

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

2024 No.

LEGAL AID AND ADVICE

**The Legal Aid (Miscellaneous
Amendment) (Scotland) Regulations 2024**

Made - - - - 2024
Coming into force - - 30th April 2024

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 28C(3) and 33(2)(a) and (3)(a), (b) and (f) of the Legal Aid (Scotland) Act 1986(1) and all other powers enabling them to do so.

In accordance with section 37(2)(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament(3).

Citation and commencement

1. These Regulations may be cited as the Legal Aid (Miscellaneous Amendment) (Scotland) Regulations 2024 and come into force on 30 April 2024.

Application

2.—(1) Regulations 4 and 5 apply only in relation to fees for work done or outlays incurred on or after 30 April 2024.

(2) Where work for a fee prescribed in regulation 5(3) 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.

Amendment of the Legal Aid (Scotland) Act 1986

3.—(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

-
- (1) 1986 c. 47. Section 28C was inserted by section 191 of the Children’s Hearings (Scotland) Act 2011 (asp 1) (“the 2011 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (2) Section 37(2) has been modified by Schedule 3, paragraph 5 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (“ILRA”) and amended by Schedule 5, paragraph 1(7) of the 2011 Act.
- (3) The powers to make these Regulations are exercised together by virtue of section 33(2) of ILRA. The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

- (2) In section 28B(4) (children’s legal aid)—
- (a) in subsection (3), for paragraph (c) substitute—
- “(c) proceedings before a children’s hearing or a pre-hearing panel if the children’s hearing or the panel considers that it might be necessary to make a compulsory supervision order in relation to the child to whom the proceedings relate that includes either (or both)—
- (i) a secure accommodation authorisation,
- (ii) a movement restriction condition,”
- (b) in subsection (4)—
- (i) in the definition of “compulsory supervision order” for “that Act” substitute “the 2011 Act”,
- (ii) after the definition of “compulsory supervision order”, insert—
- ““movement restriction condition” has the meaning given by section 84 of that Act.”.
- (3) In section 28C(1) (circumstances where children’s legal aid automatically available), for paragraph (c)(5) substitute—
- “(c) a children’s hearing or a pre-hearing panel considers that it might be necessary to make a compulsory supervision order in relation to a child that includes either (or both)—
- (i) a secure accommodation authorisation,
- (ii) a movement restriction condition.”.

Amendment of the Civil Legal Aid (Scotland) (Fees) Regulations 1989

4.—(1) Schedule 4 (fees of counsel for proceedings in certain courts) of the Civil Legal Aid (Scotland) (Fees) Regulations 1989(6) is amended as follows.

- (2) In paragraph 16 (accommodation and subsistence)(7)—
- (a) for sub-paragraph (1) substitute—
- “(1) The cost of necessary accommodation and subsistence is chargeable only—
- (a) in circumstances where a fee for time engaged in necessary travel is chargeable under paragraph 14,
- (b) on cause shown, and
- (c) subject to sub-paragraph (3), as an outlay up to the amount specified in (as the case may be)—
- (i) paragraph 14 of Chapter 6 of Part 1 (junior counsel) or paragraph 8 of Part 2 (senior counsel) of Table of Fees A (proceedings in the Court of Session), or
- (ii) paragraph 11 of Part 1 (junior counsel) or paragraph 8 of Part 2 (senior counsel) of Table of Fees B (proceedings in certain lower courts).”.
- (b) after sub-paragraph (2), insert—

(4) Section 28C was inserted by section 191 of the 2011 Act.

(5) Section 28C(1)(c) was amended by [S.S.I. 2021/368](#).

(6) [S.I. 1989/1490](#). Relevant amending instruments are [S.S.I. 2011/160](#), [S.S.I. 2016/257](#), [S.S.I. 2017/310](#), [S.S.I. 2019/78](#), [S.S.I. 2022/30](#).

(7) Paragraph 16 was substituted by [S.S.I. 2011/160](#).

“(3) Where counsel incurs accommodation and subsistence costs at an amount higher than the applicable amount specified in the relevant paragraph of sub-paragraph (1)(c), that higher amount is chargeable in place of the applicable amount only if—

- (a) counsel has demonstrated to the satisfaction of the Board that in the circumstances of the travel undertaken suitable accommodation and subsistence was not available to them at or up to the applicable amount,
- (b) counsel has received the prior approval of the Board to exceed the applicable amount, and
- (c) the Board is satisfied that the amount charged as an outlay is reasonable in all the circumstances.”.

(3) In each of the following, for “£113.56” substitute “£125.14”—

- (a) paragraph 14 of Chapter 6 of Part 1 of Table of Fees A (ordinary actions in the Court of Session),
- (b) paragraph 8 of Part 2 of Table of Fees A (family actions, petitions, ordinary actions and other actions in the Court of Session),
- (c) paragraph 11 of Part 1 of Table of Fees B (junior counsel fees for proceedings in the sheriff court, First-tier Tribunal for Scotland, Sheriff Appeal Court and Upper Tribunal for Scotland),
- (d) paragraph 8 of Part 2 of Table of Fees B (senior counsel fees for proceedings in the sheriff court, First-tier Tribunal for Scotland, Sheriff Appeal Court and Upper Tribunal for Scotland).

Amendment of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989

5.—(1) Schedule 2 (fees of counsel) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989⁽⁸⁾ is amended as follows.

(2) In the Notes on the operation of schedule 2, for paragraph 21 (accommodation and subsistence)⁽⁹⁾ substitute—

- “21.—(1) The cost of necessary accommodation and subsistence is chargeable only—
- (a) where a supplementary fee for travel is chargeable in accordance with paragraph 20,
 - (b) on cause shown, and
 - (c) subject to sub-paragraph (3), as an outlay up to the amount specified in (as the case may be)—
 - (i) paragraph 8 of Chapter 1 or 2 of Part 1 of the Table of Fees (counsel fees for proceedings in the High Court of Judiciary),
 - (ii) paragraph 10 of Chapter 1 or 2 of Part 2 of the Table of Fees (counsel fees in appeal proceedings),
 - (iii) paragraph 7 of Chapter 1 or 2 of Part 3 of the Table of Fees (counsel fees for proceedings in the Sheriff and Justice of the Peace Court).
- (2) Counsel must, if required, provide vouching of the costs incurred.

⁽⁸⁾ S.I. 1989/1491. Schedule 2 was substituted for a new Schedule 2 by S.S.I. 2005/113. Other relevant amending instruments are S.S.I. 2005/656, S.S.I. 2012/276, S.S.I. 2022/30, and S.S.I. 2023/178.

⁽⁹⁾ Paragraph 21 was substituted by S.S.I. 2012/276.

(3) Where counsel incurs accommodation and subsistence costs at an amount higher than the applicable amount specified in the relevant paragraph of sub-paragraph (1)(c), that higher amount is chargeable in place of the applicable amount only if—

- (a) counsel has demonstrated to the satisfaction of the Board that in the circumstances of the travel undertaken suitable accommodation and subsistence was not available to them at or up to the applicable amount,
- (b) counsel has received prior sanction from the Board to exceed the applicable amount, and
- (c) the Board is satisfied that the amount charged as an outlay is reasonable in all the circumstances.”.

(3) In the Table of Fees—

(a) in Part 1 (proceedings in the High Court of Justiciary)—

(i) in Chapter 1 (junior counsel)—

(aa) in paragraph 1A, after sub-paragraph (k), insert—

“(l)	Drafting written submissions where ordered by the court	£350.00”
------	---	----------

(bb) in paragraph 8, for “£113.56” each time it occurs substitute “£125.14”,

(ii) in Chapter 2 (senior counsel)—

(aa) in paragraph 1A, after sub-paragraph (k), insert—

“(l)	Drafting written submissions where ordered by the court	£500.00”
------	---	----------

(bb) in paragraph 8, for “£113.56” substitute “£125.14”,

(b) in Part 2 (appeal proceedings), in paragraph 10 of Chapters 1 and 2, for “£113.56” each time it occurs substitute “£125.14”,

(c) in Part 3 (proceedings in the Sheriff and Justice of the Peace Court)—

(i) in Chapter 1 (junior counsel)—

(aa) in paragraph 1A, after sub-paragraph (k) insert—

“(l)	Drafting written submissions where ordered by the court	£280.00”
------	---	----------

(bb) in paragraph 7, for “£113.56” each time it occurs substitute “£125.14”,

(ii) in Chapter 2 (senior counsel)—

(aa) in paragraph 1A, after sub-paragraph (k) insert—

“(l)	Drafting written submissions where ordered by the court	£400.00”
------	---	----------

(bb) in paragraph 7, for “£113.56” substitute “£125.14”.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) and existing Regulations made under that Act.

Regulation 3 makes children’s legal aid available to qualifying persons for proceedings where a children’s hearing or a pre-hearing panel considers that it might be necessary to make a compulsory supervision order that includes a movement restriction condition (whether or not the order also includes a secure accommodation authorisation).

Regulation 3 also makes equivalent provision to make children’s legal aid automatically available to the child for the purposes set out in section 28C(2)(b) and (c) of the 1986 Act.

Regulation 4 amends the Civil Legal Aid (Scotland) (Fees) Regulations 1989 to provide that costs incurred by counsel above the specified maximum amount for accommodation and associated subsistence when required to travel for a legal aid case are chargeable outlays, where suitable accommodation and subsistence was not available within that amount, and the Scottish Legal Aid Board has given prior approval and is satisfied that the amount charged is reasonable. Regulation 4 also increases the specified maximum amount.

Regulation 5 amends the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 to make equivalent provision to regulation 4. It also adds to the existing fee tables provision for payment of fees to counsel for the drafting of written submissions where this has been ordered by the court.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh EH1 3DG.