
STATUTORY INSTRUMENTS

1988 No. 1131 (S.115)

LEGAL AID AND ADVICE, SCOTLAND

The Advice and Assistance (Scotland)
Amendment (No.2) Regulations 1988

<i>Made</i>	- - - -	<i>30th June 1988</i>
<i>Laid before Parliament</i>		<i>11th July 1988</i>
<i>Coming into force</i>	- -	<i>1st August 1988</i>

The Secretary of State, in exercise of the powers conferred on him by sections 12(3), 33(2) and (3), 36, 37(1) and 42 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 Advice and Assistance (Scotland) Amendment (No.2) Regulations 1988 and shall come into force on 1st August 1988.

Interpretation

2. In these Regulations, “the principal Regulations” means the Advice and Assistance (Scotland) Regulations 1987⁽²⁾.

Amendment of references to current Social Security legislation

3.—(1) In regulation 4(a) of the principal Regulations for the words “supplementary benefit or family income supplement” there shall be substituted “income support or family credit”.

(2) After regulation 15(1)(a)(vii) of the principal Regulations there shall be inserted the following:

—
“(viii) by way of any housing benefit under the Social Security Act 1986⁽³⁾.”

Notice to the Board on acceptance of application

4. At the end of regulation 10 of the principal Regulations there shall be inserted the following:—

(1) 1986 c. 47

(2) S.I. 1987/382, as amended by S.I. 1987/883 and 1356, and 1988/489

(3) 1986 c. 50

“Failure to do so within the specified time limit, unless the Board considers that there is special reason for it to excuse such failure, shall render the solicitor’s fees and outlays ineligible for payment in terms of section 12(3) of the Act.”.

Giving of advice and assistance on the same matter

5. For regulation 12(2) of the principal Regulations there shall be substituted the following paragraph:—

“(2) Application for authority under paragraph (1) above shall be made by the second or subsequent solicitor who shall indicate his willingness to act for the client seeking such advice or assistance and the application must also be countersigned by the client seeking advice and assistance, and shall include a statement of the reasons for seeking such authority.”.

Payment of fees and outlays from property recovered or preserved

6. In regulation 15(1)(a)(vi) of the principal Regulations there shall be inserted after the words “periodical allowance” the words “or periodical payment of sums”.

Exclusion of posts and incidents from outlays of solicitors

7. At the end of regulation 16(1)(b) of the principal Regulations after the word “matter”, there shall be added “, provided that, without prejudice to any other claims for outlays, there shall not be allowed to a solicitor outlays representing posts and incidents”.

Provisions relative to lodging of accounts for advice and assistance

8. In regulation 17 of the principal Regulations—

(a) in paragraph (1) the words “6 months” shall be deleted and the words “1 year” substituted; and there shall be added at the end the following:—

“Provided that, where civil legal aid has been made available to an applicant to whom in connection with the same matter advice or assistance has been given, the account for such advice and assistance shall be submitted to the Board at the same time as that for civil legal aid; and any work which is charged under civil legal aid shall not be charged in the advice and assistance account.”;

(b) the following paragraph shall be inserted after paragraph (1):—

“(1A) The Board may accept an account for advice and assistance submitted outwith the period referred to in paragraph (1) above if it considers that there is a special reason for late submission.”.

Amendments to Schedules

9.—(1) In Schedule 2 to the principal Regulations there shall be substituted in paragraph 4, for the words “26(3) and (4)”, the words “26(3) and (5)”.

(2) For Schedule 3 to the principal Regulations (table of fees allowable to solicitors) there shall be substituted the Schedule to these Regulations.

St Andrew's House,
Edinburgh
30th June 1988

James Douglas-Hamilton
Parliamentary Under Secretary of State, Scottish
Office

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SCHEDULE

Regulation 9(2)

NEW SCHEDULE 3 TO BE SUBSTITUTED IN PRINCIPAL REGULATIONS

“SCHEDULE 3

Regulation 16

TABLE OF FEES ALLOWABLE TO SOLICITORS

PART I

TABLE OF FEES ALLOWABLE TO SOLICITORS
FOR ASSISTANCE BY WAY OF REPRESENTATION

The fees allowable to a solicitor for providing assistance by way of representation shall be—

- (a) £60 for attendance at, and all work prior to—
 - (i) any diet at which a plea to the competency or relevancy of the complaint or proceedings, or a plea in bar of trial, is tendered;
 - (ii) any diet at which a question within the meaning of rule 113 of the Act of Adjournal (Consolidation) 1988(4) is raised;
 - (iii) any diet at which there is tendered a plea of guilty;
 - (iv) any diet at which the court is considering the accused’s plea of guilty to the charges and where there has been no change of plea; and
 - (v) any diet at which the court is considering the accused’s changed plea of guilty to the charges, provided that the accused has intimated in writing his intention to change his plea to one of guilty to the prosecutor within 14 days of the diet at which the plea of not guilty was tendered, and where no application for criminal legal aid has been made;
- (b) fees, as undernoted, for work other than or subsequent to that described in (a) above—

1. The fee for:—

- (i) any time up to the first half hour spent by a solicitor appearing in court or conducting another hearing shall be £20.50;
- (ii) each quarter hour subsequent to the first half hour spent in court or conducting another hearing shall be £10.25.

2. The fee for:—

- (i) each quarter hour spent by a solicitor in performing work other than that prescribed in paragraphs 1, 3, 4 and 5 shall be £7.90, provided that any time is additional to the total time charged for under paragraph 1 above.

The work referred to in this sub-paragraph other than prescribed in paragraphs 1, 3, 4 and 5 shall include attending with clients and others, taking precognitions, perusing documents, telephone calls of over 10 minutes duration, preparing for and attending court in all circumstances;

- (ii) for each quarter hour spent by a solicitor’s clerk in performing the work prescribed in sub-paragraph (i) of this paragraph shall be one half of the solicitor’s fee.

3. The fee for:—

- (i) each citation of a witness including execution thereof;

(4) S.I. 1988/110

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- (ii) framing and drawing precognitions and other necessary papers, subject to paragraph 4(ii)—per sheet;
 - (iii) instructing messengers-at-arms and sheriff officers, including examining execution and settling fee;
 - (iv) telephone calls other than formal (of up to 10 minutes duration); and
 - (v) letters, including instructions to counsel—each page of 125 words, subject to paragraph 4(ii) and (v), shall be £4.50.
4. The fee for:—
- (i) attendance at court offices for performance of formal work including each necessary lodging in or uplifting from court or each necessary enquiry for documents due to be lodged;
 - (ii) formal letters and intimations;
 - (iii) framing formal documents, including inventories and title pages—per sheet;
 - (iv) revising papers drawn by counsel or where revisal ordered by court—per 5 sheets or part thereof; and
 - (v) formal telephone calls and letters confirming telephone calls, shall be £1.80.
5. Where an exceptional amount of copying proves necessary, a fee of 10 pence shall be paid for each page copied of whatever size.

Interpretation

The sheet throughout this table shall consist of 250 words or numbers.

PART II

TABLE OF FEES ALLOWED TO SOLICITORS FOR ADVICE AND ASSISTANCE OTHER THAN ASSISTANCE BY WAY OF REPRESENTATION

1. Subject to paragraph 2 of this Part, the fees allowable to a solicitor shall be calculated as follows—

A.	Time occupied in carrying out work for the client other than work described in paragraphs B to E below—	
(i) solicitor — per hour (the fee for any part of the hourly rate being the proportionate part of the hourly rate);	£31.60	
(ii) allowance for time of clerk — one half of the above.		
B.	For formal letters, formal telephone calls, framing formal documents such as inventories and engrossing	£ 1.80

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	formal documents for signature (per sheet of 250 words).	
C.	For letters other than in 1B above (per sheet of 125 words), and non-formal documents other than precognitions (per sheet of 250 words) and telephone calls, other than formal, (of up to 10 minutes duration).	£ 4.50
D.	For taking and drawing precognitions for the first sheet of 250 words or less	£15.80
	for each subsequent sheet of 250 words.	£15.80
	for each subsequent sheet of less than 250 words	£ 7.90
E.	Where an exceptional amount of copying proves necessary, a fee of 10 pence shall be paid for each page copied of whatever size.	

2. Where the fees which would be allowable to a solicitor in respect of the matter in respect of which advice and assistance was given, calculated in accordance with paragraph 1 above, would amount to less than £15.00 or where a solicitor elects to claim only the fee provided for in this paragraph, a fee of £15.00 shall be allowable in place of the fees so calculated.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the provisions of the Advice and Assistance (Scotland) Regulations 1987 (“the principal Regulations”) in the following respects.

Certain references in the principal Regulations to current Social Security legislation are amended (regulations 3 and 9(1)).

In regulation 4 the requirement upon a solicitor to notify the Board of his having begun to give advice and assistance is amended by making failure to do so within the specified time limit grounds for ineligibility for payment.

Regulation 5 makes provision for a second or subsequent solicitor to give advice or assistance to a client subject to certain preconditions.

Regulation 6 adds certain periodical payments made by virtue of any settlement relative to certain specified proceedings to the list of monies to which the right to prior payment of fees or outlays does not apply.

The fees for advice and assistance have been increased by around 6.5% to achieve parity with those paid under the Criminal Legal Aid (Scotland) (Fees) Regulations 1987 (S.I.1987/365, as subsequently amended). As these rates incorporate an allowance for posts and incidents, regulation 7 specifically excludes posts and incidents.

These Regulations also amend the requirement on a solicitor to submit accounts to the Scottish Legal Aid Board within 6 months of the date when the giving of advice and assistance was completed by increasing the time allowed to 1 year. An exception is now incorporated which allows the Board to waive the 1 year time bar where it considers that a special reason exists for the late submission of accounts. A provision is made whereby an account for advice and assistance shall be lodged with a civil legal aid account when both are connected with the same proceedings (regulation 8).

Regulation 9(2) and the Schedule substitute a new Schedule 3 to the principal Regulations. Part I of Schedule 3 to the principal Regulations now incorporates within the assistance by way of representation block fee certain other criteria by which an accused may qualify and increases the fee by 20%. Expenditure in excess of £60 will continue to be paid in terms of regulation 11(1) of the principal Regulations. The need to import the Criminal Legal Aid (Scotland) (Fees) Regulations 1987 has been removed by setting out the detailed fees payable within the said Part I.