

2015 No. 337

LEGAL AID AND ADVICE

**The Legal Aid (Miscellaneous Amendments) (Scotland)
Regulations 2015**

Made - - - - - *17th September 2015*

Laid before the Scottish Parliament *17th September 2015*

Coming into force - - - *22nd September 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 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.

Citation and commencement

1. These Regulations may be cited as the Legal Aid (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”.

(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.

(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 2(1) (interpretation), for the definition of “solicitor advocate”(e) substitute—

““solicitor advocate” means—

- (a) a solicitor who, in relation to the proceedings, has exercised a right of audience conferred by virtue of section 25A (rights of audience in specified courts) of the Solicitors (Scotland) Act 1980(f); or
- (b) in relation to proceedings in the Sheriff Appeal Court, a solicitor who would have been entitled to exercise such a right of audience had the proceedings taken place in a court to which section 25A of that Act applied;”.

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

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

- (5) In Schedule 2(h) (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)”;

(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) The definition of “solicitor advocate” was substituted by S.S.I. 2011/135.

(f) 1980 c.46; section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 24.

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

(h) 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.

(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

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

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

(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 £50”; and
relation to such an appeal

(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 £900-£1,250
Court under section 194ZB of the 1995 Act

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

Amendment of the Criminal Legal Aid (Scotland) Regulations 1996

4. In regulation 4 of the Criminal Legal Aid (Scotland) Regulations 1996(c) (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;”.

(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.

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

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

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

(3) In Part 1 of Schedule 1(c), 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”.

PAUL WHEELHOUSE

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
17th September 2015

(a) 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.

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

(c) 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.

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 and the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999.

The amendments—

- provide for a criminal appeal to the Sheriff Appeal Court to be treated as a distinct matter for the purposes of legal aid;
- expand the definition of “solicitor advocate” in the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 to include solicitor advocates acting in relation to criminal appeals to the Sheriff Appeal Court;
- 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.

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£4.25

S201509185 09/2015 19585

<http://www.legislation.gov.uk/id/ssi/2015/337>

ISBN 978-0-11-102945-9



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