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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 178**

**LEGAL AID AND ADVICE**

**The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 3) Regulations 2023**

<i>Made</i>	- - - -	<i>6th June 2023</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>8th June 2023</i>
<i>Coming into force</i>	- -	<i>21st September 2023</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12(3), 17(2B), 33(2)(a), and (3)(a), (b), (d) and (f), 36(1) and (2)(a) and 42 of the Legal Aid (Scotland) Act 1986(1) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 3) Regulations 2023 and come into force on 21 September 2023.

**Application**

2.—(1) Regulations 3 and 4 apply only in relation to fees for work done on or after 25 September 2023.

(2) For the purposes of paragraph (1), where work for a fee prescribed in regulation 3 or 4 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.

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(1) 1986 c. 47 (“the Act”). Section 17(2B) was inserted by paragraph 36(6) of schedule 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40). Section 12(3) was amended by paragraph 12(4)(b) of schedule 1 of the Crime and Punishment (Scotland) Act 1997 (c. 48), section 67(5)(a) and (b) of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), and section 23(7)(a) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3). Section 42 was amended by paragraph 1(9) of schedule 5 of the Children’s Hearings (Scotland) Act 2011 (asp 1). The functions of the Secretary of State under the Act were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

### **Amendment of the Civil Legal Aid (Scotland) (Fees) Regulations 1989**

3.—(1) Chapter 2 of schedule 6 (table of fees chargeable by solicitors for defended proceedings in the sheriff court (except where otherwise specified) and in the Sheriff Appeal Court) of the Civil Legal Aid (Scotland) (Fees) Regulations 1989<sup>(2)</sup> is amended as follows.

(2) In the notes on the operation of chapter 2—

(a) for paragraph 7 substitute—

“7. Where a fee is payable under sub-paragraph (a) of either paragraph 2 or paragraph 2A—

- (a) a fee is payable under only one of those paragraphs,
  - (b) the fee payable will be either—
    - (i) the fee under paragraph 2A, if work was carried out which followed the amended procedure introduced by the Act of Sederunt (Ordinary Cause Rules 1993 Amendment) (Case Management of Defended Family and Civil Partnership Actions) 2022<sup>(3)</sup>, or
    - (ii) the fee under paragraph 2, if no work was carried out under that amended procedure,
  - (c) only one fee is payable under the applicable paragraph (under either of heads (i), (ii) or (iii) of sub-paragraph (a)),
  - (d) a fee under sub-paragraph (a)(ii) of the applicable paragraph is only payable where it is unlikely that the action would have settled without the input of the solicitor and the solicitor certifies that settlement took place in consequence of one or both of the following circumstances—
    - (i) settlement was expressed within an extraneous Minute of Agreement or a Joint Minute (other than a Joint Minute for dismissal or decree simpliciter) encompassing an outcome materially different from the terms of any interim order of court in force immediately prior to the execution of that Joint Minute or Minute of Agreement,
    - (ii) settlement followed upon an exercise of sustained negotiation involving a significant level of discussion between solicitor, the client or the opponent (or their agent) taking place after the conclusion of the work payable under paragraph 1 and clearly documented on the file for perusal, if required, by the Board,
  - (e) a fee under sub-paragraph (a)(iii) of the applicable paragraph is only payable where—
    - (i) no settlement is achieved but an outcome or disposal is reached and the solicitor can demonstrate that an exercise of sustained negotiation involving a significant level of discussion between the solicitor, the client and, as the case may be, the opponent (or the opponent’s agent) took place,
    - (ii) the Board is satisfied that all the additional work carried out by the solicitor was reasonable and necessary in all the circumstances of the case; and
    - (iii) the work is clearly documented on the file and may be perused by the Board as required.”,
- (b) omit paragraph 7A,

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(2) S.I. 1989/1490, relevantly amended by S.S.I. 2003/178, S.S.I. 2007/14, S.S.I. 2015/380 and S.S.I. 2023/135.

(3) S.S.I. 2022/289.

(c) in paragraph 8, for “paragraph 2(a)(ii) or (iii)” substitute “sub-paragraph (a)(ii) or (iii) of either paragraph 2 or paragraph 2A”;

(d) after paragraph 15 insert—

“**15A.** The fees under paragraph 5(aa) are payable subject to the following conditions—

(a) the fees prescribed in heads (i) and (ii) are payable where the Child Welfare Hearing is heard alone or at the same time as the Initial Case Management Hearing, including any continued joint diets,

(b) the additional fee prescribed in head (iii) is payable only where the Child Welfare Hearing takes place at the same time as the Initial Case Management Hearing, including any continued joint diets,

(c) the fee prescribed in head (iv) is payable only where the Initial Case Management Hearing is heard alone and where no fee is payable under heads (i)-(iii).”.

(3) In the table of fees,

(a) in paragraph 2, after “Progress Fees” insert “(for actions not covered by paragraph 2A)”,

(b) after paragraph 2 insert—

“2A.	Progress fees (Family and Civil Partnership Actions for work on or after 25 September 2023) –		
(a)	(i)	Fee to cover all additional work (including adjustment, all work relating to the Pre-Hearing meeting, lodging joint minute and exchanging list of witnesses and attendance at Full Case Management Hearing) from the conclusion of the work in paragraph 1 until the allowance of a Proof or Debate or other court hearing fixed for the purpose of settlement (except as specifically provided below)	25
	(ii)	Fee to cover all additional work (e.g. negotiation, discussion, voluntary disclosure and all meetings, correspondence, and all work relating to the Pre-Hearing meeting, lodging joint minute and exchanging list of witnesses, where appropriate) involving the active participation of agents and resulting, prior to the allowance of a Proof, Debate, or other court hearing fixed for the purpose of settlement, in the negotiated settlement of the action (except as specifically provided below)	21
	(iii)	Fee to cover all additional work (e.g. negotiation, discussion, voluntary disclosure and all meetings, correspondence and all work relating to the Pre-Hearing meeting, lodging joint minute and exchanging list of witnesses, where appropriate) involving the active participation of agents where, prior to the allowance of a Proof or Debate, or other court hearing fixed for the purpose of settlement, an outcome or disposal is effected (subject to a maximum charge of 10 units) (except as specifically provided below)	11
(b)		Fee to cover all work for the preparation and attendance at any Continued Full Case Management Hearing including the preparation of an amended Record	2”

(c) in paragraph 5, for sub-paragraph (aa) substitute—

“(aa)	Preparation for Child Welfare Hearing and Initial Case Management Hearing		
	(i)	Fee to cover all work preparing for the first Child Welfare Hearing	6
	(ii)	Fee to cover all work preparing for each subsequent Child Welfare Hearing	3
	(iii)	Fee payable, in addition to the fees prescribed in paragraph (i) or (ii) above, where the Child Welfare Hearing is held at the same time as the Initial Case Management Hearing, including any continued joint diets (2 units per each joint hearing)	2
	(iv)	Fee to cover all work preparing for the Initial Case Management Hearing, and (in addition) for each subsequent continued such hearing, except where a fee is payable under any of heads (i) to (iii) above	3”

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

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

(2) In regulation 3A (fees payable in relation to certain offences where no indictment served)—

(a) after “served”, insert “on the client for whom counsel has acted in those proceedings”,

(b) for paragraph (d) substitute—

“(d) rape, or an offence under section 1, 2, 3(2)(a) or any of sections 18 to 27 of the 2009 Act;”,

(c) for paragraph (g) substitute—

“an offence under section 1 (causing death by dangerous driving), 3A (causing death by careless driving when under the influence of drink or drugs) or 3ZB (causing death by driving while unlicensed or uninsured) of the 1988 Act;”,

(d) after paragraph (o), insert—

“;

(p) an offence under the 2000 Act or the Terrorism Act 2006(5);

(q) an offence under section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015(6).”.

(3) In the notes on the operation of schedule 2 (fees of counsel)—

(a) in paragraph 2, omit “or category of proceedings”,

(b) in paragraph 3—

(i) in sub-paragraph (c)—

(aa) for “senior junior” where it first occurs substitute “junior with leader (that is, the principally instructed junior with leader in the proceedings)”,

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(4) S.I. 1989/1491, relevantly amended by S.S.I. 2005/113, S.S.I. 2005/656, S.S.I. 2007/180, S.S.I. 2010/63, S.S.I. 2011/135, S.S.I. 2012/276, S.S.I. 2012/305, S.S.I. 2015/337, S.S.I. 2021/56, S.S.I. 2022/229 and S.S.I. 2023/135. Regulation 3A was inserted by S.S.I. 2012/276, paragraphs 15A, 15B and 16A of the notes on the operation of schedule 2 were inserted by S.S.I. 2012/276, paragraph 17A of the notes on the operation of schedule 2 was inserted by S.S.I. 2007/180, and the fee tables in Parts 1 and 3 of schedule 2 were substituted by S.S.I. 2022/30.

(5) 2006 c. 11.

(6) 2015 asp 12.

- (bb) for “senior junior” where it second occurs substitute “junior with leader”,
- (ii) after sub-paragraph (ca), insert—
  - “(cb) where junior counsel is being led, the fee payable for any of the following is that of junior being led, except in respect of any work where junior counsel acts alone and senior counsel or junior as leader has no involvement (in respect of which work only the fee payable is that of junior alone)—
    - (i) all managed meetings or other work under either paragraph 1B(d) of Chapter 1 of Part 1 or paragraph 1AA(e) of Chapter 1 of Part 3 of the Table of Fees,
    - (ii) the conduct of a preliminary hearing under paragraph 1B(e) of Chapter 1 of Part 1 of the Table of Fees,
    - (iii) the conduct of a first diet under paragraph 1AA(f) of Chapter 1 of Part 3 of the Table of Fees,”
- (iii) in sub-paragraph (eb)(ii), after “where” where it first occurs insert—

“such hearing is either in a case to which the Protocol set out in the schedule to Practice Note No.1 of 2018 applies, or is”
- (iv) in sub-paragraph (h), omit “, written work (other than work for which fees are prescribed in the Table of Fees)”,
- (v) after sub-paragraph (h), insert—
  - “(i) all written work done (including work revising any document) is included within the fees payable to counsel and, except for written work for which a fee is separately prescribed in the Table of Fees, no separate charges may be made.”
- (c) in the heading before paragraph 4, after “appeals” insert “(and other proceedings where specified)”,
- (d) in paragraph 6—
  - (i) after “under” insert “paragraph 1A(k) (written work) of Chapter 1 or 2 of Part 1,”
  - (ii) after “Part 2” insert “, or paragraph 1A(k) (written work) of Chapter 1 or 2 of Part 3,”
- (e) in paragraph 13—
  - (i) at the start of sub-paragraph (d), insert—

“except in the circumstances described in paragraph 14(c),”
  - (ii) after sub-paragraph (d), insert—
    - “(e) where paragraph 14(c) applies—
      - (i) the preparation fee payable to trial counsel prior to the conclusion of the case may not exceed 50% of the sums payable at the point of conviction, and
      - (ii) the balance of any preparation fee is payable only when the case to which it relates has concluded.”
- (f) in paragraph 14—
  - (i) in sub-paragraph (a)—
    - (aa) in head (ii), for “(t)” in both places it occurs substitute “(u)”,
    - (bb) omit “; or” where it last occurs,
  - (ii) after sub-paragraph (b), insert—

“; or

(c) where at the point of conviction—

- (i) a Statement of Information is served on the convicted person in respect of proceedings in relation to proceeds of crime, and
- (ii) trial counsel no longer intends to act for the client in relation to the proceeds of crime proceedings.”,

(g) in paragraph 15A—

(i) in sub-paragraph (1)—

- (aa) after “preliminary hearing” insert “or first diet”,
- (bb) for “as prescribed in paragraphs 1B(a)” substitute “(as prescribed in paragraphs 1B”,
- (cc) after “Table of Fees” insert “) or first diets (as prescribed in paragraph 1AA of Chapter 1 or 2 of Part 3 of the Table of Fees”,

(ii) in sub-paragraph (2), after “preliminary hearings” insert “or first diets”,

(iii) in sub-paragraph (3)—

- (aa) after “preliminary hearings”, insert “or first diets”,
- (bb) for “two thirds” substitute “half”,

(h) in paragraph 15B—

(i) after sub-paragraph (a), insert—

“(aa) the fee for written questions in respect of the first or each subsequent vulnerable and child witness includes all necessary communications with Crown counsel or the Procurator Fiscal and is payable only once in any case, regardless of how many questions are drafted in that case;”,

(ii) after sub-paragraph (b), insert—

“(ba) a fee is only payable for a second devolution or compatibility minute where counsel establishes there were exceptional circumstances in the case, and in any case fees for no more than two devolution or compatibility minutes are payable in any one case;”,

(iii) after sub-paragraph (c), insert—

“(d) no fee is payable for the drafting of an application in respect of the adjournment or alteration of a diet in terms of section 75A of the 1995 Act.”,

(i) in paragraph 16, after “Table of Fees” insert “, paragraph 1AA(c) of Chapter 1 or 2 of Part 3 of the Table of Fees”,

(j) in paragraph 16A—

(i) in sub-paragraph (1)—

- (aa) at the start, insert “Subject to sub-paragraph (1A), ”,
- (bb) after “attend”, insert “one or ”,
- (cc) in head (a), for “and solicitor” substitute “, solicitor and accused”,
- (dd) in head (b), for “accused” substitute “expert”,

(ii) after sub-paragraph (1), insert—

“(1A) No more than two consultations may be claimed in relation to consultations attended by the parties specified in sub-paragraph (1)(c) on or after the date of the preliminary hearing or first diet except on cause shown.”,

(iii) after sub-paragraph (2), insert—

“(3) Viewing productions at any location forms part of case preparation and may not in any circumstances be charged as a consultation or consultation work.

(4) Payment for all necessary communications and discussions between solicitor and counsel is included within the fees payable to counsel under this schedule, and any such communications or discussions are not chargeable as consultations except where there are exceptional circumstances that would justify a solicitor and counsel consultation.”,

(k) in paragraph 17—

(i) in sub-paragraph (a), for the words from “when” to end substitute—

“—

(i) in relation to a summary complaint, when the first witness is sworn in,

(ii) in all other cases, when the jury is empanelled;”,

(ii) in sub-paragraphs (aa) and (ab), omit “full”,

(iii) in sub-paragraph (ab), for the words from “the fee payable” where it first occurs to end substitute—

“only one trial fee is payable for that day except where the outgoing trial concludes and the incoming trial commences and calls for the first time.”,

(iv) after sub-paragraph (ab), insert—

“(ac) where the principal or originally instructed junior with leader in a case is unavailable and an alternative junior with leader attends for a day or more of trial, the fee payable for each day the alternative counsel attends trial is 90% of the applicable fee prescribed in paragraph 3 of Chapter 1 of Part 1 or paragraph 2 of Chapter 1 of Part 3 of the Table of Fees;”,

(v) after sub-paragraph (ba), insert—

“(bb) where a trial has commenced but has not proceeded on a particular day due to the absence of a juror, the trial judge or any other party through illness or unavailability, the fee payable is—

(i) if any evidence has been led or any legal argument has taken place, the prescribed fee for a trial diet, or

(ii) otherwise, the applicable fee prescribed in paragraph 4(p) of Chapter 1 or 2 of Part 1 (where the proceedings are in the High Court) or paragraph 3(o) of Chapter 1 or 2 of Part 3 (where the proceedings are in the Sheriff or JP Court) of the Table of Fees;”,

(vi) after sub-paragraph (ha), insert—

“(hb) where in either of the following circumstances an offence with which an accused person is charged is not within category (a) of the relevant paragraph in the Table of Fees, the fee payable is that of the next highest category payable in either paragraph 3 of Chapter 1 or 2 of Part 1 (where the proceedings are in the High Court), or paragraph 2 of Chapter 1 or 2 of Part 3 (where the proceedings are in the Sheriff or JP Court) of the Table of Fees—

- (i) the case against an accused person is in respect of one or more offences under section 29 or 30 of the 2010 Act,
- (ii) the indictment or complaint in the case includes, in accordance with section 288BA of the 1995 Act, a docket which specifies any act or omission that is connected with a sexual offence charged in the indictment or complaint,
- (hc) where a case against an accused person proceeds in respect of offences which are not prescribed in this Schedule, the fee payable is that in paragraph 3(b) of Chapter 1 or 2 of Part 1 (where the proceedings are in the High Court) or paragraph 2(b) of Chapter 1 or 2 of Part 3 (where the proceedings are in the Sheriff or JP Court) of the Tables of Fees;”,
- (l) in paragraph 17A, after “payable”, insert “in a case where the indictment was served prior to 25 September 2023 and”,
- (m) in paragraph 18(c)—
  - (i) for “the” substitute “any”,
  - (ii) after “day”, insert “(legally aided or not)”,
- (n) in paragraph 22—
  - (i) the existing text becomes sub-paragraph (a),
  - (ii) after the definition of “the 2010 Act”, insert—
    - ““child witness” has the meaning given in section 271(5) of the 1995 Act;”,
  - (iii) in the definition of “consultation”, at the end insert “or first diet”,
  - (iv) after the definition of “documentation”, insert—
    - ““Practice Note No.1 of 2018” means the High Court of Justiciary Practice Note No.1 of 2018 on the Management of Lengthy or Complex Criminal Cases;”,
  - (v) after the definition of “retail premises”, insert—
    - ““vulnerable witness” has the meaning given in section 271(1) of the 1995 Act;”,
  - (vi) after sub-paragraph (a), insert—
    - “(b) “evidence is adduced” for the purposes of a commission on evidence or any other hearing, if one or more witnesses gives or starts to give evidence at that commission or hearing.”.
- (4) In Chapter 1 of Part 1 of the Table of Fees (Fees of Junior Counsel for Proceedings in the High Court of Justiciary)—
  - (a) in paragraph 1A (written work)—
    - (i) omit sub-paragraph (a),
    - (ii) after sub-paragraph (f), insert—

“(g)	Drafting written questions in respect of the first vulnerable witness or child witness	Payable at the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel
(h)	Drafting written questions in respect of the second, and each subsequent, vulnerable or child witness	Payable at half rate for a trial (paragraph 3 below) depending on category of case and status of counsel



(i)	Opinion on sentence	£85.18
(j)	Opinion in an appeal by way of Bill of Suspension or Stated Case	£141.95
(k)	Opinion in any other case	£227.12–£397.46”

(b) in paragraph 1B (preliminary hearing)—

(i) in sub-paragraph (a), for the words in the third column substitute—

“Payable at either—

(i) one and a half times the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel, or

(ii) in a case to which the Protocol set out in the schedule to Practice Note No.1 of 2018 applies, twice the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.”,

(ii) for sub-paragraph (b), substitute—

		“ <b>Junior leader</b>	as	<b>Junior alone</b>	<b>Junior with leader</b>
(b)	Further diet which involves substantive debate or resolution of outstanding issues, preliminary pleas, objections to the admissibility of evidence by minute, devolution minutes or applications under section 275 of the 1995 Act.	£431.52		£374.75	£255.51”

(iii) for sub-paragraph (c), substitute—

“(c)	Adjourned diet under section 75A of the 1995 Act, or continued diet.	£431.52		£374.75	£255.51”
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(c) in paragraph 3 (trial per day)—

(i) at the end of sub-paragraph (a), insert—

“, Offences under the 2000 Act or the Terrorism Act 2006, section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015.”,

(ii) at the end of sub-paragraph (b), insert—

“, Offences under section 28 of the 2010 Act, Reckless and culpable conduct.”,

(iii) at the end of sub-paragraph (c), insert—

“, Stalking, Offences under the Psychoactive Substances Act 2016(7).”,

(d) in paragraph 4 (Miscellaneous Hearings), after sub-paragraph (t) insert—

“(u)	diet of debate	Payable at the full rate for a trial (paragraph 3 above) depending on category of case and status of counsel.”
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(e) in paragraph 5 (fee for consultations etc.), at the end of the second column insert—

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“, or where counsel require to view joint investigative interviews”,

(5) In Chapter 2 of Part 1 of the Table of Fees (Fees of Senior Counsel for Proceedings in the High Court of Justiciary)—

- (a) in paragraph 1A (written work)—
- (i) omit sub-paragraph (a),
- (ii) after sub-paragraph (f), insert—

“(g)	Drafting written questions in respect of the first vulnerable witness or child witness	Payable at the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel
(h)	Drafting written questions in respect of the second, and each subsequent, vulnerable or child witness	Payable at half rate for a trial (paragraph 3 below) depending on category of case and status of counsel
(i)	Opinion on sentence	£129.47
(j)	Opinion in an appeal by way of Bill of Suspension or Stated Case	£212.93
(k)	Opinion in any other case	£397.46–£794.91”

- (b) in paragraph 1B (preliminary hearing)—
- (i) in sub-paragraph (a), for the words in the third column substitute—
- “Payable at either—
- (i) one and a half times the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel, or
- (ii) in a case to which the Protocol set out in the schedule to Practice Note No.1 of 2018 applies, twice the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.”,
- (ii) in each of sub-paragraphs (b) and (c), for the words in the third column substitute “£511.02”,
- (c) in paragraph 3 (trial per day)—
- (i) at the end of sub-paragraph (a), insert—
- “, Offences under the 2000 Act or the Terrorism Act 2006, section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015”,
- (ii) at the end of sub-paragraph (b), insert—
- “, Offences under section 28 of the 2010 Act, Reckless and culpable conduct”,
- (iii) at the end of sub-paragraph (c), insert—
- “, Stalking, Offences under the Psychoactive Substances Act 2016”,
- (d) in paragraph 4 (miscellaneous hearings), after sub-paragraph (t), insert—

“(u) diet of debate	Payable at the full rate for a trial (paragraph 3 above) depending on category of case and status of counsel.”
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- (e) in paragraph 5 (fee for consultations etc.), at the end of the second column, insert—
- “, or where counsel require to view joint investigative interviews”.

(6) In Chapter 1 of Part 3 of the Table of Fees (Fees of Junior Counsel for Proceedings in the Sheriff and Justice of the Peace Court)—

(a) in paragraph 1A (written work)—

- (i) omit sub-paragraph (a),  
(ii) after sub-paragraph (f), insert—

“(g)	Drafting written questions in respect of the first vulnerable witness or child witness	Payable at the full rate for a trial (paragraph 2 below) depending on category of case and status of counsel
(h)	Drafting written questions in respect of the second, and each subsequent, vulnerable or child witness	Payable at half rate for a trial (paragraph 2 below) depending on category of case and status of counsel
(i)	Opinion on sentence	£85.18
(j)	Opinion in an appeal by way of Bill of Suspension or Stated Case	£141.95
(k)	Opinion in any other case	£227.12–£397.46”

(b) after paragraph 1A (written work) insert—

“ <b>1AA</b>	<i>First Diet – Fees for all work in relation to a first diet in any case where the indictment is served on or after 25 September 2023</i>			
(a)	First diet including all managed meetings or equivalent communication with Crown counsel or the Procurator Fiscal by whatever means and including any note on the line of evidence	Payable at either—  (i) one and a half times the full rate for a trial (paragraph 2 below) depending on category of case and status of counsel, or  (ii) in a case to which the Protocol set out in the schedule to Practice Note No.1 of 2018 applies, twice the full rate for a trial (paragraph 2 below) depending on category of case and status of counsel		
(b)	First diet, adjourned or continued in which witnesses called to give evidence	Payable at the full rate for a trial (paragraph 2 below) depending on category of case and status of counsel		
		<b>Junior leader</b>	<b>as Junior alone</b>	<b>Junior with leader</b>
(c)	Further diet which involves substantive debate or resolution of outstanding issues, preliminary pleas, objections to the admissibility of evidence by minute, devolution minutes or applications under section 275 of the 1995 Act	£345.22	£299.80	£204.41

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(d)	Adjourned diet under section 75A of the 1995 Act, or continued diet	£345.22	£299.80	£204.41
(e)	Attendance at all managed meetings or work in connection with equivalent communication with the Crown by whatever means and including any note on the line of evidence where counsel does not attend the first diet.	Payable at one-half of the fee payable in accordance with paragraph 1AA(a) above.		
(f)	Conduct of first diet on receipt of detailed instructions not having been involved in pre hearing communication with the Crown.	Payable at one-half of the fee payable in accordance with paragraph 1AA(a) above..”		

(c) in paragraph 2 (trial per day)—

(i) at the end of sub-paragraph (a), insert—

“, Offences under the 2000 Act or the Terrorism Act 2006, section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015”,

(ii) at the end of sub-paragraph (b), insert—

“, Offences under section 28 of the 2010 Act, Reckless and culpable conduct, Stalking, Offences under the Psychoactive Substances Act 2016”,

(d) in paragraph 3 (miscellaneous hearings)—

(i) omit sub-paragraph (g),

(ii) in sub-paragraph (t), in the first column after “first diet” insert “in a case where indictment served before 25 September 2023”,

(iii) after sub-paragraph (t), insert—

“(u)	diet of debate	Payable at the full rate for a trial (paragraph 2 above) depending on category of case and status of counsel.”
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(e) in paragraph 4 (fee for consultations etc.), at the end of the second column, insert—

“, or where counsel require to view joint investigative interviews”,

(7) In Chapter 2 of Part 3 of the Table of Fees (Fees of Senior Counsel for Proceedings in the Sheriff and Justice of the Peace Court)—

(a) in paragraph 1A (written work)—

(i) omit sub-paragraph (a),

(ii) after sub-paragraph (f), insert—

“(g)	Drafting written questions in respect of the first vulnerable witness or child witness	Payable at the full rate for a trial (paragraph 2 below) depending on category of case and status of counsel
(h)	Drafting written questions in respect of the second, and each subsequent, vulnerable or child witness	Payable at half rate for a trial (paragraph 2 below) depending on category of case and status of counsel
(i)	Opinion on sentence	£129.47

(j)	Opinion in an appeal by way of Bill of Suspension or Stated Case	£212.93
(k)	Opinion in any other case	£397.46–£794.91”

(b) after paragraph 1A (written work), insert—

<b>“1AA</b>	<i>First Diet – Fees for all work in relation to a first diet in any case where the indictment is served on or after 25 September 2023</i>	
(a)	First diet including all managed meetings or equivalent communication with Crown counsel or the Procurator Fiscal by whatever means and including any note on the line of evidence	Payable at either— (i) one and a half times the full rate for a trial (paragraph 2 below) depending on category of case and status of counsel, or (ii) in a case to which the Protocol set out in the schedule to Practice Note No.1 of 2018 applies, twice the full rate for a trial (paragraph 2 below) depending on category of case and status of counsel
(b)	First diet, adjourned or continued in which witnesses called to give evidence	Payable at the full rate for a trial (paragraph 2 below) depending on category of case and status of counsel
(c)	Further diet which involves substantive debate or resolution of outstanding issues, preliminary pleas, objections to the admissibility of evidence by minute, devolution minutes or applications under section 275 of the 1995 Act.	£408.82
(d)	Adjourned diet under section 75A of the 1995 Act, or continued diet.	£408.82
(e)	Attendance at all managed meetings or work in connection with equivalent communication with the Crown by whatever means and including any note on the line of evidence where counsel does not attend the first diet.	Payable at one-half of the fee payable in accordance with paragraph 1AA(a) above.
(f)	Conduct of first diet on receipt of detailed instructions not having been involved in pre hearing communication with the Crown.	Payable at one-half of the fee payable in accordance with paragraph 1AA(a) above.”

(c) in paragraph 2 (trial per day)—

(i) at the end of sub-paragraph (a), insert—

“, Offences under the 2000 Act or the Terrorism Act 2006, section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015”,

(ii) at the end of sub-paragraph (b), insert—

“, Offences under section 28 of the 2010 Act, Reckless and culpable conduct, Stalking, Offences under the Psychoactive Substances Act 2016”,

(d) in paragraph 3 (Miscellaneous Hearings)—

- (i) omit paragraph (g),
- (ii) in sub-paragraph (t), in the first column after “first diet” insert “in a case where indictment served before 25 September 2023”,
- (iii) after sub-paragraph (t), insert—

“(u)	diet of debate	Payable at the full rate for a trial (paragraph 2 above) depending on category of case and status of counsel.”
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(e) in paragraph 4 (fee for consultations etc.), at the end of the second column insert—

“, or where counsel require to view joint investigative interviews”.

#### **Amendment of the Advice and Assistance (Scotland) Regulations 1996**

5.—(1) The Advice and Assistance (Scotland) Regulations 1996<sup>(8)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the 2022 Act”, insert—

““the 2023 Act” means the Social Security (Additional Payments) Act 2023<sup>(9)</sup>;

“the Hague Convention” means the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007;”,

(b) for the definition of “additional payment” substitute—

““additional payment” means a payment within the meaning given in section 9(1) (interpretation) of the 2022 Act or that given in section 10(1) (interpretation) of the 2023 Act;”.

(3) In regulation 5—

(a) in the heading, after “1982”, insert “or the Hague Convention”,

(b) in paragraph (1)—

(i) for “the following sub-paragraphs” substitute “paragraph (1A)”,

(ii) for “of” where it third occurs substitute “or”,

(iii) for the words from “section 5” to “namely:—” substitute—

“—

(a) section 5 of the Civil Jurisdiction and Judgments Act 1982 by an applicant to whom paragraph (2) applies, or

(b) the Hague Convention by an applicant to whom paragraph (3) applies.”,

(iv) omit sub-paragraphs (a) to (c),

(c) after paragraph (1), insert—

“(1A) The modifications mentioned in paragraph (1) are that—

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<sup>(8)</sup> S.I. 1996/2447 was renamed by S.I. 1997/726 and relevantly amended by S.S.I. 2023/11.

<sup>(9)</sup> 2023 c. 7.

- (a) section 8 shall be modified so as to provide that such advice and assistance shall be made available whether within or furth of Scotland without regard to the income or capital of an applicant to whom this regulation applies,
- (b) section 11 shall be modified so as to provide that such applicant shall, irrespective of their disposable income, not require to pay any fees or outlays in respect of such advice and assistance, and
- (c) section 12(3) shall be modified so as to provide that fees or outlays to which section 12 applies shall be paid to the solicitor in respect of such advice and assistance provided to such applicant—
  - (i) firstly, in priority to all other debts, out of any expenses which (by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the applicant by any other person in respect of the matter in connection with which the advice and assistance is provided, and
  - (ii) secondly, by the Board out of the Fund, following receipt by it of a claim submitted by the solicitor.”
- (d) in paragraph (2), for “regulation” substitute “paragraph”,
- (e) after paragraph (2), insert—
  - “(3) This paragraph applies to—
    - (a) an applicant who is entitled to free legal assistance by virtue of Article 15(1) of the Hague Convention; and,
    - (b) an applicant who has, in a State bound by the Hague Convention, benefited from complete or partial legal aid or exemption from costs or expenses.”
- (4) In regulation 16(2) (payment of fees and outlays from property recovered or preserved)—
  - (a) in sub-paragraph (a)(xvii), after “2022 Act”, insert “or the 2023 Act, at any time since the coming into force of those Acts”,
  - (b) in sub-paragraph (n), after “2022” insert, “ or the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023(10)”.
- (5) In schedule 2 (assessment of disposable capital and disposable income), in paragraph 5(bg) after “2022” insert “or the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023”.

### **Amendment of the Civil Legal Aid (Scotland) Regulations 2002**

- 6.—(1) The Civil Legal Aid (Scotland) Regulations 2002(11) are amended as follows.
- (2) In regulation 2(1) (interpretation)—
  - (a) after the definition of “the 2022 Act”, insert—
    - ““the 2023 Act” means the Social Security (Additional Payments) Act 2023;”,
  - (b) for the definition of “additional payment” substitute—
    - ““additional payment” means a payment within the meaning given in section 9(1) (interpretation) of the 2022 Act or that given in section 10(1) (interpretation) of the 2023 Act;”.
- (3) In regulation 33 (payments out of property recovered or preserved: exceptions), in sub-paragraph (e) after “2022”, insert “or the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023”.

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(10) S.I. 2023/549.

(11) S.S.I. 2002/494, relevantly amended by S.S.I. 2023/11.

- (4) In schedule 2 (rules for computing disposable income)—
  - (a) in paragraph 5(h), for “2002 Act” substitute “2022 Act”,
  - (b) after paragraph 5(h), insert—
    - “(i) any means-tested additional payment made under section 1 of the 2023 Act, at any time since the coming into force of that Act.”,
  - (c) after paragraph 7(m), insert—
    - “(n) any disability additional payment made under section 5 of the 2023 Act, at any time since the coming into force of that Act.”,
- (5) In schedule 3 (rules for computing disposable capital)—
  - (a) in paragraph 8(i), for “the 2022 Act” substitute “either the 2022 Act or the 2023 Act, at any time since the coming into force of those Acts”,
  - (b) in paragraph 8(j), after “2022”, insert “or the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023”.

### **Amendment of the Children’s Legal Assistance (Scotland) Regulations 2013**

7.—(1) The Children’s Legal Assistance (Scotland) Regulations 2013<sup>(12)</sup> are amended as follows.

- (2) In regulation 2(1) (interpretation)—
  - (a) after the definition of “the 2022 Act”, insert—
    - ““the 2023 Act” means the Social Security (Additional Payments) Act 2023;”,
  - (b) for the definition of “additional payment” substitute—
    - ““additional payment” means a payment within the meaning given in section 9(1) (interpretation) of the 2022 Act or that given in section 10(1) (interpretation) of the 2023 Act;”.
- (3) In schedule 1 (assessment of disposable income for the purposes of children’s legal aid), paragraph 5—
  - (a) in sub-paragraph (m), for “2002 Act” substitute “2022 Act”,
  - (b) after sub-paragraph (n), insert—
    - “(o) any means-tested additional payment made under section 1 of the 2023 Act, at any time since the coming into force of that Act;
    - “(p) any disability additional payment made under section 5 of the 2023 Act, at any time since the coming into force of that Act.”.
- (4) In schedule 2 (assessment of disposable capital for the purposes of children’s legal aid)—
  - (a) in paragraph 8(i) for “the 2022 Act” substitute “either the 2022 Act or the 2023 Act, at any time since the coming into force of those Acts”,
  - (b) in paragraph 8(j), after “2022”, insert “or the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023”.

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<sup>(12)</sup> S.S.I. 2013/200, relevantly amended by S.S.I. 2023/11.



St Andrew's House,  
Edinburgh  
6th June 2023

*SIOBHIAN BROWN*  
Authorised to sign by the Scottish Ministers

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

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

Regulation 2 makes provision as to when the amendments made by regulations 3 and 4 of these Regulations apply.

Regulation 3 amends the civil legal aid fee tables, and related notes on their operation, in Chapter 2 of schedule 6 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989, to take account of changes made to court rules relating to procedure in defended family and civil partnership actions in the sheriff court by the Act of Sederunt (Ordinary Cause Rules 1993 Amendment) (Case Management of Defended Family and Civil Partnership Actions) 2022.

Regulation 4 makes provision to amend fees for criminal legal aid work carried out by counsel in the High Court, Sheriff Court and JP Court, by providing for changes to the fee tables, and related notes on their operation, set out in schedule 2 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989. Minor changes are also made to regulation 3A of those Regulations.

Regulation 5 amends the Advice and Assistance (Scotland) Regulations 1996 to provide that—

- additional payments made under the Social Security (Additional Payments) Act 2023 (“the 2023 Act”) and the Social Fund Winter Fuel Payment (Temporary Increase) Regulations 2023 (“the 2023 Regulations”) are to be disregarded by the Scottish Legal Aid Board in the assessment and computation of an applicant’s disposable capital and income,
- such payments are excluded from bearing fees and outlays when forming part of any recovered or preserved property in proceedings,
- the 1986 Act is modified so advice and assistance is available to an applicant who is entitled to free legal assistance under Article 15(1) of the Hague Convention or who has, in a State bound by the Hague Convention, benefited from legal aid or exemption from costs or expenses—
  - without regard to their income or capital, whether or not they are within Scotland,
  - without their requiring to pay any fees or outlays in respect of such advice and assistance, irrespective of their disposable income, and
  - with their fees or outlays to the solicitor met firstly out of any expenses payable to them by any other person (by virtue of a judgment, court order, agreement or otherwise) in respect of the matter in connection with which the advice and assistance is provided, and otherwise by SLAB out of the Scottish Legal Aid Fund.

Regulations 6 and 7 amend the Civil Legal Aid (Scotland) Regulations 2002 and the Children’s Legal Assistance (Scotland) Regulations 2013 respectively to make similar provision to regulation 5 in respect of disregarding additional payments made under the 2023 Act from the computation of disposable capital and income, and the exclusion of payments made under the 2023 Regulations from bearing fees and outlays.

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.