
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (“the principal Regulations”). The amendments apply in relation to proceedings commenced on or after 5th July 2010 or, if the solicitor involved so chooses, 1st April 2008.

Regulation 4(2) of these Regulations substitutes for regulation 5 of the principal Regulations a modified version. Regulation 5 of the principal Regulations deals with two matters. First, it makes provision about the fee allowed to a solicitor for attending an identification parade. The substitute regulation 5 provides for a new fee rate in respect of identification parades held in relation to solemn criminal proceedings. Where the new fee rate does not apply, the fee for attending an identification parade is unchanged. The new fee rate does not apply if the solicitor attends the identification parade as the duty solicitor and does not go on to represent the accused person in the subsequent criminal proceedings. The new fee rate also does not apply where the identification parade is held in relation to summary criminal proceedings.

The second matter regulation 5 of the principal Regulations deals with is the fee allowed to a solicitor representing an accused person at a judicial examination. Regulation 5 made provision for the fee allowed to both nominated and duty solicitors. The substitute regulation 5 makes provision only for the fee allowed to a duty solicitor, provided that solicitor does not go on to become the accused person’s nominated solicitor in the solemn criminal proceedings. The fee allowed to a solicitor representing an accused person at a judicial examination is otherwise provided for by Schedule 1 to the principal Regulations.

Regulation 4(3) of these Regulations removes regulation 7(2) of the principal Regulations. Regulation 7(2) made provision relating to the fees due to a solicitor for time necessarily spent waiting at court and for travel. Those matters are now dealt with in paragraphs 4 and 5 (respectively) of the notes on the operation of Schedule 1 to the principal Regulations.

Regulation 4(4) of these Regulations substitutes for regulation 8(1)(a) of the principal Regulations a modified version. Regulation 8(1)(a) made provision about the circumstances in which travel outlays were allowed to a solicitor. The substitute regulation 8(1)(a) provides for this by linking the circumstances in which travel outlays are allowed to the circumstances in which a fee for travelling time is allowed in terms of paragraph 5 of the notes on the operation of Schedule 1 to the principal Regulations.

Fees are allowed to solicitors and counsel in terms of the principal Regulations only for work “actually and reasonably done” (this is stated in regard to solicitors in regulation 7 and in regard to counsel in regulation 10 of the principal Regulations). Regulation 4(5) of these Regulations makes clear that in determining whether work has actually and reasonably been done, the Scottish Legal Aid Board and the auditor should start from the premise that solicitors and counsel are up to date with the law in their field of practice.

Regulation 4(6) of these Regulations replaces, with a new version, Schedule 1 to the principal Regulations. The new Schedule 1—

- (a) creates a new structure for solicitors’ fees in solemn criminal proceedings; whereby rather than specifying a fee for all items of work, it provides for solicitors to receive block fees covering all work undertaken during designated stages of the case;

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- (b) provides for increased fee rates for those items of work in respect of solemn criminal proceedings which do not attract a block fee and for items of work in respect of summary criminal proceedings; and
- (c) makes further provision about the circumstances in which fees are chargeable and to whom they are payable in the event that an accused person changes solicitor in the course of proceedings.