

## SCHEDULE 4 JUSTICE

### PART 9

#### LEGAL AID

##### *Assessment of claims for interim payment of fees and outlays*

- 21 (1) The Legal Aid (Scotland) Act 1986 applies in accordance with the modification in this paragraph.
- (2) Section 33 (fees and outlays of solicitors and counsel) has effect as if after subsection (5) there were inserted—
- “(6) Subsections (7) to (9) apply where—
- (a) a solicitor or counsel submits a claim to the Board in respect of fees or outlays incurred by the solicitor or counsel in connection with—
    - (i) the provision of legal aid by the solicitor or counsel prior to the completion of the proceedings for which the legal aid was granted, or
    - (ii) the provision of advice and assistance by the solicitor or counsel to a person while the advice and assistance is being provided by the solicitor or counsel to the person, and
  - (b) in submitting the claim, the solicitor or counsel confirms to the Board that the fees or outlays to which the claim relates have been properly incurred by the solicitor or counsel.
- (7) The fees or outlays to which the claim relates are to be treated as having been properly incurred by the solicitor or counsel for the purposes of subsection (1).
- (8) Any sum paid out of the Fund to the solicitor or counsel pursuant to the claim is to be treated as having been paid out of the Fund in accordance with section 4(2)(a).
- (9) Where the claim is made under regulation 11 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 ([S.I. 1989/1490](#)) in relation to the provision of civil legal aid, the fees to which the claim relates are to be treated, for the purposes of the regulation, as having been necessarily and reasonably incurred in connection with the proceedings for which the legal aid is granted.”.

##### *Recovery of overpayment of interim fees or outlays paid to firms*

- 22 (1) The Legal Aid (Scotland) Act 1986 applies in accordance with the modification in this paragraph.
- (2) Section 33 (fees and outlays of solicitors and counsel) has effect as if after subsection (9) (inserted by paragraph 21) there were inserted—
- “(10) Subsection (11) applies where—

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*Status: This is the original version (as it was originally enacted).*

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- (a) a sum is paid out of the Fund after the day on which paragraph 22 of schedule 4 of the Coronavirus (Scotland) Act 2020 comes into force (the “interim payment”) in respect of fees or outlays incurred by a solicitor in connection with—
    - (i) the provision of legal aid by the solicitor prior to the completion of the proceedings for which the legal aid was granted, or
    - (ii) the provision of advice and assistance by the solicitor to a person while the advice and assistance is being provided by the solicitor to the person,
  - (b) on the instruction of the solicitor, the interim payment is paid by the Board to the firm of the solicitor, and
  - (c) on the completion of the proceedings for which the legal aid was granted (or, as the case may be, on the cessation of the advice and assistance by the solicitor to the person), the Board determines that the interim payment exceeds the sum payable out of the Fund to the solicitor under subsection (1) in connection with the provision of the legal aid (or the advice and assistance) by the solicitor.
- (11) The firm of the solicitor is jointly and severally liable with the solicitor for the repayment to the Fund of the excess mentioned in subsection (10)(c).
- (12) Subsection (13) applies where—
- (a) a firm is jointly and severally liable for the repayment of a sum to the Fund under subsection (11) (the “repayment amount”),
  - (b) the repayment amount has not been repaid to the Fund,
  - (c) a separate sum is due to be paid out of the Fund to any solicitor of the firm (the “amount payable”), and
  - (d) the solicitor has instructed the Board to pay the amount payable to the firm.
- (13) The Board may deduct all or part of the repayment amount from the amount payable.”.

*Payment of interim fees for civil legal aid to counsel*

- 23 (1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989 (S.I. 1989/1490) apply in accordance with the modification in this paragraph.
- (2) Regulation 11 has effect as if paragraph (2) were revoked.