
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 56

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2021

Citation and Commencement

1. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2021 and come into force on 22 March 2021.

Application

2.—(1) These Regulations apply only in relation to fees for work done or outlays incurred on or after 22 March 2021, except in relation to—

- (a) regulation 4(4) and (9),
- (b) regulation 6(4) and (6), and
- (c) regulation 7.

(2) Regulation 4(4) applies only in relation to work carried out for the purposes of commencing appeal proceedings in terms of section 107 of the Criminal Procedure (Scotland) Act 1995⁽¹⁾ on or after 22 March 2021.

(3) Regulation 4(9) applies only in relation to trials commenced on or after 22 March 2021.

(4) Regulations 6(4) and (6), and 7 apply only in relation to a case where the criminal legal assistance concerned is granted or made available on or after 22 March 2021.

(5) For the purposes of paragraph (1), where work for a fee prescribed in schedules 1 to 11 is conducted over more than one date, the work is deemed to have been done on the day on which the work comes to an end.

Amendments to the Civil Legal Aid (Scotland) (Fees) Regulations 1989

3.—(1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989⁽²⁾ are amended as follows.

(2) In regulation 5 (fees allowable to solicitors) in paragraph (2A) for “£21.63”⁽³⁾ substitute “£22.72”.

(3) In Part 1 of Chapter 3 of schedule 2 (undefended actions), for the first table of fees substitute the table of fees in schedule 1 of these Regulations.

(4) In Part 2 of Chapter 3 of schedule 2 (defended actions), for the first table of fees substitute the table of fees in schedule 2 of these Regulations.

(1) 1995 c.46. Section 107 was amended by paragraph 21(15) of schedule 1 of the Crime and Punishment (Scotland) Act 1997 c.48, section 62 of the Criminal Justice (Scotland) Act 2003 (asp 7), paragraph 16 of schedule 1 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) and paragraph 8 of schedule 1 of the Double Jeopardy (Scotland) Act 2011 (asp 16).

(2) S.I. 1989/1490; relevant amending instruments are S.I. 1990/473, S.I. 1991/565, S.I. 1992/372, S.I. 1994/1015, S.I. 1995/1044, S.I. 1997/689, S.S.I. 2003/178, S.S.I. 2007/14, S.S.I. 2009/203, S.S.I. 2011/41, S.S.I. 2011/160, S.S.I. 2013/144, S.S.I. 2013/250, S.S.I. 2014/257, S.S.I. 2015/337, S.S.I. 2015/380, S.S.I. 2016/257, S.S.I. 2016/290, S.S.I. 2017/310 and S.S.I. 2019/78 and S.S.I. 2020/191. Regulation 11 was modified by paragraph 23 of schedule 4 of the Coronavirus (Scotland) Act 2020 (asp 7).

(3) Paragraph (2A) was inserted by S.S.I. 2003/178 and this figure substituted by S.S.I. 2019/78.

(5) In Chapter 4 of schedule 2 (executory business), for each of the tables of fees substitute the table of fees in schedule 3 of these Regulations.

(6) In schedule 2A (fees allowable to solicitors for simple procedure cases and First-Tier Tribunal for Scotland cases)(4), substitute the table of fees in schedule 4 of these Regulations.

(7) In schedule 3 (table of detailed fees chargeable by solicitors for proceedings in the Court of Session and the sheriff court), for the table of fees substitute the table of fees in schedule 5 of these Regulations.

(8) In schedule 4 (fees of counsel for proceedings in the Court of Session, Sheriff Appeal Court, sheriff court, First-Tier Tribunal for Scotland and Upper Tribunal for Scotland)(5), for the table of fees substitute the table of fees in schedule 6 of these Regulations.

(9) In schedule 5 (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)(6), for the table of fees substitute the table of fees in schedule 7 of these Regulations.

(10) In schedule 6 (table of fees chargeable by solicitors for proceedings in the sheriff court (except summary cause and executory proceedings and the proceedings listed in schedule 7) and in the Sheriff Appeal Court)—

- (a) in Chapter 1 (sheriff court civil fees (undefended)) in the Notes on the operation of Chapter 1 in paragraph 6 for “£7.49”(7) substitute “£7.87”,
- (b) in Chapter 2 (sheriff court civil fees (defended)) in the Notes on the operation of Chapter 2 in paragraph 21 for “£7.49”(8) substitute “£7.87”.

Amendments to the Criminal Legal Aid (Scotland) (Fees) Regulations 1989

4.—(1) The Criminal Legal Aid (Scotland) (Fees) Regulations 1989(9) are amended as follows.

(2) In regulation 5(1) (fees allowances to solicitors: identification parades)(10)—

- (a) in sub-paragraph (a)(i) for “£117.42” substitute “£123.30”,
- (b) in sub-paragraph (a)(ii) for “£13.06” substitute “£13.72”,
- (c) in sub-paragraph (b)(i) for “£96.62” substitute “£101.46”,
- (d) in sub-paragraph (b)(ii) for “£12.18” substitute “£12.79”.

(3) In regulation 6 (duty solicitors’ fees)(11)—

- (a) for “£64.89” in each place where it appears substitute “£68.14”,
- (b) for “£9.27” in each place where it appears substitute “£9.74”,
- (c) for “£72.10” in each place where it appears substitute “£75.71”.

(4) After regulation 10 (fees allowable to counsel) insert—

(4) Schedule 2A was inserted by [S.S.I. 2016/290](#) and amended by [S.S.I. 2019/78](#).

(5) Schedule 4 was inserted and renamed by [S.S.I. 2011/160](#), renamed by [S.S.I. 2016/257](#) and amended by [S.S.I. 2019/78](#).

(6) Schedule 5 was inserted by [S.S.I. 2003/178](#) and renamed by [S.S.I. 2016/257](#).

(7) This figure substituted by [S.S.I. 2019/78](#).

(8) Paragraph 21 was inserted by [S.S.I. 2003/178](#) and this figure substituted by [S.S.I. 2019/78](#).

(9) [S.I. 1989/1491](#); relevant amending instruments are [S.I. 1991/566](#), [S.I. 1992/374](#), [S.S.I. 2004/264](#), [S.S.I. 2005/113](#), [S.S.I. 2005/584](#), [S.S.I. 2005/656](#), [S.S.I. 2007/180](#), [S.S.I. 2008/240](#), [S.S.I. 2009/312](#), [S.S.I. 2010/63](#), [S.S.I. 2010/212](#), [S.S.I. 2011/41](#), [S.S.I. 2011/135](#), [S.S.I. 2012/276](#), [S.I. 2013/7](#), [S.S.I. 2013/250](#), [S.S.I. 2013/320](#), [S.S.I. 2015/337](#) and [S.S.I. 2017/466](#), [S.S.I. 2019/78](#) and [S.S.I. 2020/191](#).

(10) Regulation 5 substituted by [S.S.I. 2010/212](#) and amended by [S.S.I. 2019/78](#).

(11) Figures in regulation 6 substituted by [S.S.I. 2019/78](#).

“Fees (exceptional) allowable to counsel in appeal proceedings

10ZA.—(1) This regulation applies only pending leave to appeal being granted by the Appeal Court of the High Court of Justiciary.

(2) Counsel who provides criminal legal aid in relation to preparation of the note of appeal, or preparation of the note of appeal and counsel’s opinion on the merits of an appeal for the purposes of proceedings under section 107 of the Criminal Procedure (Scotland) Act 1995—

- (a) where the circumstances prescribed in paragraph (4) exist, and
- (b) subject to the conditions prescribed in paragraph (5),

is to be paid an additional fee for work carried out in accordance with schedule 2, subject to the modifications to the notes on the operation of schedule 2 specified in paragraph (9).

(3) It is for the Board to determine whether the circumstances prescribed in paragraph (4) exist.

(4) The circumstances referred to in paragraph (2)(a) are that the amount of fees payable to counsel in accordance with these Regulations (other than under paragraph (2)) would be likely to result in an assisted person being deprived of effective legal assistance.

(5) The conditions referred to in paragraph (2)(b) are—

- (a) that counsel providing the criminal legal aid is to make an application to the Board in such a manner and form (which may include an online form) and containing such information as the Board may specify at as early a stage in the provision of criminal legal aid as is reasonably practicable,
- (b) that counsel is, if required by the Board to do so, to supply such further information or such documents as the Board may require to enable it to determine that application, and
- (c) that counsel is to keep proper records of all professional services provided by way of that criminal legal aid, whether before or after the Board determines whether the conditions prescribed in this paragraph are met.

(6) Counsel may apply for a review where the Board has determined that the circumstances prescribed in paragraph (4) do not exist.

(7) An application for review—

- (a) must be lodged with the Board within 15 days, beginning on the day notice of the Board’s determination was given to the applicant,
- (b) must include a statement of any matters which the applicant wishes the Board to take into account in reviewing the application, and
- (c) may be accompanied by such additional precognitions and other documents as the applicant considers to be relevant to the review.

(8) Paragraph (7)(a) does not apply where the Board considers that there is a special reason for it to consider a late application for review.

(9) The modifications to the notes on the operation of schedule 2 referred to in paragraph (2) are as follows—

- (a) paragraph 9 does not apply,
- (b) paragraph 11A applies as if the words “taking into account that in cases set down for a day or more 2 hours preparation is covered by that fee by virtue of paragraph 9(a)” are omitted.”.

(5) In schedule 1 (fees of solicitors) in the Notes on the operation of schedule 1 in paragraph 7(1)(12) for “£13.06” substitute “£13.72”.

(6) In schedule 1 (fees of solicitors) in the table of fees, for Part 1 (detailed fees) and Part 2 (inclusive fees for solemn first instance proceedings) substitute the tables of fees in schedule 8 of these Regulations.

(7) In schedule 2 (fees of counsel) for the table of fees substitute the table of fees in schedule 9 of these Regulations.

(8) In schedule 3 (fees of counsel for proceedings in the supreme court) for the table of fees substitute the table of fees in schedule 10 of these Regulations.

(9) In paragraph 3 of the notes on the operation of schedule 2—

(a) in sub-paragraph (b) after the words “sub-paragraph (c)” insert “and sub-paragraph (ca)”,

(b) after sub-paragraph (c) insert—

“(ca) where junior counsel being led is unable to appear at a trial diet hearing, and the junior as leader has sought and has been granted leave of the court to continue alone at the trial diet hearing, the fee payable to junior as leader will be those prescribed in the Table of Fees for junior as leader.”.

Amendments to the Legal Aid in Contempt of Court Proceedings (Scotland) (Fees) Regulations 1992

5.—(1) The Legal Aid in Contempt of Court Proceedings (Scotland) (Fees) Regulations 1992(13) are amended as follows.

(2) In schedule 1 (table of fees allowable to solicitors for legal aid made available under section 30 of the Act in connection with proceedings for contempt of court)(14)—

(a) in paragraph 1(a) for “£28.23” substitute “£29.65”,

(b) in paragraph 1(b) for “£14.12” substitute “£14.83”,

(c) in paragraph 2(a) for “£10.87” substitute “£11.42”,

(d) in paragraph 2(b) for “£5.41” substitute “£5.69”,

(e) in paragraph 3 for “£6.18” substitute “£6.49”,

(f) in paragraph 4 for “£2.48” substitute “£2.61”,

(g) in paragraph 4A(a)(15) for “£5.44” substitute “£5.72”,

(h) in paragraph 4A(b) for “£2.71” substitute “£2.85”.

(3) In paragraph 4 of schedule 2 (fees of counsel)(16) for the table of fees substitute the table of fees in schedule 11 of these Regulations.

Amendments to the Advice and Assistance (Scotland) Regulations 1996

6.—(1) Schedule 3 (table of fees allowable to solicitors) of the Advice and Assistance (Scotland) Regulations 1996(17) is amended as follows.

(12) Figure in paragraph 7 substituted by [S.S.I. 2019/78](#).

(13) [S.I. 1992/1228](#); relevant amending instruments are [S.I. 1997/718](#), [S.S.I. 2011/41](#), [S.S.I. 2013/250](#), [S.S.I. 2014/257](#) and [S.S.I. 2019/78](#).

(14) Figures in paragraphs 1 to 4A of schedule 1 substituted by [S.S.I. 2019/78](#).

(15) Paragraph 4A was inserted by [S.S.I. 2011/41](#) and amended by [S.S.I. 2019/78](#).

(16) Paragraph 4A was amended by [S.S.I. 2019/78](#).

(17) [S.I. 1996/2447](#); relevant amending instruments are [S.I. 1997/726](#), [S.S.I. 2004/262](#), [S.S.I. 2005/171](#), [S.S.I. 2006/233](#), [S.S.I. 2008/240](#), [S.S.I. 2010/312](#), [S.S.I. 2011/41](#), [S.S.I. 2013/144](#), [S.S.I. 2013/250](#), [S.S.I. 2014/257](#), [S.S.I. 2017/466](#), [S.S.I. 2019/78](#), [S.S.I. 2020/191](#) and [S.S.I. 2021/55](#).

- (2) In Part 1 (table of fees allowable to solicitors for assistance by way of representation)—
- (a) in paragraph 1, for the table of fees substitute the table of fees in schedule 12 of these Regulations,
 - (b) in paragraph 3 (petition by debtor for sequestration)(**18**)—
 - (i) in sub-paragraph (a) for “£34.15” substitute “£35.86”, and
 - (ii) in sub-paragraph (b) for “£56.09” substitute “£58.90”.
- (3) In paragraph 1 of Part 2 (table of fees allowed to solicitors for advice and assistance other than assistance by way of representation) for the table of fees substitute the table of fees in schedule 13 of these Regulations.
- (4) In Part 3 (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) for the table of fees substitute the table of fees in schedule 14 of these Regulations.
- (5) In Part 4 (table of fees allowed to solicitors for advice and assistance in relation to sections 32 and 44 of the Criminal Justice (Scotland) Act 2016)(**19**)—
- (a) in paragraph 3 (standard rate) for “£77.25” substitute “£81.12”,
 - (b) in paragraph 3 (higher rate) for “£102.75” substitute “£107.89”,
 - (c) in paragraph 4(a) (standard rate) for “£118.45” substitute “£124.38”,
 - (d) in paragraph 4(a) (higher rate) for “£157.54” substitute “£165.42”,
 - (e) in paragraph 4(b)(i) (standard rate) for “£206.00” substitute “£216.30”,
 - (f) in paragraph 4(b)(i) (higher rate) for “£273.98” substitute “£287.68”,
 - (g) in paragraph 4(b)(ii) (standard rate) for “£51.50” substitute “£54.08”,
 - (h) in paragraph 4(b)(ii) (higher rate) for “£68.50” substitute “£71.93”,
 - (i) in paragraph 5 (standard rate) for “£30.90” substitute “£32.45”,
 - (j) in paragraph 5 (higher rate) for “£41.10” substitute “£43.16”,
 - (k) in paragraph 6 for “£11.95” in each place where it appears substitute “£12.55”,
 - (l) in paragraph 6 for “£15.90” in each place where it appears substitute “£16.70”.
- (6) In Part V (table of fees allowable to solicitors for assistance by way of representation for proceedings under schedule 8 of the Terrorism Act 2000)(**20**)—
- (a) for “£51.50” in each place where it appears substitute “£54.08”,
 - (b) for “£77.25” in each place where it appears substitute “£81.12”,
 - (c) for “£5.98” in each place where it appears substitute “£6.28”.
- (7) In Part VI (table of fees allowable to solicitors for advice and assistance in relation to section 41 and schedule 7 of the Terrorism Act 2000 and Part 1 of schedule 3 of the Counter-Terrorism and Border Security Act 2019)(**21**)—
- (a) in paragraph 3(a) (standard rate) for “£118.45” substitute “£124.38”,
 - (b) in paragraph 3(a) (higher rate) for “£157.54” substitute “£165.42”,
 - (c) in paragraph 3(b)(i) (standard rate) for “£206.00” substitute “£216.30”,
 - (d) in paragraph 3(b)(i) (higher rate) for “£273.98” substitute “£287.68”,
 - (e) in paragraph 3(b)(ii) (standard rate) for “£51.50” substitute “£54.08”,

(18) Figures in paragraph 3 substituted by [S.S.I. 2019/78](#).

(19) Figures in Part 4 substituted by [S.S.I. 2019/78](#).

(20) Part V inserted by [S.S.I. 2021/55](#).

(21) Part VI inserted by [S.S.I. 2021/55](#).

- (f) in paragraph 3(b)(ii) (higher rate) for “£68.50” substitute “£71.93”
- (g) in paragraph 4 (standard rate) for “£30.90” substitute “£32.45”,
- (h) in paragraph 4 (higher rate) for “£41.10” substitute “£43.16”,
- (i) in paragraph 5(a) (standard rate) for “£11.95” substitute “£12.55”,
- (j) in paragraph 5(a) (higher rate) for “£15.90” substitute “£16.70”,
- (k) in paragraph 5(b) (standard rate) for “£11.95” substitute “£12.55”,
- (l) in paragraph 5(b) (higher rate) for “£15.90” substitute “£16.70”.

Amendments to the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999

7.—(1) The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999⁽²²⁾ are amended as follows.

- (2) In regulation 4 (fixed payments allowable to solicitors)—
 - (a) in paragraphs (6) and (6ZA)⁽²³⁾ for “£103” substitute “£108.15”,
 - (b) in paragraph (9)(b) for “£100” substitute “£108.15”.
- (3) In schedule 1—
 - (a) for the table of fees in Part 1 substitute the table of fees in Part 1 of schedule 15 of these Regulations,
 - (b) for the table of fees in Part 2 substitute the table of fees in Part 2 of schedule 15 of these Regulations.
- (4) In schedule 1A for the table of fees substitute the table of fees in schedule 16 of these Regulations.
- (5) In schedule 1B—
 - (a) for the table of fees in Part 1 substitute the table of fees in Part 1 of schedule 17 of these Regulations,
 - (b) for the table of fees in Part 2 substitute the table of fees in Part 2 of schedule 17 of these Regulations.

St Andrew’s House,
Edinburgh
28th January 2021

HUMZA YOUSAF
A member of the Scottish Government

⁽²²⁾ S.I. 1999/491; relevant amending instruments are S.S.I. 2001/307, S.S.I. 2002/247, S.S.I. 2003/249, S.S.I. 2004/51, S.S.I. 2004/126, S.S.I. 2004/263, S.S.I. 2005/93, S.S.I. 2006/234, S.S.I. 2008/240, S.S.I. 2010/237, S.S.I. 2011/162, S.S.I. 2014/366, S.S.I. 2015/337 and S.S.I. 2017/466, S.S.I. 2019/78 and S.S.I. 2020/191.

⁽²³⁾ Paragraph 6ZA was inserted by S.S.I. 2011/162 and amended by S.S.I. 2019/78.