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SCOTTISH STATUTORY INSTRUMENTS

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**2024 No. 216**

**LEGAL AID AND ADVICE**

**The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2024**

<i>Made</i>	- - - -	<i>27th August 2024</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>29th August 2024</i>
<i>Coming into force</i>	- -	<i>12th October 2024</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12(3), 17(2B), 33(2) and (3)(a), (b) 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. 2) Regulations 2024 and come into force on 12 October 2024.

**Application**

2.—(1) Regulation 3 applies only in relation to fees for work done or outlays incurred on or after 12 October 2024.

(2) For the purposes of paragraph (1), where work for a fee prescribed in regulation 3 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 Criminal Legal Aid (Scotland) (Fees) Regulations 1989**

3.—(1) Schedule 2 (fees of counsel) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989(2) is amended as follows.

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- (1) 1986 c. 47 (“the Act”). 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 17(2B) was inserted by paragraph 36(6) of schedule 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40). 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).
- (2) S.I. 1989/1491. Schedule 2 was substituted by S.S.I. 2005/113. A new table of fees was substituted by S.S.I. 2022/30 in relation to fees for work done or outlays incurred on or after 1 April 2022.

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

(a) for paragraph 4A, substitute—

“Where in respect of a bill of advocacy in which a hearing is set down for half a day or longer the court orders counsel to make written submissions, counsel is to be paid for drafting those submissions a fee in the range specified in paragraph 3(b) of the applicable Chapter of Part 2 of the Table of Fees.”,

(b) in paragraph 6, omit—

- (i) “paragraph 1A(k) (written work) of Chapter 1 or 2 of Part 1,”,
- (ii) “, or paragraph 1A(k) (written work) of Chapter 1 or 2 of Part 3,”,

(c) in paragraph 8—

- (i) after “under”, insert “paragraph 1A(k) (written work) of Chapter 1 or 2 of Part 1,”,
- (ii) after “2(a),” insert “(d),”,
- (iii) after “(e),” insert “4(b),”,
- (iv) after “6(d),” insert “, (e),”,
- (v) for “Part II”, substitute “Part 2, or paragraph 1A(k) (written work) of Chapter 1 or 2 of Part 3,”.

(3) In Part 2 (fees of counsel in appeal proceedings) of the table of fees—

(a) in Chapter 1 (junior counsel)—

- (i) in paragraph 2 (appeal by way of Bill of Suspension, Bill of Advocacy or Stated Case), after sub-paragraph (c), insert—

	“(d) drafting written submissions where ordered by the court	£96.53– £302.07	£93.13– £227.12	£85.18– £170.35”,
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- (ii) for paragraph 4 (appeal hearing before a Full Bench) substitute—

“4. Appeal Hearing before a Full Bench (5 or more Judges)				
	(a) all work in connection with an appeal hearing before a Full Bench except under (b) below	£1,476.25	£1,135.58	£851.69
	(b) drafting written submissions where ordered by the court	£283.90– £476.96	£227.12– £397.46	£158.99– £340.68”,

- (iii) in paragraph 6 (appeals conduct other), after sub-paragraph (d), insert—

	“(e) drafting written submissions where ordered by the court	£283.90– £476.96	£227.12– £397.46	£158.99– £340.68”,
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(b) In Chapter 2 (senior counsel)—

- (i) in paragraph 2 (appeal by way of Bill of Suspension, Bill of Advocacy or Stated Case), after sub-paragraph (c), insert—

	“(d) drafting written submissions where ordered by the court	£140.82– £340.68”,
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- (ii) for paragraph 4 (appeal hearing before a Full Bench) substitute—

“4. Appeal Hearing before a Full Bench (5 or more Judges)		
(a)	all work in connection with an appeal hearing before a Full Bench except under (b) below	£1,703.37
(b)	drafting written submissions where ordered by the court	£283.90– £574.61”,

(iii) in paragraph 6 (appeals conduct other), after sub-paragraph (d), insert—

(e)	drafting written submissions where ordered by the court	£283.90– £574.61”.
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### Amendment of the Advice and Assistance (Scotland) Regulations 1996

4.—(1) The Advice and Assistance (Scotland) Regulations 1996(3) are amended as follows.

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

(a) after the definition of “employment tribunal”, insert—

““Grenfell Tower payment” means any payment made to a person by way of compensation, damages or legal expenses in connection with the Grenfell Tower fire of 14 June 2017, including under any settlement arrived at to prevent or bring legal proceedings to an end,

“human trafficking or exploitation victim payment” means any payment made by way of support or assistance provided under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015(4) or under regulations made under section 10 of that Act, or any payment made by way of support provided under a Modern Slavery Victim Care Contract(5),”

(b) after the definition of “income-related employment and support allowance”, insert—

““Infected Blood Compensation Scheme” means the scheme made by the Secretary of State or the Minister for the Cabinet Office in exercise of powers conferred by section 49 of the Victims and Prisoners Act 2024(6),”

(c) after the definition of “legal representative”, insert—

““miscarriage of justice payment” means any payment made by the Secretary of State, the Scottish Ministers or the Department of Justice (Northern Ireland) for the purpose of compensating a person for a miscarriage of justice,”

(3) In regulation 16(2) (payment of fees and outlays from property recovered or preserved)—

(a) in sub-paragraph (a), after head (xix)(7), insert—

“(xx) by way of any human trafficking or exploitation victim payment,

(xxi) by way of any miscarriage of justice payment,

(xxii) by way of any Grenfell Tower payment,

(xxiii) by way of any payment made under the Infected Blood Compensation Scheme.”

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(3) S.I. 1996/2447. Relevant amending instruments are S.S.I. 2000/399, S.S.I. 2003/163, S.S.I. 2003/421, S.S.I. 2023/11, S.S.I. 2023/178, and S.S.I. 2024/178 which comes into force on 3 October 2024.

(4) 2015 asp 12.

(5) “Modern Slavery Victim Care Contract” refers to the Home Office contract to provide care to adult victims of modern slavery in England and Wales in statutory guidance issued by the Secretary of State under section 49 of the Modern Slavery Act 2015 (c. 30) – <https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>.

(6) 2024 c. 21.

(7) Head (xix) was inserted by S.S.I. 2024/178 with effect from 3 October 2024.

- (b) in sub-paragraph (c), for “invalid care allowance” substitute “carer’s allowance”.
- (4) In schedule 2 after paragraph 5(bg) (assessment of disposable capital and income), insert—
  - “(bh) there shall be left out of account any human trafficking or exploitation victim payment,
  - (bi) there shall be left out of account any miscarriage of justice payment,
  - (bj) there shall be left out of account any Grenfell Tower payment,
  - (bk) there shall be left out of account any payment made under the Infected Blood Compensation Scheme.”.

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

- 5.—(1) The Civil Legal Aid (Scotland) Regulations 2002<sup>(8)</sup> are amended as follows.
- (2) In regulation 2(1) (interpretation)—
  - (a) after the definition of “Fund”, insert—
    - ““Grenfell Tower payment” means any payment made to a person by way of compensation, damages or legal expenses in connection with the Grenfell Tower fire of 14 June 2017, including under any settlement arrived at to prevent or bring legal proceedings to an end,
    - “human trafficking or exploitation victim payment” means any payment by way of support or assistance provided under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 or under regulations made under section 10 of that Act, or any payment made by way of support provided under a Modern Slavery Victim Care Contract,”
  - (b) after the definition of “income-related employment and support allowance”, insert—
    - ““Infected Blood Compensation Scheme” means the scheme made by the Secretary of State or the Minister for the Cabinet Office in exercise of powers conferred by section 49 of the Victims and Prisoners Act 2024,”
  - (c) after the definition of “maximum contribution”, insert—
    - ““miscarriage of justice payment” means any payment made by the Secretary of State, the Scottish Ministers or the Department of Justice (Northern Ireland) for the purpose of compensating a person for a miscarriage of justice,”
- (3) In regulation 33(a) (payments out of property recovered or preserved: exceptions)—
  - (a) after head (iii), insert—
    - “(iia) by way of carer’s allowance under section 70 of the 1992 Act,”
  - (b) after head (xxvii)<sup>(9)</sup>, insert—
    - “(xxviii) by way of any human trafficking or exploitation victim payment,
    - (xxix) by way of any miscarriage of justice payment,
    - (xxx) by way of any Grenfell Tower payment,
    - (xxxi) by way of any payment made under the Infected Blood Compensation Scheme.”.
- (4) In schedule 2, paragraph 7 (disregards in computing disposable income)—
  - (a) after sub-paragraph (a), insert—
    - “(ab) carer’s allowance paid under section 70 of the 1992 Act,”

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<sup>(8)</sup> S.S.I. 2002/494. Relevantly amended by S.S.I. 2024/178 which comes into force on 3 October 2024.

<sup>(9)</sup> Head (xxvii) was inserted by S.S.I. 2024/178 with effect from 3 October 2024.

- (b) after sub-paragraph (q)(10), insert—
  - “(r) any human trafficking or exploitation victim payment,
  - (s) any miscarriage of justice payment,
  - (t) any Grenfell Tower payment,
  - (u) any payment made under the Infected Blood Compensation Scheme.”.
- (5) In schedule 3, paragraph 8 (disregards in computing disposable capital)—
  - (a) in sub-paragraph (l)(11), after “any”, insert “carer’s allowance paid under section 70 of the 1992 Act or”,
  - (b) after sub-paragraph (m), insert—
    - “(n) any human trafficking or exploitation victim payment,
    - (o) any miscarriage of justice payment,
    - (p) any Grenfell Tower payment,
    - (q) any payment made under the Infected Blood Compensation Scheme.”.

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

6.—(1) The Children’s Legal Assistance (Scotland) Regulations 2013(12) are amended as follows.

- (2) In regulation 2(1) (interpretation)—
  - (a) after the definition of “children’s hearing”, insert—
    - ““Grenfell Tower payment” means any payment made to a person by way of compensation, damages or legal expenses in connection with the Grenfell Tower fire of 14 June 2017, including under any settlement arrived at to prevent or bring legal proceedings to an end,
    - “human trafficking or exploitation victim payment” means any payment by way of support or assistance provided under section 9 of the Human Trafficking and Exploitation (Scotland) Act 2015 or under regulations made under section 10 of that Act, or any payment made by way of support provided under a Modern Slavery Victim Care Contract,
    - “Infected Blood Compensation Scheme” means the scheme made by the Secretary of State or the Minister for the Cabinet Office in exercise of powers conferred by section 49 of the Victims and Prisoners Act 2024.”,
  - (b) after the definition of “interested person”, insert—
    - ““miscarriage of justice payment” means any payment made by the Secretary of State, the Scottish Ministers or the Department of Justice (Northern Ireland) for the purpose of compensating a person for a miscarriage of justice.”.
- (3) In schedule 1, paragraph 5 (disregards in assessing disposable income for the purposes of children’s legal aid)—
  - (a) in sub-paragraph (r)(13), after “any”, insert “carer’s allowance paid under section 70 of the 1992 Act or”,
  - (b) after sub-paragraph (s), insert—

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(10) Sub-paragraph (q) was inserted by [S.S.I. 2024/178](#) with effect from 3 October 2024.

(11) Sub-paragraphs (l) and (m) were inserted by [S.S.I. 2024/178](#) with effect from 3 October 2024.

(12) [S.S.I. 2013/200](#). Relevantly amended by [S.S.I. 2021/368](#) and [S.S.I. 2024/178](#) which comes into force on 3 October 2024.

(13) Sub-paragraphs (r) and (s) were inserted by [S.S.I. 2024/178](#) with effect from 3 October 2024.

- “(t) any human trafficking or exploitation victim payment,
- (u) any miscarriage of justice payment,
- (v) any Grenfell Tower payment,
- (w) any payment made under the Infected Blood Compensation Scheme.”.

(4) In schedule 2, paragraph 8 (disregards in assessing disposable capital for the purposes of children’s legal aid)—

- (a) in sub-paragraph (l)(14), after “any” insert “carer’s allowance paid under section 70 of the 1992 Act or”,
- (b) after sub-paragraph (m), insert—
  - “(n) any human trafficking or exploitation victim payment,
  - (o) any miscarriage of justice payment,
  - (p) any Grenfell Tower payment,
  - (q) any payment made under the Infected Blood Compensation Scheme.”.

St Andrew’s House,  
Edinburgh  
27th August 2024

*SIOBHIAN BROWN*  
Authorised to sign by the Scottish Ministers

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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.

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

Regulation 3 amends the table of fees in Part 2 of schedule 2 of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 to make provision for counsel fees for making written submissions where so ordered by the court. Regulation 3 also amends the notes on the operation of that schedule - paragraph 4A is amended to maintain existing fee provision for written submissions where required in hearings related to bills of advocacy, and notes setting out the factors to be shown by counsel when seeking higher fees for written work—

- are moved from paragraph 6 to paragraph 8 for the purposes of consolidation, and
- are added to paragraph 8 regarding the new provisions in the fee tables.

Regulations 4 to 6 amend existing legal aid regulations so any payments made to a person by way of (a) a human trafficking or exploitation victim payment, (b) a miscarriage of justice payment, (c) a Grenfell Tower payment, and (d) an Infected Blood Compensation Scheme payment (“the payments”) are to be disregarded by the Scottish Legal Aid Board in the assessment and computation of that person’s disposable capital and income.

Regulation 4 amends the Advice and Assistance (Scotland) Regulations 1996 to disregard the payments for the purposes of advice and assistance. It also excludes the payments, and also any carer’s allowance payments, from bearing fees and outlays when forming part of any recovered or preserved property in proceedings.

Regulation 5 amends the Civil Legal Aid (Scotland) Regulations 2002 to make equivalent provision for the purposes of civil legal aid.

Regulation 6 amends the Children’s Legal Assistance (Scotland) Regulations 2013 to disregard the payments for the purposes of children’s legal aid.

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.