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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2015 No.**

**LEGAL AID AND ADVICE**

**The Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015**

*Made* - - - - 2015

*Coming into force* - - 22nd September 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9, 33(2), (3) and (3A) and 36(2)(c) of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

In accordance with section 37(2) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015 and come into force on 22nd September 2015.

**Amendment of the Civil Legal Aid (Scotland) (Fees) Regulations 1989**

2.—(1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989(b) are amended as follows.

(2) In Schedule 4, Table of Fees A(c) (fees of counsel for proceedings in the Court of Session)—

(a) in Chapter 3 (petitions for judicial review) of Part 1 (junior counsel)—

(i) in paragraph 2 of the table, for “Motion for first orders” substitute “Oral hearing at permission stage or procedural hearing”; and

(ii) in paragraph 3 of the table, for “First or second hearing” substitute “Substantive hearing”.

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(a) 1986 c.47; section 33(2) was amended by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 67. Section 33(3A) was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 51. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(b) S.I. 1989/1490; relevant amending instruments are S.S.I. 2003/178, S.S.I. 2004/281, S.S.I. 2007/14, S.S.I. 2009/203, S.S.I. 2011/160 and 2013/144.

(c) Table of Fees A was substituted by S.S.I. 2011/160.

- (b) in Chapter 6 (ordinary actions) of Part 1 (junior counsel), after paragraph 9 of the table insert—

“9A. *Any other hearing where no other fee is specified*

- |   |          |
|---|----------|
| (a) where the hearing does not exceed 30 minutes  | £60.00   |
| (b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof | £50.00”. |

- (3) In Schedule 4, Table of Fees B(a) (fees of counsel for proceedings in the sheriff court), in Part 1 (junior counsel), after paragraph 16 of the table insert—

“17. *Any other hearing where no other fee is specified*

Attendance for up to half hour, and for each subsequent half hour or part thereof      £55.00”.

- (4) In Schedule 7(b) (sheriff court proceedings for which fees for work done shall only be payable under Schedule 5), at the appropriate place insert—

“proceedings in an all-Scotland sheriff court within the meaning of section 42(7) of the Courts Reform (Scotland) Act 2014(c);”.

- (5) The amendments made by paragraph (2)(a) do not apply in the case of petitions for judicial review lodged before 22nd September 2015.

### **Amendment of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989**

**3.—**(1) The Criminal Legal Aid (Scotland) (Fees) Regulations 1989(d) are amended as follows.

(2) In regulation 11(1)(a), after “appeals,” insert “or the Sheriff Appeal Court,”.

(3) In paragraph 8 (interpretation) of Schedule 1(e), in the definition of “court”, after “Justiciary,” insert “the Sheriff Appeal Court,”.

(4) In Schedule 2(f) (fees of counsel)—

(a) in the notes on the operation of the Schedule—

- (i) in the heading before paragraph 4, omit the words “in the High Court of Justiciary”;
- (ii) in paragraph 6, for “6(a), (b) or (c)” substitute “6(a), (b), (c), (ca) or (cb)”;

(b) in Chapter 1 of Part II (fees of junior counsel in appeal proceedings), in paragraph 5 of the table (appeals in relation to bail or interim liberation)—

- (i) in sub-paragraph (a), for “except (b)” substitute “except (ab) or (b)”;
- (ii) after sub-paragraph (a) insert—

“(ab) all work in connection with a	£30	£30	£30”;
continued diet in relation to such an appeal			

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(a) Table of Fees B was substituted by S.S.I. 2011/160.

(b) Schedule 7 was inserted by S.S.I. 2003/178 and amended by S.S.I. 2004/281, S.S.I. 2007/14, S.S.I. 2009/203, and S.S.I. 2013/144.

(c) 2014 asp 18.

(d) S.I. 1989/1491; relevant amending instruments are S.S.I. 2004/264, S.S.I. 2005/113, S.S.I. 2010/63 and S.S.I. 2011/135.

(e) Schedule 1 was substituted by S.S.I. 2004/264.

(f) Schedule 2 was substituted by S.S.I. 2005/113; paragraph 4 to 11B and Chapters 1 and 2 of Part II were substituted by S.S.I. 2010/63.

(c) in Chapter 1 of Part II, (fees of junior counsel in appeal proceedings), in paragraph 6 of the table (appeals conduct other), after sub-paragraph (c) insert—

“(ca) appeal from the Sheriff Appeal Court to the High Court under section 194ZB of the 1995 Act(a) £700-£1,089 £500-£825 £400-£625

(cb) referral from the Sheriff Appeal Court to the High Court under section 175A of the 1995 Act(b) £700-£1,089 £500-£825 £400-£625”;

(d) in Chapter 2 of Part II (fees of senior counsel in appeal proceedings), in paragraph 5 of the table (appeals in relation to bail or interim liberation)—

(i) in sub-paragraph (a), for “except (b)” substitute “except (ab) or (b);

(ii) after sub-paragraph (a), insert—

“(ab) all work in connection with a continued diet in relation to such an appeal £50”;

(e) in Chapter 2 of Part II (fees of senior counsel in appeal proceedings), in paragraph 6 of the table (appeals conduct other), after sub-paragraph (c) insert—

“(ca) appeal from the Sheriff Appeal Court to the High Court under section 194ZB of the 1995 Act £900-£1,250

(cb) referral from the Sheriff Appeal Court to the High Court under section 175A of the 1995 Act £900-£1,250”.

#### **Amendment of the Criminal Legal Aid (Scotland) Regulations 1996**

**4.**—(1) The Criminal Legal Aid (Scotland) Regulations 1996(c) are amended as follows.

(2) In regulation 4 (distinct proceedings for the purpose of criminal legal aid), after paragraph (1)(e) insert—

“(ea) appeals to the Sheriff Appeal Court against conviction, sentence, other disposal or acquittal;

(eb) appeals to the High Court of Justiciary under section 194ZB of the 1995 Act against a decision of the Sheriff Appeal Court;”.

(3) In regulation 14(1)(b) (prior approval of Board for employment of counsel etc.), after “in” insert “the Sheriff Appeal Court.”.

#### **Amendment of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999**

**5.**—(1) The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(d) are amended as follows.

(2) In regulation 2(1)(e) (interpretation), in sub-paragraph (l) of the definition of “excluded proceedings”, omit the words “to the High Court”.

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(a) Section 194ZB is inserted by section 119 of the Courts Reform (Scotland) Act 2014 (asp 18) (“the 2014 Act”).

(b) Section 175A(1) is inserted by section 120 of the 2014 Act.

(c) S.I. 1996/2555; relevant amending instruments are S.I. 1999/1042, S.S.I. 2001/306, S.S.I. 2009/312 and S.I. 2013/7.

(d) S.I. 1999/491; of the definition of “excluded proceedings” relevant amending instruments are S.S.I. 2001/307 and S.S.I. 2008/240.

(e) Sub-paragraph (l) of the definition of “excluded proceedings” was inserted by S.S.I. 2008/240.

(3) In Part 1 of Schedule 1(a), for paragraph 13 of the table substitute—

“13(a) All work done in connection with a bail appeal under section 32 of the 1995 Act, or an appeal under section 201(4) of the 1995 Act, other than under paragraph (b) or (c).	£50	£50	£50
(b) Representation in such an appeal where counsel not employed.	£30	£30	£30
(c) Representation at a continued diet in such an appeal where counsel not employed.	£30	£30	£30”.

**Amendment of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003**

6.—(1) The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003(b) are amended as follows.

(2) In regulation 6(1)(a) (summary criminal proceedings), omit the words “to the High Court of Justiciary”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

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(a) Schedule 1 was substituted by S.S.I. 2001/307; paragraph 13 of the table in Part 1 was amended by S.S.I. 2010/237.  
(b) S.S.I. 2003/179; relevant amending instruments are S.S.I. 2006/345 and S.S.I. 2008/251.

## EXPLANATORY NOTE

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

These Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 1989, the Criminal Legal Aid (Scotland) (Fees) Regulations 1989, the Criminal Legal Aid (Scotland) Regulations 1996, the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003.

The amendments—

- provide for the availability of criminal legal aid and assistance by way of representation in criminal appeals to the Sheriff Appeal Court (established by section 46 of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”)) and in relation to appeals and references from that Court to the High Court of Justiciary;
- prescribe the fees payable to solicitors and counsel in relation to bail appeals to the Sheriff Appeal Court;
- revise the table of fees applying to junior counsel in judicial review proceedings to take account of the new procedure introduced by section 89 of the 2014 Act; and
- make provision in relation to the fees payable in relation to proceedings in an all-Scotland sheriff court established under section 41 of the 2014 Act and in relation to civil hearings for which no fee is otherwise prescribed.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh EH1 3DG.

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