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

Regulation 2 provides that—

- except in relation to the amendments made by regulation 4(4) and (9), regulation 6(4) and (6), and regulation 7, the amendments in these Regulations apply only to fees for work done or outlays incurred on or after the 22 March 2021. Where work which qualifies for a fee prescribed under these 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,
- the amendments in regulation 4(4) (additional fees) apply to criminal appeal proceedings commenced on or after 22 March 2021,
- the amendments in regulation 4(9) (continuity of counsel representation) apply to criminal trials commenced on or after 22 March 2021, and
- the amendments in regulation 6(4) and (6) (assistance by way of representation) and regulation 7 (fixed payments) apply only in relation to a case where the criminal legal assistance concerned is granted or made available on or after 22 March 2021.

Regulations 3 to 7 make amendments to the above instruments to increase fees and outlays for legal aid and advice and assistance by 5%.

Regulation 4(4) inserts a new regulation 10ZA into the 1989 Criminal Regulations which provides that counsel may be paid an additional fee for preparation of the note of appeal, and where applicable counsel’s opinion on the merits of an appeal, for the purposes of proceedings under section 107 of the Criminal Procedure (Scotland) Act 1995. The additional fee can only be paid where the Scottish Legal Aid Board determines that an assisted person would otherwise be likely to be deprived of effective legal assistance as a result of the amount of fees payable to counsel.

Regulation 4(9) amends schedule 2 of the 1989 Criminal Regulations to provide that during a trial diet where a leading junior counsel, upon the unavailability of junior counsel being led, has sought and been granted leave of the court to continue alone may continue to be paid as leading junior counsel.

Minor textual amendments are also included in schedules 3, 6 and 7 to amend the wording in the fee tables in the 1989 Civil Regulations, and in schedule 7 to amend the wording in one of the fee tables in the 1999 Fixed Payment Regulations, in order to correct errors or clarify the meaning of existing provisions.

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.