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STATUTORY INSTRUMENTS

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**1999 No. 491 (S. 33)**

**LEGAL AID AND ADVICE, SCOTLAND**

**The Criminal Legal Aid (Fixed  
Payments) (Scotland) Regulations 1999**

<i>Made</i>	- - - -	<i>28th February 1999</i>
<i>Laid before Parliament</i>		<i>2nd March 1999</i>
<i>Coming into force</i>	- -	<i>1st April 1999</i>

The Secretary of State, in exercise of the powers conferred on him by sections 33 and 41A 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 (Fixed Payments) (Scotland) Regulations 1999 and shall come into force on 1st April 1999.

**Interpretation**

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

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

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2);

“assisted person” means a person to whom criminal legal aid has been made available in relation to the proceedings in question;

“excluded proceedings” means—

- (a) summary proceedings arising following a reduction from solemn proceedings;
- (b) proceedings in relation to which legal aid is only available by virtue of section 22(1)(a) of the Act (identification parades held by or on behalf of the prosecutor in contemplation of criminal proceedings);
- (c) proceedings in relation to which legal aid is only available by virtue of section 22(1)(c) of the Act (assisted person in custody or liberated by police on undertaking to appear);

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(1) 1986 c. 47; sections 33(3A) and 41A were inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48), sections 51 and 54 respectively.

(2) 1995 c. 46.

- (d) proceedings in relation to which legal aid is only available by virtue of section 22(1)(da) of the Act (plea of insanity in bar of trial)(3);
- (e) proceedings in relation to which legal aid is only available by virtue of section 22(1)(db) of the Act (examination of facts)(4);
- (f) proceedings in relation to which legal aid is made available by virtue of regulation 15 of the Criminal Legal Aid (Scotland) Regulations 1996 (matters of special urgency)(5);
- (g) any reference in connection with proceedings under article 177 of the EEC Treaty(6).

“relevant criminal legal aid” means criminal legal aid provided by a solicitor in relation to summary proceedings other than excluded proceedings.

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

### **Application**

3.—(1) For the purposes of these regulations, the references in section 33(3A) and (3B) of the Act(7) to criminal legal assistance relate to relevant criminal legal aid.

(2) These Regulations shall apply—

- (a) in respect of relevant criminal legal aid first made available in terms of sections 22 or 24(7) of the Act, only in relation to any case where criminal legal aid is first so available on or after 1st April 1999; and
- (b) in respect of relevant criminal legal aid first made available otherwise, only in relation to any case where an application for criminal legal aid is granted on or after that date.

### **Fixed payments allowable to solicitors**

4.—(1) There shall be made to a solicitor who provides relevant criminal legal aid in summary proceedings, in respect of the professional services provided by him and the outlays specified in paragraph (2) below, and in accordance with the provisions of this regulation, the fixed payments specified in Schedule 1.

(2) The outlays specified in this paragraph are all outlays in connection with—

- (a) the taking, drawing, framing and perusal of precognitions;
- (b) the undertaking by another solicitor of any part of the work; and
- (c) photocopying.

(3) Except where proceedings have been brought under section 185 of the 1995 Act, the reference to summary proceedings in paragraph (1) above is a reference to proceedings on a single summary complaint or on complaints which arise out of the same incident.

(4) Where in such proceedings a solicitor acts for more than one assisted person a separate fixed payment shall be made to him in respect of each such assisted person, in accordance with paragraph (5) below.

(5) Where a solicitor represents 2 or more assisted persons he shall be paid in respect of the first assisted person 100% of such of the fixed payments specified in Schedule 1 as are appropriate to that assisted person, in respect of a second assisted person 40% of the appropriate fixed payments, and in respect of a third and each subsequent assisted person 20% of those payments.

(3) Section 22(1)(da) was inserted by 1995 c. 40, section 5 and Schedule 4.

(4) Section 22(1)(db) was inserted by 1995 c. 40, section 5 and Schedule 4.

(5) S.I.1996/2555.

(6) EEC Treaty has the meaning assigned to it in Schedule 1 to the European Communities Act 1972 c. 68.

(7) Section 33(3A) and (3B) were inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 51.

(6) Where a solicitor represents an assisted person who has been remanded in custody at or subsequent to the first calling of the case and that assisted person is at any time during that remand under 21 years of age the fixed payment specified in paragraph 1 of Schedule 1 shall be increased by £100.

(7) Where the Board grants an application for a change of solicitor under regulation 17(3) of the Criminal Legal Aid (Scotland) Regulations 1996 there shall be paid to each of the solicitors who act for the assisted person in the relevant proceedings an equal part of the total amount payable in respect of those proceedings by virtue of paragraph (1) above and for the purposes of calculating that total amount paragraph (5) shall not apply.

(8) 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 payments allowed to the solicitor an amount equal to the amount of value added tax chargeable.

### **Submission of accounts**

5.—(1) A claim for a fixed payment in accordance with these Regulations shall be made by submitting to the Board not later than 6 months after the date of conclusion of the proceedings in respect of which the relevant legal aid was granted, an account specifying the fixed payments which are claimed in relation to the proceedings, together with any fees and outlays which are claimed in relation to those proceedings by virtue of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989(8).

(2) The Board may accept accounts submitted later than the 6 months referred to in paragraph (1) if it considers that there is special reason for late submission.

### **Consequential**

6. In the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 at the beginning of regulation 3 (fees and outlays to which the Regulations apply) insert—

“Subject to the provisions of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999.”.

St Andrew’s House,  
Edinburgh  
28th February 1999

*Henry McLeish*  
Minister of State, Scottish Office

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

SCHEDULE 1

Regulation 4

	<i>Where professional services are provided in relation to proceedings in the District Court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court (other than proceedings in a Court specified in Schedule 2) or the District Court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
<p><b>1.</b> All work up to and including:</p> <p>(i) any diet at which a plea of guilty is made and accepted or plea in mitigation is made;</p> <p>(ii) the first 30 minutes of conducting a proof in mitigation other than in the circumstances where paragraph (2) below</p>	£300 (where criminal legal aid has been made available in the circumstances referred to in paragraphs 7 or 8 below £275)	£500 (where criminal legal aid has been made available in the circumstances referred to in paragraphs 7 or 8 below £475)	£550 (where criminal legal aid has been made available in the circumstances referred to in paragraphs 7 or 8 below £525)

	<i>Where professional services are provided in relation to proceedings in the District Court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court (other than proceedings in a Court specified in Schedule 2) or the District Court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
<p>applies; and (ii) the first 30 minutes of conducting any trial together with any subsequent or additional work other than that specified in paragraphs 2-9 below.</p>			
<p><b>2.</b> All work done in connection with a grant of legal aid under section 23(1)(b) of the Act including the first 30 minutes of conducting a proof in mitigation.</p>	£25	£50	£50
<p><b>3.</b> Conducting a trial or proof in mitigation for the first day (after the first 30 minutes).</p>	£50	£100	£100

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	<i>Where professional services are provided in relation to proceedings in the District Court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court (other than proceedings in a Court specified in Schedule 2) or the District Court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
4. Conducting trial or proof in mitigation for the second day.	a £50	£200	£200
5. Conducting trial or proof in mitigation for the third and subsequent days (per day).	a £100	£400	£400
6. Representation in court at a diet of deferred sentence.	£25	£50	£50
7. All work done where the accused is in custody and has tendered a plea of not guilty until determination of the application for legal aid.	£25	£25	£25
8. All work done by virtue of section 24(7) of the Act until determination of the application for legal aid.	£25	£25	£25
9. All work done in connection with a bail appeal under section 32 of the 1995 Act.	£50	£50	£50

## SCHEDULE 2

Schedule 1

### SPECIFIED SHERIFF COURTS

Campbeltown  
Dunoon (where proceedings have taken place in Lochgilphead)  
Kirkwall  
Lerwick  
Lochmaddy  
Oban  
Portree  
Rothesay  
Stornoway

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### EXPLANATORY NOTE

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

These Regulations make new provision for payment of criminal legal aid to solicitors from the Scottish Legal Aid Fund in respect of summary proceedings. Provision is made for fixed payments to be made in respect of the professional services provided by a solicitor including certain prescribed outlays. Where these regulations apply the fixed payments replace the fees and outlays formerly payable to solicitors in terms of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989.

These Regulations apply to summary proceedings with the following exceptions: proceedings reduced from solemn to summary; proceedings where legal aid has been made available as a matter of special urgency by virtue of regulation 15 of the Criminal Legal Aid (Scotland) Regulations 1996; references in summary proceedings to the European Court of Justice; and the following proceedings in relation to which legal aid is not otherwise available:—

- representation at an identification parade held by or on behalf of the prosecutor in connection with or in contemplation of criminal proceedings;
- proceedings where the assisted person is in custody or liberated by police on undertaking to appear;
- proceedings in relation to a plea of insanity in bar of trial; and
- an examination of the facts (regulation 2).

The fixed payments to be made are provided for in Schedule 1. Those payments are dependent on the nature of the proceedings, the court in which the proceedings are brought and, the age and custodial status of the assisted person for whom criminal legal aid has been made available (Schedule 1 and regulation 4(6)).

A higher fixed payment is to be made where proceedings are brought in certain distant and rural sheriff courts (Schedule 1, column 3 and Schedule 2).

Only one payment is payable in relation to a single summary complaint or complaints which arise out of the same incident (regulation 4(3)).

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A percentage reduction is applied to the fixed payments in respect of a second and subsequent assisted person where a solicitor represents more than one assisted person in relation to a single complaint or complaints arising from the same incident (regulation 4(5)).

A larger fixed payment is to be made where a solicitor represents an assisted person who is placed on remand at or subsequent to the first calling of the case and is under 21 at any time during that remand (regulation 4(6)).

Fixed payments are to be equally apportioned between solicitors where there has been a change of solicitor (regulation 4(7)).

Value added tax is to be chargeable where the work done by the solicitor constitutes a supply of services (regulation 4(8)).

Accounts including all fees and outlays claimed in relation to the provision of criminal legal aid in those proceedings are to be submitted to the Board within 6 months (regulation 5).