

1968 No. 1933 (S.171)

LEGAL AID AND ADVICE, SCOTLAND

**The Act of Adjournal (Criminal Legal Aid Fees Amendment)
1968**

Made 29th November 1968

Coming into Operation 2nd January 1969

**ACT OF ADJOURNAL
Relative to Criminal Legal Aid Fees**

AT EDINBURGH, the TWENTY NINTH day of
NOVEMBER, Nineteen hundred and sixty eight
years.

Present :

The Right Honourable
The Lord Justice-General ;
The Right Honourable
The Lord Justice-Clerk ;
The Honourable Lord Guthrie ;
The Honourable Lord Cameron ;
The Honourable Lord Johnston.

The Lord Justice-General, Lord Justice-Clerk and Lords Commissioners of Justiciary, by virtue of the powers conferred upon them by section 16 of the Legal Aid (Scotland) Act 1967(a), and of all other powers competent to them in that behalf, do hereby enact and declare as follows :

1. This Act of Adjournal may be cited as the Act of Adjournal (Criminal Legal Aid Fees Amendment) 1968 and shall come into operation on 2nd January 1969.

2. The Act of Adjournal (Criminal Legal Aid Fees) 1964(b) as amended by the Act of Adjournal (Criminal Legal Aid Fees Amendment) 1965(c) shall be further amended as follows :—

(a) By deleting sub-paragraph (1) of paragraph 3 and by substituting a new sub-paragraph (1) thereof as follows :—

“(1) There shall be allowed to the duty Solicitor representing accused persons in the sheriff court on rota in terms of Article 6 of the Scheme, fees on the following scales :—

(a) Attendance at the first session of a court for the day a sessional fee of (i) £5 for the first case and (ii) £1 for each additional case, subject to a maximum total fee of £10 for the session until its termination on

(a) 1967 c. 43.
(c) S.I. 1965/1788 (1965 III, p. 5461).

(b) S.I. 1964/1410 (1964 III, p. 3292).

completion of business for the day or on adjournment by the court, whichever be the earlier ;

- (b) Attendance at any other session of that court on the same day a sessional fee of (i) £5 for the first case and (ii) £1 for each additional case, subject to a maximum total fee of £7 for each such other session :

Provided that the fee according to the foregoing scale shall cover the appearance in court of the duty Solicitor on behalf of the accused as well as any interview or interviews with the accused or others whether such interview or interviews take place during the same or another session."

- (b) By deleting sub-paragraph (2) of paragraph 12 and by substituting a new sub-paragraph (2) thereof as follows:—

"(2) Where the nominated Solicitor requires to instruct another Solicitor, whether an Edinburgh Solicitor in connection with an appeal or on a remit for sentence, or a Solicitor at the place of the prison or the court, or a local Solicitor for the purpose of local precognitions or enquiry, nevertheless only one account shall be rendered by the nominated Solicitor in accordance with this Act of Adjournal (payment of the other Solicitor being a matter for adjustment between the nominated Solicitor and the other Solicitor out of the fees payable hereunder) but in determining the sum to be allowed to the nominated Solicitor, account shall be taken also of the work carried out by that other Solicitor."

- (c) By deleting paragraph 13 and by substituting a new paragraph 13 as follows:—

"13.—(1) The determination of the sum to be allowed to a Solicitor shall take into account all the relevant circumstances including the nature, importance, complexity or difficulty of the work and the time involved, including time necessarily spent at the court on any day in waiting for the case or for the appeal to be heard, where such time has not been occupied in waiting for or conducting another case, and shall include such amount as appears to represent fair remuneration for the work actually and reasonably done due regard being had to economy.

(2) It shall be competent immediately on conclusion of the trial for the Counsel or Solicitor who appeared for the accused to make oral application to the court for a certificate that the case has necessarily been one of exceptional length, complexity or difficulty. Such certificate may be granted or refused forthwith by the Court, or the Judge may adjourn the application for a hearing in Chambers. This hearing must take place within seven days of such adjournment. In the event of such an adjournment being ordered written grounds for such application must be lodged within two days of the adjournment being ordered, otherwise the application shall be refused. The Prosecutor may be represented at such hearing. If such a certificate shall be granted then any limitation contained in the foregoing paragraphs, or such of them as are referred to in such certificate, on the amount of any fee payable shall not apply and such fees shall be allowed, after taking into account all the relevant circumstances of the case, in respect of the work done as appears to represent fair remuneration according to the work actually and reasonably done due regard being had to economy."

- (d) By deleting paragraph 15 and by substituting a new paragraph 15 as follows:—

"15.—(1) If any question or dispute arises as to the amount payable to any Solicitor or Counsel in respect of any remuneration payable for the representation of any person receiving legal aid in connection with any criminal proceedings in the High Court, including appeals, the matter shall

be referred to the Auditor of the Court of Session for his decision as to what represents fair remuneration under and in terms of this Act of Adjournal: Provided that the Law Society and any other party to a reference to the Auditor under this sub-paragraph shall have the right to state written objections to the High Court in relation to the report of the Auditor under this sub-paragraph within seven days of the date of issue of such report and the Law Society and any such other party may be heard in Chambers thereon.

(2) If any question or dispute arises as to the amount payable to any Solicitor or Counsel in respect of any remuneration payable for the representation of any person receiving legal aid in connection with any criminal proceedings in the Sheriff Court, the matter shall be referred to the Auditor of the Sheriff Court for the district in which those proceedings took place for his decision as to what represents fair remuneration under and in terms of this Act of Adjournal: Provided that the Law Society and any other party to a reference to an Auditor under this sub-paragraph shall have the right to state written objections to the Sheriff in relation to the report of the Auditor under this sub-paragraph within seven days of the date of issue of such report and the Law Society and any such other party may be heard in Chambers thereon.

(3) A reference to an Auditor under this paragraph need not be joint but may be made at the instance either of the Solicitor concerned or of the Law Society and the Auditor concerned shall give reasonable notice to both of the diet of taxation."

And the Lords appoint this Act of Adjournal to be recorded in the Books of Adjournal, and to be published in the *Edinburgh Gazette*.

J. L. Clyde,
I.P.D.

EXPLANATORY NOTE

(This Note is not part of the Act of Adjournal.)

This Act of Adjournal amends the Act of Adjournal (Criminal Legal Aid Fees) 1964 by clarifying certain provisions relating to the fees of a duty Solicitor and of a nominated Solicitor, and by modifying the provisions relating to fees in exceptional cases. It also provides for the making of objections to the report of an Auditor of Court on the question of fair remuneration.