
STATUTORY INSTRUMENTS

1987 No. 365 (S. 28)

LEGAL AID AND ADVICE, SCOTLAND

The Criminal Legal Aid (Scotland) (Fees) Regulations 1987

<i>Made</i>	- - - -	<i>5th March 1987</i>
<i>Laid before Parliament</i>		<i>11th March 1987</i>
<i>Coming into force</i>	- -	<i>1st April 1987</i>

The Secretary of State, in exercise of the powers conferred on him by section 33 of the Legal Aid (Scotland) Act 1986⁽¹⁾ and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Scotland) (Fees) Regulations 1987 and shall come into force on 1st April 1987.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1986 Act” means the Legal Aid (Scotland) Act 1986;

“auditor” means the appropriate auditor of court specified in regulation 15;

“duty solicitor” means a solicitor who is available for the purpose of giving criminal legal aid by virtue of an arrangement made by the Board under section 31(8) of the 1986 Act;

“High Court” means the High Court of Justiciary;

“nominated solicitor” means the solicitor nominated to act by a person to whom criminal legal aid has been made available;

“outlays” does not include fees payable to counsel.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is to one of these Regulations and any reference to a numbered Schedule is to a Schedule to these Regulations.

Fees and outlays to which the Regulations apply

3. These Regulations shall regulate the fees and outlays allowable to solicitors, and the fees allowable to counsel, from the Fund in respect of criminal legal aid under the 1986 Act, upon any taxation in accordance with regulation 15.

Fees allowance to solicitors: general provisions

4.—(1) Subject to the following provisions of this regulation and to regulations 11 and 12, the fees allowable to solicitors shall be those specified in regulations 5 to 10.

(2) Where a nominated solicitor represents two or more persons charged in the same indictment or complaint, or appealing against conviction or sentence in respect of the same indictment or complaint—

- (a) he shall submit one account in respect of all those persons; and
- (b) the maximum fees specified in regulations 6 to 10 shall -
 - (i) in a case where he represents two such persons, be increased by 40 per cent.,
 - (ii) in a case where he represents more than two such persons, be increased in respect of each such additional person by 20 per cent.

(3) Where a nominated solicitor requires 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 inquiry, nevertheless only one account shall be submitted by the nominated solicitor (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.

(4) Where the work done by a solicitor constitutes a supply of services in respect of which value-added tax is chargeable, there may be added to the amount of fees allowed to the solicitor an amount equal to the amount of value-added tax chargeable.

Solicitors' fees for identification parades and judicial examinations

5.—(1) The duty solicitor or, where criminal legal aid may be provided by a solicitor other than the duty solicitor, the nominated solicitor shall be allowed, in respect of attendance at an identification parade to which section 21(4)(b) of the 1986 Act applies, fees at the following rates—

- First hour of attendance - £52.25;
- Each subsequent half hour - £12.70.

(2) The duty solicitor or the nominated solicitor shall be allowed in respect of representing an accused person at a judicial examination (whether a first examination or a further examination) to which sections 20, 20A and 20B of the Criminal Procedure (Scotland) Act 1975((2)) apply—

- (a) fees in accordance with the rates specified in regulation 6(1); and
- (b) fees in respect of any necessary waiting time or any other necessary work relating to the judicial examination determined in accordance with regulation 11.

(3) Any fees allowed to a nominated solicitor under this regulation shall be in addition to any fees allowed to him under regulation 7, 8 or 9.

(2) 1975 c. 21; section 20 was amended by, and sections 20A and 20B inserted by, section 6 of the Criminal Justice (Scotland) Act 1980 (c. 62).

Duty solicitors' fees

6.—(1) There shall be allowed to the duty solicitor representing accused persons in the sheriff or district court fees on the following scales—

- (a) for attendance at the first session of a court for the day, a sessional fee of £30.90 for the first case and £4.20 for each additional case, subject to a maximum total fee of £66.90 for the session until its termination on completion of business for the day or on adjournment by the court, whichever is the earlier;
- (b) for attendance at any other session of that court on the same day, a sessional fee of £30.90 for the first case and £4.20 for each additional case, subject to a maximum total fee of £44.95 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.

(2) Where, following a plea of guilty, one or more adjournments are ordered by the court, and the duty solicitor requires to appear again, then an additional fee shall be payable to the duty solicitor in respect of—

- (a) additional interviews with the accused or others; and
- (b) attendances at court other than during the course of the duty solicitor's period of duty.

The amount of such additional fee shall be such sum not exceeding £75.75 as shall form reasonable remuneration having regard to the additional work and time involved.

Nominated solicitors' fees for summary proceedings

7. There shall be allowed to the nominated solicitor acting for an accused person to whom legal aid has been granted in summary proceedings a fee of not less than £44.95 and not exceeding £344.85, and a further fee not exceeding £110.75 in respect of every day on which an adjourned hearing takes place.

Nominated solicitors' fees for solemn proceedings in the sheriff court

8.—(1) There shall be allowed to the nominated solicitor acting for an accused person to whom legal aid has been granted in solemn proceedings in the sheriff court a fee of not less than £56.45 and not exceeding £566.40.

(2) Where a trial has not been concluded on the day on which it started there shall be allowed to the solicitor in addition to the fee allowed under the foregoing paragraph a daily fee in respect of the second and every subsequent day—

- (a) where counsel has not been instructed, not exceeding £162.00;
- (b) where counsel has been instructed, not exceeding £110.75.

Nominated solicitors' fees for solemn proceedings in the High Court

9.—(1) There shall be allowed to the nominated solicitor acting for an accused person to whom legal aid has been granted in solemn proceedings in the High Court a fee of not less than £70.55 and not exceeding £1,107.70.

(2) Where a trial has not been concluded on the day in which it started there shall be allowed to the solicitor in addition to the fee allowed under the foregoing paragraph a daily fee in respect of the second and every subsequent day not exceeding £110.75.

Nominated solicitors' fees for appeals

10.—(1) There shall be allowed to the nominated solicitor acting for an accused person to whom legal aid for an appeal has been made available in connection with an appeal from proceedings in any court a fee of not less than £56.45 and not exceeding £566.40.

(2) Where the hearing of an appeal has not been concluded on the day on which it started there shall be allowed to the nominated solicitor in addition to the fee allowed under the foregoing paragraph a daily fee in respect of the second and every subsequent day not exceeding £110.75.

Determination of amount of solicitors' fees allowable under regulations 5(2)(b) and 7 to 10

11.—(1) Subject to regulation 12 the amount of any fee allowable to a solicitor in terms of regulation 5(2)(b) or regulations 7 to 10 shall be determined in accordance with paragraphs

(2) and (3) of this regulation but shall be subject to any limitation on the amount of fees specified in regulations 7 to 10, as read where appropriate with regulations 4(2).

(2) A solicitor shall be allowed such amount as may be determined to be reasonable remuneration, calculated in accordance with paragraph (3) of this regulation, for work actually and reasonably done, due regard being had to economy:

Provided that in determining such amount there shall be taken into account all the relevant circumstances, including the nature, importance, complexity or difficulty of the work and the time involved, including—

- (a) 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
- (b) time necessarily spent in travelling to and from the court at which the accused appears or the trial or appeal takes place (not being a court in the town or place where the solicitor has a place of business) and to and from the prison and any place visited for the purpose of preparing or conducting the defence or appeal.

(3) Reasonable remuneration for the purpose of paragraph (2) of this regulation shall be calculated—

- (a) in the case of proceedings in the High Court, on the basis of the fees set out in Schedule 1; and
- (b) in the case of any other proceedings, on the basis of the fees set out in Schedule 2.

Removal of limitations on amount of solicitors' fees under Regulations 7 to 10 and increase of such fees in exceptional circumstances

12.—(1) The counsel or solicitor representing an accused person at any trial (whether under solemn or summary procedure) may, immediately on the conclusion of the trial, make an oral application to the presiding judge for a certificate certifying that the case has necessarily been of exceptional length or complexity or difficulty, and the judge may either grant or refuse the application. If the judge refuses the application or if no such application is made, the counsel or solicitor may make, within a period of 14 days after the date on which the trial in question was concluded, a written application to the judge for such a certificate in the form of a note specifying the grounds of the application, and the judge may either grant or refuse the application, but shall not refuse it without giving the counsel or solicitor an opportunity of being heard in support of the application within a period of 14 days after the date on which it was made, and at any such hearing the prosecutor shall be given an opportunity of being heard in relation to the application. In determining an application for a certificate certifying that the case has necessarily been of exceptional length, the judge shall have regard to the time necessarily spent in preparation for the trial. In determining an

application for a certificate certifying that the case has necessarily been of exceptional complexity or difficulty, the judge shall have regard to the number of accused persons represented by the solicitor in question.

(2) If a solicitor has done work for an accused person in any proceedings, including proceedings on petition, and those proceedings do not, for any reason, lead to the trial of that person, the solicitor may make a written application to a single judge of the court concerned for a certificate certifying that the work has necessarily been of exceptional length, or complexity, or difficulty; and the provisions of paragraph (1) of this regulation shall apply to any such application as they apply to a written application under that paragraph.

(3) If such a certificate as is referred to in the foregoing paragraphs of this regulation is granted, then any limitation contained in regulations 7 to 10, or such of them as are referred to in such certificate, as read where appropriate with regulation 4(2), on the amount of any fee allowable under those regulations shall not apply and the amount of any such fee shall be determined in accordance with paragraphs (2) and (3) of regulation 11 without regard to such limitations.

(4) Where a certificate has been granted under paragraph (1) or (2) of this regulation upon the ground that the case has necessarily been of exceptional complexity or difficulty, or upon grounds which include either or both of these grounds, and the certificate so discloses, there shall be added to the amount of any fee allowable under regulations 7 to 10, determined in accordance with regulation 11(2) and (3) as read with paragraph (3) of this regulation, such further sum in respect of such exceptional complexity or difficulty as appears in the particular circumstances to be appropriate, being a sum of up to, but not exceeding, 25 per cent. of the amount of such fee determined as aforesaid.

Fees allowable to counsel

13.—(1) Counsel shall be allowed such fee as appears to the auditor to represent reasonable remuneration, calculated in accordance with Schedule 3, for work actually and reasonably done, due regard being had to economy.

(2) Where work done by counsel constitutes a supply of services in respect of which value-added tax is chargeable, there may be added to the amount of fees allowable to counsel an amount equal to the amount of value-added tax chargeable.

Outlays allowable to solicitors

14.—(1) A solicitor shall be allowed the following outlays—

- (a) expenses actually and reasonably incurred by himself or his clerk in travelling to and from the court at which the accused person appears or the trial or appeal takes place (not being a court in the town or place where the solicitor has a place of business) and to and from the prison and any place visited for the purpose of preparing or conducting the defence or appeal: Provided that where public transport is not used a reasonable mileage allowance shall be treated as an outlay;
- (b) fees paid to witnesses who are not on the Crown list, which fees shall not exceed the sums payable from time to time by the Crown to witnesses of the same categories; and
- (c) any other out of pocket expenses actually and reasonably incurred.

(2) Where a witness is a professional person giving evidence of fact or expert evidence and value-added tax is chargeable in respect of giving that evidence, and the witness adds an amount equal to the tax chargeable to his note of fee, the amount so added may be allowed to the solicitor as an outlay.

Taxation of fees and outlays

15.—(1) If any question or dispute arises between the Board and a solicitor or counsel as to the amount of fees or outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, from the Fund in respect of legal aid in criminal proceedings in the High Court, including appeals, the matter shall be referred for taxation to the Auditor of the Court of Session:

Provided that the Board and any other party to a reference to the Auditor under this paragraph shall have the right to state written objections to the High Court in relation to the report of the Auditor under this paragraph within 14 days of the date of issue of such report and the Board and any such other party may be heard thereon.

(2) If any question or dispute arise between the Board and a solicitor or counsel as to the amount of fees and outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, from the Fund in respect of legal aid in criminal proceedings in the sheriff or district court, the matter shall be referred for taxation to the auditor of the sheriff court for the district in which those proceedings took place:

Provided that the Board and any other party to a reference to an auditor under this paragraph shall have the right to state written objections to the sheriff in relation to the report of the auditor under this paragraph within 14 days of issue of such report and the Board and any such other party may be heard thereon.

(3) A reference to an auditor under this regulation may be made at the instance of the solicitor concerned or, where the question in dispute affects the fees allowable to counsel, of the counsel concerned, or of the Board and the auditor concerned shall give reasonable notice of the diet of taxation to the solicitor or counsel as appropriate and the Board.

Revocation

16. Without prejudice to their continuation in effect for the purposes of legal aid under the Legal Aid (Scotland) Act 1967((3)) by virtue of paragraph 3 of Schedule 4 to the 1986 Act, the following Regulations are hereby revoked:—

The Legal Aid (Scotland) (Fees in Criminal Proceedings) Regulations 1984((4));

The Legal Aid (Scotland) (Fees in Criminal Proceedings) Amendment Regulations 1985((5));

The Legal Aid (Scotland) (Fees in Criminal Proceedings) Amendment Regulations 1986((6)).

New St. Andrew's House,
Edinburgh
5th March 1987

Ian Lang
Parliamentary Under Secretary of State, Scottish
Office

(3) 1967 c. 43.
(4) S.I.1984/520.
(5) S.I. 1985/554.
(6) S.I. 1986/674.

SCHEDULE 1

Regulation 11(3)

TABLE OF FEES APPLICABLE FOR CALCULATING REMUNERATION OF SOLICITORS IN PROCEEDINGS IN THE HIGH COURT

1.	(a) (a) Framing £3.85 precognitions and other papers, not drawn by counsel - per sheet
	(b) (b) Framing £1.65 formal documents such as inventories, title pages and accounts of expenses - per sheet
Notes:	(i) The sheet throughout this Table shall consist of 250 words or numbers. (ii) The solicitor shall be entitled to charge for copies of the precognitions for the use of counsel and himself. (iii) Where a skilled witness prepares his own precognition or report the solicitor shall be allowed half drawing fees for revising and adjusting it. (iv) Where the business can properly be performed by a local solicitor the auditor shall allow such expenses as would have been incurred if it had been done by the nearest local solicitor, including reasonable fees for instructing and corresponding with him, unless the auditor is satisfied that it was in the interests of the client that the solicitor in charge of the case should attend personally.
2.	Copying papers by any means -

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	First copy - per sheet	£0.75
	Additional copies - per sheet	£0.32
Note:	When copied by photostatic or similar process each page shall be charged as one sheet.	
3.	Revising papers drawn by counsel - for each five sheets or part thereof	£1.65
4.	Citation of witnesses, instructions to messengers-at-arms -	
	Each witness	£3.30
	Instructing messenger-at-arms including examining execution and settling fee	£3.30
5.	Time charges -	
	(a) (a) Attendances at meetings, preparation for trial or other hearing, attendance at court, consultation with counsel, etc. -	
	Per half hour	£12.10
	or such other sum as in the opinion of the auditor is justified.	
	(b) (b) Perusal of documents -	
	Per half hour	£6.60
	or such other sum as in the opinion of the auditor is justified.	
	(c) (c) Allowance for time of clerk - one half of the fee specified in subparagraph (a) or (b) above.	
	(d) (d) Attendance at court offices for performance of formal work	£1.65
Note:	In the event of an accused person in a trial being represented by one counsel	

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	only, allowances may be made to the solicitor should the case warrant it for the attendance of a clerk at one-half the rate chargeable for the solicitor's attendance.	
6.	Correspondence -	
	Letters (save as provided below) including instructions to counsel - each page of 125 words	£3.30
	Formal letters	£0.75
	Telegrams or telephone calls, including letters confirming	£1.65

SCHEDULE 2

Regulation 11(3)

TABLE OF FEES APPLICABLE FOR CALCULATING REMUNERATION OF SOLICITORS IN PROCEEDINGS IN THE SHERIFF OR DISTRICT COURT

1.	Attendance at court conducting trial or other hearing - per half hour	£16.55
2.	Time occupied in the performance of all other work including attendances with client and others and attendances at court in all circumstances, except as otherwise specifically provided -	
	(a) (a) Solicitor - per half hour	£12.10
	(b) (b) Allowance for time of clerk - one half of above.	
3.	Drawing all necessary papers (the sheet throughout this Table to consist of 250 words or numbers) - per sheet	£3.85
4.	Revising papers where revision ordered - for each five sheets	£1.65
5.	Copying all necessary papers by any means -	
	First copy - per sheet	£0.75

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	Additional copies - per sheet	£0.32
Note:	When copied by photostatic or similar process each page shall be charged as one sheet.	
6.	Perusing any document (other than a letter) not exceeding -	
	2 sheets in length	£3.30
	For each 2 sheets thereafter	£3.30
7.	Lodging in court -	
	Each necessary lodging in, or uplifting documents from, court or each necessary enquiry for documents due to be lodged	£1.65
8.	Correspondence, intimations, etc. -	
	(a) (a) Formal letters and intimations	£0.75
	(b) (b) Letters other than above - per page of 125 words	£3.30
	(c) (c) Telephone calls except those to which subparagraph (d) below applies	£1.65
	(d) (d) Telephone calls (lengthy) to be treated as attendances or long letters.	
9.	Citations -	
	Each citation of witness including execution thereof	£3.30
10.	Instructions to officers	£1.65

SCHEDULE 3

Regulation 13

FEES OF COUNSEL

1. Subject to the following provisions of this Schedule, fees shall be calculated in accordance with the Table of Fees in this Schedule.

2. Where the Table of Fees in this Schedule does not prescribe a fee for any item of work the auditor shall allow such fee as appears to him appropriate to provide reasonable remuneration for

work with regard to all the circumstances, including the general levels of fees in the said Table of Fees.

3. The auditor shall have power to increase any fee set out in the Table of Fees in this Schedule where he is satisfied that, because of the particular complexity or difficulty of the work or any other particular circumstances, such an increase is necessary to provide reasonable remuneration for the work.

4. The auditor shall have power to reduce any fee set out in the Table of Fees in this Schedule where he is satisfied that, because of any particular circumstances, a reduced fee is sufficient to provide reasonable remuneration for the work.

TABLE OF FEES

CHAPTER 1 - JUNIOR COUNSEL

	Junior with Senior	Junior alone	
1. Trial - per day			
(a)	(a) In Edinburgh	£120.50	£170.00
(b)	(b) In Glasgow	£142.50	£208.50
(c)	(c) Elsewhere within 60 miles journey by road from Edinburgh	£148.00	£214.00
(d)	(d) In Aberdeen, Inverness or Dumfries	£203.00	£285.50
(e)	(e) Elsewhere beyond 60 miles journey by road from Edinburgh: Such fee as the auditor considers appropriate with regard to the journey involved and the level of fees prescribed in this paragraph.		
2. Appeals, etc.			
(a)	(a) Drafting grounds of appeal against conviction, including any note of appeal	£ 31.00	£ 44.00
(b)	(b) Hearing in appeal against conviction - per day	£120.50	£170.00
(c)	(c) Note of adjustments to stated case	£ 31.00	£ 44.00

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Junior with Senior	Junior alone
(d) (d) Hearing on stated case or bill of suspension relating to conviction or conviction and sentence	£ 55.00 £ 71.50
(e) (e) Any appeal against sentence including fee for drafting note of appeal	£ 22.00 £ 49.50
(f) (f) Appeal relating to granting of bail	£ 16.50 £ 16.50
3. Consultations	
(a) (a) In Edinburgh Additional fee if held in prison	£ 38.50 £ 5.50 £ 55.00 £ 5.50
(b) (b) Elsewhere within 60 miles journey by road from Edinburgh	£ 71.50 £ 93.50
(c) (c) In Aberdeen, Inverness or Dumfries	£142.50 £170.00
(d) (d) Elsewhere beyond 60 miles journey by road from Edinburgh: Such fee as the auditor considers appropriate with regard to the journey involved and the level of fees prescribed in this paragraph.	
4. Opinion on appeal, etc.	

CHAPTER 2 - SENIOR COUNSEL

1. Trial - per day

- | | |
|---|----------------------------------|
| (a) (a) In Edinburgh | Appeals, etc. |
| (a) (a) Revising grounds of appeal against conviction, including any note of appeal | Consultations |
| (a) (a) In Edinburgh | Additional fee if held in prison |

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the fees allowable to solicitors and counsel in Scotland for criminal legal aid given under the Legal Aid (Scotland) Act 1986. The fees are the same as those previously prescribed in relation to legal aid for criminal proceedings under the Legal Aid (Scotland) Act 1967, except that fees for interim solicitors, who have no equivalent under the new arrangements, are not prescribed.