
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make new provision for payment of criminal legal aid to solicitors from the Scottish Legal Aid Fund in respect of summary proceedings. Provision is made for fixed payments to be made in respect of the professional services provided by a solicitor including certain prescribed outlays. Where these regulations apply the fixed payments replace the fees and outlays formerly payable to solicitors in terms of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989.

These Regulations apply to summary proceedings with the following exceptions: proceedings reduced from solemn to summary; proceedings where legal aid has been made available as a matter of special urgency by virtue of regulation 15 of the Criminal Legal Aid (Scotland) Regulations 1996; references in summary proceedings to the European Court of Justice; and the following proceedings in relation to which legal aid is not otherwise available:—

representation at an identification parade held by or on behalf of the prosecutor in connection with or in contemplation of criminal proceedings;

proceedings where the assisted person is in custody or liberated by police on undertaking to appear;

proceedings in relation to a plea of insanity in bar of trial; and
an examination of the facts (regulation 2).

The fixed payments to be made are provided for in Schedule 1. Those payments are dependent on the nature of the proceedings, the court in which the proceedings are brought and, the age and custodial status of the assisted person for whom criminal legal aid has been made available (Schedule 1 and regulation 4(6)).

A higher fixed payment is to be made where proceedings are brought in certain distant and rural sheriff courts (Schedule 1, column 3 and Schedule 2).

Only one payment is payable in relation to a single summary complaint or complaints which arise out of the same incident (regulation 4(3)).

A percentage reduction is applied to the fixed payments in respect of a second and subsequent assisted person where a solicitor represents more than one assisted person in relation to a single complaint or complaints arising from the same incident (regulation 4(5)).

A larger fixed payment is to be made where a solicitor represents an assisted person who is placed on remand at or subsequent to the first calling of the case and is under 21 at any time during that remand (regulation 4(6)).

Fixed payments are to be equally apportioned between solicitors where there has been a change of solicitor (regulation 4(7)).

Value added tax is to be chargeable where the work done by the solicitor constitutes a supply of services (regulation 4(8)).

Accounts including all fees and outlays claimed in relation to the provision of criminal legal aid in those proceedings are to be submitted to the Board within 6 months (regulation 5).