

POLICY NOTE

THE LEGAL AID AND ASSISTANCE BY WAY OF REPRESENTATION (FEES FOR TIME AT COURT AND TRAVELLING) (SCOTLAND) REGULATIONS 2014

SSI 2014/257

The above instrument was made in exercise of the powers conferred by section 33(2)(a) and (b) and (3) of the Legal Aid (Scotland) Act 1986. The instrument is subject to negative procedure.

Policy Objectives

The Scottish Government remains committed to maintaining a fair, high quality and equitable system which maintains public confidence at an affordable and sustainable level of expenditure. It is imperative, therefore, that savings are made wherever possible. In 2011 the Scottish Government set out its proposals in *A Sustainable Future for Legal Aid* to take forward a series of legal aid reforms.

The instrument will bring in a consistent approach as to how solicitors must charge their time engaged at court across civil legal aid, criminal legal aid, legal aid in contempt of court proceedings and advice and assistance (A&A) for matters relating to assistance by way of representation (ABWOR). This will bring about savings to the Scottish Legal Aid Fund and will assist with the development of the Scottish Legal Aid Board's ("the Board") online accounts system.

The instrument will ensure that the actual time engaged at court by solicitors – specifically for advocacy (conduct of the hearing), non-advocacy (work other than the hearing) and travel – is added up and then the total time is rounded up to the nearest quarter of an hour.

There can often be gaps in between the times the solicitor is engaged at court. For example:

Activity	Time	Actual time engaged (mins)
Travel to court	9:30-9:50	20
Meeting with client	9:50-9:55	5
Meeting with Procurator Fiscal/Advocate Depute	10:10-10:30	20
Waiting for hearing	10:30-11:00	30
Conduct of hearing	11:00-12:00	60
Meeting with client	12:10-12:15	5
Travel to office	12:30-12:45	15

Under the present provisions, there is an ambiguity regarding whether the rounding up to the nearest quarter hour should take place on basis of the total time engaged per day in a given type of work, or whether each block of time engaged in activities falling under a particular fee heading should be rounded up individually. The effect of the amendments is that the actual time the solicitor is engaged at court or travelling is aggregated and then rounded up. In the above example, this would produce the following results:

Activity	Time	Actual time engaged (mins)	Time charged (rounded up to nearest ¼ hour)
Travel to court	9:30-9:50	20	45
Travel to office	12:30-12.45	15	
	Total:	35	
Meeting with client	9:50-9:55	5	60
Meeting with Procurator Fiscal/Advocate Depute	10:10-10:30	20	
Waiting for hearing	10:30-11:00	30	
Meeting with client	12:10-12:15	5	
	Total:	60	
Conduct of hearing	11:00-12:00	60	60
	Grand total	155	165

Consultation

The Scottish Government shared a discussion paper at an early stage and later a draft of the instrument with the Board, the Faculty of Advocates and the civil and criminal negotiating teams of the Law Society of Scotland. They are content with the proposal.

Impact Assessments

An equality impact assessment for this policy was undertaken and is attached. There are no equality impact issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that there will be a single method of calculation of the aggregated time for solicitors to manage, regardless of the type of proceedings or legal assistance available in the case. Having a single calculation is also beneficial to the development of the Board's online accounts system and will achieve an estimated full year saving to the Legal Aid Fund in the region of £100,000-£150,000.

Scottish Government
Justice Directorate

22 September 2014