
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 178

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

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

- 4.—(1) The Criminal Legal Aid (Scotland) (Fees) Regulations 1989⁽¹⁾ 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⁽²⁾;
 - (q) an offence under section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015⁽³⁾.”.
- (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)”,
 - (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)—

(1) 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.

(2) 2006 c. 11.

(3) 2015 asp 12.

- (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—

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- (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—

		“ Junior leader	as Junior alone	Junior with leader
(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(4).”,

(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”,

(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—

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“(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—

“ 1AA	<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		
			Junior leader	as Junior alone
				Junior with leader
(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
(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	Payable at one-half of the fee payable in accordance with paragraph 1AA(a) above.		

	on the line of evidence where counsel does not attend the first diet.	
(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—

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“1AA	<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”.