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## EXPLANATORY NOTE

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

These Regulations amend the following instruments made under the Legal Aid (Scotland) Act 1986 (“the 1986 Act”)—

- the Civil Legal Aid (Scotland) (Fees) Regulations 1989,
- the Criminal Legal Aid (Scotland) (Fees) Regulations 1989,
- the Legal Aid in Contempt of Court Proceedings (Scotland) (Fees) Regulations 1992,
- Advice and Assistance (Financial Limit) (Scotland) Regulations 1993,
- the Advice and Assistance (Scotland) Regulations 1996,
- the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“the 1999 Regulations”).

Regulation 2 provides that—

- regulations 6 (financial limits), 7(2), (3)(c) and (e) (assistance by way of representation) and 8(3) to (5) (fixed payments) apply where the grant of legal aid, advice and assistance or assistance by way of representation was made on or after 29 April 2023,
- the other amendments in these Regulations apply to fees for work done or outlays incurred on or after 29 April 2023, and
- where work which qualifies for a fee prescribed under these Regulations, other than under regulation 8 for the 1999 Regulations, 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.

Regulations 3, 5 and 7 amend the above instruments to increase fees and outlays for legal aid and advice and assistance.

Regulation 4 amends the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 to:

- increase certain fees,
- insert a new table of fees and note on the operation of those fees and make related amendments,
- provide that in relation to solemn proceedings (other than exceptional proceedings) where a grant of legal aid was made before 29 April 2023, the case concludes after that date and the solicitor has requested that the Scottish Legal Aid Board do so, fees may be paid in accordance with the previous table of fees, with related provision as to the applicable table of fees where there has been a transfer of agency in a case,
- add provision for written objections to be made to the Sheriff Appeal Court in relation to a dispute as to allowable fees and outlays.

Regulation 6 amends the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993 to substitute the financial limit amounts for advice and assistance specified in section 10(2) of the 1986 Act beyond which solicitors are required to seek prior approval of the Scottish Legal Aid Board before providing further advice and assistance, and removes obsolete references to stipendiary magistrates.

Regulation 8 substitutes the tables of fees in the 1999 Regulations and removes obsolete references to stipendiary magistrates.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:  
*The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2023 No. 135*

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 Andrew's House, Edinburgh EH1 3DG, and online at [www.legislation.gov.uk](http://www.legislation.gov.uk).