

**2013 No. 320**

**LEGAL AID AND ADVICE**

**The Criminal Legal Aid (Scotland) (Fees) Amendment  
Regulations 2013**

*Made* - - - - - *11th November 2013*

*Laid before the Scottish Parliament* *13th November 2013*

*Coming into force* - - - *8th January 2014*

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

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2013 and come into force on 8th January 2014.

(2) Subject to paragraph (3), these Regulations apply only in relation to fees for work done in relation to proceedings commenced on or after 8th January 2014.

(3) If the solicitor involved so requests, in determining the fees payable in respect of proceedings commenced on or after 5th July 2010 and not concluded by 8th January 2014, the Criminal Legal Aid (Scotland) (Fees) Regulations 1989(b) are to be read and have effect as if amended in accordance with these Regulations.

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

2. The Criminal Legal Aid (Scotland) (Fees) Regulations 1989(c) are amended as follows.

3. After regulation 7, insert—

**“Solemn proceedings (exceptional) fees**

**7A.**—(1) A solicitor who provides criminal legal aid in relation to solemn criminal proceedings—

- (a) where the circumstances prescribed in paragraph (3) exist; and
- (b) subject to the conditions prescribed in paragraph (5),

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(a) 1986 c.47; section 33(2) was amended by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 67. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.

(b) S.I. 1989/1491.

(c) Relevant amending instruments are S.S.I. 2010/212, S.S.I. 2011/41, S.I. 2013/7 and S.S.I. 2013/250.

is to be paid for all work only in accordance with Part 1 of the Table of Fees (detailed fees) in Schedule 1.

(2) It is for the Board to determine whether the circumstances prescribed at paragraph (3) exist, and whether the conditions prescribed at paragraphs (5) and (10) are met.

(3) The circumstances referred to in paragraph (1)(a) are where an assisted person would be deprived of the right to a fair trial in a case because of the amount of fees payable to the solicitor in accordance with these Regulations (other than paragraph (1)).

(4) Factors to be taken into account by the Board in considering whether the circumstances prescribed at paragraph (3) exist include whether the case involves legal or factual complexity (including procedural complexity).

(5) The conditions referred to in paragraph (1)(b) are as follows—

- (a) the solicitor providing the criminal legal aid is to make an application to the Board in such a manner and form (which may include an online form) and containing such information as the Board may specify at as early a stage in the provision of the criminal legal aid as is reasonably practicable;
- (b) that solicitor is, if required by the Board to do so, to supply such further information or such documents as the Board may require to enable it to determine the application; and
- (c) that solicitor is to keep proper records of all professional services provided by way of, and outlays incurred in the provision of, that criminal legal aid, whether before or after the Board determines whether the conditions prescribed in this paragraph are met.

(6) A solicitor may apply for review where the Board has determined that the circumstances prescribed in paragraph (3) do not exist.

(7) An application for review must—

- (a) subject to paragraph (8), be lodged with the Board within 15 days, beginning on the day notice of the Board's determination was given to the applicant;
- (b) include a statement of any matters which the applicant wishes the Board to take into account in reviewing the application; and
- (c) be accompanied by such additional precognitions and other documents as the applicant considers to be relevant to the review.

(8) Paragraph (7)(a) does not apply where the Board considers there is a special reason for it to consider a late application for review.

(9) Where the Board has granted an application for a change of solicitor under regulation 17(3) of the Criminal Legal Aid (Scotland) Regulations 1996 (changes of solicitor), any solicitor who provided criminal legal aid prior to that grant is to be paid, where the Board has determined that the circumstances prescribed in paragraph (3) exist, for all work only in accordance with Part 1 of the Table of Fees (detailed fees) in Schedule 1.

(10) A solicitor to whom paragraph (9) applies is only to be paid in accordance with paragraph (9) where that solicitor has kept proper records of all professional services provided by way of, and outlays incurred in the provision of, that criminal legal aid.”.

**4. In Schedule 1 (fees of solicitors), in the Notes on the operation of Schedule 1—**

(a) for paragraph 1(1) substitute—

“(1) In relation to solemn criminal proceedings, other than proceedings to which regulation 7A(1) (solemn proceedings (exceptional) fees) applies, the fees payable to a solicitor are to be calculated as follows:—

- (a) for all work falling within a block of work prescribed in Part 2 of the Table of Fees (inclusive fees), the fee specified for that block of work in that Part;
- (b) for all other work, unless no fee is chargeable by virtue of paragraph 3, the fees specified in Part 1 of the Table of Fees (detailed fees).”;

- (b) after paragraph 1(3) insert—
- “(3A) Where the Table of Fees does not prescribe a fee for any item of work, and unless no fee is chargeable by virtue of paragraph 3, the Board or the auditor, as the case may be, is to allow such fees as appear appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the Table of Fees.”;
- (c) in paragraph 1(5)—
- (i) omit “Without prejudice to the generality of sub-paragraph (1),”; and
- (ii) after “Table of Fees” where it first occurs insert “and the fees for these items are payable in accordance with Part 1 of the Table of Fees (detailed fees)”;
- (d) in paragraph 3, for sub-paragraph (j) substitute—
- “(j) preparing for a hearing, other than where the fee for preparation is as provided for within a block of work prescribed in Part 2 of the Table of Fees (inclusive fees);”;
- (e) in paragraph 3(m), omit “or diet of deferred sentence”; and
- (f) after paragraph 3 insert—
- “**3A.**—(1) In solemn proceedings, where fees would otherwise be chargeable under both paragraph 4A(c) and paragraph 6(a) or (ab) of Part 2 of the Table of Fees (inclusive fees), only one fee is chargeable, being the higher amount of the two.
- (2) Under paragraph 4A a fee is chargeable for preparing lines of enquiry and preparing submissions, but is not chargeable for consultations which concern preparation.

## Research

**3B.** The fee prescribed in paragraph 6 of Part 1 of the Table of Fees (detailed fees) may be payable for time spent in researching a novel, developing or unusual point of law where the following conditions are met:—

- (a) the Board considers that the circumstances of the case are exceptional, whether or not the Board has made a determination under regulation 7A (solemn proceedings (exceptional) fees); and
- (b) the research required in the case, in the opinion of the Board, goes beyond the understanding of the substantive and procedural law expected of solicitors in accordance with regulation 10A.”.

**5.** In Schedule 1 (fees of solicitors), in Part 1 of the Table of Fees (detailed fees), substitute the following fees for the fees shown in the column for Solemn Procedure in the corresponding paragraphs:—

paragraph 1(b)	£18.30;
paragraph 2	£6.95;
paragraph 3	£2.75;
paragraph 4(a)(i)	£11.55;
paragraph 4(a)(ii)	£11.55;
paragraph 4(b)(i)	£2.40;
paragraph 4(b)(ii)	£1.45;
paragraph 4(b)(iii)	£0.95;
paragraph 5A(a)	£6.10;
paragraph 5A(b)	£3.05;
paragraph 6(a)	£12.20; and

paragraph 6(b) £6.10.

**6.** In Schedule 1 (fees of solicitors), in Part 2 of the Table of Fees (inclusive fees)—

- (a) in paragraph 4(b), omit “or diet of deferred sentence”;
- (b) after paragraph 4 insert—

“ <b>4A.</b> The fee for preparation for—	£38.00	£38.00	£38.00
(a) a hearing under section 76 of the 1995 Act (procedure where accused decides to plead guilty);			
(b) a hearing on a plea in bar of trial;			
(c) a hearing raising a preliminary issue, where the preliminary issue would have the effect of excusing the accused person from trial and no other fee is prescribed for this preparation.”;			

- (c) in paragraph 5—
  - (i) for “and advice” substitute “, advice and representation”;
  - (ii) in columns A and B, for “£152.00” where it occurs both times substitute “£177.00”; and
  - (iii) in column C, for “£76.00” substitute “£101.00”; and
- (d) in paragraph 6—
  - (i) after “hearing” insert “or a first diet”;
  - (ii) in sub-paragraph (a) omit “or compatibility”; and
  - (iii) after sub-paragraph (a) insert—
    - “(ab) a compatibility issue in terms of section 288ZA of the 1995 Act(a);”.

*KENNY MACASKILL*  
A member of the Scottish Government

St Andrew’s House,  
Edinburgh  
11th November 2013

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(a) Section 288ZA was inserted by section 34 of the Scotland Act 2012 (c.11).

## **EXPLANATORY NOTE**

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

These Regulations amend the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (“the principal Regulations”) as regards the fees payable to solicitors for carrying out legal aid work in relation to solemn criminal proceedings.

The Regulations apply to fees for work done in relation to proceedings commenced on or after 8th January 2014. However, a solicitor can request, under regulation 1, in respect of proceedings commenced before that date but not concluded by that date, that the fees be calculated as if the principal Regulations were amended by these Regulations.

Regulation 3 inserts a new regulation 7A into the principal Regulations which allows a solicitor, in certain circumstances and where certain conditions are met, to apply to the Board for the case to be determined to be exceptional. Once a case has been determined to be exceptional the solicitor, and any previous solicitor who acted for the assisted person in that case where there has been a transfer of agency, is to be paid different fees to those otherwise payable under Schedule 1 of the principal Regulations for solemn proceedings.

Regulations 4 and 6 make various amendments to the principal Regulations to clarify and alter existing provisions and make some new provisions. These amendments include how fees are calculated where work is not covered by an inclusive fee in Part 2 of the Table of Fees in the principal Regulations, the circumstances in which fees for preparation for a hearing or research may be chargeable and what fees are chargeable in relation to preparation for diets of deferred sentence.

Regulation 5 alters the amounts payable by way of the detailed fees payable under Part 1 of the Table of Fees in Schedule 1 to the principal Regulations.

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