
STATUTORY INSTRUMENTS

1994 No. 1015

**The Civil Legal Aid (Scotland)
(Fees) Amendment Regulations 1994**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 1994 and shall come into force on 5th May 1994.

(2) In these Regulations “the principal Regulations” means the Civil Legal Aid (Scotland) (Fees) Regulations 1989⁽¹⁾.

Application

2.—(1) Regulations 3, 5, 7 and 8(2) shall apply only in relation to any case where—

- (a) legal aid is made available on or after 5th May 1994; and
- (b) all work in respect of which legal aid is made available was done on or after that date.

(2) Regulations 4, 6 and 8(1) shall apply only in relation to any case where—

- (a) all work in respect of which legal aid is made available was done on or after 5th May 1994; and
- (b) the cause or action in respect of which legal aid is made available was commenced on or after 1st January 1994.

Amendment of the principal Regulations

3. In regulation 2(1) of the principal Regulations⁽²⁾ (interpretation)—

- (a) in the introduction after the word “context” there shall be inserted the word “otherwise”;
- (b) for the definitions of “counsel”, “junior counsel” and “junior”, there shall be substituted—
““counsel” includes a solicitor-advocate, except in regulation 10(2) and Schedule 2;
“junior counsel” or “junior” includes a junior solicitor-advocate;” and

(c) for the definition of “rights of audience solicitor” to the end of Regulation 2(1) there shall be substituted the following provisions—

““right of audience” means, in relation to a solicitor, a right of audience in the Court of Session, the House of Lords and the Judicial Committee of the Privy Council which a solicitor has by virtue of section 25A (rights of audience in specified courts) of the Solicitors (Scotland) Act 1980⁽³⁾;

“senior counsel” or “senior” includes a senior solicitor-advocate except in paragraph (1A) below;

(1) S.I. 1989/1490, amended by S.I. 1990/473 and 1036, 1991/565, 1992/372 and 1993/531.

(2) Regulation 2 was amended by S.I. 1993/531.

(3) 1980 c. 46; section 25A was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 24.

“solicitor-advocate” means a solicitor, whether instructed by another solicitor or not, when and only when he is exercising his right of audience or acting in connection with the exercise of such a right and “junior solicitor-advocate” and “senior solicitor-advocate” shall be construed in accordance with paragraph (1A) below;

and, unless the context otherwise requires, any reference in these Regulations to a solicitor shall not include a solicitor when acting as a solicitor-advocate.

(1A) For the purposes of these Regulations, a solicitor-advocate shall be—

- (a) a senior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a senior counsel in a case in the House of Lords or where the Board has authorised the employment of senior counsel under regulation 21(1)(b) or (2) of the Civil Legal Aid (Scotland) Regulations 1987((4)); or
- (b) a junior solicitor-advocate, where he is undertaking work equivalent to that which would be done by a junior counsel, irrespective of whether or not the Board has authorised the employment of senior counsel in the case.”.

4. In regulation 5(4) of the principal Regulations for paragraph (g) there shall be substituted—

- “(g) the steps taken with a view to settling the proceedings, limiting the matters in dispute or limiting the scope of any hearing; and
- (h) any other fees and allowances payable to the solicitor in respect of other items in the same proceedings and otherwise charged for in the account.”.

5. After paragraph (2) of regulation 10 of the principal Regulations((5)), there shall be inserted—

“(2A) The fees of a solicitor-advocate for any work in relation to proceedings in the House of Lords shall be 90 per cent of the amount of fees which would be allowed for that work on a taxation of expenses between solicitor and client, third party paying, if the work done were not legal aid.”.

6. For the Table of Fees set out in Schedule 2 to the principal Regulations((6)) (fees of solicitors for proceedings in the sheriff court) there shall be substituted the Table of Fees set out in the Schedule to these Regulations.

7. For paragraph 1 of Schedule 4 to the principal Regulations((7)) (fees of counsel for proceedings in the Court of Session), there shall be substituted the following paragraph:—

“1. Subject to the following provisions of this Schedule, the fees of counsel and of solicitor-advocates shall be calculated in accordance with the Table of Fees in this Schedule and the fee of a solicitor-advocate for undertaking an item of work shall be—

- (a) where he is acting as a junior solicitor-advocate, the same as that allowable to a junior counsel for undertaking an item of work equivalent to that undertaken by the solicitor-advocate; or
- (b) where he is acting as a senior solicitor-advocate, the same as that allowable to a senior counsel for undertaking an item of work equivalent to that undertaken by the solicitor-advocate.”.

(4) S.I. 1987/381; regulation 21 was amended by S.I. 1992/753.

(5) Regulation 10 was amended by S.I. 1990/473 and 1991/565.

(6) Schedule 2 was amended by S.I. 1990/1036, 1991/565 and 1992/372.

(7) Schedule 4 was amended by S.I. 1990/473, 1991/565 and 1992/372.

Revocations

8.—(1) The Civil Legal Aid (Scotland) (Fees) Amendment (No.2) Regulations 1990((**8**)), regulation 4(b) of the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 1991((**9**)) and regulation 3 of the Civil Legal (Fees) Amendment Regulations 1992((**10**)) are hereby revoked.

(2) The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 1993((**11**)) are hereby revoked.

St Andrew's House,
Edinburgh
31st March 1994

Fraser of Carmyllie
Minister of State, Scottish Office

(**8**) S.I. 1990/1036.
(**9**) S.I. 1991/565.
(**10**) S.I. 1992/372.
(**11**) S.I. 1993/531.