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STATUTORY INSTRUMENTS

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**1989 No. 1491 (S.120)**

**LEGAL AID AND ADVICE, SCOTLAND**

**The Criminal Legal Aid (Scotland) (Fees) Regulations 1989**

<i>Made</i>	- - - -	<i>14th August 1989</i>
<i>Laid before Parliament</i>		<i>17th August 1989</i>
<i>Coming into force</i>	- -	<i>31st August 1989</i>

The Secretary of State, in exercise of the powers conferred upon him by section 33 of the Legal Aid (Scotland) Act 1986<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 and shall come into force on 31st August 1989.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1986 Act” means the Legal Aid (Scotland) Act 1986;

“auditor” means the appropriate auditor of court specified in regulation 11;

“duty solicitor” means a solicitor who is available for the purpose of giving criminal legal aid by virtue of an arrangement made by the Board under section 31(8) of the 1986 Act;

“High Court” means the High Court of Justiciary;

“nominated solicitor” means the solicitor nominated to act by a person to whom criminal legal aid has been made available;

“outlays” does not include fees payable to counsel.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is to one of these Regulations and any reference to a numbered Schedule is to a Schedule to these Regulations.

### **Fees and outlays to which the Regulations apply**

3. These Regulations shall regulate the fees and outlays allowable to solicitors, and the fees allowable to counsel, from the Fund in respect of criminal legal aid under the 1986 Act, upon any taxation in accordance with regulation 11, in respect of which the proceedings are concluded on or after 31st August 1989.

### **Fees allowance to solicitors: general provisions**

4.—(1) Subject to the following provisions of this regulation and to regulations 5, 6 and 9, the fees allowable to solicitors shall be those specified in Schedule 1.

(2) Where a nominated solicitor represents two or more persons charged in the same indictment or complaint, or appealing against conviction or sentence in respect of the same indictment or complaint he shall submit one account in respect of all those persons.

(3) Where a nominated solicitor requires another solicitor, whether an Edinburgh solicitor in connection with an appeal or on a remit for sentence, or a solicitor at the place of the prison or the court, or a local solicitor for the purpose of local precognitions or inquiry, nevertheless only one account shall be submitted by the nominated solicitor (payment of the other solicitor being a matter for adjustment between the nominated solicitor and the other solicitor out of the fees payable hereunder), but in determining the sum to be allowed to the nominated solicitor account shall be taken also of the work carried out by that other solicitor.

(4) Where the work done by a solicitor constitutes a supply of services in respect of which value added tax is chargeable, there may be added to the amount of fees allowed to the solicitor an amount equal to the amount of value added tax chargeable.

### **Solicitors' fees for identification parades and judicial examinations**

5.—(1) The duty solicitor or, where criminal legal aid may be provided by a solicitor other than the duty solicitor, the nominated solicitor shall be allowed, in respect of attendance at an identification parade to which section 21(4)(b) of the 1986 Act applies, fees at the following rates:—

First hour of attendance - £68.35;

Each subsequent quarter hour - £8.60.

(2) The duty solicitor or the nominated solicitor shall be allowed in respect of representing an accused person at a judicial examination (whether a first examination or a further examination) to which sections 20, 20A and 20B of the Criminal Procedure (Scotland) Act 1975(2) apply—

(a) fees in accordance with the rates specified in regulation 6(1); and

(b) fees in respect of any necessary waiting time or any other necessary work relating to the judicial examination, determined in accordance with regulation 7.

(3) Any fees allowed to a nominated solicitor under this regulation shall be in addition to any fees allowed to him under regulation 7.

### **Duty solicitors' fees**

6.—(1) There shall be allowed to the duty solicitor representing accused persons in the sheriff or district court fees on the following scales:—

(a) for attendance at the first session of a court for the day, a sessional fee of £36.30 for the first case and £4.90 for each additional case, subject to a maximum total fee of £78.55 for

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(2) 1975 c. 21; section 20 was amended by, and sections 20A and 20B inserted by, section 6 of the Criminal Justice (Scotland) Act 1980 (c. 62).

the session until its termination on completion of business for the day or on adjournment by the court, whichever is the earlier;

- (b) for attendance at any other session of that court on the same day, a sessional fee of £36.30 for the first case and £4.90 for each additional case, subject to a maximum total fee of £52.75 for each such other session: Provided that the fee according to the foregoing scale shall cover the appearance in court of the duty solicitor on behalf of the accused as well as any interview or interviews with the accused or others whether such interview or interviews take place during the same or another session.

(2) Where, following a plea of guilty, one or more adjournments are ordered by the court, and the duty solicitor requires to appear again, then an additional fee shall be payable to the duty solicitor in respect of—

- (a) additional interviews with the accused or others; and
- (b) attendances at court other than during the course of the duty solicitor's period of duty.

The amount of such additional fee calculated on the basis of the fees set out in Schedule 1 shall be such sum not exceeding £88.90 as shall form reasonable remuneration having regard to the additional work and time involved.

(3) There shall be allowed to the duty solicitor making, for an accused person in the sheriff or district court, a preliminary plea to the competency or relevancy of the petition or complaint, or conducting any plea in bar of trial or any mental health proof, an additional fee to be calculated on the basis of the fees set out in Schedule 1, the amount of such additional fee to be such sum not exceeding £88.90 as shall form reasonable remuneration having regard to the additional work and time involved.

### **Fees allowable to solicitors**

7.—(1) Subject to the provisions of regulations 4, 5, 6 and 9, and paragraph (2) of this regulation, a solicitor shall be allowed such amount of fees as shall be determined to be reasonable remuneration for work actually and reasonably done, and travel and waiting time actually and reasonably undertaken or incurred, due regard being had to economy. The fees allowed shall be at the rates provided in paragraphs 1 to 5 of Schedule 1.

- (2) In determining the fees specified in paragraph (1) above there shall be taken into account—
  - (a) time necessarily spent at the court on any day in waiting for the case or the appeal to be heard, where such time had not been occupied in waiting for or conducting another case; and
  - (b) time necessarily spent in travelling to and from the court at which the accused appears or the trial or appeal takes place (not being a court in the town or place where the solicitor has a place of business) and to and from the prison and any place visited for the purpose of preparing or conducting the defence or appeal:

Provided that it would not 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) should attend personally.

### **Outlays allowable to solicitors**

- 8.—(1) A solicitor shall be allowed the following outlays—
  - (a) expenses actually and reasonably incurred by himself or his clerk in travelling to and from the court at which the accused person appears or the trial or appeal takes place (not being a court in the town or place where the solicitor has a place of business) and to and from the prison and any place visited for the purpose of preparing or conducting the defence or

appeal: Provided that where public transport is not used a reasonable mileage allowance shall be treated as an outlay;

- (b) fees paid to witnesses who are not on the Crown list, which fees shall not exceed the sums payable from time to time by the Crown to witnesses of the same categories; and
- (c) any out of pocket expenses actually and reasonably incurred, provided that without prejudice to any other claims for outlays there shall not be allowed to a solicitor outlays representing posts and incidents.

(2) Where a witness is a professional person giving evidence of fact or expert evidence and value added tax is chargeable in respect of giving that evidence, and the witness adds an amount equal to the tax chargeable to his note of fee, the amount so added may be allowed to the solicitor as an outlay.

### **Submission of accounts**

9.—(1) Subject to paragraph (2) accounts prepared in respect of fees and outlays allowable to solicitors shall be submitted to the Board not later than 6 months after the date of conclusion of the proceedings in respect of which that legal aid was granted.

(2) The Board may accept accounts submitted in respect of fees and outlays later than the 6 months referred to in paragraph (1) if they consider that there is a special reason for late submission.

### **Fees allowable to counsel**

10.—(1) Counsel shall be allowed such fee as appears to the auditor to represent reasonable remuneration, calculated in accordance with Schedule 2, for work actually and reasonably done, due regard being had to economy.

(2) Where work done by counsel constitutes a supply of services in respect of which value added tax is chargeable, there may be added to the amount of fees allowable to counsel an amount equal to the amount of value added tax chargeable.

### **Taxation of fees and outlays**

11.—(1) If any question or dispute arises between the Board and a solicitor or counsel as to the amount of fees or outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, from the Fund in respect of legal aid in criminal proceedings in the High Court, including appeals, the matter shall be referred for taxation to the Auditor of the Court of Session: Provided that the Board and any other party to a reference to the Auditor under this paragraph shall have the right to state written objections to the High Court in relation to the report of the Auditor under this paragraph within 14 days of the date of issue of such report and the Board and any such other party may be heard thereon.

(2) If any question or dispute arises between the Board and a solicitor or counsel as to the amount of fees and outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, from the Fund in respect of legal aid in criminal proceedings in the sheriff or district court, the matter shall be referred for taxation to the auditor of the sheriff court for the district in which those proceedings took place: Provided that the Board and any other party to a reference to an auditor under this paragraph shall have the right to state written objections to the sheriff in relation to the report of the auditor under this paragraph within 14 days of issue of such report and the Board and any such other party may be heard thereon.

(3) A reference to an auditor under this regulation may be made at the instance of the solicitor concerned or, where the question in dispute affects the fees allowable to counsel, of the counsel concerned, or of the Board and the auditor concerned shall give reasonable notice of the diet of taxation to the solicitor or counsel as appropriate and the Board.

## Revocation

12. Without prejudice to their continuation in effect for the purposes of legal aid for proceedings concluded prior to the coming into force of these Regulations; the following regulations are hereby revoked:—

- The Criminal Legal Aid (Scotland) (Fees) Regulations 1987(3);
- The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 1987(4);
- The Criminal Legal Aid (Scotland) (Fees) Amendment (No.2) Regulations 1987(5);
- The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 1988(6);
- The Criminal Legal Aid (Scotland) (Fees) Amendment (No.2) Regulations 1988(7);
- The Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 1989(8).

St. Andrew's House,  
Edinburgh  
14th August 1989

*Sanderson of Bowden*  
Minister of State, Scottish Office

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- (3) S.I. 1987/365.
  - (4) S.I. 1987/824.
  - (5) S.I. 1987/1358.
  - (6) S.I. 1988/421.
  - (7) S.I. 1988/1109.
  - (8) S.I. 1989/388.

SCHEDULE 1

Regulation 7

DESCRIPTION OF WORK AND FEES FOR CALCULATING REMUNERATION  
OF SOLICITORS IN THE HIGH, SHERIFF AND DISTRICT COURTS

1. The fee for—
  - (a) any time up to the first half hour spent by a solicitor conducting a trial in court or conducting another hearing shall be £22.35;
  - (b) each quarter hour (or part thereof) subsequent to the first half hour spent in so conducting a trial or other hearing shall be £11.15.
2. The fee for—
  - (a) each quarter hour (or part thereof) spent by a solicitor in carrying out work other than that prescribed in paragraphs 1 and 3 to 5 hereof, provided that any time is additional to the total time charged for under paragraph 1 above, shall be £8.60.
  - (b) each quarter hour (or part thereof) spent by a solicitor’s clerk in carrying out work other than that prescribed in paragraphs 3 to 5 hereof shall be £4.30.
3. The fee for—
  - (a) each citation of a witness including execution thereof;
  - (b) framing and drawing precognitions and other necessary papers, subject to paragraph 4(c) —per sheet (or part thereof);
  - (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); and
  - (e) letters, including instructions to counsel—per page (or part thereof), subject to paragraph 4(b) below; shall be £4.90.
4. The fee for—
  - (a) attendance at court offices for performance of formal work including each necessary lodging in or uplifting from court or each necessary enquiry for documents due to be lodged;
  - (b) short letters of a formal 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) short telephone calls (of up to 4 minutes duration); shall be £1.95.
5. Where an exceptional amount of copying proves necessary, a fee of 30 pence shall be paid for each sheet.

**Interpretation**

6. In this Schedule—

“court” means the High Court, the sheriff court or the district court as the case may be; and a “sheet” shall consist of 250 words or numbers; a “page” shall consist of 125 words or numbers; and

“exceptional” means the production of more than 20 output copy sheets (whether 20 of one sheet, 5 of 4 sheets or whatever) when a document has been copied.

## SCHEDULE 2

Regulation 10

## FEES OF COUNSEL

1. Subject to the following provisions of this Schedule, fees shall be calculated in accordance with the Table of Fees in this Schedule.

2. Where the Table of Fees in this Schedule does not prescribe a fee for any item of work the auditor shall allow such fee as appears to him appropriate to provide reasonable remuneration for work with regard to all the circumstances, including the general levels of fees in the said Table of Fees.

3. The auditor shall have power to increase any fee set out in the Table of Fees in this Schedule where he is satisfied that, because of the particular complexity or difficulty of the work or any other particular circumstances, such an increase is necessary to provide reasonable remuneration for the work.

4. The auditor shall have power to reduce any fee set out in the Table of Fees in this Schedule where he is satisfied that, because of any particular circumstances, a reduced fee is sufficient to provide reasonable remuneration for the work.

## TABLE OF FEES

## CHAPTER 1—JUNIOR COUNSEL

	<i>Junior with Senior</i>	<i>Junior alone</i>
<i>Trial per day</i>	£139.50	£196.50
<b>1</b>		
(a) In Edinburgh		
(b) (b) In Glasgow	£165.00	£241.50
(c) (c) Elsewhere within 60 miles journey by road from Edinburgh	£171.00	£247.50
(d) (d) In Aberdeen, Inverness or Dumfries	£235.00	£330.50
(e) (e) Elsewhere beyond 60 miles journey by road from Edinburgh: Such fee as the auditor considers appropriate with regard to the journey involved and the level of fees prescribed in this paragraph.		
<i>Appeals, etc.</i>	£36.00	£51.00

2

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

	<i>Junior with Senior</i>	<i>Junior alone</i>
(a) Drafting grounds of appeal against conviction, including any note of appeal		
(b) (b) Hearing in appeal against conviction—per day	£139.50	£196.50
(c) (c) Note of adjustment to stated case	£36.00	£51.00
(d) (d) Hearing on stated case or bill of suspension relating to conviction or conviction and sentence	£63.50	£82.50
(e) (e) Any appeal against sentence including fee for drafting note of appeal	£25.50	£57.00
(f) (f) Appeal relating to granting of bail	£19.00	19.00
<i>Consultations</i>	£44.50	£63.50
<b>3</b>		
(a) In Edinburgh additional fee if held in prison	£7.00	£7.00
(b) (b) Elsewhere within 60 miles journey by road from Edinburgh	£82.50	£108.00
(c) (c) In Aberdeen, Inverness, Dumfries	£165.00	£196.00
(d) (d) Elsewhere beyond 60 miles journey by road from Edinburgh: Such fee as the auditor considers appropriate with regard to the journey involved and the level of fees prescribed in this paragraph.		



	<i>Junior with Senior</i>	<i>Junior alone</i>
4. Opinion on appeal, etc.		£38.00
5. Revisal of stated case		£38.00
6. Drafting bill of suspension		£38.00
7. Remits for sentence and pleas in mitigation		£38.00

## CHAPTER 2

### —SENIOR COUNSEL

<i>Trial—per day</i>		£254.50
<b>1</b>		
(a) In Edinburgh		
(b) (b) In Glasgow		£298.50
(c) (c) Elsewhere within 60 miles journey by road from Edinburgh		£305.50
(d) (d) In Aberdeen, Inverness or Dumfries		£413.00
(e) (e) Elsewhere beyond 60 miles journey by road from Edinburgh: Such fee as the auditor considers appropriate with regard to the journey involved and the level of fees prescribed in this paragraph.		
<i>Appeals, etc.</i>		£70.00
<b>2</b>		
(a) Revising grounds of appeal against conviction, including any note of appeal		
(b) (b) Hearing in appeal against conviction— per day		£254.50
(c) (c) Note of adjustments to stated case		£70.00
(d) (d) Hearing on stated case or bill of suspension relating to conviction or conviction and sentence		£126.50
(e) (e) Any appeal against sentence including revisal of note of appeal		£82.50
(f) (f) Appeal relating to granting of bail		£25.50
<i>Conduktations</i>		£95.50
<b>3</b>		

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(a) In Edinburgh	
Additional fee is held in prison	£7.00
(b) (b) Elsewhere within 60 miles journey by road from Edinburgh	£152.00
(c) (c) In Aberdeen, Inverness or Dumfries	£292.50
(d) (d) Elsewhere beyond 60 miles journey by road from Edinburgh: Such fee as the auditor considers appropriate with regard to the journey involved and the level of fees prescribed in this paragraph.	
4. Opinion on appeal	£57.00
5. Revisal of stated case	£57.00
6. Revisal of bill of suspension	£57.00
7. Remits for sentence and pleas in mitigation	£57.00

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe the fees and outlays of solicitors, and the fees of counsel, which an auditor of court may allow in taxing an account of fees and outlays claimed from the Scottish Legal Aid Fund in respect of legal aid in criminal proceedings in any court in Scotland. The Regulations apply only to proceedings concluded on or after 31st August 1989 (regulation 3).

The fees and outlays previously allowable for legal aid in criminal proceedings under the Legal Aid (Scotland) Act 1986 were prescribed in the Criminal Legal Aid (Scotland) (Fees) Regulations 1987 (S.I.1987/365) (the 1987 Regulations), as amended. As regards solicitors' fees and outlays, regulations 4 to 9 consolidate with some drafting amendments the provisions of regulations 4 to 12 of the 1987 Regulations, as amended. The rates of fees in regulations 5 to 7 and Schedule 1 have been increased by around 9% and some descriptions of work within a number of fees in the Schedule have been rationalised, where possible, with the descriptions which apply to the same work when done under the other legal aid schemes. In addition these Regulations differ from the 1987 Regulations, as amended, by not prescribing—

- (a) Maximum fees for solicitors conducting—
  - (i) any proceedings where a nominated solicitor represented 2 or more persons charged in the same indictment or complaint or appealing against conviction or sentence;
  - (ii) summary proceedings in the sheriff or district courts;
  - (iii) solemn proceedings in the sheriff court or High Court; (iv) appeals; and,
- (b) the circumstances in which the maxima in (i) to (iv) above could be waived and/or a percentage addition added to a solicitor's account where the maxima had been waived.

Regulation 7(2) contains provision, similar to that in the Civil Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 1988 (S.I. [1988/1107](#)), governing the fees payable, where a solicitor chooses to conduct proceedings outwith the court or town in which he has a place of business. In those circumstances account shall be taken of travelling time to and from court even if it would have been more economical to use a local solicitor, provided it was in the interest of the client that the non-local solicitor should attend personally.

Regulation 10 repeats the provisions of the 1987 Regulations dealing with fees allowable to counsel and provides for counsel to be paid such fee as appears to the auditor to represent reasonable remuneration for work actually and reasonably done, due regard being had to economy, while allowing counsel to add VAT to their fees where appropriate.

Schedule 2 of these Regulations reproduces Schedule 2 of the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 1989 (S.I. [1989/388](#)) which uprated the fees of counsel from 1st April 1989.

Regulation 11 provides for taxation of fees and outlays by auditors of court. The provisions are the same as previously prescribed by the 1987 Regulations. Regulation 12 revokes the 1987 Regulations and subsequent amending instruments subject to their continuation in effect for proceedings completed prior to the effective date of these Regulations (31st August 1989).