

SCHEDULE 8

Regulation 4(10)

Schedule 1A of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989

“SCHEDULE 1A

Regulation 4

FEES OF SOLICITORS

(From 29 April 2023)

Notes on the operation of Schedule 1A

Application of Schedule 1A

1. Subject to paragraph 2, in relation to solemn criminal proceedings other than proceedings to which regulation 7A(1) (solemn proceedings (exceptional) fees) applies—

- (a) the fees payable to a solicitor for all work are to be calculated in accordance with the fees prescribed in Part 2 of the Table of Fees (fees for solemn first instance proceedings), and
- (b) only the fees specified for that work in that Part are payable.

2. Where a solicitor carries out any of the work described in the following sub-paragraphs, the fees referred to in that sub-paragraph or sub-paragraphs are payable in addition to the fees payable in accordance with paragraph 1—

- (a) attending an identification parade held by or on behalf of the prosecutor (within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995), in connection with or in contemplation of criminal proceedings against the person so represented, in which case the fees specified in regulation 5 of these Regulations will apply;
- (b) work in connection with any appeal, or referral by the Lord Advocate, where those proceedings are covered by the grant of criminal legal aid in respect of the solemn first instance proceedings, in which case the fees specified in Part 1 of the Table of Fees (detailed fees) will apply to that work;
- (c) where confiscation proceedings are being brought against the accused, and the confiscation is treated as part of the sentencing process, work that is covered under any existing grant of criminal legal aid, in which case the fees specified in Part 1 of the Table of Fees (detailed fees) will apply to that work.

3. In relation to summary criminal proceedings, including appeals, the fee for any item of work is to be calculated in accordance with the fees prescribed in Part 1 of the Table of Fees (detailed fees).

4. Without prejudice to the discretion of the Board or the auditor, where fees are calculated in accordance with the fees prescribed in Part 1 of the Table of Fees (detailed fees) no fee is chargeable for—

- (a) making a telephone call that is not answered;
- (b) making a telephone call that is answered only by an automated device or system that allows the caller to record a message, except on cause shown;
- (c) framing a file note;
- (d) framing a precognition following a meeting where a file note would suffice;
- (e) perusing correspondence;
- (f) a letter of acknowledgement, unless expressly requested or required;
- (g) more than two consultations, except on cause shown;

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- (h) a meeting with the client, unless it is clear from a brief narrative in the account that information was received from or imparted to the client at the meeting advancing the case;
- (i) more than one solicitor attending a meeting with the client, without the prior sanction of the Board;
- (j) preparing for a hearing;
- (k) more than one solicitor attending a hearing, without the prior sanction of the Board;
- (l) during the court's lunch break, time spent at court for a hearing or travelling to or from court, except on cause shown;

Solemn Fees - General

5. Where a fee is payable under Part 2 of the Table of Fees (fees for solemn first instance proceedings) that fee includes any and all of the following work carried out in relation to the case to which the fee relates and accordingly no further claim may be made in relation to that work (whether such work is done by the nominated solicitor or by any other party)—

- (a) the taking, drawing, framing and perusal of precognitions;
- (b) the undertaking by a solicitor of any part of the work; and
- (c) photocopying.

6. In a case in which an indictment has been served, the relevant column of Part 2 of the Table of Fees (fees for solemn first instance proceedings) for the purposes of paragraph 1 of these Notes

- (a) for proceedings in the High Court of Justiciary which relate to an offence listed in Schedule 2, Part I, Chapter 1—
 - (i) paragraph 3(a) is column A;
 - (ii) paragraph 3(b) or (c) is column B;
- (b) for proceedings in the sheriff court is column C.

7. In a case in which an indictment has not been served (unless the matter is reduced to summary proceedings), the relevant column of Part 2 of the Table of Fees (fees for solemn first instance proceedings) for the purposes of paragraph 1 of these Notes—

- (a) is column A if the proceedings relate to any of the following offences—
 - (i) murder;
 - (ii) multiple attempted murder;
 - (iii) culpable homicide;
 - (iv) rape, or an offence under section 1, 2, 3(2)(a) or any of sections 18 to 27 of the 2009 Act;
 - (v) assault and robbery involving commercial premises;
 - (vi) importation of controlled drugs;
 - (vii) an offence under section 1 (causing death by dangerous driving), section 3A (causing death by careless driving when under the influence of drink or drugs) or 3ZB (causing death by driving while unlicensed or uninsured) of the 1988 Act;
 - (viii) an offence under the Explosive Substances Act 1883;
 - (ix) a firearms offence;
 - (x) incest;
 - (xi) sodomy;
 - (xii) sedition;

- (xiii) treason;
 - (xiv) torture;
 - (xv) war crimes;
 - (xvi) an offence under the 2000 Act or the Terrorism Act 2006⁽¹⁾;
 - (xvii) an offence under section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015⁽²⁾,
- (b) is column C if the proceedings do not relate to any of the offences specified in sub-paragraph (a).

8. In relation to paragraph 6 of these Notes—

- (a) where there is more than one offence on the indictment the applicable offence for the purpose of ascertaining the relevant column of Part 2 of the Table of Fees is to be determined as the Board, or as the case may be the auditor, considers appropriate, having regard to the offence on the indictment that in their view is the most serious;
- (b) where the proceedings relate to an offence which is not listed in paragraph 3(a), (b) or (c) of Chapter 1 of Part I of Schedule 2 the offence is deemed to be listed in whichever of those sub-paragraphs the Board, or as the case may be the auditor, considers appropriate having regard to all the circumstances.

9. The fees prescribed in paragraphs 1, 3, 5 and 6 of Part 2 of the Table of Fees (fees for solemn first instance proceedings) are payable only once in any proceedings which are covered by the grant of legal aid.

Solemn Fees – Perusal and Preparation

10. In respect of perusal fees under paragraph 4 of Part 2 of the Table of Fees (fees for solemn first instance proceedings)—

- (a) where the disclosed material is a combination of statements etc. (payable on the basis of sheets considered), audio/video (payable on the basis of runtime), and other material (payable on the basis of reasonable time engaged), the standard fee will be calculated on the basis of the aggregate total of sheets, minutes of audio/video runtime and minutes reasonably engaged, payable per tranche of 250;
- (b) where the amount of disclosure exceeds 50,000 sheets or minutes in any case the first 50,000 sheets or minutes remain payable at the prescribed rate in the Tables of Fees, and each tranche of 250 in excess of 50,000 will be payable at 50% of the prescribed rate.

11. Where a perusal fee is claimed under paragraph 4 of Part 2 of the Table of Fees (fees for solemn first instance proceedings)—

- (a) the fee payable is calculated on the basis of the documentation which has been actually and reasonably considered, due regard being had to economy;
- (b) the fee is only payable if the Board, or as the case may be the auditor, is satisfied that—
 - (i) the level of perusal was necessary, reasonable and proportionate in all the circumstances of the case, and
 - (ii) there has been due regard to the manner of perusal and reasonably available tools and aids;
- (c) the solicitor must—

(1) 2006 c. 11.
(2) 2015 asp 12.

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- (i) produce, if requested, records providing a detailed summary of the nature of the work or, if applicable, the nature of the documentation perused, at each stage of the process, the time taken and when and where the work was undertaken, and
- (ii) retain, and if requested produce, any contemporaneous record or notes made in the course of the perusals.

12.—(1) The preparation fee under paragraph 5 of Part 2 of the Table of Fees (fees for solemn first instance proceedings) includes the perusal of—

- (a) the first 50 sheets, minutes or labels where a fee is payable under paragraph 5(a) or (c) of that Part of the Table of Fees;
- (b) the first 1,000 sheets, minutes or labels where a fee is payable under paragraph 5(b) of that Part of the Table of Fees.

(2) Where a preparation fee is payable under paragraph 5 of Part 2 of the Table of Fees (fees for solemn first instance proceedings), a perusal fee under paragraph 4 of that Part is only payable in respect of any perusal not included in sub-paragraph (1).

(3) No fee is payable under paragraph 5 of Part 2 of the Table of Fees (fees for solemn first instance proceedings) until the case to which it relates has concluded.

13.—(1) The preparation fee payable under paragraph 5 of Part 2 of the Table of Fees (fees for solemn first instance proceedings) in a case will be determined—

- (a) subject to sub-paragraph (2), by how proceedings are finally disposed of in that case where—
 - (i) a diet has been deserted pro loco et tempore, or
 - (ii) a trial diet does not proceed and the procedure in section 81 of the Criminal procedure (Scotland) Act 1995 is followed;
- (b) where proceedings are covered by an existing grant of legal aid, in accordance with any guidance issued from time to time by the Board.

(2) Where upon re-indictment following desertion pro loco et tempore after trial commenced on an earlier indictment, the case is disposed of by any means, the solicitor may elect the fee payable under paragraph 5 of Part 2 of the Table of Fees (fees for solemn first instance proceedings) either on the basis of the prior indictment or the final disposal.

Solemn and Summary - Calculation of fees based on time charges

14. The fees prescribed in paragraphs 1, 8 and 9 of Part 1 of the Table of Fees (detailed fees), and in paragraphs 7, 9, 10 and 11 of Part 2 of the Table of Fees (fees for solemn first instance proceedings) are payable on the basis of the aggregate actual time engaged on the case, per day.

15.—(1) A fee for time spent waiting is chargeable only for time necessarily spent waiting at court for a hearing, provided that time has not been occupied in connection with another case (whether such other case is legally aided or not).

(2) Waiting should be charged to the first case calling except where waiting time is in respect of multiple attendances for the same accused. In that case, the waiting fee should be apportioned equally between each of the relevant cases (whether the cases are legally aided or not).

(3) No waiting time is payable in respect of the period of time during the court's lunch break.

16.—(1) A fee for travelling time is chargeable only for time necessarily spent travelling to and from—

- (a) court, provided that—
 - (i) a fee is chargeable for the work undertaken at the court, and
 - (ii) the court is not in a town or place where the solicitor has a place of business;
- (b) a meeting with the client—
 - (i) in prison, or
 - (ii) elsewhere, if the client is unable to travel on medical grounds;
- (c) a meeting with the Procurator Fiscal or Advocate Depute at their office;
- (d) a consultation with counsel or an expert witness provided that, where necessary, prior approval to engage their services has been obtained from the Board;
- (e) a locus inspection;
- (f) an examination of productions.

(2) Where a fee for travelling time is claimed that falls within any of heads (b) to (f) of sub-paragraph (1) in respect of travel undertaken in relation to work for which a fee is payable under paragraphs 1 to 6 of Part 2 of the Table of Fees (fees for solemn first instance proceedings), no additional fee may be claimed in respect of any work done during that time spent travelling unless that work is separately chargeable in terms of paragraph 2(b) or (c) of these Notes.

(3) A fee for travelling time is chargeable in circumstances other than those listed in sub-paragraph (1) only if the Board, or as the case may be the auditor, is satisfied that it was necessary for the advancement of the case that the solicitor be physically present at the place travelled to.

(4) A fee for travelling time is not chargeable if it would have been more economical to use a local solicitor, unless it was reasonable in the interests of the client that the nominated solicitor, or a solicitor assisting the nominated solicitor in terms of regulation 4(3), attended personally.

(5) The fee chargeable for travelling time is the fee for time necessarily spent travelling divided by the number of cases (whether legally aided or not) in connection with which the travel was undertaken.

(6) The travel fees chargeable will be based on the total time engaged in travel that day.

(7) Travel will be chargeable from the place of business or employment of the person travelling to the relevant location, except where travel—

- (a) commences from or concludes at that person's place of residence (or both commences and concludes at that place), and
- (b) is of a shorter distance than travel to the relevant location from their place of business or employment would have been.

Solemn and Summary Cases - Research

17.—(1) The fee prescribed in paragraph 9 of Part 1 of the Table of Fees (detailed fees) may be payable for time spent in researching a novel, developing or unusual point of law where the conditions in sub-paragraph (2) are met.

(2) The conditions are that—

- (a) the case is either—
 - (i) a summary case in respect of which—
 - (aa) Part 1 of the Table of Fees (detailed fees) applies, and
 - (bb) the Board considers the circumstances of the case to be exceptional, or
 - (ii) a solemn case in which either—

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- (aa) the Board considers that the circumstances of the case are exceptional, whether or not the Board has made a determination under regulation 7A (solemn proceedings (exceptional) fees), or
 - (bb) fees are payable in terms of paragraph 2(b) or (c) of these Notes; and
- (b) the research required in the case, in the opinion of the Board, goes beyond the understanding of the substantive and procedural law expected of solicitors in accordance with regulation 10A.

Solemn Cases - Transfer of agency

18. Where agency is transferred from one solicitor to another—
- (a) the fee for a block of work commenced and completed by the same solicitor is payable to that solicitor;
 - (b) the fee for a block of work commenced by one solicitor but completed by another is to be apportioned equally between the solicitors who undertook work falling within that block;
 - (c) in relation to the fees to which paragraph 9 of these Notes applies, no fee is payable to the transferring solicitor for a block of work not completed at the point of transfer unless and until the remaining work of that block is completed;
 - (d) no fee is payable to the transferee solicitor under paragraph 4 of Part 2 of the Table of Fees (fees for solemn first instance proceedings) in respect of any documentation that has already been made available and perused by the transferring solicitor where—
 - (i) the transfer takes place post-conviction,
 - (ii) the work is in relation to confiscation proceedings, and
 - (iii) the work is covered under any existing grant of criminal legal aid.

Solemn Cases payable under Part 1 - Precognitions

- 19.—(1) The fee for time spent by a solicitor in connection with a precognition to which this paragraph applies is—
- (a) for travelling, the fee prescribed in paragraph 8(a) of Part 1 of the Table of Fees (detailed fees);
 - (b) for taking a statement, the fee prescribed in paragraph 9(a) of that Part of that Table.
- (2) This paragraph applies to a precognition in relation to solemn proceedings if—
- (a) the fees payable to a solicitor in relation to those proceedings are to be calculated in accordance with Part 1 of the Table of Fees (detailed fees); and
 - (b) either—
 - (i) it is the first precognition of the client, or
 - (ii) cause is shown that the statement had to be taken by a solicitor.

Interpretation

20. In this Schedule—
- “court” means the Supreme Court, the High Court of Justiciary, the Sheriff Appeal Court, the sheriff court, the justice of the peace court or any remaining district court as the case may be;
- “hearing” includes any diet;
- “minute” means—

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- (a) in relation to perusal work to which paragraph 4(b) of Part 2 of the Table of Fees (fees for solemn first instance proceedings) applies, a minute of running time of any untranscribed audio or video recording; and
- (b) in relation to perusal work to which paragraph 4(c) of Part 2 of the Table of Fees (fees for solemn first instance proceedings) applies, a minute of the actual time spent perusing any documentation or material covered in that paragraph in a manner appropriate in all the circumstances of the case;

“other material” means telephony/computer records, outputs/labels/photographs or any material or documentation not otherwise covered by paragraph 4(a) or (b) of Part 2 of the Table of Fees (fees for solemn first instance proceedings).

a “page” shall consist of 125 words;

“quarter of an hour” will be read as if immediately followed by the words “(or part thereof)”;

a “sheet” shall consist of 250 words or numbers.

PART 1 DETAILED FEES

		Summary Procedure	Solemn Procedure
1.	In connection with the conduct of a hearing—		
	(a)	in summary proceedings, the fee for—	
		(i)	any time up to the first half hour spent by a solicitor conducting the hearing
	(ii)	each quarter hour spent, subsequent to the first half hour, conducting the hearing	£17.17
(b)	in solemn proceedings, the fee for each quarter of an hour spent by a solicitor conducting the hearing		£21.48
2.	Supplementary fee, payable in addition to the fee under paragraph 1, where at a holiday court sitting a solicitor acts for a person appearing from custody on the day on which that person is first brought to a court to answer to a complaint or attend a first examination		£88.16
3.	The fee for any of the following—		£7.52
	(a)	each citation of a witness, including execution,	
	(b)	framing and drawing necessary papers other than those referred to in paragraph 4(c),	
	(c)	instructing messengers at arms and sheriff officers, including examining execution and settling fee,	
	(d)	lengthy telephone calls (of over 4 and up to 10 minutes’ duration), subject to paragraph 5(b)(iii), and	
	(e)	letters, including instructions to counsel, per page (or part thereof), subject to paragraph 4(b).	

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		Summary Procedure	Solemn Procedure
4.	The fee for any of the following—	£3.04	£3.25
	(a) attendance at court offices for performance of formal work including each necessary lodging in or uplifting from court or each necessary inquiry for documents due to be lodged,		
	(b) short formal letters, letters of acknowledgement, letters each having a similar nature, intimations and letters confirming telephone calls,		
	(c) framing formal papers, including inventories and title pages, per sheet (or part thereof),		
	(d) revising papers drawn by counsel or where revision ordered by court, per 5 sheets (or part thereof), and		
	(e) subject to paragraph 5(b)(iii), short telephone calls (of up to 4 minutes' duration) and telephone calls (of any duration) where the intended recipient is not reached or insufficient narrative is provided in the account to ascertain the duration of the call.		
5.	In connection with taking a precognition in relation to solemn proceedings—		
	(a) subject to paragraph 19 of the notes on the operation of schedule 1A, the fee for each hour (or part thereof) spent—		
	(i) travelling		£13.57
	(ii) taking a statement		£13.57
	(b) the fee for—		
	(i) framing the precognition, per sheet		£2.85
	(ii) each letter making arrangements for taking a statement		£1.72
	(iii) a telephone call, of any duration		£1.13
6.	Subject to paragraph 7, the fee for photocopying in relation to the proceedings is—		
	(a) for each sheet copied for up to 10,000 sheets	£0.05	£0.05
	(b) for each sheet copied in addition to the first 10,000 sheets	£0.01	£0.01
7.	There is no fee for photocopying—		
	(a) where fewer than 20 sheets are copied at any one time,		
	(b) in relation to the first 20 sheets copied at any one time.		
8.	The fee for each quarter of an hour spent travelling—		
	(a) by a solicitor	£6.63	£7.18

		Summary Procedure	Solemn Procedure
	(b) by a solicitor's clerk	£3.31	£3.60
9.	The fee for each quarter of an hour spent carrying out work other than that prescribed in the preceding paragraphs—		
	(a) by a solicitor, provided the time is additional to the total time charged for under paragraph 1	£13.23	£14.32
	(b) by a solicitor's clerk	£6.59	£7.18

PART 2

FEES FOR SOLEMN FIRST INSTANCE PROCEEDINGS

	Column A	Column B	Column C
1. The fee for all work except where prescribed in paragraph 2 or in paragraphs 6-10, from the taking of initial instructions up until the client is admitted to bail or committed until liberated in due course of law—			
(a) where at the first examination the client is either—	£178.31	£156.03	£66.88
(i) not committed for further examination, or			
(ii) committed for further examination and admitted to bail			
(b) in any other case	£267.47	£245.19	£156.03
2. The fee for all work in connection with a bail appeal hearing including any continued diet and, where necessary, instructing Edinburgh agents	£66.88	£66.88	£66.88
3. The fee for all forms of communications in the case including meetings, consultations, letters, telephone calls, etc. from the conclusion of the work in paragraph 1 up to and including the commencement of any work for which a fee is payable in accordance with paragraph 6	£794.91	£567.79	£227.12
4. Perusal fee. Fee payable for any perusal not included in a fee claimed and payable under paragraph 5—			
(a) for the first 250 sheets of documentation where separately chargeable, and each subsequent 250 sheets	£227.12	£227.12	£227.12
(b) for each 250 minutes of recorded video or audio material, where separately chargeable	£227.12	£227.12	£227.12

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	Column A	Column B	Column C
(c) for each 250 minutes of other material, where separately chargeable	£227.12	£227.12	£227.12
5. Preparation fee. Except where a separate fee is otherwise prescribed, the fee for all other work in the case from the conclusion of the work in paragraph 1, including perusal work (in respect of which see paragraph 12 of the Notes on the operation of this Schedule), where—			
(a) (i) the case proceeds to trial	£1,357.26	£1,130.14	£903.03
(ii) on or after the day fixed for trial, the Crown withdraws any libel against the client, or			
(iii) a lesser plea is accepted by the Crown on the day the case has been brought to trial			
(b) the case is disposed of by way of a hearing under section 76 of the 1995 Act	£1,419.48	£1,419.48	£1,135.58
(c) the case is disposed of by any other means	£618.90	£519.54	£363.39
6. The fee for all work in connection with post-conviction discussions, including advising and giving an opinion on the prospects of any appeal	£207.65	£207.65	£118.50
7. The fee for each quarter of an hour spent by a solicitor conducting the hearing	£23.46	£23.46	£23.46
8. Supplementary fee, payable in addition to the fee under paragraph 7, where at a holiday court sitting a solicitor acts for a person appearing from custody on the day on which that person is first brought to a court to answer to a complaint or attend a first examination	£88.16	£88.16	£88.16
9. The fee, where counsel conducts the hearing, for each quarter of an hour spent by—			
(a) a solicitor	£15.49	£15.49	£15.49
(b) a solicitor's clerk	£7.18	£7.18	£7.18
10. The fee for each quarter of an hour spent waiting at court—			
(a) by a solicitor	£14.32	£14.32	£14.32
(b) by a solicitor's clerk	£7.18	£7.18	£7.18
11. The fee for each quarter of an hour spent travelling—			
(a) by a solicitor	£7.18	£7.18	£7.18
(b) by a solicitor's clerk	£3.60	£3.60	£3.60"

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