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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 240**

**LEGAL AID AND ADVICE**

**The Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008**

<i>Made</i>	- - - -	<i>6th June 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>6th June 2008</i>
<i>Coming into force</i>	- -	<i>30th June 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 12(3), 33, 36(1), (2)(a), (e) and (g) and 41A of the Legal Aid (Scotland) Act 1986<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008 and come into force on 30th June 2008.

(2) Regulations 2, 3, 6, 7 and 8(1) apply only in relation to a case where the criminal legal assistance concerned is granted or made available on or after 30th June 2008.

(3) Regulation 4 applies only in relation to a case where the criminal legal assistance concerned is made available on or after 30th June 2008.

*Fees etc.*

**Criminal legal aid and assistance by way of representation**

2.—(1) The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999<sup>(2)</sup> are amended as follows.

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

- (a) in the definition of “assisted person”, after “aid” insert “or (as the case may be) assistance by way of representation”;
- (b) in the definition of “excluded proceedings”, after paragraph (k) insert—

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(1) 1986 c. 47 (as relevantly amended). Functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).  
(2) S.I.1999/491.

- “(l) proceedings in an appeal to the High Court under section 174(1) (appeals relating to preliminary pleas) of the 1995 Act(3).”;
- (c) before the definition of “relevant criminal legal aid” insert–
- ““relevant ABWOR” means assistance by way of representation provided by a solicitor in relation to summary criminal proceedings other than excluded proceedings;”.
- (3) In regulation 3 (application)–
- (a) in paragraph (1), after “aid” insert “and relevant ABWOR”;
- (b) after paragraph (2) add–
- “(3) These Regulations apply also in respect of relevant ABWOR.”.
- (4) In regulation 4 (fixed payments allowable to solicitors)–
- (a) in paragraph (1) after “Schedule 1” insert “or 1A”;
- (b) after paragraph (1) insert–
- “(1A) In the application of paragraph (1) above in relation to the assisted person’s case, fixed payments are payable under one of those Schedules only (as alternatives to each other) where–
- (a) Schedule 1 is for the purpose of–
- (i) cases in the JP court (other than before a stipendiary magistrate);
- (ii) cases in the JP court (before a stipendiary magistrate) or the sheriff court which proceed beyond the first 30 minutes of a trial;
- (b) Schedule 1A is for the purpose of cases in the JP court (before a stipendiary magistrate) or the sheriff court which do not so proceed.
- (1B) Those Schedules are to be read and applied accordingly.
- (1C) There is to be made (in accordance with the other provisions of this regulation) to a solicitor who provides relevant ABWOR in summary proceedings, in respect of the professional services provided by the solicitor and the outlays mentioned in paragraph (2) below, the fixed payments specified in Schedule 1B.
- (1D) Schedule 1B is for the purpose of cases in the JP court (before a stipendiary magistrate or otherwise) or the sheriff court.”;
- (c) in paragraph (5), omit “specified in Schedule 1”;
- (d) in paragraph (7)–
- (i) in sub paragraph (a), after “Schedule 1” insert “or (as the case may be) under paragraph 1 of Schedule 1A”;
- (ii) at the beginning of sub-paragraph (b) insert “where Schedule 1 applies,”;
- (iii) after sub paragraph (b) add–
- “; and
- (c) where Schedule 1A applies, the amounts payable under paragraph 1 of Schedule 1A so far as applying by reference to paragraphs 10 and 10AA of Part 1 of Schedule 1, or under paragraph 2 of Schedule 1A, are payable to the solicitor who carries out the work concerned (despite, in the case of paragraph 1 of Schedule 1A, the reference in sub paragraph (a) above to that paragraph).”;

- (e) after paragraph (7) insert—
  - “(7A) Paragraph (7) above is subject to paragraph (1A) above (and, accordingly, does not affect the restriction imposed by it).
  - (7B) Where, in relation to relevant ABWOR, there is a change of solicitor by virtue of regulation 14A(2) and (3) of the Advice and Assistance (Scotland) Regulations 1996(4), there is to be paid—
    - (a) to each of the solicitors who act for the assisted person in the relevant proceedings, an equal part of the total amount payable under paragraph 1 or 2 of Part 1 of Schedule 1B; and
    - (b) to the solicitor who carries out work described in the other paragraphs of that Part of that Schedule, the amount payable under those paragraphs in respect of the work.”;
  - (f) in paragraph (9), after “person” in the first place where it occurs there is inserted “(having relevant criminal legal aid)”;
  - (g) after paragraph (9) insert—
    - “(10) Where a solicitor represents an assisted person (having relevant ABWOR) in a court which has been so designated—
      - (a) Part 1 of Schedule 1B does not apply; and
      - (b) the fixed payment specified in Part 2 of that Schedule is payable instead.”.
- (5) In regulation 5 (submission of accounts)—
  - (a) in paragraph (1)—
    - (i) for “6 months” substitute “4 months”;
    - (ii) after “aid” insert “or assistance”;
    - (iii) after “1989” insert “or the Advice and Assistance (Scotland) Regulations 1996”;
  - (b) in paragraph (2), for “6 months” substitute “4 months”.
- (6) In paragraph 1 of Part 1 of Schedule 1—
  - (a) in the first column,
    - (i) omit “and” at the end of sub paragraph (iii);
    - (ii) after sub paragraph (iii) insert—
      - “(iia) a first or second diet of deferred sentence; and”;
  - (b) in the second column (which relates to the JP court)—
    - (i) for the entry “£300” substitute “£315”;
    - (ii) for “£275” substitute “£290”;
  - (c) in the third column (which relates to the sheriff court or stipendiary magistrate)—
    - (i) for the entry “£500” substitute “£515”;
    - (ii) for “£475” substitute “£490”;
  - (d) in the fourth column (which relates to certain specified sheriff courts)—
    - (i) for the entry “£550” substitute “£565”;
    - (ii) for “£525” substitute “£540”.
- (7) For paragraph 2 of that Part of that Schedule substitute—

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<p>“2. All work mentioned in paragraph 1 above that is done in connection with a complaint under section 27(1)(b) of the 1995 Act.</p>	<p>£157.50</p>	<p>£257.50</p>	<p>£257.50”.</p>
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(8) After paragraph 10 of that Part of that Schedule insert—

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<p>“10AA. Representation at a first or second diet of deferred sentence (one only) at which the court considers a report required under section 203 of the 1995 Act and where the case is disposed of (as an additional payment).</p>	<p>£25</p>	<p>£25”.</p>
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(9) Omit paragraph 10A of that Part of that Schedule.

(10) The Schedule to these Regulations inserts—

- (a) a Schedule 1A containing a table of payments for relevant criminal legal aid (as defined);
- (b) a Schedule 1B containing the table of payments for relevant ABWOR (as defined).

### Advice and assistance

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

(2) After regulation 8B insert—

#### “Information to be recorded in criminal matters

8C. Where advice and assistance is given in relation to a criminal matter, the solicitor must record—

- (a) whether the matter is one as regards which—
  - (i) a complaint has been served;
  - (ii) a fixed penalty, compensation or work offer has been made under section 302, 302A or 303ZA of the Criminal Procedure (Scotland) Act 1995;
  - (iii) liability for another non-court penalty has arisen;
- (b) if not such a matter, a note of the details of the event to which the advice and assistance relates;
- (c) a summary of the nature and content of the advice and assistance;

- (d) any relevant case or other reference number.”.
- (3) In regulation 13 (giving of advice and assistance on the same matter)–
  - (a) in paragraph (3), after “allowable” insert “in relation to a civil matter”;
  - (b) after paragraph (5) add–
    - “(6) A client is not to be given advice and assistance by the same solicitor in relation to the same criminal matter (whether or not at the relevant time the subject of proceedings) more than once without the prior approval of the Board.
    - (7) The Board may (on an application for the purpose of paragraph (6) above)–
      - (a) refuse to give its approval; or
      - (b) give its approval unconditionally or on such conditions as it may impose.”.
- (4) After regulation 14 insert–

**“Change of solicitor etc.**

- 14A.**—(1) Where the solicitor who is providing assistance by way of representation in relation to a summary criminal matter has been required by the client to cease to act (other than where paragraph (2) below applies), the solicitor is to–
  - (a) notify the Board of that fact; and
  - (b) provide it with a statement of the circumstances so far as known to the solicitor.
- (2) Where a client who is being provided assistance by way of representation in relation to a summary criminal matter wishes to have it provided by a different solicitor, the client is to–
  - (a) apply to the Board for authority to have that solicitor provide the assistance; and
  - (b) inform it of any reason for the application.
- (3) The Board may grant an application under paragraph (2) above if it is satisfied that there is a good reason for the application.”.
- (5) In regulation 15A(1) (supply of information by clients), after “assistance” insert “in relation to a civil matter”.
- (6) In regulation 17 (fees and outlays of solicitor), after paragraph (2) add–
  - “(3) In the application of paragraph (1) above so far as concerning assistance by way of representation in relation to a summary criminal matter, there is to be taken into account time necessarily spent in travelling to and from the relevant court (other than one in the town or other place where the solicitor has a place of business) or any other place visited for the purpose of preparing or conducting the defence.
  - (4) Paragraph (3) above does not apply if it would have been more economical to use a local solicitor (where that would have been reasonable in the interests of the client).
  - (5) This regulation (so far as concerning criminal matters) is subject to the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999.”.
- (7) In Schedule 2 (assessment of disposable capital and disposable income)–
  - (a) in paragraph 2, after “Schedule” in the first place where it occurs there is inserted “in relation to a civil matter”;
  - (b) after paragraph 2 insert–
    - “**2A.**—(1) Any question arising under this Schedule in relation to a criminal matter is to be decided by the solicitor in accordance with paragraphs (2) and (3) below.

- (2) The solicitor must, for the purpose of ascertaining the capital and income of the person concerned—
- (a) so far as necessary and practicable, obtain from that person financial or other documentation; and
  - (b) take such other reasonable steps as are necessary.
- (3) The solicitor must have regard to any guidance issued by the Board regarding the application of this Schedule.”.
- (8) In Part 1 of Schedule 3 (table of fees allowable to solicitors)—
- (a) omit paragraph 1(a) and the corresponding entries “£70.00” and “£44.40”;
  - (b) in paragraph 1(b), for “(a) above” substitute “Schedule 1B to the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999”.
- (9) In Part 2 of Schedule 3—
- (a) in paragraph 1, for “Subject to paragraph 2 of this Part, the” substitute “The”;
  - (b) in entries A to E of paragraph 1, in the column which specifies sums for criminal matters—
    - (i) for “£10.55” in the first place where it occurs substitute “£11.60”;
    - (ii) for “£5.25” substitute “£5.77”;
    - (iii) for “£2.40” substitute “£2.64”;
    - (iv) for “£6.00” substitute “£6.60”;
    - (v) for “£21.05” in the first place where it occurs substitute “£23.15”;
    - (vi) for “£21.05” in the second place where it occurs substitute “£23.15”;
    - (vii) for “£10.55” in the second place where it occurs substitute “£11.60”;
    - (viii) in entry E, for “8 pence” substitute “9 pence” and for “copies” substitute “copied”;
  - (c) omit paragraph 2.

### **Duty solicitors**

- 4.—(1) The Criminal Legal Aid (Scotland) (Fees) Regulations 1989<sup>(5)</sup> are amended as follows.
- (2) In paragraph (1) of regulation 6 (duty solicitors' fees)—
- (a) in sub paragraph (a)—
    - (i) for “£47.95 for the first case” substitute “£63 for the first case in which the accused person pleads not guilty or which is adjourned under section 145 of the 1995 Act”;
    - (ii) for “£6.48 for each additional case” substitute “£9 for each additional such case”;
    - (iii) for “£103.95” substitute “£140”;
  - (b) after sub paragraph (a) insert—
 

“(aa) for attendance at that session, a fee of £70 for each case in which the accused pleads guilty;”;
  - (c) in sub-paragraph (b)—
    - (i) for “£47.95 for the first case” substitute “£63 for the first case in which the accused person pleads not guilty or which is adjourned under section 145 of the 1995 Act”;
    - (ii) for “£6.48 for each additional case” substitute “£9 for each additional such case”;
    - (iii) for “£69.71” substitute “£93”;

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(5) S.I. 1989/1491.

- (d) in sub paragraph (b), for “session:” substitute “session;” and after that sub paragraph insert—
  - “(c) for attendance at any such other session, a fee of £70 for each case in which the accused pleads guilty:”.
- (3) In paragraph (2) of that regulation—
  - (a) after “guilty” insert “or in circumstances where the accused has not been called on to plead”;
  - (b) for “£121.91” substitute “£150 (of which the relevant fee of £70 under paragraph (1) is to form part)”.
- (4) In paragraph (3) of that regulation, for “£121.91” substitute “£150”.
- (5) After paragraph (3) of that regulation insert—
  - “(3A) In an exceptional case, the Board may pay to the duty solicitor such fees other than those specified in paragraph (2) or (3) (and to a higher limit) as it considers appropriate in the circumstances of the case.
  - (3B) Where fees are payable under this regulation, the duty solicitor is not entitled to separate payment in respect of any expenses incurred in travelling to and from the court (despite any entitlement to such payment that would arise but for this paragraph).
  - (3C) But paragraph (3B) does not prevent the Board paying such fees as are reasonably required for the purpose of securing the availability of a duty solicitor at a remote court.”.

#### *Further provision*

#### **Supply of information by assisted persons etc.**

5.—(1) A person who is receiving, or has received, criminal legal assistance must supply the Board with such information (including documents) as the Board may require from the person for the purposes of performing its functions under the Legal Aid (Scotland) Act 1986.

(2) The Board may recover from the person any amounts that have been paid out of the Fund in respect of the fees and outlays of the person’s solicitor in the case (and, if counsel is acting, of counsel) if the person has—

- (a) wilfully failed to comply with a requirement made under paragraph (1) above; or
  - (b) knowingly made a false statement or representation, or wilfully failed to disclose a material fact, in relation to such a requirement.
- (3) In this regulation, reference to counsel includes reference to a solicitor advocate.

#### **Withholding payment in certain summary criminal matters**

6.—(1) Paragraphs (2) and (3) apply where, under the Legal Aid (Scotland) Act 1986—

- (a) advice and assistance has been provided in relation to a criminal matter or assistance by way of representation has been provided in relation to a summary criminal matter; and
- (b) the Board finds that the provision—
  - (i) was not (wholly or partly) in accordance with the relevant rules applying by virtue of that Act; or
  - (ii) was otherwise unjustified in the circumstances of the case (including by reason of inadequate assessment or verification of any relevant factor).

(2) In considering whether or not the provision was in accordance with those rules, the Board may have regard to any relevant guidance it has issued in relation to their application.

- (3) The Board may—
- (a) withhold (wholly) payment from the Fund in respect of the provision; or
  - (b) if such payment has been made, fully recover it.

### **Single payment in summary criminal cases**

7.—(1) Paragraphs (3) and (4) apply where, under the Legal Aid (Scotland) Act 1986, more than one relevant type of criminal legal assistance is made to the same person in respect of the same matter.

- (2) Here, the relevant types of criminal legal assistance are (in order from first to third)—
- (a) advice and assistance (whether concerning a fixed penalty, compensation or work offer under section 302, 302A or 303ZA of the Criminal Procedure (Scotland) Act 1995 or any complaint or otherwise);
  - (b) assistance by way of representation in relation to summary criminal proceedings;
  - (c) criminal legal aid in relation to summary proceedings.

(3) Where the first and second types of assistance are provided (but not the third type), any entitlement to payment in respect of fees and outlays attributable to the provision (or payment of any fixed fees) is restricted to payment in respect of the second type.

(4) Where the third type of assistance and either or both of the first and second types are provided, any entitlement to payment in respect of fees and outlays attributable to the provision (or payment of any fixed fees) is restricted to payment in respect of the third type.

(5) However, paragraphs (3) and (4) do not affect any entitlement to separate payment in respect of—

- (a) attendance at a police station in relation to the provision of advice or assistance to, or representation of, the assisted person which (along with reasonable (and proportionate as compared to the amount of time involved in the attendance) time for travel to and from the police station) takes more than 2 hours;
- (b) an appeal under section 174(1) of the Criminal Procedure (Scotland) Act 1995.

(6) Accordingly—

- (a) any requirement of the Board to make payment to a solicitor is (by reference to this regulation) qualified;
- (b) if the total of any payments made from the Fund exceeds that which is allowed by virtue of this regulation, the Board may recover the excess.

(7) The Board may disregard any claim by a solicitor for payment in respect of the first type of assistance until such time as it believes that provision of the second or third type will not be (or is unlikely to be) required in respect of the same matter.

### *Miscellaneous*

#### **Miscellaneous**

8.—(1) The Advice and Assistance (Scotland) Amendment (No. 2) Regulations 2006<sup>(6)</sup> are revoked.

- (2) Any reference in the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999—
- (a) to the JP court means the justice of the peace court;
  - (b) to that court includes any remaining district court.

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(6) [S.S.I. 2006/233](#).



St Andrew's House,  
Edinburgh  
6th June 2008

*KENNY MACASKILL*  
A member of the Scottish Executive

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SCHEDULE

Regulation 2(10)

After Schedule 1 to the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 insert—

“SCHEDULE 1A

	<i>Where professional services are provided in relation to proceedings in the Sheriff Court or the JP court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court and those proceedings are brought in a Court specified in Schedule 2</i>
<b>1.</b> All work up to and including—	£515	£515
<ul style="list-style-type: none"> <li>(a) any diet at which a plea of guilty is made and accepted or plea in mitigation is made;</li> <li>(b) the first 30 minutes of conducting any trial;</li> <li>(c) a first or second diet of deferred sentence; and</li> <li>(d) advising, giving an opinion and taking final instructions on the prospects of an appeal against conviction, sentence, other disposal or acquittal,</li> </ul>	(where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 of Part 1 of Schedule 1 above, £490)	(where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 of Part 1 of Schedule 1 above, £490)
together with any subsequent or additional work other than that of the kind specified in paragraphs 10 to 12 of Part 1 of Schedule 1 above.		
<b>2.</b> All work mentioned in paragraph 1 above that is done in connection with a complaint under section 27(1)(b) of the 1995 Act.	£257.50	£257.50

SCHEDULE 1B

PART 1

	<i>Where professional services are provided in relation to proceedings in the JP court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court or the JP court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>
<p><b>1.</b> All work up to and including—</p> <p>(a) any diet at which a plea of guilty is made and accepted or plea in mitigation is made;</p> <p>(b) the first 30 minutes of conducting a proof in mitigation, or a proof of a victim statement, other than in the circumstances where paragraph 3 below applies;</p> <p>(c) a first or second diet of deferred sentence; and</p> <p>(d) advising, giving an opinion and taking final instructions on the prospects of an appeal against conviction, sentence, other disposal or acquittal,</p> <p>together with any subsequent or additional work other than that specified in paragraphs 8 and 9 below.</p>		£515
<p><b>2.</b> All work prior to, and attendance at—</p> <p>(a) any diet at which a plea to the competency or relevancy of</p>		

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	<i>Where professional services are provided in relation to proceedings in the JP court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court or the JP court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>
the complaint or proceedings, or a plea in bar of trial, is tendered;		
(b) any diet at which a question within the meaning of Rule 31.1 of the Act of Adjournal (Criminal Procedure Rules) 1996(7) is raised;		
(c) any diet from or to which the case has been adjourned under section 145 of the 1995 Act;		
(d) any diet at which there is tendered a plea of guilty or a plea in mitigation is made;		
(e) any diet at which the court is considering the accused's plea of guilty to the charges and where there has been no change of plea; and		
(f) any diet at which the court is considering the accused's change to plea of guilty to the charges, and where no application for criminal legal aid has been made,		
together with—		

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(7) S.I. 1996/513.

	<i>Where professional services are provided in relation to proceedings in the JP court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court or the JP court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>
(i) the first 30 minutes of conducting a proof in mitigation;		
(ii) a first or second diet of deferred sentence;		
(iii) any subsequent or additional work other than that specified in paragraphs 4 and 8 to 13 below.		
<b>3.</b> All work mentioned in paragraph 1 or 2 above that is done in connection with a complaint under section 27(1)(b) of the 1995 Act.	£75	£257.50
<b>4.</b> Conducting a proof in mitigation for the first day (after the first 30 minutes).	£50	£100
<b>5.</b> Representation in court at a continued diet following a victim statement having been laid before the court where the court determines sentence or fixes a proof of a victim statement, adjourns such a proof without hearing evidence.		£50
<b>6.</b> Conducting a proof of a victim statement where there has been no proof in mitigation for the first day (after the first 30 minutes), and thereafter for subsequent days (per day).		£200
<b>7.</b> Conducting a proof of a victim statement at a continued diet following a concluded trial or proof in mitigation (per day).		£200
<b>8.</b> Representation in court at a diet of deferred sentence or, per appearance, in a court which has been designated as a youth court by the Sheriff Principal,	£25	£50

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	<i>Where professional services are provided in relation to proceedings in the JP court (other than where proceedings are set down to proceed before a Stipendiary Magistrate)</i>	<i>Where professional services are provided in relation to proceedings in the Sheriff Court or the JP court (where proceedings are set down to proceed before a Stipendiary Magistrate)</i>
at a hearing in respect of a community supervision order, or per appearance at a hearing in a court which has been designated as a domestic abuse court by the Sheriff Principal.		
<b>9.</b> Representation at a first or second diet of deferred sentence (one only) at which the court considers a report required under section 203 of the 1995 Act and where the case is disposed of (as an additional payment).	£25	£25
<b>10.</b> All work done in connection with a bail appeal under section 32 of the 1995 Act, or on appeal under section 201(4) of the 1995 Act.	£50	£50
<b>11.</b> All work done in connection with an application for bail subject to a movement restriction condition under section 24A of the 1995 Act.		£50
<b>12.</b> Conducting a special reasons proof or hearing on exceptional hardship (where both, they to be regarded as one only even if conducted separately).	£150	£150
<b>13.</b> Conducting a back-duty proof (but only if in the case no fee is payable under paragraph 12 above).	£50	£50

## PART 2

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*Where professional services are provided in relation to proceedings in a sheriff court which has been designated as a drug court by the Sheriff Principal*

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1. All work done in connection with £50”.  
any appearance of an assistance person (per appearance).

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations relate to the different types of criminal legal assistance given by nominated and duty solicitors (where payments for the assistance come from the Scottish Legal Aid Fund).

They increase various fee levels and introduce fixed payments for some work (and make related provision).

They make provision for the obtaining by solicitors and the Scottish Legal Aid Board of information relevant to payments.

They make provision for payments to be withheld or recovered.

They make provision to allow for a single (consolidated) payment where different types of criminal legal assistance is given in relation to the same matter.