
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 257

LEGAL AID AND ADVICE

The Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2016

Made - - - - - *6th September 2016*
Laid before the Scottish
Parliament - - - - - *8th September 2016*
Coming into force - - - - - *1st December 2016*

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) and (c) of the Legal Aid (Scotland) Act 1986⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2016 and come into force on 1st December 2016.

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

- 2.—(1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989⁽²⁾ are amended as follows.
- (2) In regulation 2(1) (interpretation), in the definition of “auditor”—
- (a) in paragraph (a) after “Lands Valuation Appeal Court” insert “, Upper Tribunal for Scotland”; and
 - (b) in paragraph (aa), for the words from “sheriff court” to “heard” substitute “Sheriff Appeal Court”.
- (3) In regulation 5(1) (fees and outlays allowable to solicitors), after “Court of Session” insert “or the Upper Tribunal for Scotland”.
- (4) In regulation 10(1) (fees allowable to counsel), after “Court of Session” insert “, Upper Tribunal for Scotland”.

(1) 1986 c.47 (“the 1986 Act”). Section 33(2) of the 1986 Act was amended by section 67(7)(b) of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5). 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).

(2) S.I. 1989/1490; relevant amending instruments are S.S.I. 1994/1015, S.S.I. 2002/496, S.S.I. 2003/178, S.S.I. 2004/281, S.S.I. 2007/14, S.S.I. 2009/203, S.S.I. 2009/312, S.S.I. 2011/160, S.S.I. 2013/144 and S.S.I. 2015/380.

(5) In schedule 4 (fees of counsel for proceedings in the Court of Session, Sheriff Appeal Court and sheriff court)—

- (a) the heading of the schedule becomes “Fees of Counsel for proceedings in the Court of Session, Sheriff Appeal Court, sheriff court and Upper Tribunal for Scotland”;
- (b) in paragraph 13, after “sheriff court” insert “, Upper Tribunal for Scotland”; and
- (c) in Table of Fees B (fees of counsel for proceedings in the sheriff court and the Sheriff Appeal Court)—
 - (i) the heading becomes “Table of Fees B – Fees of Counsel for proceedings in the sheriff court, Sheriff Appeal Court and Upper Tribunal for Scotland”;
 - (ii) in paragraph 16 of Part 1 (junior counsel), after “2011 Act” insert “or to the Upper Tribunal for Scotland”; and
 - (iii) in paragraph 6 of Part 2 (senior counsel), after “2011 Act” insert “or to the Upper Tribunal for Scotland”.

(6) The heading of schedule 5 becomes “Table of detailed fees chargeable by solicitors for proceedings in the Court of Session, Sheriff Appeal Court and Upper Tribunal for Scotland, proceedings listed at regulation 5(3) and proceedings in the sheriff court listed in schedule 7”.

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

3.—(1) The Civil Legal Aid (Scotland) Regulations 2002(3) are amended as follows.

(2) After regulation 4(1)(l) (distinct proceedings for the purposes of legal aid), insert—

“(m) proceedings on appeal to the Upper Tribunal for Scotland.”.

(3) In regulation 21(1)(c) (employment of counsel etc.), after “Lands Tribunal for Scotland” insert “, the Upper Tribunal for Scotland”.

St Andrew’s House,
Edinburgh
6th September 2016

ANNABELLE EWING
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (“the 1989 Regulations”) and the Civil Legal Aid (Scotland) Regulations 2002.

Regulation 2 amends the 1989 Regulations to make provision consequential upon the addition of certain proceedings in the Upper Tribunal for Scotland to the list of proceedings in Part 1 of schedule 2 of the Legal Aid (Scotland) Act 1986 (courts in which civil legal aid is available) by the Legal Aid (Scotland) Act 1986 Amendment Regulations 2016 (S.S.I. 2016/xxx). It provides for the calculation of the fees of solicitors and counsel in relation to proceedings in the Upper Tribunal for Scotland. Additionally, it amends regulation 2 of the 1989 Regulations to specify the Auditor of the Court of Session as the relevant auditor in relation to legal aid accounts in the Upper Tribunal for Scotland and the auditor of the Sheriff Appeal Court in relation to legal aid accounts in the Sheriff Appeal Court.

Regulation 3 amends the Civil Legal Aid (Scotland) Regulations 2002 to provide for appeals to the Upper Tribunal for Scotland to be treated as distinct proceedings for the purposes of legal aid and to require the prior approval of SLAB for the employment of counsel in the Upper Tribunal for Scotland.

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.