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STATUTORY INSTRUMENTS

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**1996 No. 2447 (S.192)**

**LEGAL AID AND ADVICE, SCOTLAND**

**The Advice and Assistance (Scotland)  
(Consolidation and Amendment) Regulations 1996**

<i>Made</i>	- - - -	<i>19th September 1996</i>
<i>Laid before Parliament</i>		<i>24th September 1996</i>
<i>Coming into force</i>	- -	<i>7th October 1996</i>

The Secretary of State, in exercise of the powers conferred on him by sections 12(3), 33(2)(b) and (3), 36(1), (2)(a), (d) and (e) and (4), 37(1) and (3) and 42 of the Legal Aid (Scotland) Act 1986<sup>(1)</sup>, and of all other powers enabling him in that behalf, and with the concurrence of the Treasury, in respect of regulation 7 and Schedule 2, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996 and shall come into force on 7th October 1996.

**Interpretation**

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

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

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992<sup>(2)</sup>;

“advice and assistance” means advice and assistance given under Part II of the Act;

“auditor” in relation to the taxation of accounts means the auditor of a sheriff court;

“child” means a person under 16 years.

(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.

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(1) 1986 c. 47.  
(2) 1992 c. 4.

**Revocations and savings**

3.—(1) Subject to paragraphs (2) and (3) below, the Regulations specified in Schedule 1 are hereby revoked.

(2) The revocation by these Regulations of—

(i) a transitional provision relating to the coming into force of; or

(ii) an application provision which restricts the application of,

a provision which is revoked and re-enacted by these Regulations does not affect the operation of that transitional provision, insofar as it remains capable of having effect, in relation to the provision which is re-enacted in these Regulations.

(3) Where a period of time specified in any provision, which is revoked by these Regulations, is current at the date of coming into force of these Regulations, these Regulations have effect as if the provision which re-enacts that revoked provision in these Regulations had been in force when that period began to run.

**Applications for advice and assistance**

4. An application for advice and assistance, which shall be in such form as the Board may require, shall be signed by the client, or by a person who may apply on his behalf by virtue of regulation 6, and shall include such information as is necessary to enable the solicitor—

(a) to determine the client's disposable capital and either his disposable income or, where appropriate, whether he is in receipt of disability working allowance, income support or family credit; and

(b) otherwise to satisfy himself as to the client's eligibility to receive advice and assistance.

**Applications for advice and assistance in relation to the Civil Jurisdiction and Judgments Act 1982**

5.—(1) Sections 8, 11 and 12(3) of the Act<sup>(3)</sup> shall be modified to the extent provided in the following sub-paragraphs in the case of an application for advice and assistance in relation to the recognition of enforcement of a judgment under section 5 of the Civil Jurisdiction and Judgments Act 1982<sup>(4)</sup> by an applicant to whom this regulation applies, namely:—

(a) section 8 shall be modified so as to provide that such advice and assistance shall be made available whether within or furth of Scotland without regard to the income or capital of an applicant to whom this regulation applies;

(b) section 11 shall be modified so as to provide that such applicant shall, irrespective of his disposable income, not require to pay any fees or outlays in respect of such advice and assistance; and

(c) section 12(3) shall be modified so as to provide that fees or outlays to which section 12 applies shall be paid to the solicitor in respect of such advice and assistance provided to such applicant—

(i) firstly, in priority to all other debts, out of any expenses which (by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the advice and assistance is provided; and

(3) Sections 8 and 11 of the Legal Aid (Scotland) Act 1986 were amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraph 61.

(4) 1982 c. 27; section 5 was amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12), Schedule 2, paragraph 2.

- (ii) secondly, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor.
- (2) This regulation applies to—
- (a) an applicant who seeks advice and assistance in relation to the enforcement of a decision given by an administrative authority in Denmark or Iceland and who presents a statement from, respectively, the Danish Ministry of Justice or the Icelandic Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses; and
  - (b) an applicant who, in the State of origin of the judgment, has benefited from complete or partial legal aid or exemption from costs or expenses.

### **Applications on behalf of others**

6.—(1) A client who for good reason cannot himself make application in accordance with regulation 4 may authorise another person to apply on his behalf and to furnish such information as is required by regulation 4.

(2) Without prejudice to any right of a child to apply under regulation 4 or to authorise application on his behalf under paragraph (1) of this regulation, application for advice and assistance on behalf of a child may be made by any person having parental responsibilities within the meaning of section 1(3) of the Children (Scotland) Act 1995<sup>(5)</sup> in relation to the child or by any person in whose care he is, or by a person acting for the purpose of any proceedings as his tutor or curator.

(3) An application for advice and assistance in relation to the recognition or enforcement of a judgment under section 5 of the Civil Jurisdiction and Judgments Act 1982 may be signed on behalf of the client by the solicitor to whom the application is made.

### **Determination of disposable income or disposable capital**

7.—(1) Insofar as the Act requires a client's disposable income or disposable capital to be determined for purposes of an application for advice and assistance, they shall be determined by the solicitor to whom application is made in accordance with the provisions of Schedule 2.

(2) A man and a woman who are not married to each other and who are living together in the same household as husband and wife shall be treated for the purposes of section 42 of the Act as if they were spouses of each other.

### **Giving of advice and assistance by solicitor**

8. A solicitor shall give advice and assistance in pursuance of Part II of the Act only if he has satisfied himself that the client is eligible to receive advice and assistance under the provisions of the Act and of these Regulations.

### **Determination and collection of contributions**

9.—(1) Where a client is liable by virtue of section 11 of the Act to pay a contribution towards the cost of the advice and assistance, the solicitor shall determine the maximum amount which the client is, by virtue of that section, liable to pay, and may collect that contribution in full or in such instalments as may be agreed between him and the applicant.

(2) Where by agreement the client's contribution is payable by instalments and the client defaults in making payment of any instalment, the solicitor shall be entitled to cease to act, without prejudice

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(5) 1995 c. 36.

to his right to require payment of any deficiency in respect of work done and outlays incurred, or to the right of the client to demand an accounting from the solicitor for sums already paid.

(3) Where the total contribution payable is likely to exceed the cost of giving advice or assistance, the solicitor shall require the client to pay a sum sufficient only to meet the expected cost.

### **Applicant for assistance by way of representation having other rights and facilities**

**10.**—(1) Where it appears to the solicitor that an applicant for assistance by way of representation has available rights and facilities making it unnecessary for him to obtain advice or assistance or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, the solicitor shall not approve the application unless the applicant has not succeeded in enforcing or obtaining such rights, facilities or help, after having taken, in the opinion of the solicitor, all reasonable steps to enforce or obtain them:

Provided that the applicant shall not, for the purpose of this regulation, be deemed to have failed to take all reasonable steps by reason only that he has not taken proceedings by way of declarator or otherwise to enforce or obtain such rights, facilities or help.

(2) Where the solicitor approves an application for assistance by way of representation by a person who is a member of a body which might reasonably have been expected to give him financial help towards the expenses of the advice and assistance, the solicitor shall require him to sign an undertaking to pay to the Board any sum received from that body on account of the expenses of the advice and assistance.

### **Notice to the Board on acceptance of application**

**11.** The solicitor shall, within 14 days of his having begun to give advice and assistance, send to the Board a copy of the client's application. 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.

### **Authority to exceed financial limit**

**12.**—(1) Where at any time it appears to the solicitor that the cost of giving the advice and assistance is likely to exceed the limit applicable under section 10 of the Act or under paragraph (2) below, he shall apply to the Board for its approval to an increased limit, stating the reasons for the excess, the likely amount, and giving such other information as may enable the Board to consider and determine that application.

(2) The Board, if it approves an application made under paragraph (1) above—

- (a) shall authorise such increased limit as it thinks fit; and
- (b) may require that the advice and assistance be subject to such conditions, and limited to such subject matter, or, in the case of assistance by way of representation, such proceedings (or stages of proceedings), as it thinks fit.

(3) The Board shall inform the solicitor of its decision in regard to an application under paragraph (1) above.

### **Giving of advice and assistance on the same matter**

**13.**—(1) A client shall not be given advice or assistance in respect of the same matter by more than one solicitor without the prior authority of the Board, and such authority shall be given only on such terms and conditions as the Board may see fit to impose.

(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.

#### **Procedure on withdrawal from giving advice and assistance**

**14.** Where the solicitor declines to continue giving advice and assistance to a client in respect of a particular matter, he shall—

- (a) give notice to the Board of his withdrawal and of his reasons for withdrawing; and
- (b) inform the client of the provisions of regulation 13.

#### **Supply of information by solicitors**

**15.** A solicitor who gives advice and assistance shall supply the Board with such information as the Board may require for the purposes of performing its functions under the Act, and shall not be precluded by reason of any privilege arising out of the relationship between solicitor and client from disclosing such information to the Board.

#### **Payment of fees and outlays from property recovered or preserved**

**16.—(1)** In this regulation, unless the context otherwise requires, any reference to a numbered section is to a section bearing that number in the 1992 Act.

(2) The right to prior payment of fees or outlays out of any property recovered or preserved which is created by section 12(3)(c) of the Act shall not apply—

- (a) to any money paid—
  - (i) under a decree following on an action for aliment within the meaning of the Family Law (Scotland) Act 1985<sup>(6)</sup>;
  - (ii) under an order for the payment of a periodical allowance under section 5 of the Divorce (Scotland) Act 1976<sup>(7)</sup>, or for the making of a periodical allowance under section 8 of the Family Law (Scotland) Act 1985;
  - (iii) under any order for the periodical payment of sums for the maintenance of any person which, by virtue of the Maintenance Orders Act 1950<sup>(8)</sup>, the Maintenance Orders (Reciprocal Enforcement) Act 1972<sup>(9)</sup> or the Civil Jurisdiction and Judgments Act 1982<sup>(10)</sup>, may be enforced in Scotland;
  - (iv) under an order made by the Employment Appeal Tribunal established under section 87 of the Employment Protection Act 1975<sup>(11)</sup> or under any settlement arrived at to prevent or bring to an end proceedings in which such an order may be made;
  - (v) by way of income support, family credit or disability working allowance under section 124, 128 or 129 of the 1992 Act<sup>(12)</sup> or an income-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995<sup>(13)</sup> but

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<sup>(6)</sup> 1985 c. 37.

<sup>(7)</sup> 1976 c. 39; section 5 was repealed on 1st September 1986 by the Family Law (Scotland) Act 1985, Schedule 2, subject to a saving in section 28(3) of that Act.

<sup>(8)</sup> 1950 c. 37.

<sup>(9)</sup> 1972 c. 18.

<sup>(10)</sup> 1982 c. 27.

<sup>(11)</sup> 1975 c. 71.

<sup>(12)</sup> Section 124 was amended by the Jobseekers Act 1995 (c. 18) (“the 1995 Act”), Schedule 2, paragraph 30 and repealed in part by Schedule 3 to that Act; section 128 was amended by the 1995 Act, Schedule 2, paragraph 33; section 129 was amended by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 2, by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 10 and Schedule 1, paragraph 32 and by the 1995 Act, Schedule 2, paragraph 33.

<sup>(13)</sup> 1995 c. 18.

- excluding any sums treated as payable by way of a jobseeker's allowance by virtue of section 26 of that Act;
- (vi) by way of aliment or periodical allowance or periodical payment of sums by virtue of any settlement arrived at to prevent or bring to an end proceedings in which such a decree or order as is mentioned in sub-paragraphs (i) to (iii) above may be granted;
  - (vii) by way of any payment made out of the social fund under section 138;
  - (viii) by way of any housing benefit under section 130(14);
  - (ix) by way of child support maintenance under the Child Support Act 1991(15);
- (b) to the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of—
- (i) an order for the payment of a capital sum under section 5 of the Divorce (Scotland) Act 1976;
  - (ii) an order for payment of a capital sum or transfer of property, or an incidental order, under section 8 of the Family Law (Scotland) Act 1985(16);
  - (iii) any settlement arrived at to prevent or bring to an end proceedings in which such an order may be granted;
- (c) to statutory sickness benefit under sections 151 to 163(17), incapacity benefit under section 30A(1)(18), retirement pension under sections 43 to 55(19), statutory maternity pay under section 164(20), benefits for widows and widowers under sections 36 to 42(21), a child's special allowance under section 56, attendance allowance under section 64, invalid care allowance under section 70(22), the mobility component of a disability living allowance under section 71, guardians allowance under section 77, industrial death benefit under paragraphs 14 to 21 of Schedule 7 to the 1992 Act or a contribution-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995, but excluding any sums treated as payable by way of a jobseeker's allowance by virtue of section 26 of that Act;
- (d) to child benefit paid under section 141;
- (e) to allowances and benefits for industrial injuries paid under sections 94 to 111;

(14) Section 130 was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 3 and by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 174(4).

(15) 1991 c. 48.

(16) Section 8 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 34 and by the Pensions Act 1995 (c. 26), section 167.

(17) Section 151 was amended by the Social Security (Incapacity for Work) Act 1994 (c. 18) ("the 1994 Act"), Schedule 1, paragraph 34; section 157 was amended by the 1994 Act, section 8 and by S.I. 1993/350, 1994/542, 1995/559 and 562; section 158 was amended by the 1994 Act, section 8 and repealed in part by the Statutory Sick Pay Act 1994 (c. 2) ("the SSP Act"), section 1; section 159A was inserted by the SSP Act, section 3; and section 163 was amended by the 1994 Act, Schedule 1, paragraph 35 and repealed in part by the 1994 Act, Schedule 2 and the Jobseekers Act 1995 (c. 18), Schedule 3.

(18) Section 30A was inserted by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 1 and came into force on 13 April 1995 by virtue of S.I. 1994/2926.

(19) Section 44 was amended by the Pension Schemes Act 1993 (c. 48) ("the 1993 Act"), Schedule 8, paragraph 38, by the Social Security (Incapacity for Work) Act 1994 (c. 18) ("the 1994 Act"), Schedule 1, paragraph 11 and by the Pensions Act 1995 (c. 26) ("the 1995 Act"), section 128; section 45A was inserted by the 1995 Act, section 127; section 46 was amended by the 1994 Act, Schedule 1, paragraph 12 and by the 1995 Act, Schedule 4, paragraph 21(5) and was repealed in part by the 1994 Act, Schedule 2; section 47 was amended by the 1993 Act, Schedule 8, paragraph 39, by the 1994 Act, Schedule 1, paragraph 13 and by S.I. 1995/559; sections 49 and 50 were substituted by the 1995 Act, Schedule 4, paragraph 3; section 51A was inserted by the 1995 Act, Schedule 4, paragraph 21(6); section 53 was repealed by the 1995 Act, Schedules 4 and 7; and section 54 was amended by the 1995 Act, section 134 and Schedule 4, paragraph 6 and repealed in part by the 1995 Act, Schedule 7.

(20) Section 164 was repealed in part by S.I. 1994/1230.

(21) Sections 40 to 42 were substituted by the Social Security (Incapacity for Work) Act 1994 (c. 18), Schedule 1, paragraphs 8, 9 and 10.

(22) Section 70 was amended and repealed in part by S.I. 1994/2556.

- (f) to one-half of any redundancy payment within the meaning of Part XI of the Employment Rights Act 1996<sup>(23)</sup> recovered or preserved for the client;
- (g) to any payment of money in accordance with an order made under section 21 of the Industrial Tribunals Act 1996<sup>(24)</sup> by the Employment Appeal Tribunal;
- (h) to any dwelling, household furniture or tools of trade recovered or preserved for the client as a result of advice and assistance given to him by the solicitor.

(3) The Board may authorise that the requirement created by section 12(3)(c) of the Act that, before recourse to the Fund, fees or outlays shall be paid to the solicitor out of any property which is recovered or preserved for the client shall not apply in relation to the whole or any part of any such property in any case where on application by the solicitor the Board are satisfied that—

- (a) payment out of the property to which the requirement would otherwise apply would cause grave hardship or distress to the client; or
- (b) (i) the solicitor has taken all reasonable steps to obtain payment out of the property to which the requirement would otherwise apply; and  
(ii) payment to the solicitor out of that property could only be effected with unreasonable difficulty or after unreasonable delay.

### **Fees and outlays of solicitors**

17.—(1) Subject to paragraph (2) below, fees and outlays allowable to the solicitor upon any assessment or taxation mentioned in regulations 18 and 19 in respect of advice or assistance shall, and shall only, be—

- (a) fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy, calculated, in the case of assistance by way of representation, in accordance with the table of fees in Part I of Schedule 3 and, in any other case, in accordance with the table of fees in Part II of Schedule 3; and
- (b) outlays actually, necessarily and reasonably incurred in connection with that matter, due regard being had to economy, provided that, without prejudice to any other claims for outlays, there shall not be allowed to a solicitor outlays representing posts and incidents.

(2) The fees and outlays allowable to the solicitor under paragraph (1) above shall not exceed the limit applicable under section 10 of the Act as read with regulation 12.

### **Assessment and taxation of fees and outlays**

18.—(1) Where the solicitor considers that the fees and outlays properly chargeable for the advice or assistance exceed any contribution payable by the client under the provisions of section 11 of the Act together with any expenses or property recovered or preserved under the provisions of section 12 of the Act as read with regulation 16, he shall, within one year of the date when the giving of advice and assistance was completed, submit an account to the Board:

Provided that, where civil legal aid has been made available to an applicant to whom in connection with the same matter advice and 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.

(2) 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.

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(23) 1996 c. 18.

(24) 1996 c. 17.

(3) Where the Board receives an account in accordance with paragraph (1) above, it shall assess the fees and outlays allowable to the solicitor for the advice and assistance in accordance with regulation 17 and shall determine accordingly any sum payable out of the Fund and pay it to the solicitor.

(4) If the solicitor is dissatisfied with any assessment of fees and outlays by the Board under paragraph (3) above, he may require taxation of his account by the auditor; the auditor shall tax the fees and outlays allowable to the solicitor for the advice and assistance in accordance with regulation 17, and such taxation shall be conclusive of the fees and outlays so allowable.

#### **Client's right to require taxation**

**19.**—(1) In any case where there is no such excess as is mentioned in regulation 18(1) and any fees and outlays in respect of the advice and assistance are payable by the client under the provisions of section 11 of the Act or are payable out of any expenses payable to the client or any property recovered or preserved for the client under the provisions of section 12 of the Act, the client may, if he is dissatisfied with the amount of those fees and outlays, require taxation of those fees and outlays by the auditor; the auditor shall tax the fees and outlays allowable to the solicitor in respect of the advice and assistance in accordance with regulation 17, and such taxation shall be conclusive of the amount of the fees and outlays so allowable.

(2) In any case where the fees and outlays allowable to a solicitor in respect of advice and assistance in accordance with regulation 17 are less than any contribution paid by the client under section 11 of the Act, the solicitor shall refund the excess contribution.

#### **Fees and outlays recoverable from a third party**

**20.** Regulations 17, 18 and 19 shall not apply to fees and outlays recoverable in respect of advice and assistance to a client from a third party and, where such fees and outlays are to be taxed, they shall be taxed as if the advice and assistance were not advice and assistance under the Act.

#### **Right of Board to recover sums paid out of the Fund**

**21.** Where it appears to the Board that a client has wilfully failed to comply with the provisions of these Regulations as to the information to be furnished by him or, in furnishing such information, has knowingly made a false statement or false representation, the Board shall be entitled to recover from the applicant any sums paid out of the Fund to the solicitor in respect of the advice or assistance so given.

St Andrew's House,  
Edinburgh  
12 September 1996

*Lindsay*  
Parliamentary Under Secretary of State, Scottish  
Office



We concur,

19th September 1996

*Kenneth Clarke*  
*Patrick McLoughlin*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

*Status: This is the original version (as it was originally made).*

## SCHEDULE 1

Regulation 3

<i>Title</i>	<i>Reference</i>
The Advice and Assistance (Scotland) Regulations 1987	S.I. 1987/382
The Advice and Assistance (Scotland) Amendment Regulations 1987	S.I. 1987/883
The Advice and Assistance (Scotland) Amendment (No.2) Regulations 1987	S.I. 1987/1356
The Advice and Assistance (Scotland) Amendment Regulations 1988	S.I. 1988/489
The Advice and Assistance (Scotland) Amendment (No.2) Regulations 1988	S.I. 1988/1131
The Advice and Assistance (Scotland) Amendment Regulations 1989	S.I. 1989/506
The Advice and Assistance (Scotland) Amendment (No.2) Regulations 1989	S.I. 1989/1492
The Advice and Assistance (Scotland) Amendment Regulations 1990	S.I. 1990/632
The Advice and Assistance (Scotland) Amendment (No.2) Regulations 1990	S.I. 1990/1037
The Advice and Assistance (Scotland) Amendment Regulations 1991	S.I. 1991/567
The Advice and Assistance (Scotland) Amendment Regulations 1992	S.I. 1992/373
The Advice and Assistance (Scotland) Amendment (No.2) Regulations 1992	S.I. 1992/752
The Advice and Assistance (Scotland) Amendment Regulations 1993	S.I. 1993/533
The Advice and Assistance (Scotland) Amendment (No.2) Regulations 1993	S.I. 1993/819
The Advice and Assistance (Scotland) Amendment Regulations 1994	S.I. 1994/1061
The Advice and Assistance (Scotland) Amendment Regulations 1995	S.I. 1995/1066
The Advice and Assistance (Scotland) Amendment Regulations 1996	S.I. 1996/811

## SCHEDULE 2

Regulation 7

## ASSESSMENT OF DISPOSABLE CAPITAL AND DISPOSABLE INCOME

1. In this Schedule, unless the context otherwise requires—

“capital” means the amount or value of every resource of a capital nature;

“income” means the total income from all sources which the person concerned received or became entitled to during or in respect of the seven days up to and including the date of his application;

“the person concerned” means the person whose disposable capital and disposable income are to be determined.

2. Any question arising under this Schedule shall be decided by the solicitor, and the solicitor, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Board as to the application of this Schedule.

3. The disposable capital and disposable income of the person concerned shall be the capital and income as determined by the solicitor after making such deductions as are to be made under the provisions of this Schedule.

4. If it appears to the solicitor that the person concerned has, with intent to reduce his disposable capital or disposable income or maximum contribution, whether for the purpose of making himself eligible for advice and assistance, reducing his liability to pay a contribution towards advice and assistance or otherwise, directly or indirectly deprived himself of any resource or has converted any part of his resources into resources which are to be left out of account wholly or partly, the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted, as the case may be.

5. In computing the capital and income of the person concerned—

- (a) there shall be left out of account the value of the subject matter of any claim in respect of which the person concerned is applying for advice and assistance;
- (b) there shall be left out of account so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of a jobseeker’s allowance; and
- (c) the resources of any spouse of the person concerned shall be treated as that person’s resources unless—
  - (i) the spouse has a contrary interest in the matter in respect of which the person concerned is applying for advice and assistance, or
  - (ii) the person concerned and spouse are living separate and apart, or
  - (iii) in all the circumstances of the case it would be inequitable or impracticable to do so.

6. In computing the capital of the person concerned—

- (a) the value of his household furniture and effects, of articles of personal clothing and of the tools and implements of his trade shall be left out of account;
- (b) there shall be left out of account the value of the main or only dwelling in which he resides;
- (c) where the applicant has an interest in a dwelling other than the main one in which he resides, there shall be taken into account any sum which may be obtained by borrowing money on the security thereof;
- (d) where the person concerned is living with one or more of the following persons, namely, a spouse whose resources are required to be aggregated with his, a dependent child, or a dependent relative wholly or substantially maintained by him, a deduction shall be made of £335 in respect of the first person, £200 in respect of the second person and £100 in respect of each further person.

7. In computing the income of the person concerned—

- (a) there shall be left out of account—

*Status: This is the original version (as it was originally made).*

- (i) any income tax paid or payable on income treated under the provisions of this Schedule as his income;
- (ii) the amount estimated to have been paid by way of contributions under the 1992 Act or any scheme made under those Acts in respect of the seven days up to and including the date of the application for advice or assistance;
- (b) there shall be left out of account any payment made by the Secretary of State under the Earnings Top-up Scheme 1996<sup>(25)</sup>;
- (c) there shall be a deduction in respect of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent child and in respect of the maintenance of any dependent relative of the person concerned, being, in either of such cases, a member of his household, at the following rates:—
  - (i) in the case of a spouse, at a rate equivalent to the difference, as at the date when the application for advice and assistance is made, between the income support allowance for a couple where both members are aged not less than 18 (which is specified in column 2 of paragraph 1(3)(c) of Part I of Schedule 2 to the Income Support (General) Regulations 1987<sup>(26)</sup>), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of Part I of Schedule 2 to those Regulations<sup>(27)</sup>);
  - (ii) in the case of a dependent child or a dependent relative, at a rate equivalent to the amount specified in paragraph 2 of Part I of Schedule 2 to the Income Support (General) Regulations 1987<sup>(28)</sup> appropriate to the age of the child or relative as at the date when the application for advice and assistance is made.

8. If the person concerned is making *bona fide* payments for the maintenance of a spouse who is living apart, of a former spouse or of a child or relative who is not (in any such case) a member of the household of the person concerned, there shall be a deduction of such payment as was made during or in respect of the seven days up to and including the date of the application for advice and assistance.

9. Where it appears to the solicitor that there has been some error or mistake in the determination of the disposable income, disposable capital or maximum contribution of the person concerned, he may redetermine the disposable income or disposable capital or maximum contribution or, as the case may be, amend the determination, and in the latter case the amended determination shall for all purposes be substituted for the original determination.

10.—(1) Where the person concerned is of pensionable age and his weekly disposable income (excluding any net income derived from capital) is less than the current amended figure thereof as prescribed in section 11(2)(a) of the Act there shall be disregarded the amount of capital as specified in the following table:—

<i>Weekly disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
Up to £10	25,000
£11 – £22	20,000

(25) This Scheme, which applies only in certain areas of Great Britain, is an extra-statutory Scheme introduced by the Secretary of State for Social Security having effect on 8th October 1996. Copies of the Rules of the Scheme may be obtained from the Customer Service's Manager, Earnings Top-up, Norcross, Blackpool, FY5 3TA and will be available for inspection at the Department of Social Security, 9th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6H5 and Offices of the Benefits Agency and Employment Job Centres which serve the area specified in Schedule 1 to the Scheme.

(26) S.I. 1987/1967; paragraph 1(3) was substituted by S.I. 1996/206.

(27) The allowance specified was amended by S.I. 1995/559.

(28) The allowance specified was amended by S.I. 1995/559.

<i>Weekly disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
£23 – £34	15,000
£35 – £46	10,000
£47 and above	5,000

(2) In this Schedule “pensionable age” means–

- (a) in the case of a man, the age of 65; and
- (b) in the case of a woman, the age of 60.

**11.** In computing the amount of capital of the person concerned there shall be wholly disregarded any capital payment received from any source which is made in relation to the subject matter of the dispute in respect of which the person concerned is applying for advice and assistance.

### SCHEDULE 3

Regulation 17

#### TABLE OF FEES ALLOWABLE TO SOLICITORS

#### PART I

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

**1.** Subject to paragraph 3 of this Part, the fees allowable to a solicitor for providing assistance by way of representation shall be–

- (a) £70 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(29) 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, 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 £27.40;
- (ii) each quarter hour (or part thereof) subsequent to the first half hour spent in court or conducting another hearing shall be £13.70.

**2.** The fee for–

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(29) S.I. 1988/110.

*Status: This is the original version (as it was originally made).*

- (i) each quarter hour (or part thereof) spent by a solicitor in carrying out work other than that prescribed in paragraphs 1 and 3 to 5 hereof, provided that any time is additional to the total time charged for under paragraph 1 above, shall be £10.55;
- (ii) for each quarter hour (or part thereof) spent by a solicitor's clerk in carrying out work other than that prescribed in paragraphs 3 to 5 hereof shall be £5.25.

**3. The fee for–**

- (i) each citation of a witness including execution thereof;
- (ii) framing and drawing precognitions and other necessary papers, subject to paragraph 4(iii) below – per sheet (or part thereof);
- (iii) instructing messengers-at-arms and sheriff officers, including examining execution and settling fee;
- (iv) lengthy telephone calls (of over 4 and up to 10 minutes duration); and
- (v) letters, including instructions to counsel, subject to paragraph 4(ii) below – per page (or part thereof),

shall be £6.00.

**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) short letters of a formal nature, intimations and letters confirming telephone calls;
- (iii) framing formal papers, including inventories and title pages – per sheet (or part thereof);
- (iv) revising papers drawn by counsel or where revisal ordered by court – per 5 sheets (or part thereof); and
- (v) short telephone calls (of up to 4 minutes duration),

shall be £2.40.

**5.** Where an exceptional amount of copying proves necessary, a fee of 35 pence shall be paid for each sheet.

**Interpretation**

**2.** In paragraph 1 of this Part–

a “sheet” shall consist of 250 words or numbers;

a “page” shall consist of 125 words or numbers; and

“exceptional” means the production of more than 20 output copy sheets (whether 20 of 1 sheet, 5 of 4 sheets or whatever) when a document has been copied.

**Petition by debtor for sequestration**

**3.** The fees allowable to a solicitor for providing assistance by way of representation in relation to a petition by a debtor for the sequestration of his estate under section 5(2)(a) of the Bankruptcy (Scotland) Act 1985(30) shall be–

- (a) £27.40 for any time spent by a solicitor appearing in court in connection with the petition; and

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(30) 1985 c. 66; section 5(2)(a) was amended by section 3(2) of the Bankruptcy (Scotland) Act 1993 (c. 6).

(b) £45 for all other work in connection with the petition.

## 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:–

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**A.** Time occupied in carrying out work £10.55  
for the client other than work described in  
paragraphs B to E below–

(i) solicitor – per quarter hour (or  
part thereof)

(ii) solicitor’s clerk – per quarter hour (or part £ 5.25  
thereof)

**B.** For short letters of a formal nature, short £ 2.40  
telephone calls (of up to 4 minutes duration),  
framing formal documents such as inventories  
and engrossing formal documents for signature  
– per sheet (or part thereof)

**C.** For letters other than in B above – £ 6.00  
per page (or part thereof), framing non-formal  
documents other than precognitions – per sheet  
of 250 words (or part thereof) and lengthy  
telephone calls (of over 4 and up to 10 minutes  
duration)

**D.** For taking and drawing precognitions – £21.05  
for the first sheet of 250 words or less for each  
subsequent sheet of 250 words

for each subsequent sheet of 250 words £21.05

for each subsequent sheet of less than 250 £10.55  
words

**E** Where an exceptional amount of copying  
proves necessary, a fee of 35 pence shall be paid  
for each sheet.

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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 £25.00 or where a solicitor elects to claim only the fee provided for in this paragraph, a fee of £25.00 shall be allowable in place of the fees so calculated.

### Interpretation

3. In this Table–

a “sheet” shall consist of 250 words or numbers;

**Status:** This is the original version (as it was originally made).

a “page” shall consist of 125 words or numbers; and

“exceptional” means the production of more than 20 output copy sheets (whether 20 of 1 sheet, 5 of 4 sheets or whatever) when a document has been copied.

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### **EXPLANATORY NOTE**

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

These Regulations consolidate with amendments and revoke the Advice and Assistance (Scotland) Regulations 1987 and the Regulations amending those Regulations.

The main amendments are as follows:–

- (a) the previous reference to “parent or guardian” in regulation 6(2) has been substituted in consequence of the Children (Scotland) Act 1995 to allow an application for advice and assistance to be made on behalf of a child by any person having parental responsibilities in relation to the child;
- (b) the prior right to payment of fees and outlays from property preserved does not apply to money paid by way of an income-based jobseeker’s allowance, a contribution-based jobseeker’s allowance or incapacity benefit (regulation 16);
- (c) any back to work bonus treated as payable by way of a jobseeker’s allowance is excluded from the computation of capital and income (paragraph 5(b) of Schedule 2); and
- (d) any payment made under the Earnings Top-up Scheme is excluded from the computation of income (paragraph 7(b) of Schedule 2).