedings”; and

(ii) omit “or (e)”.

(3) In paragraph 15—

(a) for “total number of sheets of documentation” substitute “total number of actual sheets of documentation considered by counsel”;

(b) after sub-paragraph (c)(iii) insert—

- “(iv) 2.5 days are allowable for each additional 2,500 sheets;”
- (c) for sub-paragraph (d) substitute—
  - “(d) where the total number of sheets exceeds 7,500, 2.5 days are allowable for each additional 2,500 sheets;”
- (d) omit sub-paragraph (e);
- (e) in sub-paragraph (f)(i), omit “or the proportion of the fee allowable under sub-paragraph (e) which is attributable to over 7,500 sheets”; and
- (f) in sub-paragraph (f)(ii) omit “or (e)”.

### Consultations

8.—(1) After paragraph 16, insert—

“**16A.**—(1) A consultation fee is payable under paragraph 5 of Chapter 1 or 2 of Part 1 and paragraph 4 of Chapter 1 or 2 of Part 3 of the Table of Fees only once a day for a case, regardless of how many consultations in relation to that case are held that day. This applies where any of the following parties attend more than one consultation in one day—

- (a) the same counsel and solicitor;
- (b) the same counsel and accused;
- (c) the same counsel and Crown counsel or Procurator Fiscal; or
- (d) the same counsel and expert.”.

(2) A fee for an abortive consultation is payable under paragraph 5A of Chapter 1 or 2 of Part 1 and paragraph 4A of Chapter 1 or 2 of Part 3 of the Table of Fees where counsel attended for a consultation but the consultation did not proceed due to no fault of counsel.”.

(2) For paragraph 17(e) substitute—

“(e) subject to paragraph (ee), the prescribed fees for a trial or any hearing shall include all work undertaken in the case that day;”.

(3) After paragraph 17(e) insert—

- “(ee) a fee for a consultation with an expert, in addition to the prescribed fees for a trial or a hearing under paragraph (e), may be payable where counsel establishes that—
  - (i) previous attempts had been made to consult with the expert which were unsuccessful;
  - (ii) the need to hold the consultation was urgent; and
  - (iii) the consultation took place on the same day as the trial or hearing before 0800 hours or after 1800 hours due to the limited availability of the expert;”.

(4) In Part 1 of the Table of Fees—

- (a) in Chapter 1 (fees of junior counsel in the High Court of Justiciary), after paragraph 5 insert—

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“ <b>5A.</b> Fee for abortive consultation	£105.00	£92.00	£67.50”;
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- (b) in Chapter 2 (fees of senior counsel in the High Court of Justiciary), after paragraph 5 insert—

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“ <b>5A.</b> Fee for abortive consultation	£125.00”.
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(5) In Part 3 of the Table of Fees—

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- (a) in Chapter 1 (fees of junior counsel in the sheriff and district court), after paragraph 4 insert—

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<i>“4A. Fee for abortive consultation</i>	<i>£89.00</i>	<i>£77.00</i>	<i>£54.00”</i> ; and
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- (b) in Chapter 2 (fees of senior counsel in the sheriff and district court), after paragraph 4 insert—

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<i>“4A.Fee for abortive consultation</i>	<i>£100.00”</i> .
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### Early pleas

9. In paragraph 19—

- (a) in sub-paragraph (a), for “sub-paragraph (b)” substitute “sub-paragraphs (b) and (c)”; and  
 (b) omit “but” at the end of sub-paragraph (a);  
 (c) after sub-paragraph (b), insert—  
     “; and

- (c) where a case proceeded by indictment, was deserted, and proceedings were re-raised and disposed of by way of a hearing under section 76 of the 1995 Act, the following fees are chargeable by counsel in the Tables of Fees:

- (i) a fee for the section 76 hearing under the re-raised indictment, as prescribed in paragraph 2 of Chapters 1 and 2 of Part 1 and paragraph 1B of Chapters 1 and 2 of Part 3, and fees for any court hearings which took place under the initial indictment, as prescribed in paragraph 4 of Chapters 1 and 2 of Part 1 and paragraph 3 of Chapters 1 and 2 of Part 3; or  
 (ii) fees prescribed in Parts 1 and 3 of the Table of Fees for any hearings, including trial, which took place under the initial indictment, and fees for any hearings under the re-raised indictment, as prescribed in paragraph 4 of Chapters 1 and 2 of Part 1 and paragraph 3 of Chapters 1 and 2 of Part 3, but not the fee for the section 76 hearing under the re-raised indictment, as prescribed in paragraph 2 of Chapters 1 and 2 of Part 1 and paragraph 1B of Chapters 1 and 2 of Part 3.”.

### Adjourned diets, trials and other hearings

- 10.—(1) In paragraph 16, after “Fees” insert “or adjournment of any other hearing including trial”.

- (2) After paragraph 17(a), insert—

“(aa) where a trial, or other hearing where a prescribed fee is payable at the full rate for a trial, exceeds 30 days in total, the fee payable is reduced by 10% for every day in excess of 30 days;

- (ab) where counsel attends in one day more than one trial, or other hearing where a prescribed fee is payable at the full rate for trial, the fee payable to counsel for the first trial or other hearing of that day is as prescribed and the fee payable for any subsequent trial or other hearing is half that prescribed in those Parts;”.

- (3) After paragraph 17(b), insert—

“(ba) where at a trial diet there is more than one accused and counsel represents an accused who pled guilty at an earlier diet, the fee under paragraph 3 of Chapter 1 or 2 of Part 1 or under paragraph 2 of Chapter 1 or 2 of Part 3 is not payable, but a fee may be payable

on cause shown under paragraph 4(pa) of Chapter 1 or 2 of Part 1 or paragraph 3(oa) of Chapter 1 or 2 of Part 3;”.

**11.—(1)** In Part 1 of the Table of Fees, in Chapter 1 (fees of junior counsel in the High Court of Justiciary)—

(a) after paragraph 4(a) insert—

“(aa) judicial examination	£360.00	£315.00	£225.00”;
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(b) after paragraph 4(n) insert—

“(na) drug treatment and testing order review	£180.00	£157.50	£112.50
“(nb) drug treatment and testing order review where mitigation led and order revoked	£360.00	£315.00	£225.00”;

(c) after paragraph 4(p) insert—

“(pa) trial diet where there is more than one accused and counsel represents an accused who pled guilty at an earlier diet	£360.00	£315.00	£225.00”;
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(d) after paragraph 4(q) insert—

“(qa) commission on evidence and any other hearing, other than one for which a fee is prescribed, at which evidence is adduced	Payable at the full rate for a trial (paragraph 3 above) depending on the category of case and status of counsel.”.
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**(2)** In Part 1 of the Table of Fees, in Chapter 2 (fees of senior counsel in the High Court of Justiciary)—

(a) after paragraph 4(a) insert—

“(aa) judicial examination	£410.00”;
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(b) after paragraph 4(n) insert—

“(na) drug treatment and testing order review	£205.00
“(nb) drug treatment and testing order review where mitigation led and order revoked	£410.00”;

(c) after paragraph 4(p) insert—

“(pa) trial diet where there is more than one accused and counsel represents an accused who pled guilty at an earlier diet	£410.00”;
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(d) after paragraph 4(q) insert—

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“(qa) commission on evidence and any other hearing, other than one for which a fee is prescribed, at which evidence is adduced Payable at the full rate for a trial (paragraph 3 above) depending on the category of case and status of counsel.”.

(3) In Part 3 of the Table of Fees, in Chapter 1 (fees of junior counsel in the sheriff and district court)—

(a) after paragraph 3(a) insert—

“(aa) judicial examination	£288.00	£252.00	£180.00”;
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(b) after paragraph 3(m) insert—

“(ma) drug treatment and testing order review	£144.00	£126.00	£90.00
(mb) drug treatment and testing order review where mitigation led and order revoked	£288.00	£252.00	£180.00”;

(c) after paragraph 3(o) insert—

“(oa) trial diet where there is more than one accused and counsel represents an accused who pled guilty at an earlier diet	£288.00	£252.00	£180.00”;	and
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(d) after paragraph 3(p) insert—

“(pa) commission on evidence and any other hearing, other than one for which a fee is prescribed, at which evidence is adduced Payable at the full rate for a trial (paragraph 2 above) depending on the category of case and status of counsel.”.

(4) In Part 3 of the Table of Fees, in Chapter 2 (fees of senior counsel in the sheriff and district court)—

(a) after paragraph 3(a) insert—

“(aa) judicial examination	£328.00”;
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(b) after paragraph 3(m) insert—

“(ma) drug treatment and testing order review	£164.00
(mb) drug treatment and testing order review where mitigation led and order revoked	£328.00”;

(c) after paragraph 3(o) insert—

“(oa) trial diet where there is more than one accused and counsel represents an accused who pled guilty at an earlier diet	£328.00”;	and
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(d) after paragraph 3(p) insert—

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“(pa) commission on evidence and any other Payable at the full rate for a trial (paragraph 2 hearing, other than one for which a fee is above) depending on the category of case and prescribed, at which evidence is adduced status of counsel.”.

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### **Cases not subsequently indicted at the High Court**

**12.** After regulation 3 insert—

“**3A.** In relation to proceedings in the sheriff court where an indictment has not been served, the fees which may be payable are those prescribed in Chapters 1 and 2 of Part 1 of the Table of Fees in Schedule 2 if the proceedings relate to any of the following offences—

- (a) murder;
- (b) multiple attempted murder;
- (c) culpable homicide;
- (d) rape;
- (e) assault and robbery involving commercial premises;
- (f) importation of controlled drugs;
- (g) an offence under section 1 of the 1998 Act (causing death by dangerous driving);
- (h) an offence under the Explosive Substances Act 1883;
- (i) a firearms offence;
- (j) incest;
- (k) sodomy;
- (l) sedition;
- (m) treason;
- (n) torture;
- (o) war crimes.”.

### **Fee for one counsel only**

**13.**—(1) In paragraph 3(e) of the notes on the operation of Schedule 2, for “sub-paragraph (ea)” substitute “sub-paragraphs (ea) and (eb)”.

(2) After paragraph 3(ea) of those notes insert—

“(eb) a fee, under Part 1 or 3 of the Table of Fees, is to be allowed to one counsel only in respect of—

- (i) a diet of deferred sentence, except where there is in contemplation the imposition of any of the following—
  - (a) a mandatory or discretionary life sentence;
  - (b) an order for lifelong restriction;
  - (c) any disposal under Part 6 of the 1995 Act (mental disorder),

or where there is a hearing of evidence in mitigation; and

- (ii) a continued preliminary hearing, except where designated as a hearing at which any of the following matters is intended to be heard—
  - (a) a preliminary minute;

- (b) a preliminary issue;
- (c) a devolution minute;
- (d) an application under section 275 of the 1995 Act;
- (e) a petition to recover documents under a specification of documents where the petition is opposed or likely to involve substantive legal argument, or an evidential hearing or any other hearing involving substantive legal argument;”.

#### **Travel, accommodation and subsistence**

14.—(1) For paragraph 20, substitute—

“20.—(1) The supplementary fee for travel prescribed in paragraph 7 of Chapters 1 and 2 of Part 1, paragraph 9 of Chapters 1 and 2 of Part 2 and paragraph 6 of Chapters 1 and 2 of Part 3 of the Table of Fees is chargeable only as provided for in this regulation.

(2) The fee is only chargeable where the travel involves a round trip exceeding 60 miles in each direction.

(3) The fee is not chargeable for travel to courts in any of the following locations for the purposes of a trial or any other hearing—

- (a) Edinburgh;
- (b) Glasgow;
- (c) Airdrie;
- (d) Alloa;
- (e) Dunfermline;
- (f) Falkirk;
- (g) Hamilton;
- (h) Kirkcaldy;
- (i) Lanark;
- (j) Livingston;
- (k) Paisley;
- (l) Stirling.

(4) Where counsel travels to a court in any of the locations listed in paragraph (3) for the purposes of a trial or any other hearing and also attends to business relating to any case on the same day, (subject to paragraph 5) the fee is not chargeable.

(5) The fee may be chargeable in the circumstances set out in paragraph (4) where the Board is satisfied that the trip relating to business in any case is separate and additional to the trip relating to the court.

(6) Counsel must, if required, produce vouching of the travel undertaken.

(7) The fee is chargeable once only in respect of each round trip, irrespective of the number of cases for which the trip is undertaken.

(8) The fee chargeable excludes any travel costs.”.

(2) For paragraph 21 substitute—

“21. Necessary accommodation and subsistence is chargeable only—

- (a) as an outlay up to the amount specified in specified in paragraph 8 of Chapters 1 and 2 of Part 1, paragraph 10 of Chapters 1 and 2 of Part 2 or paragraph 7 of Chapters 1 and 2 of Part 3 of the Table of Fees;
- (b) where a supplementary fee for travel is chargeable in accordance with paragraph 20; and
- (c) on cause shown.”.

St Andrew’s House,  
Edinburgh  
17th October 2012

*KENNY MACASKILL*  
A member of the Scottish Government

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## EXPLANATORY NOTE

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

These Regulations amend the Criminal Legal Aid (Scotland) Fees Regulations 1989 ([S.I. 1989/1491](#), “the principal Regulations”) to make new provision about the fees payable to senior and junior counsel for criminal legal aid work, and conditions on payment.

All the fees, except those in regulation 14, apply to proceedings at first instance in the High Court of Justiciary, the sheriff court and the district court. Regulation 14 applies to proceedings at first instance and on appeal in those courts.

Regulation 4 amends the definitions in the principal Regulations. Regulation 5 amends the categories of charges in the principal Regulations. Regulation 6 makes provision about preliminary hearings, necessary notes and other written work. Regulation 7 makes provision about fees for preparation. Regulation 8 makes provision about consultations including abortive consultations. Regulation 9 makes provision about fees for early pleas. Regulations 10 to 12 make provision about adjourned diets, trials and other hearings and certain cases which proceed in the sheriff court. Regulation 13 makes provision about where a fee for only one counsel is payable, and regulation 14 makes provision about payments for travel, accommodation and subsistence.