

Draft Regulations laid before the Scottish Parliament under section 37(2) of the Legal Aid (Scotland) Act 1986 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2022 No.

LEGAL AID AND ADVICE

**The Advice and Assistance (Summary Criminal Proceedings)
(Miscellaneous Amendment) (Scotland) Regulations 2022**

Made - - - - 2022
Coming into force - - 4th November 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9(1) and (2)(a), 33(2) and (3)(b), (f) and (3A), and 36(2)(b) of the Legal Aid (Scotland) Act 1986(1) and all other powers enabling them to do so.

In accordance with section 37(2) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Advice and Assistance (Summary Criminal Proceedings) (Miscellaneous Amendment) (Scotland) Regulations 2022 and come into force on 4 November 2022.

Amendments to the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993

2. In regulation 3(c) (financial limit) of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993(2) after sub-paragraph (ii) insert—

“(ia) where the advice and assistance relates to a criminal matter for which an inclusive fee under regulation 17(1B) of the Advice and Assistance (Scotland) Regulations 1996(3) is payable, in respect of each client, the sum of £600;”.

(1) 1986 c. 47 (“the Act”). The functions of the Secretary of State under the Act were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46). Section 33(3A) was inserted by section 51 of the Crime and Punishment (Scotland) Act 1997 (c. 48). Section 36(2)(b) was amended by Schedule 4, paragraph 6 of the Legal Aid Act 1988 (c. 34) and section 23(9)(a)(ii) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3). The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(2) S.I. 1993/3187, relevant amending instruments are S.S.I. 2008/251 and S.S.I. 2022/116.

(3) S.I. 1996/2447, relevant amending instrument is S.S.I. 2017/466.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

3. In regulation 17 (fees and outlays of solicitors) of the Advice and Assistance (Scotland) Regulations 1996(4)—

(a) for sub-paragraph (a) of paragraph (1) substitute—

“(a) fees for work actually, necessarily and reasonably done in connection with the matter upon which advice and assistance was given, due regard being had to economy, calculated—

(i) in the case of assistance by way of representation, in accordance with the table of fees in Part I of schedule 3; and

(ii) in any other case, in accordance with the table of fees in Part II of schedule 3; and”;

(b) after paragraph (1A) insert—

“(1B) An inclusive fee of £550.76 is payable, subject to paragraph (1C), instead of any fee that would otherwise be payable under paragraph (1)(a)(ii) where—

(a) one solicitor represents a client and—

(i) the solicitor was appointed by the client;

(ii) a decision has been made to prosecute the matter in respect of which the solicitor has been appointed in the sheriff court;

(iii) the solicitor has submitted a letter of engagement to the procurator fiscal;

(iv) a copy of the complaint has been issued to the solicitor by the procurator fiscal; and

(v) the case is resolved and concluded prior to proceedings commencing;

(b) one solicitor represents two or more clients in the same case and the requirements in heads (i) to (v) of sub-paragraph (a) are met in respect of each of those clients;

(c) more than one solicitor acts for a client in the same case and—

(i) each solicitor was appointed by the client;

(ii) a decision has been made to prosecute the matter in respect of which each solicitor has been appointed in the sheriff court;

(iii) each of the solicitors has submitted a letter of engagement to the procurator fiscal;

(iv) a copy of the complaint has been issued to each of the solicitors by the procurator fiscal; and

(v) the case is resolved and concluded prior to proceedings commencing.

(1C) Where an inclusive fee is payable under paragraph (1B) in the circumstances where—

(a) sub-paragraph (b) applies, the solicitor is to be paid—

(i) 100% of the inclusive fee in respect of the first client;

(ii) 40% of the inclusive fee in respect of a second client; and

(iii) 20% of the inclusive fee in respect of each subsequent client;

(4) S.I. 1996/2447, relevant amending instruments are S.S.I. 2017/466 and S.S.I. 2021/55. Regulation 17(1A) was inserted by regulation 5(4) of the Criminal Legal Assistance (Miscellaneous Amendments) (Scotland) Regulations 2017/466.

- (b) sub-paragraph (c) applies, each solicitor is to be paid an equal share of the total amount payable.”

Amendment of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003

4. In regulation 6 (summary criminal proceedings) of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003⁽⁵⁾ for sub-paragraph (c) of paragraph (1) substitute—

- “(c) in relation to any diet (including ancillary work prior to that diet) in a case in which no plea has previously been tendered, where—
- (i) at the diet a plea of guilty to the charges against the accused is tendered, or a plea of guilty to part thereof which partial plea is accepted by the prosecutor, and thereafter until the case has been finally disposed of;
 - (ii) at the diet the prosecutor accepts a plea of not guilty to the charges to the effect that the case is then concluded; or
 - (iii) prior to calling the case at that diet the prosecutor accepts a plea of not guilty to the charges or otherwise makes a final determination that the case is not to proceed whether at that time or thereafter, and does not call the case at that diet;”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(5) S.S.I. 2003/179, relevant amending instruments are S.S.I. 2008/251 and S.S.I. 2014/366.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulations made under the Legal Aid (Scotland) Act 1986.

Regulation 2 amends the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 to specify a financial limit in respect of an inclusive fee under regulation 17(1B) of the Advice and Assistance (Scotland) Regulations 1996 (“the 1996 Regulations”) provided for by regulation 3 of these Regulations.

Regulation 3 amends the 1996 Regulations to make provision for an inclusive fee to be payable to a defence solicitor instead of the fee otherwise payable for advice and assistance where a criminal case in which the solicitor has been instructed ends prior to trial. This is intended to facilitate the early resolution of summary criminal cases where appropriate. Provision is also made for cases where more than one solicitor has been instructed or a solicitor acts for more than one client.

Regulation 4 amends the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 to allow for early settlement in summary criminal proceedings by making provision for assistance by way of representation to be available (in addition to existing provision for guilty pleas) where in a case in which no plea has previously been tendered the prosecutor either accepts a plea of not guilty when the case calls with the effect that the case is concluded, or prior to calling the case accepts such a plea or otherwise determines that the case will not proceed.

A business and regulatory impact assessment has not been prepared in relation to these Regulations as no, or no significant impact upon business, charities or voluntary bodies is foreseen.