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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 178**

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

**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>(1)</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>(2)</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—

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<sup>(1)</sup> 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.

<sup>(2)</sup> S.S.I. 2022/289.

*Status: This is the original version (as it was originally made).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

- (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,
  - (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	11

		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)	
	(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”