
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 466

The Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017

Amendment of the Advice and Assistance (Scotland) Regulations 1996

5.—(1) The Advice and Assistance (Scotland) Regulations 1996(1) are amended as follows.

(2) After regulation 4 (application for advice and assistance), insert—

“Applications for advice and assistance: further provision

4A. The requirement in regulation 4 for an application for advice and assistance to be signed does not apply in the case of a client to whom section 32 (right to have a solicitor present) of the Criminal Justice (Scotland) Act 2016 applies.”.

(3) In regulation 14A (change of solicitor etc.), after paragraph (3) insert—

“(4) This regulation does not apply to proceedings under sections 19, 30 or 36(1)(a) of the Criminal Justice (Scotland) Act 2016.”.

(4) In regulation 17 (fees and outlays of solicitors), after paragraph (1) insert—

“(1A) In the application of paragraph (1)(a) above to fees for work actually, necessarily and reasonably done in connection those matters described in—

(a) Part III of Schedule 3, the reference to Part I of schedule 3 in paragraph (1)(a) above should be read as a reference to Part III of schedule 3;

(b) Part IV of Schedule 3, the reference to Part II of schedule 3 in paragraph (1)(a) should be read as a reference to Part IV of schedule 3.”.

(5) In the Table of Fees in Part II of schedule 3 (table of fees allowable to solicitors)—

(a) delete paragraphs F and G;

(b) at the end insert—

“PART III

TABLE OF FEES ALLOWED TO SOLICITORS FOR ASSISTANCE BY WAY OF REPRESENTATION FOR PROCEEDINGS UNDER SECTIONS 19, 30 AND 36(1)(a) OF THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016

A reference in this Table of Fees to a section is a reference to a section of the Criminal Justice (Scotland) Act 2016.

1. *Section 19 - Application for review of conditions of investigative liberation*

- (a) Inclusive fee, excluding travel, for all work where matter does not proceed to a court hearing. £50.00
 - (b) Inclusive fee, excluding travel, for all work where matter proceeds to a court hearing. £75.00
 - (c) Additional fee, excluding travel, for second or subsequent court hearing, per hearing. £50.00
 - (d) Fee for time necessarily spent travelling to and from court, where the court is not in a town or place where the solicitor has a place of business, per quarter hour. £5.80
2. *Section 30 - Application for review of undertaking conditions*
- (a) Inclusive fee, excluding travel, for all work where matter does not proceed to a court hearing. £50.00
 - (b) Inclusive fee, excluding travel, for all work where matter proceeds to a court hearing. £75.00
 - (c) Additional fee, excluding travel, for second or subsequent court hearing, per hearing. £50.00
 - (d) Fee for time necessarily spent travelling to and from court, where the court is not in a town or place where the solicitor has a place of business, per quarter hour. £5.80
3. *Section 36(1)(a) – Application for authorisation for questioning by a prosecutor*
- (a) Inclusive fee, excluding travel, for all work where matter does not proceed to a court hearing. £50.00
 - (b) Inclusive fee, excluding travel, for all work where matter proceeds to a court hearing. £75.00
 - (c) Additional fee, excluding travel, for second or subsequent court hearing, per hearing. £50.00
 - (d) Fee for time necessarily spent travelling to and from court, where the court is not in a town or place where the solicitor has a place of business, per quarter hour. £5.80
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PART IV

TABLE OF FEES ALLOWED TO SOLICITORS FOR ADVICE AND ASSISTANCE IN RELATION TO SECTIONS 32 AND 44 OF THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016

1.(a) Where a client to whom section 32 applies has exercised a right to have a solicitor present while being interviewed in terms of section 32(2), a solicitor can only claim a fee under paragraph 4 for all work undertaken in a single period in which that client—

- (i) voluntarily attends for interview,
- (ii) is in custody,

- (iii) voluntarily attends for interview and during that interview, or immediately after it, is arrested and in custody.
- (b) Where a client to whom section 32 applies has not exercised their right under section 32(2), a solicitor can only claim a fee under paragraph 3 or 5 for all work undertaken in a single period in which that client is in custody.
- (c) (i) Where a fee under paragraph 3 or 4 is claimed, a solicitor can only claim the higher rate, instead of the standard rate, if personal attendance on the client takes place wholly or partly during an unsocial time.
- (ii) Where a fee under paragraph 5 is claimed, a solicitor can only claim a higher rate, instead of the standard rate, if the attendance on the client (personal or otherwise) takes place wholly or partly at an unsocial time.

2. In this part—

“unsocial time” means—

- (a) a Saturday, Sunday or specified holiday;
- (b) any time between 1900 hours and 0700 hours on any other day;

“constable” means—

- (a) a constable within the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012;
- (b) a person appointed under section 21(1), 22(1), 23(1), 24(1) or 25(1) of the Railways and Transport Safety Act 2003;
- (c) a person appointed under section 55(1) of the Energy Act 2004;
- (d) a person who is a member of the Ministry of Defence Police by virtue of section 1(2) of the Ministry of Defence Police Act 1987;
- (e) a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;
- (f) a person who is designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009 or as a customs revenue official under section 11(1) of that Act;
- (g) a person appointed as an officer of Revenue and Customs under section 2(1) of the Commissioners for Revenue and Customs Act 2005;

“mental disorder” has the meaning given in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003;

“specified holiday” means—

- (a) New Year’s Day, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following New Year’s Day;
- (b) 2nd January or
 - (i) if it is a Saturday, 4th January;
 - (ii) if it is Sunday, 4th January;
- (c) Good Friday;
- (d) Easter Monday;
- (e) the first Monday in May;
- (f) 30th November, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following the 30th November;

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- (g) Christmas Day, if it is not a Saturday or Sunday or, if it is a Saturday or Sunday, the first Monday following Christmas Day;
- (h) 26th December or
- (i) if it is a Saturday, 28th December;
- (ii) if it is a Sunday, 28th December.

	Standard Rate	Higher Rate
3. Inclusive fee, excluding travel, for personal attendance by a solicitor where a constable determines the client has a mental disorder and the client has exercised a right to consultation under section 44.	£75.00	£99.75
4. Inclusive fee, excluding travel, for personal attendance by a solicitor where the client has exercised a right to have a solicitor present in terms of section 32(2)—		
(a) aggregate time engaged or waiting is 2 hours or less; or	£115.00	£152.95
(b)(i) aggregate time engaged or waiting is more than 2 hours, up to and including 4 hours; and	£200.00	£266.00
(ii) for each additional hour over 4 hours (or part thereof).	£50.00	£66.50
5. Inclusive fee, excluding travel, for attendance by a solicitor where the client has exercised a right to consultation under section 44 other than in the circumstances provided for in paragraph 3.	£30.00	£39.90
6. Fee for travelling time in relation to personal attendance—		
(a) travel time engaged is 2 hours or less per half hour (or part thereof); and	£11.60	£15.43
(b) travel time engaged is more than 2 hours, where authorised by the Board, in advance per half hour (or part thereof).	£11.60	£15.43”
