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## EXPLANATORY NOTE

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

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

The following regulations remove provisions inserted into legal aid and advice and assistance regulations on a temporary basis during the coronavirus emergency period (which for the purposes of the provisions amended by these Regulations ends on 30 September 2022, the date on which Part 9 of schedule 4 of the Coronavirus (Scotland) Act 2020 expires)—

- regulation 2 amends the Civil Legal Aid (Scotland) (Fees) Regulations 1989 to remove the provisions allowing the Scottish Legal Aid Board (“the Board”) to make payments during the emergency period of the amount of the fees which would be payable if the work in a case had been completed in its entirety;
- regulation 3 amends the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 to remove the exception that during the emergency period a fee for separate preparation may be payable prior to the conclusion of the case during the emergency period;
- regulation 6 amends the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 to remove the provision made for assistance by way of representation in relation to restrictions or requirements under the Coronavirus Act 2020, following the expiry of the relevant provisions in that Act.

The following regulations remove temporary changes put in place during the coronavirus emergency period and replace these with permanent provisions with equivalent effect—

- regulation 4 amends the Advice and Assistance (Scotland) Regulations 1996 to provide that when assessing a claim for interim payment under the Act the Board need not take into account any property which may be recovered in the course of proceedings for the client to whom the advice and assistance has been provided and to make provision for the recovery of interim sums paid out. Temporary interim payment provisions in the Act expire on 30 September 2022, with replacement provisions with similar overall effect proposed for insertion into the Act by Scottish Parliament bill (see the Coronavirus (Recovery and Reform) (Scotland) Bill);
- regulation 5 amends the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 to remove the provision that the fee due in a case is halved where a duty solicitor makes an initial plea of not guilty on the instruction of another solicitor, and that solicitor later tenders a plea of guilty prior to trial;
- regulation 7(a) to (c) amend the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 (“the 2011 Regulations”) to provide that duty solicitors may represent persons prosecuted under summary procedure when authorised to do so by that person’s appointed solicitor or a solicitor connected with the appointed solicitor’s firm.

Regulation 7(d) amends the 2011 Regulations to provide that a person being prosecuted under summary procedure who has been liberated by police on undertaking to appear may appoint a solicitor of their choice to advise or act for them even where a duty solicitor is made available.

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.