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STATUTORY INSTRUMENTS

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**1994 No. 1050 (S.56)**

**LEGAL AID AND ADVICE, SCOTLAND**

**The Criminal Legal Aid (Scotland)  
Amendment Regulations 1994**

<i>Made</i>	- - - -	<i>8th April 1994</i>
<i>Laid before Parliament</i>		<i>14th April 1994</i>
<i>Coming into force</i>	- -	<i>5th May 1994</i>

The Secretary of State, in exercise of the powers conferred on him by sections 36(1) and (2)(a) and (c) of the Legal Aid (Scotland) Act 1986((1)), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Criminal Legal Aid (Scotland) Amendment Regulations 1994 and shall come into force on 5th May 1994.

(2) In these Regulations—

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

“the principal Regulations” means the Criminal Legal Aid (Scotland) Regulations 1987((2)).

**Application**

2. These Regulations shall apply—

(a) in respect of criminal legal aid made available in terms of section 22 of the Act, only in relation to any case where criminal legal aid is first so made available on or after 5th May 1994; and

(b) in respect of criminal legal aid made available otherwise, only in relation to any case where an application for criminal legal aid is granted on or after that date.

**Amendment of the principal Regulations**

3. In regulation 2 of the principal Regulations((3)) (interpretation)—

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(1) 1986 c. 47.

(2) S.I. 1987/307, amended by S.I. 1988/1126, 1992/527 and 1993/532.

(3) Regulation 2 was amended by S.I. 1988/1126 and 1993/532.

- (a) at the beginning there shall be inserted “(1)”;
- (b) for the definitions of “counsel” and of “junior counsel”, there shall be substituted—
  - ““counsel” includes a solicitor-advocate;
  - “junior counsel” includes a junior solicitor-advocate;”;
- (c) for the definition of “rights of audience solicitor” to the end, there shall be substituted—
  - ““right of audience” means, in relation to a solicitor, a right of audience in the High Court of Justiciary which a solicitor has by virtue of section 25A (rights of audience in specified courts) of the Solicitors (Scotland) Act 1980((4));
  - “senior counsel” includes a senior solicitor-advocate, except in paragraph (2) below;
  - “solicitor-advocate” means a solicitor, whether instructed by another solicitor or not, when and only when he is exercising his right of audience or acting in connection with the exercise of such a right and “junior solicitor-advocate” and “senior solicitor-advocate” shall be construed in accordance with paragraph (2) below;

and, unless the context otherwise requires, any reference in these Regulations to a solicitor shall not include a solicitor when acting as a solicitor-advocate.

- (2) For the purposes of these Regulations, a solicitor-advocate shall be—
  - (a) a senior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a senior counsel in a case where the proceedings relate to a prosecution or conviction for murder or where the Board has authorised the employment of senior counsel under regulation 14(1)(a) or (2) below;
  - (b) a junior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a junior counsel, whether or not the Board has authorised the employment of senior counsel in the case.”.

4. In regulation 4(1) of the principal Regulations((5)) (distinct proceedings for purposes of criminal legal aid) sub-paragraphs (j) to (l) shall be deleted.

### **Revocations**

5. The Criminal Legal Aid (Scotland) Amendment Regulations 1993((6)) and regulation 4(1) of the Criminal Legal Aid (Scotland) Amendment Regulations 1988((7)) are hereby revoked.

St Andrew’s House,  
Edinburgh  
8th April 1994

*Fraser of Carmyllie*  
Minister of State, Scottish Office

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(4) 1980 c. 46; section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 24.  
(5) Regulation 4 was amended by S.I. 1988/1126.  
(6) S.I. 1993/532.  
(7) S.I. 1988/1126.

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## EXPLANATORY NOTE

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

These Regulations amend the Criminal Legal Aid (Scotland) Regulations 1987. The regulations—

- (a) substitute new definitions relating to solicitors who have a right of audience in the High Court of Justiciary (regulation 3) and revoke the Criminal Legal Aid (Scotland) Amendment Regulations 1993 (S.I. [1993/532](#)) which inserted defective definitions relating to such solicitors.; and
- (b) remove from the list of proceedings treated as distinct for the purposes of criminal legal aid certain proceedings to which assistance by way of representation is extended by regulation 3(b) of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 1994 (S.I. [1994/1000](#)).