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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 310**

**LEGAL AID AND ADVICE**

**The Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2017**

*Made* - - - - 20th September 2017  
*Laid before the Scottish Parliament* - - - - 22nd September 2017  
*Coming into force* - - 1st December 2017

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<sup>(1)</sup> 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 2017 and come into force on 1st December 2017.

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

2.—(1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989<sup>(2)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation), in paragraph (a) of the definition of “auditor”, after “Lands Valuation Appeal Court” insert “, First-tier Tribunal for Scotland”<sup>(3)</sup>.

(3) After regulation 5(1A) (fees and outlays allowable to solicitors) insert—

“(1B) A solicitor’s fees in relation to proceedings in the First-tier Tribunal for Scotland shall be calculated in accordance with schedule 2A.”.

(4) In regulation 10(1) (fees allowable to counsel), after “Sheriff Appeal Court” insert “, First-tier Tribunal for Scotland”.

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(1) 1986 c.47. 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. 2007/181, S.S.I. 2009/203, S.S.I. 2009/312, S.S.I. 2011/160, S.S.I. 2013/144, S.S.I. 2015/380, S.S.I. 2016/257 and S.S.I. 2016/290.

(3) Part 1 of schedule 2 of the Legal Aid (Scotland) Act 1986 is amended by S.S.I. 2017/xx to include proceedings before the First-tier Tribunal for Scotland in the list of proceedings. The First-tier Tribunal for Scotland is established by section 1 of the Tribunals (Scotland) Act 2014 (asp 10).

- (5) In schedule 2A (fees allowable for simple procedure cases)—
- (a) in the heading of the schedule, after “cases” insert “and First-tier Tribunal for Scotland cases”;
  - (b) in paragraph 5(a) of the Table of Fees, after “court” insert “or First-tier Tribunal for Scotland”.
- (6) In schedule 4 (fees of counsel for proceedings in the Court of Session, Sheriff Appeal Court, sheriff court and Upper Tribunal for Scotland)—
- (a) in the heading, after “sheriff court” insert “, First-tier Tribunal for Scotland”;
  - (b) in paragraph 8—
    - (i) after “petition”, insert “, application”;
    - (ii) after “defences”, insert “, representations”;
  - (c) in paragraph 13, after “sheriff court” insert “, First-tier Tribunal for Scotland”;
  - (d) in Table of Fees B (fees of counsel for proceedings in the sheriff court, the Sheriff Appeal Court and Upper Tribunal for Scotland)—
    - (i) in the heading, after “sheriff court” insert “, First-tier Tribunal for Scotland”;
    - (ii) in paragraph 1 of Part 1, after “family action” insert “or applications to the First-tier Tribunal for Scotland”;
    - (iii) in paragraph 2 of Part 1, after “family action” insert “or representations to the First-tier Tribunal for Scotland”.

### **Amendment of the Civil Legal Aid (Scotland) Regulations 2002**

- 3.—**(1) The Civil Legal Aid (Scotland) Regulations 2002<sup>(4)</sup> are amended as follows.
- (2) After regulation 4(1)(m) (distinct proceedings for the purposes of legal aid), insert—
- “(n) proceedings before the First-tier Tribunal for Scotland.”.
- (3) In regulation 21(1)(c) (employment of counsel etc.), after “the Lands Tribunal for Scotland” insert “, the First-tier Tribunal for Scotland”.

St Andrew’s House,  
Edinburgh  
20th September 2017

*ANNABELLE EWING*  
Authorised to sign by the Scottish Ministers

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(4) S.S.I. 2002/494; relevant amending instruments are S.S.I. 2009/312, S.S.I. 2010/166 and S.S.I. 2016/257.

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## 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 before the First-tier Tribunal for Scotland to the list of proceedings in Part 1 of schedule 2 of the Legal Aid (Scotland) Act 1986 (courts and tribunals in which civil legal aid is available) by the Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 (S.S.I. 2017/xxx). It provides for the calculation of the fees of solicitors and counsel in relation to proceedings in the First-tier Tribunal for Scotland. 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 First-tier Tribunal for Scotland.

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