
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 135

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2023

Citation and commencement

1. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2023 and come into force on 29 April 2023.

Application

2.—(1) These Regulations apply only in relation to fees for work done or outlays incurred on or after 29 April 2023, except in relation to regulations 6, 7(2), (3)(c) and (e), and 8(3) to (5).

(2) Regulations 6, 7(2), (3)(c) and (e) and 8(3) to (5) apply only in relation to a case where the grant of legal aid, advice and assistance or assistance by way of representation was made on or after 29 April 2023.

(3) Where work for a fee prescribed in schedules 1 to 11 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 Civil Legal Aid (Scotland) (Fees) Regulations 1989

3.—(1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989(1) are amended as follows.

(2) In regulation 5 (fees allowable to solicitors), in paragraph (2A), for “£23.86”(2) substitute “£26.30”.

(3) In Part 1 of Chapter 3 of schedule 2 (undefended actions), for the first table of fees substitute the table of fees in schedule 1 of these Regulations.

(4) In Part 2 of Chapter 3 of schedule 2 (defended actions), for the first table of fees substitute the table of fees in schedule 2 of these Regulations.

(5) In Chapter 4 of schedule 2 (executory business), for the table of fees substitute the table of fees in schedule 3 of these Regulations.

(6) In schedule 2A (fees allowable to solicitors for simple procedure cases and First-Tier Tribunal for Scotland cases)(3), for the table of fees substitute the table of fees in schedule 4 of these Regulations.

(7) In schedule 3 (table of detailed fees chargeable by solicitors for proceedings in the Court of Session and the sheriff court), for the table of fees substitute the table of fees in schedule 5 of these Regulations.

(8) In schedule 5 (table of detailed fees chargeable by solicitors for proceedings in the Court of Session, Sheriff Appeal Court, and Upper Tribunal for Scotland, proceedings listed at regulation 5(3)

(1) S.I. 1989/1490; relevant amending instruments are S.I. 1994/1015, S.I. 1995/1044, S.S.I. 2003/178, S.S.I. 2007/14, S.S.I. 2009/203, S.S.I. 2011/41, S.S.I. 2011/160, S.S.I. 2013/144, S.S.I. 2013/250, S.S.I. 2014/257, S.S.I. 2015/337, S.S.I. 2015/380, S.S.I. 2016/257, S.S.I. 2016/290, S.S.I. 2017/310, S.S.I. 2019/78, S.S.I. 2020/191, S.S.I. 2021/56 and S.S.I. 2022/30.

(2) Paragraph (2A) was inserted by S.S.I. 2003/178 and this figure substituted by S.S.I. 2022/30.

(3) Schedule 2A was inserted by S.S.I. 2016/290 and relevantly amended by S.S.I. 2022/30.

and proceedings in the sheriff court listed in schedule 7)(4), for the table of fees substitute the table of fees in schedule 6 of these Regulations.

(9) In schedule 6 (table of fees chargeable by solicitors for proceedings in the sheriff court (except summary cause and executry proceedings and the proceedings listed in schedule 7) and in the Sheriff Appeal Court)—

- (a) in Chapter 1 (sheriff court civil fees (undefended)) in the Notes on the operation of Chapter 1 in paragraph 6, for “£8.27”(5) substitute “£9.12”,
- (b) in Chapter 2 (sheriff court civil fees (defended)) in the Notes on the operation of Chapter 2 in paragraph 21, for “£8.27”(6) substitute “£9.12”.

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

4.—(1) The Criminal Legal Aid (Scotland) (Fees) Regulations 1989(7) are amended as follows.

(2) In regulation 4 (fees allowance to solicitors: general provisions)—

- (a) in paragraph (1), for “Schedule 1” substitute “Schedule 1A”,
- (b) after paragraph (1), insert—

“(1ZA) Subject to paragraph (1ZB), where the following conditions apply, the fees allowable to solicitors in relation to solemn criminal proceedings other than proceedings to which regulation 7A(1) (solemn proceedings (exceptional) fees) applies are those specified in Schedule 1—

- (a) the grant of legal aid was made before 29 April 2023,
- (b) the proceedings in the case concluded on or after that date, and
- (c) the solicitor submitting the account has requested, in such form as the Board may specify, that said account be paid in accordance with Schedule 1.

(1ZB) Paragraph (1ZA) does not apply in a case if—

- (a) there has been a transfer of agency from one solicitor to another,
- (b) the solicitor who transferred agency has submitted—
 - (i) an account for payment before 29 April 2023, or
 - (ii) a request in accordance with paragraph (1ZA)(c),
- (c) that account, or the account in respect of which that request was made, has been paid, and
- (d) the Board has received from all solicitors who have acted in the case a written request, in such form as the Board may specify, that their accounts be assessed, or reassessed as the case may be, and paid in accordance with Schedule 1A.”.

(3) In regulation 5 (fees allowance to solicitors: identification parades)(8)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a)(i), for “£129.47” substitute “£142.68”,
 - (ii) in sub-paragraph (a)(ii), for “£14.41” substitute “£15.88”,
 - (iii) in sub-paragraph (b)(i), for “£106.54” substitute “£117.41”,
 - (iv) in sub-paragraph (b)(ii), for “£13.43” substitute “£14.80”,

(4) Schedule 5 was inserted by S.S.I. 2003/178 and renamed by S.S.I. 2016/257.

(5) Schedule 6 was inserted by S.S.I. 2003/178 and this figure substituted by S.S.I. 2022/30.

(6) This figure was substituted by S.S.I. 2022/30.

(7) S.I. 1989/1491; relevant amending instruments are S.I. 1992/374, S.S.I. 2004/264, S.S.I. 2005/113, S.S.I. 2005/656, S.S.I. 2008/240, S.S.I. 2010/212, S.S.I. 2013/320, S.S.I. 2017/466, S.S.I. 2022/30 and S.S.I. 2022/116.

(8) Regulation 5 was substituted by S.S.I. 2010/212 and amended by S.S.I. 2022/30.

- (b) in paragraph (6)—
 - (i) after “in accordance with”, insert “either”,
 - (ii) after “Schedule 1”, insert “or paragraph 1 of Part 2 of the Table of Fees set out in Schedule 1A”.
- (4) In regulation 6 (duty solicitors’ fees)⁽⁹⁾—
 - (a) in paragraph (1)—
 - (i) in sub-paragraph (a), for “£165” substitute “£182”,
 - (ii) in sub-paragraph (b), for “£115” substitute “£127”,
 - (iii) for “£71.55” in each place where it appears substitute “£78.85”,
 - (iv) for “£10.23” in each place where it appears substitute “£11.28”,
 - (v) for “£79.50” in each place where it appears substitute “£87.61”,
 - (b) in paragraph (2)—
 - (i) for “Schedule 1” substitute “Part 1 of the table of fees in Schedule 1A”,
 - (ii) for “£250” substitute “£276”,
 - (iii) for “£79.50” substitute “£87.61”,
 - (c) in paragraph (2A) for “£80.00” substitute “£88.16”,
 - (d) in paragraph (3)—
 - (i) for “Schedule 1” substitute “Part 1 of the table of fees in Schedule 1A”,
 - (ii) for “£150” substitute “£180”.
- (5) In regulation 7 (fees allowable to solicitors), for “Schedule 1” substitute—
“—
 - (a) Schedule 1A, or
 - (b) where regulation 4(1ZA) applies, Schedule 1”.
- (6) In regulation 7A (solemn proceedings (exceptional) fees), in paragraphs (1) and (9), for “Schedule 1” substitute “Schedule 1A”.
- (7) In regulation 8(1) (outlays allowable to solicitors), for “paragraph 5(4) of the notes on the operation of Schedule 1” substitute “paragraph 16(5) of the notes on the operation of Schedule 1A”.
- (8) In regulation 11(3) (dispute as to allowable fees and outlays)—
 - (a) after “(1)(a)”, insert “, (ba)”,
 - (b) for “or, as the case may be, the sheriff”, insert “, the Sheriff Appeal Court or the sheriff, as the case may be,”.
- (9) In schedule 1 (fees of solicitors)—
 - (a) after the heading insert—
“(Before 29 April 2023)”,
 - (b) in the Notes on the operation of schedule 1 in paragraph 7(1)⁽¹⁰⁾, for “£14.41” substitute “£14.89”,
 - (c) in the tables of fees, for Part 1 (detailed fees) and Part 2 (inclusive fees for solemn first instance proceedings) substitute the tables of fees in schedule 7 of these Regulations.
- (10) After schedule 1, insert schedule 1A in schedule 8 of these Regulations.

⁽⁹⁾ The figures in regulation 6 were substituted by [S.S.I. 2022/30](#) and [S.S.I. 2022/116](#).

⁽¹⁰⁾ The figure in paragraph 7 was substituted by [S.S.I. 2022/30](#).

Legal aid in contempt of court proceedings

5. Schedule 1 (table of fees allowable to solicitors for legal aid made available under section 30 of the Legal Aid (Scotland) Act 1986 in connection with proceedings for contempt of court) of the Legal Aid in Contempt of Court Proceedings (Scotland) (Fees) Regulations 1992(11) is amended as follows—

- (a) in paragraph 1(a), for “£31.14” substitute “£34.32”,
- (b) in paragraph 1(b), for “£15.58” substitute “£17.17”,
- (c) in paragraph 2(a), for “£12.00” substitute “£13.23”,
- (d) in paragraph 2(b), for “£5.98” substitute “£6.59”,
- (e) in paragraph 3, for “£6.82” substitute “£7.52”,
- (f) in paragraph 4, for “£2.75” substitute “£3.04”,
- (g) in paragraph 4A(a)(12), for “£6.01” substitute “£6.63”,
- (h) in paragraph 4A(b), for “£3.00” substitute “£3.31”.

Amendment of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993

6. Regulation 3 (financial limit) of the Advice and Assistance (Financial Limit) (Scotland) Regulations 1993(13) is amended as follows—

- (a) in paragraph (b)—
 - (i) in sub-paragraph (i), for “£120” substitute “£135”,
 - (ii) in sub-paragraph (ii), for “£45” substitute “£50”,
- (b) in paragraph (c)—
 - (i) in sub-paragraph (i) and (ii), for “£105” substitute “£115”,
 - (ii) in sub-paragraph (iii), for “£45” substitute “£50”,
 - (iii) in sub-paragraph (iv)—
 - (aa) omit “a stipendiary magistrate, or”,
 - (bb) for “£705” substitute “£750”,
 - (iv) in sub-paragraph (v)—
 - (aa) omit “(other than before a stipendiary magistrate)”,
 - (bb) for “£330” substitute “£500”,
 - (v) in sub-paragraph (vi) and (vii), for “£195” substitute “£215”,
 - (vi) in sub-paragraph (viii), for “£265” substitute “£290”,
 - (vii) in sub-paragraph (ix), for “£185” substitute “£215”,
 - (viii) in sub-paragraph (x) and (xv), for “£225.00” substitute “£250”,
 - (ix) in sub-paragraph (xi), for “£550” substitute “£600”,
 - (x) in sub-paragraph (xii), (xiii) and (xiv), for “£350” substitute “£385”,
 - (xi) in sub-paragraph (xv), for “£550.00” substitute “£600”.

(11) S.I. 1992/1228; relevant amending instruments are S.S.I. 2013/250 and S.S.I. 2022/30. Figures in paragraphs 1 to 4A were substituted by S.S.I. 2022/30.

(12) Paragraph 4A was inserted by S.S.I. 2011/41 and amended by S.S.I. 2022/30.

(13) S.I. 1993/3187; relevant amending instruments are S.S.I. 2007/248, S.S.I. 2017/466 and S.S.I. 2022/116.

Amendment of the Advice and Assistance (Scotland) Regulations 1996

- 7.—(1) The Advice and Assistance (Scotland) Regulations 1996⁽¹⁴⁾ are amended as follows.
- (2) In regulation 17(1B) (fees and outlays of solicitors)⁽¹⁵⁾, for “£550.76” substitute “£572.00”.
- (3) In schedule 3 (table of fees allowable to solicitors)—
- (a) in Part 1 (table of fees allowable to solicitors for assistance by way of representation)—
 - (i) in paragraph 1, for the table of fees substitute the table of fees in schedule 9 of these Regulations,
 - (ii) in paragraph 3 (petition by debtor for sequestration)⁽¹⁶⁾—
 - (aa) in sub-paragraph (a), for “£37.66” substitute “£41.51”,
 - (bb) in sub-paragraph (b), for “£61.85” substitute “£68.16”,
 - (b) in Part 2 (table of fees allowed to solicitors for advice and assistance other than assistance by way of representation), for the table of fees in paragraph 1 substitute the table of fees in schedule 10 of these Regulations,
 - (c) in Part 3 (table of fees allowed to solicitors for assistance by way of representation for proceedings under sections 19, 30 and 36(1)(a) of the Criminal Justice (Scotland) Act 2016), for the table of fees substitute the table of fees in schedule 11 of these Regulations,
 - (d) in Part 4 (table of fees allowed to solicitors for advice and assistance in relation to sections 32 and 44 of the Criminal Justice (Scotland) Act 2016)⁽¹⁷⁾—
 - (i) in paragraph 3 (standard rate), for “£85.18” substitute “£93.87”,
 - (ii) in paragraph 3 (higher rate), for “£113.29” substitute “£124.85”,
 - (iii) in paragraph 4(a) (standard rate), for “£130.60” substitute “£143.93”,
 - (iv) in paragraph 4(a) (higher rate), for “£173.70” substitute “£191.42”,
 - (v) in paragraph 4(b)(i) (standard rate), for “£227.12” substitute “£250.29”,
 - (vi) in paragraph 4(b)(i) (higher rate), for “£302.07” substitute “£332.89”,
 - (vii) in paragraph 4(b)(ii) (standard rate), for “£56.79” substitute “£62.59”,
 - (viii) in paragraph 4(b)(ii) (higher rate), for “£75.53” substitute “£83.24”,
 - (ix) in paragraph 5 (standard rate), for “£34.08” substitute “£37.56”,
 - (x) in paragraph 5 (higher rate), for “£45.32” substitute “£49.95”,
 - (xi) in paragraph 6 (standard rate), for “£13.18” in each place where it appears substitute “£14.53”,
 - (xii) in paragraph 6 (higher rate), for “£17.54” in each place where it appears substitute “£19.33”,
 - (e) in Part 5 (table of fees allowable to solicitors for assistance by way of representation for proceedings under schedule 8 of the Terrorism Act 2000)⁽¹⁸⁾—
 - (i) for “£56.79” in each place where it appears substitute “£62.59”,
 - (ii) for “£85.18” in both places where it appears substitute “£93.87”,
 - (iii) for “£6.60” in both places where it appears substitute “£7.28”,

⁽¹⁴⁾ S.I. 1996/2447; relevant amending instruments are S.S.I. 2005/171, S.S.I. 2017/466, S.S.I. 2021/55 and S.S.I. 2022/30.

⁽¹⁵⁾ Paragraph (1B) was inserted by S.S.I. 2022/292.

⁽¹⁶⁾ Figures in paragraph 3 were substituted by S.S.I. 2022/30.

⁽¹⁷⁾ Part 4 was inserted by S.S.I. 2017/466. Figures in Part 4 were substituted by S.S.I. 2022/30.

⁽¹⁸⁾ Part 5 was inserted by S.S.I. 2021/55 and amended by S.S.I. 2022/30.

- (f) in Part 6 (table of fees allowable to solicitors for advice and assistance in relation to section 41 and schedule 7 of the Terrorism Act 2000 and Part 1 of schedule 3 of the Counter-Terrorism and Border Security Act 2019)(**19**)—
- (i) in paragraph 3(a) (standard rate), for “£130.60” substitute “£143.93”,
 - (ii) in paragraph 3(a) (higher rate), for “£173.70” substitute “£191.42”,
 - (iii) in paragraph 3(b)(i) (standard rate), for “£227.12” substitute “£250.29”,
 - (iv) in paragraph 3(b)(i) (higher rate), for “£302.07” substitute “£332.89”,
 - (v) in paragraph 3(b)(ii) (standard rate), for “£56.79” substitute “£62.59”,
 - (vi) in paragraph 3(b)(ii) (higher rate), for “£75.53” substitute “£83.24”
 - (vii) in paragraph 4 (standard rate), for “£34.08” substitute “£37.56”,
 - (viii) in paragraph 4 (higher rate), for “£45.32” substitute “£49.95”,
 - (ix) in paragraph 5 (standard rate), for “£13.18” in each place where it appears substitute “£14.53”,
 - (x) in paragraph 5 (higher rate), for “£17.54” in each place where it appears substitute “£19.33”.

Amendment of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999

8.—(1) The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(**20**) are amended as follows.

(2) In regulation 4 (fixed payments allowable to solicitors)—

(a) in paragraph (1A)(**21**)—

(i) in sub-paragraph (a) omit “(other than before a stipendiary magistrate)”,

(ii) in sub-paragraph (a) and (b) omit “(before a stipendiary magistrate)”,

(b) in paragraph (1D) omit “(before a stipendiary magistrate or otherwise)”,

(c) omit paragraphs (4) to (6ZA).

(3) In schedule 1, for the table of fees in Part 1 substitute the table of fees in Part 1 of schedule 12 of these Regulations.

(4) In schedule 1A(**22**), for the table of fees substitute the table of fees in schedule 13 of these Regulations.

(5) In schedule 1B(**23**)—

(a) for the table of fees in Part 1 substitute the table of fees in Part 1 of schedule 14 of these Regulations,

(b) for the table of fees in Part 2 substitute the table of fees in Part 2 of schedule 14 of these Regulations.

(19) Part 6 inserted by S.S.I. 2021/55 and amended by S.S.I. 2022/30.

(20) S.I. 1999/491; relevant amending instruments are S.S.I. 2001/307, S.S.I. 2004/263, S.S.I. 2008/240, S.S.I. 2011/162, S.S.I. 2014/366, S.S.I. 2020/191 and S.S.I. 2022/30.

(21) Paragraphs (1A) and (1D) were inserted by S.S.I. 2008/240, and paragraph (6ZA) was inserted by S.S.I. 2011/162.

(22) Schedule 1A inserted by S.S.I. 2008/240.

(23) Schedule 1B inserted by S.S.I. 2008/240.

St Andrew's House,
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27th April 2023

SIOBHIAN BROWN
Authorised to sign by the Scottish Ministers