

**2009 No. 203**

**LEGAL AID AND ADVICE**

**The Civil Legal Aid (Scotland) (Fees) Amendment  
Regulations 2009**

<i>Made</i>	- - - -	<i>27th May 2009</i>
<i>Laid before the Scottish Parliament</i>		<i>28th May 2009</i>
<i>Coming into force</i>	- -	<i>22nd June 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 33(2)(a) and (3) and 36(1) and (2)(a) of the Legal Aid (Scotland) Act 1986(a) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2009 and come into force on 22nd June 2009.

**Application**

2.—(1) Regulations 4, 6 and 7 only apply to fees for work done or outlays incurred on or after 1st April 2008.

(2) Regulation 8 only applies to fees for work done or outlays incurred on or after 22nd June 2009.

(3) Regulations 5 and 9 only apply in relation to any case concluded on or after 22nd June 2009.

(4) For the purposes of this regulation, where work for a fee prescribed in Schedule 2 or 6 to the Civil Legal Aid (Scotland) (Fees) Regulations 1989(b) is conducted over more than one day, the work is deemed to have been done on the day it comes to an end.

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

3. The Civil Legal Aid (Scotland) (Fees) Regulations 1989 are amended in accordance with the following regulations.

4. In regulation 5(2A) (which prescribes the value of one unit for the purposes of Schedule 6), for “£19.00” substitute “£21.00”.

5. In regulation 5(4) (which provides for an additional fee in specified circumstances), for “the Auditor” substitute “the Board, or as the case may be the Auditor,”.

6. In Schedule 2 (fees of solicitors for proceedings in the sheriff court)—

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(a) 1986 c.47. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1989/1490; amended by S.I. 1990/473, 1991/565, 1994/1015 and 1233, 1995/1044, 1997/689, 1999/1042 and S.S.I. 2002/496, 2003/178, 2004/281, 2005/449, 2007/14, 181 and 438.

- (a) for paragraph 2 substitute–

“2. Chapter III of the Table of Fees in this Schedule shall have effect subject to the following provisions:–

- (a) in paragraph 2 of Part I and paragraph 7 of Part II, no fee is allowable for attendance at a continuation of the first calling, unless specifically authorised by the court;
- (b) in Part I, in relation to actions for reparation there are allowable such additional fees for precognitions and reports as are necessary to permit the framing of the summons;
- (c) in Part II, in respect of paragraph 22 (final procedure), no fee shall be allowed in respect of accounts of expenses when the hearing on the claim for expenses takes place immediately on the sheriff or sheriff principal announcing his decision;
- (d) unless the sheriff, on an incidental application in that behalf, otherwise directs, all fees chargeable under Chapter III shall be reduced by 50% in respect of–
  - (i) undefended actions for recovery of heritable property;
  - (ii) actions under the Tenancy of Shops (Scotland) Act 1949(a) or section 3 of the Sheriff Courts (Civil Jurisdiction and Procedure) (Scotland) Act 1963(b).

**2A.** In Chapter III of the Table of Fees in this Schedule–

“attendance at court” means waiting for and conducting any hearing unless specifically provided for elsewhere in the Chapter;

“half hour” shall be read as if immediately followed by the words “(or part thereof)”;

“a page” consists of 125 words or numbers; and

“a sheet” consists of 250 words or numbers.”.

- (b) for Chapter III of the Table of Fees (which sets out solicitors’ fees for summary cause proceedings), substitute the Schedule to these Regulations.

7. In Schedule 5 (detailed fees chargeable by solicitors), for £34.00, £17.00, £13.15, £6.50, £11.15, £7.50, £2.95 and £0.08 substitute £37.58, £18.79, £14.53, £7.18, £12.32, £8.29, £3.26 and £0.09 respectively.

**8.** In Chapter III of Schedule 6 (circumstances in which the Board may allow an additional fee)–

- (a) for paragraph 1 substitute–

“1. That the assisted person’s inadequate knowledge of English–

- (a) required instructions to be taken through an interpreter; or
- (b) significantly increased the duration of meetings necessary to take instructions.”;

- (b) for paragraph 2 substitute–

“2. That although able to attend at the solicitor’s office the assisted person suffered throughout or for a significant period of the case from–

- (a) a severe substance abuse problem; or
- (b) a mental disorder within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003(c).”; and

- (c) in paragraph (a) of the Note on the application of Chapter III for “paragraph 5 or 6 above” substitute “paragraph 5, 6 or 7 above”.

**9.** In Schedule 7 (sheriff court proceedings for which fees are payable under Schedule 5)–

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(a) 1949 c.25; amended by section 1 of the Tenancy of Shops (Scotland) Act 1964 (c.50) and paragraph 3 of Schedule 1 to the Sheriff Courts (Scotland) Act 1971 (c.58).

(b) 1963 c.22; section 3 was substituted by section 23 of the Family Law (Scotland) Act 1985 (c.37).

(c) 2003 asp 13.

- (a) after “division and sale of heritable property;” insert “exceptional cases;”; and
- (b) at the end, insert–

**“Interpretation**

1.—(1) For the purposes of this Schedule an “exceptional case” means any case certified as such by the Board on the application of the solicitor involved.

(2) The solicitor involved may apply to the Board not later than 4 months after the conclusion of a case to have it certified as an exceptional case.

(3) The Board will certify a case as exceptional only if satisfied that–

- (a) the other party, or as the case may be at least one of the other parties, was a party litigant;
- (b) there were concurrent proceedings before a children’s hearing;
- (c) the solicitor involved had to apply for a transfer of agency after the fixing of a diet of proof, debate or any other hearing fixed for the purposes of settlement; or
- (d) payment in accordance with Schedule 6 would not provide reasonable remuneration for the work actually, necessarily and reasonably done because the case involved–
  - (i) unusual court procedure for which a fee is not otherwise prescribed; or
  - (ii) a significantly greater volume of work than is usual for a case of that type.”.

*KENNY MACASKILL*

A member of the Scottish Executive

St Andrew’s House,  
Edinburgh  
27th May 2009

# SCHEDULE

Regulation 6(b)

## “CHAPTER III

### Part I — Undefended Actions

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1. The fee for citation, service or re-service after the first citation—	
(a) to any destination by post	£6.74
(b) by advertisement	£19.01
2. The fee for attendance at court	£19.01
3. The fee for all other work	£53.50

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### Part II — Defended Actions

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1. The instruction fee—	
(a) for the pursuer’s solicitor, including taking instructions, framing summons and statement of claim, obtaining warrant for service, enquiring for the form of response and noting defence	£81.16
(b) for the defender’s solicitor, for all work from taking instructions (including instructions for a counter-claim) up to and including lodging the form of response	£81.16
2. Where an additional defender or third party enters the cause, an additional fee for each of the original parties’ solicitors for all consequent work	£40.61
3. The fee for citation, service or re-service, except as provided for in paragraph 19(e), by—	
(a) post, to a destination—	
(i) within the United Kingdom, Isle of Man, Channel Islands or the Republic of Ireland	£6.74
(ii) other than one specified in paragraph (i)	£14.42
(b) sheriff officer, to include instructing sheriff officer, perusing execution of citation and settling sheriff officer’s fee	£6.74
(c) advertisement, to include framing and instructing the advertisement	£21.11
4. In connection with the first hearing of the cause—	
(a) the fee for attendance at court, including noting the outcome of the hearing	£70.17
(b) if waiting for and conducting the hearing exceeds an hour and a half, the fee for attendance at court for each subsequent half hour	£21.11
5. The fee for attendance at court, except as specifically provided for elsewhere in this Chapter, per half hour	£21.11
6. The fee for drawing precognitions, including instructions, attendances with witnesses and all relative meetings and correspondence, per sheet	£31.27

<b>7.</b> The fee for perusing, revising and adjusting a report or precognition prepared by a skilled witness, per sheet	£15.64
<b>8.</b> In connection with reports commissioned by order of Court, the fee for–	
(a) all incidental work, including instructing the report	£21.11
(b) each half hour perusing the report	£21.11
<b>9.</b> The fee, per inventory, for–	
(a) lodging productions	£31.27
(b) perusing the opposition’s productions	£14.42
<b>10.</b> The fee for framing affidavits, per sheet	£15.64
<b>11.</b> Except as provided for by paragraphs 17, 18 and 19 the fee for–	
(a) drawing, intimating and lodging any written minute or incidental application including any relative attendance at court, where that minute or application is–	
(i) opposed	£44.53
(ii) unopposed	£26.74
(b) considering a written minute or incidental application intimated by the opposition including any relative attendance at court, where that minute or application is–	
(i) opposed	£36.63
(ii) unopposed	£21.11
<b>12.</b> In connection with a hearing to which paragraph 11 applies, if waiting for and conducting that hearing exceeds half an hour, the fee for attendance at court for each subsequent half hour	£21.11
<b>13.</b> In connection with a proof the fee for all work, except as specifically provided for elsewhere in this Chapter, preparatory to–	
(a) the first scheduled proof, if–	
(i) the cause is settled or abandoned 7 or more days before the scheduled proof	£73.26
(ii) paragraph (i) does not apply	£87.96
(b) any adjourned proof, if the postponement from the hearing previously scheduled exceeds 6 days and–	
(i) the cause is settled or abandoned 7 or more days before the scheduled proof	£36.63
(ii) paragraph (i) does not apply	£43.98
<b>14.</b> The fee for each half hour inspecting the opposition’s documents either at court or at a place fixed by the opposition	£21.11
<b>15.</b> In connection with a proof or a trial and debate on evidence taken at the close of proof, the fee for each half hour–	
(a) conducting that hearing	£21.11
(b) waiting in court for that hearing	£11.22
<b>16.</b> In connection with a debate on evidence not taken at the close of proof, the fee for–	
(a) all preparatory work	£49.06
(b) attendance at court, per half hour	£21.11

<b>17. In connection with a minute of judicial tender–</b>	
(a) the fee for consideration of, preparing and lodging the minute	£44.53
(b) on acceptance of the tender, the fee for consideration of, preparing and lodging the minute of acceptance and attendance at court when decree is granted in terms of that minute	£31.27
(c) on rejection of the tender, the fee for considering it	£31.27
<b>18. The fee for each party where the case is settled extra-judicially, including all relative negotiations, framing or revising the joint minute and attendance at court when authority is interposed thereto</b>	£73.26
<b>19. In connection with an incidental application for commission and diligence to recover documents or an order under section 1 of the Administration of Justice (Scotland) Act 1972(a), the fee for–</b>	
(a) drawing, intimating and lodging the application and, where relevant, specification and any relative attendance at court, where the application is–	
(i) opposed	£48.95
(ii) unopposed	£26.74
(b) considering the application and, where relevant, specification intimated by the opposition and any relative attendance at court, where the application is–	
(i) opposed	£36.63
(ii) unopposed	£21.11
(c) each subsequent half hour, where attendance at court exceeds half an hour	£21.11
(d) citing havers and preparing for and appearing before the commissioner or sheriff at the execution of the commission, per half hour	£21.11
(e) serving an order on each person, if optional procedure is adopted	£14.42
(f) each half hour perusing the documents recovered	£21.11
<b>20. In connection with an open commission to take evidence, the fee for–</b>	
(a) all work, excluding attendance at the commission, by the–	
(i) solicitor applying for the commission	£49.06
(ii) the opposing solicitor	£21.11
(b) each half hour attending the execution of the commission	£21.11
<b>21. In connection with an appeal, the fee for–</b>	
(a) all work, including preparation for any hearing	£100.17
(b) attendance at court for a hearing on adjustments or for the appeal hearing, per half hour	£21.11
<b>22. At the conclusion of the cause, the fee for–</b>	
(a) settling with witnesses and noting the final decree	£44.53
(b) the successful party to cover drawing the account of expenses, arranging, intimating and attending a diet of taxation and obtaining approval of the auditor's report and, where necessary, ordering, procuring and examining extract decree or adjusting account with opponent	£44.53

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(a) 1972 c.59; section 1 was amended by section 19 of and paragraph 15 of Schedule 2 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73).

- (c) the unsuccessful party to cover considering the opponent's account of expenses and, where necessary, adjusting the account with opponent or attending a diet of taxation £21.11"

## EXPLANATORY NOTE

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

These Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (“the principal Regulations”) as they apply to solicitors’ fees in civil proceedings. In this note references to numbered Schedules are to Schedules to the principal Regulations.

In respect of work done or outlays incurred on or after 1st April 2008–

- (a) the value of one unit, for the purposes of calculating the fees chargeable for the blocks of work prescribed in Schedule 6, is increased from £19.00 to £21.00 (regulation 4);
- (b) a new table of fees prescribes the fees chargeable in summary cause proceedings (regulation 6); and
- (c) the fees for work and outlays chargeable in accordance with Schedule 5 are increased (regulation 7).

Regulation 5(4) of the principal Regulations provides, inter alia, that the Court of Session may allow an additional fee to a solicitor in respect of the responsibility undertaken by that solicitor in the conduct of proceedings before the Court of Session. It further provided that it was for the Auditor of the Court of Session to determine the value of that fee. Regulation 5 of these Regulations amends regulation 5(4) of the principal Regulations to provide that the Scottish Legal Aid Board (“the Board”) will, in the first instance, determine the value of any additional fee allowed by the Court of Session.

Chapter II of Schedule 6 prescribes the fees for solicitors in defended, civil proceedings in the sheriff court. Regulation 5(2C) of the principal Regulations allows the Board to pay a fee additional to the fee due in terms of the said Chapter II, where it is satisfied that any of the circumstances prescribed in Chapter III of Schedule 6 have had a significant effect on the conduct of the case. In respect of work done or outlays incurred on or after 22nd June 2009, regulation 8 extends the circumstances prescribed in the said Chapter III to allow an additional fee to be paid where–

- (i) the assisted person’s inadequate knowledge of English prolonged meetings to take instructions; or
- (ii) the assisted person suffered from a severe substance abuse problem during a significant proportion of the case.

Solicitors’ fees for sheriff court proceedings are generally calculated in accordance with Schedule 6. However in the circumstances specified in Schedule 7 fees are calculated in accordance with Schedule 5 instead. Regulation 9 adds “exceptional cases” to the list of proceedings in Schedule 7 for which solicitors’ fees will be calculated in accordance with Schedule 5 rather than Schedule 6. A case is only an exceptional case in terms of Schedule 7 if the solicitor requests the Board to treat it as such and the Board are satisfied that the specified criteria are met.

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