
STATUTORY INSTRUMENTS

1989 No. 1490

The Civil Legal Aid (Scotland) (Fees) Regulations 1989

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) (Fees) Regulations 1989 and shall come into force on 31st August 1989.

Interpretation

2.—(1) In these Regulations, unless the context requires—

“auditor” means—

- (a) in relation to proceedings in the Court of Session, Lands Valuation Appeal Court, House of Lords, Restrictive Practices Court or Employment Appeal Tribunal, the Auditor of the Court of Session;
- (b) in relation to proceedings in a sheriff court the auditor of that sheriff court;
- (c) in relation to proceedings in the Scottish Land Court, the auditor of the Scottish Land Court; and
- (d) in relation to proceedings in the Lands Tribunal for Scotland either—
 - (i) the auditor of the Court of Session, or
 - (ii) the auditor of a sheriff court agreed to by the parties or, failing agreement, the Auditor of a sheriff court specified by that Tribunal;

“outlays” does not include fees of counsel.

(2) In these Regulations, unless the context otherwise requires, any reference to proceedings in a court or tribunal includes any preparatory work done in connection with such proceedings, whether or not the proceedings were actually begun.

(3) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to one of these Regulations and any reference to a numbered Schedule is a reference to a Schedule to these Regulations.

Fees and outlays regulated by these Regulations

3.—(1) These Regulations shall regulate the fees and outlays allowable to solicitors, and the fees allowable to counsel, from the Fund in respect of legal aid under the Legal Aid (Scotland) Act 1986, other than criminal legal aid, upon any taxation in accordance with regulation 12.

(2) These Regulations shall not apply to the fees and outlays recoverable by virtue of an award of expenses in favour of a person who has received legal aid or of an agreement as to expenses in favour of such a person, and where accounts of such fees and outlays are taxed they shall be taxed as if the work done for that person were not legal aid.

Fees and outlays allowable to solicitors

4. Subject to the provisions of regulations 5 and 7 regarding the calculation of fees, regulations 6 and 7 regarding the calculation of outlays, and the provisions of regulation 8 regarding the

submission of accounts, a solicitor shall be allowed such fees and outlays as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying.

5.—(1) A solicitor's fees in relation to proceedings in the Court of Session shall be calculated in accordance with either Schedule 1 or 3 but it shall not be competent to charge fees partly on the basis of Schedule 1 and partly on the basis of Schedule 3.

- (a) (2) (a) Subject to sub-paragraphs (b) and (c) hereof a solicitor's fees in relation to proceedings in the sheriff court shall be calculated in accordance with either Schedule 2 or 3 but it shall not be competent to charge fees partly on the basis of Schedule 2 and partly on the basis of Schedule 3;
- (b) fees for work to which Chapters III or IV of Schedule 2 applies shall be chargeable only on the basis prescribed in those chapters; and
- (c) fees for sequestrations in bankruptcy (other than summary sequestrations) or proceedings under the Social Work (Scotland) Act 1968(1) shall be chargeable only on the basis of Schedule 3 and fees for summary sequestrations shall be chargeable only on the basis of 80 per cent of the fees in that Schedule.

(3) A solicitor's fees in relation to proceedings in the House of Lords, Restrictive Practices Court, Employment Appeal Tribunal, Lands Valuation Appeal Court, Scottish Land Court or Lands Tribunal for Scotland shall be calculated in accordance with Schedule 3.

(4) In all Court of Session proceedings a fee, additional to those set out in Schedules 1 or 3, may be allowed at the discretion of the Court to cover the responsibility undertaken by a solicitor in the conduct of the proceedings. In the sheriff court, in proceedings of importance or requiring special preparation, the sheriff may allow a percentage increase in a cause on the Ordinary Roll, not exceeding 50 per cent, and in a cause on the Summary Cause Roll, not exceeding 100 per cent, of the fees authorised by Schedules 2 or 3 to cover the responsibility undertaken by the solicitor in the conduct of the proceedings. The Court of Session in deciding whether to allow an additional fee and the auditor in determining that fee or the sheriff in fixing the amount of a percentage fee increase shall take into account the following factors—

- (a) the complexity of the proceedings and the number, difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of and the time and labour expended by the solicitor;
- (c) the number and importance of the documents prepared or perused;
- (d) the place and circumstances of the proceedings or in which the solicitor's work of preparation for and conduct of it has been carried out;
- (e) the importance of the proceedings or the subject matter thereof to the client;
- (f) the amount or value of money or property involved; and
- (g) any other fees and allowances payable to the solicitor in respect of other items in the same proceedings and otherwise charged for in the account.

(5) The auditor of the Court of Session shall have power to increase or decrease any inclusive fee set out in Schedule 1 in any appropriate circumstances.

(6) The auditor shall have the power to apportion any fees set out in Schedules 1 or 2 between solicitors in appropriate circumstances or to modify any such fees in the case of a solicitor acting for more than one party in the same proceedings or in the case of the same solicitor acting in more than one proceeding arising out of the same circumstances or in the event of the proceedings being settled or disposed of at a stage when the work covered by any inclusive fee has not been completed.

(7) Where work done by a solicitor constitutes a supply of services in respect of which value-added tax is chargeable, there may be added to the amount of fees calculated in accordance with the foregoing paragraphs of this regulation an amount equal to the amount of value-added tax chargeable.

6. A solicitor's outlays shall include a charge in respect of posts and incidents of 12 per cent of the amount of the fees allowable to the solicitor in Schedules 1 and 2 (excluding any amount added in accordance with regulations 5(4) and (7)). In Schedule 3, without prejudice to any other claims for outlays, a solicitor shall not be allowed outlays representing posts and incidents.

7. Where any work is carried out in the preparation for or conduct of the proceedings and that work could more economically have been done by instructing a local solicitor, only such fees and outlays shall be allowed as would have been allowable if a local solicitor had been instructed, including reasonable fees for instructing and corresponding with him, unless it was reasonable in the interests of the client that the solicitor in charge of the proceedings, or a solicitor or clerk authorised by him, should attend personally.

Accounts in respect of solicitors' fees and outlays

8.—(1) Subject to paragraph (2) below, accounts prepared in respect of fees and outlays allowable to solicitors shall be submitted to the Board not later than 6 months after the date of completion of the proceedings in respect of which that legal aid was granted.

(2) The Board may accept accounts submitted in respect of fees and outlays later than the 6 months referred to in paragraph (1) if they consider that there is a special reason for late submission.

Fees allowable to counsel

9. Subject to the provisions of regulation 10 regarding calculation of fees, counsel may be allowed such fees as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying.

10.—(1) Counsel's fees in relation to proceedings in the Court of Session shall be calculated in accordance with Schedule 4.

(2) Counsel's fees for any work in relation to proceedings in the sheriff court, House of Lords, Restrictive Practices Court, Employment Appeal Tribunal, Lands Valuation Appeal Court, Scottish Land Court or Lands Tribunal for Scotland shall be 90 per cent of the amount of fees which would be allowed for that work on a taxation of expenses between solicitor and client, third party paying, if the work done were not legal aid.

Payments to account

11.—(1) A solicitor acting for, or counsel instructed on behalf of, a person receiving civil legal aid may prior to the completion of the proceedings for which the legal aid was granted submit a claim to the Board, in such form and complying with such terms and containing such information as the Board may require for assessment purposes, for payment of sums to account of his fees necessarily and reasonably incurred in connection with these proceedings.

(2) No claim may be made under this regulation, except in relation to civil legal aid granted on or after 1st April 1987, and that only after a period of 2 years has elapsed since the date on which the Board gave notice in writing of its decision to grant legal aid.

(3) Further claims may be made under this regulation at intervals of not less than 12 months after the date on which the first or, in the event of subsequent claims being made, the immediately preceding claim was made.

(4) The amount of any payment in respect of a claim under this regulation shall be 75 per cent of the fees that will become eligible for payment and earned up to the date of submission of the claim

or, in the case of a further claim, earned in the period from the date of submission of the immediately preceding claim to the date of submission of such further claim.

(5) The making of a claim under this regulation shall not be regarded as an account of expenses nor shall the claim affect in any way the provisions of regulation 8 above with regard to the submission and acceptance of accounts prepared in respect of fees and outlays allowable to solicitors.

(6) Where payment has been made in accordance with the provisions of this regulation but the payment made exceeds in the case of any solicitor acting for the assisted person the total fees and outlays allowable to that solicitor in respect of the legal aid or in the case of any counsel instructed on behalf of the assisted person the total fees allowable to that counsel in respect of the legal aid, the excess shall be repaid to the Fund by such solicitor or counsel as the case may be:

Provided that where by reason of a failure to comply with the requirements of regulation 8 above with regard to submission of an account of his fees and outlays the amount of the fees and outlays allowable to a solicitor to whom payment has been made under this regulation cannot be ascertained, the Board may require such solicitor to repay to the Fund the whole amount paid under this regulation or such part thereof which it is satisfied may have been overpaid to the solicitor.

Taxation of fees and outlays

12.—(1) If any question or dispute arises between the Board and a solicitor or counsel as to the amount of fees or outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, from the Fund under these Regulations, other than regulation 11 above, the matter shall be referred for taxation by the auditor.

(2) A reference to the auditor under paragraph (1) above may be at the instance of the solicitor concerned or, where the question or dispute affects the fees allowable to counsel, of the counsel concerned, or of the Board, and the auditor shall give reasonable notice of the diet of taxation to the solicitor or counsel as appropriate and to the Board.

(3) The Board and any other party to a reference to the auditor under paragraph (1) above shall have the right to state written objections to the court in relation to the auditor's report within 14 days of the issue of that report, and may be heard thereon; and where the court is the Court of Session rule 349 of the Act of Sederunt (Rules of Court, consolidation and amendment) 1965(2) shall apply to the determination of any such objections.

(4) For the purposes of this regulation the expression “the court” means—

- (a) in relation to any report of the Auditor of the Court of Session, the Court of Session;
- (b) in relation to any report of the auditor of a sheriff court, the sheriff; and
- (c) in relation to any report of the Auditor of the Scottish Land Court, the Chairman of the Scottish Land Court.

Revocation

13. Without prejudice to their continuation in effect for the purposes of legal aid for work done prior to 31st August 1989 the following Regulations are hereby revoked:—

The Civil Legal Aid (Scotland) (Fees) Regulations 1987(3);

The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 1987(4);

The Civil Legal Aid (Scotland) (Fees) Amendment (No.2) Regulations 1987(5);

(2) [S.I. 1965/321](#); the relevant amending instrument is [S.I. 1983/826](#)

(3) [S.I. 1987/366](#)

(4) [S.I. 1987/823](#)

(5) [S.I. 1987/895](#)

The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 1988**(6)**;
The Civil Legal Aid (Scotland) (Fees) Amendment (No.2) Regulations 1988**(7)**;
The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 1989**(8)**;

St Andrew's House,
Edinburgh
14th August 1989

Sanderson of Bowden
Minister of State, Scottish Office

(6) [S.I. 1988/420](#)
(7) [S.I. 1988/1107](#)
(8) [S.I. 1989/391](#)