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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 212**

**LEGAL AID AND ADVICE**

**The Criminal Legal Aid (Scotland) (Fees)  
Amendment (No. 2) Regulations 2010**

<i>Made</i>	- - - -	<i>25th May 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>26th May 2010</i>
<i>Coming into force</i>	- -	<i>5th July 2010</i>

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

**Citation and commencement**

1. These Regulations may be cited as the Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2010 and come into force on 5th July 2010.

**Application**

2. These Regulations only apply in relation to proceedings commenced on or after 5th July 2010.

3. If the solicitor involved so requests, in determining the fees chargeable in respect of proceedings commenced on or after 1st April 2008 and before 5th July 2010, the Criminal Legal Aid (Scotland) (Fees) Regulations 1989<sup>(2)</sup> are to be read and have effect as if amended in accordance with regulation 4.

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

4.—(1) The Criminal Legal Aid (Scotland) (Fees) Regulations 1989 are amended in accordance with paragraphs (2) to (6).

(2) For regulation 5, substitute—

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(1) 1986 c.47. Section 33(2) was amended by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 67. Sections 33(3) and 36(1) have not been amended. The 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. 1989/1491; amended by S.I. 1990/474 and 1035, 1991/566, 1992/374, 1994/1019, 1997/719, 1999/491 and 1042 and S.S.I. 2002/246, 2004/264 and 316, 2005/656, 2006/515, 2007/180, 2008/240; 2009/312 and 2010/63.

“5.—(1) For attending an identification parade to which section 21(4)(b) of the 1986 Act(3) applies, a solicitor shall be allowed a fee at the following rates:—

- (a) where paragraph (2) applies—
  - (i) £114.00 for the first hour; and
  - (ii) £12.67 for each subsequent quarter of an hour; or
- (b) where paragraph (2) does not apply—
  - (i) £93.80 for the first hour; and
  - (ii) £11.82 for each subsequent quarter of an hour.

(2) This paragraph applies where a solicitor represents an accused person at an identification parade in connection with or in contemplation of solemn criminal proceedings if—

- (a) when the identification parade is held, criminal legal aid has been made available in respect of those proceedings and the solicitor is the nominated solicitor; or
- (b) after the identification parade has been held, criminal legal aid is made available in respect of those proceedings and the solicitor becomes the nominated solicitor.

(3) In paragraphs (1) and (2) “a solicitor” means the duty solicitor or, where criminal legal aid may be provided by a solicitor other than the duty solicitor, the nominated solicitor.

(4) For the purposes of paragraph (1), where attendance at an identification parade is required on more than one occasion each occasion is a separate identification parade.

(5) Subject to paragraph (6), the duty solicitor shall be allowed in respect of representing an accused person at a judicial examination (whether a first examination or a further examination) to which sections 35 to 39 of the Criminal Procedure (Scotland) Act 1995(4) apply—

- (a) fees in accordance with the rates specified in regulation 6(1); and
- (b) fees in respect of any necessary waiting time or any other necessary work relating to the judicial examination, determined in accordance with regulation 7.

(6) No fee shall be allowed under paragraph (5) if the duty solicitor goes on to become the accused person’s nominated solicitor in respect of the same proceedings and entitled to a fee in accordance with paragraph 1 of Part 2 of the Table of Fees set out in Schedule 1.”.

(3) In regulation 7, omit—

- (a) in paragraph (1) “and paragraph (2) of this regulation,”; and
- (b) paragraph (2).

(4) For regulation 8(1)(a) substitute—

- “(a) travelling expenses actually and reasonably incurred by himself or his clerk in connection with travel for which a fee for travelling time is chargeable and, in calculating the travelling expenses due, paragraph 5(4) of the notes on the operation of Schedule 1 applies to those expenses as it applies to the fee for travelling time;”.

(5) After regulation 10 insert—

**“Work actually and reasonably done**

**10A.** In determining whether work has been actually and reasonably done for the purposes of these Regulations the Board, or as the case may be the auditor, is to deem solicitors and

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(3) Section 21(4)(b) of the 1986 Act (meaning the Legal Aid (Scotland) Act 1986) was amended by paragraph 63(2) of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40).

(4) 1995 c.40.

counsel to be as up to date with the substantive and procedural law of the field in which they practise as a competent solicitor or counsel practising in that field.”.

(6) For Schedule 1(5) substitute the Schedule to these Regulations.

St Andrew's House,  
Edinburgh  
25th May 2010

*KENNY MACASKILL*  
A member of the Scottish Executive

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SCHEDULE

regulation 4(6)

“SCHEDULE 1

regulation 7

FEES OF SOLICITORS

**Notes on the operation of Schedule 1**

- 1.—(1) In relation to solemn criminal proceedings the fee for—
- (a) all work falling within a block of work prescribed in Part 2 of the Table of Fees is the fee specified in the relevant column of that Part;
  - (b) any item of work that does not fall within a block of work prescribed in Part 2 of the Table of Fees is to be calculated in accordance with Part 1 of the Table of Fees.
- (2) In a case in which an indictment has been served, the relevant column of Part 2 of the Table of Fees for the purposes of sub-paragraph (1)(a)—
- (a) for proceedings in the High Court of Justiciary which relate to an offence listed in Schedule 2, Part I, Chapter 1—
    - (i) paragraph 3(a) is column A;
    - (ii) paragraph 3(b) or (c) is column B;
  - (b) for proceedings in the sheriff court is column C.
- (3) In a case in which an indictment has not been served, the relevant column of Part 2 of the Table of Fees for the purposes of sub-paragraph (1)(a)—
- (a) is column A if the proceedings relate to any of the following offences:—
    - (i) murder;
    - (ii) multiple attempted murder;
    - (iii) culpable homicide;
    - (iv) rape;
    - (v) assault and robbery involving commercial premises;
    - (vi) importation of controlled drugs;
    - (vii) an offence under section 1 of the 1988 Act (causing death by dangerous driving);
    - (viii) an offence under the Explosive Substances Act 1883;
    - (ix) a firearms offence;
    - (x) incest;
    - (xi) sodomy;
    - (xii) sedition;
    - (xiii) treason;
    - (xiv) torture; and
    - (xv) war crimes;
  - (b) is column C if the proceedings do not relate to any of offences specified in sub-paragraph (a).
- (4) For the purposes of sub-paragraph (2)(a), where the proceedings relate to an offence which is not listed in paragraph 3(a), (b) or (c) of Chapter 1 of Part I of Schedule 2 the offence is deemed to be listed in whichever of those sub-paragraphs the Board, or as the case may be the auditor, considers appropriate having regard to all the circumstances.

(5) Without prejudice to the generality of sub-paragraph (1), the following items of work do not fall within any block of work prescribed in Part 2 of the Table of Fees—

- (a) travel;
- (b) attending locus visits;
- (c) work in connection with the taking of a witness precognition;
- (d) perusing, for the first time, the indictment, witness lists, statements, productions and labels received from the Crown and defence precognitions;
- (e) instructing expert witnesses;
- (f) conducting, or attending court when counsel is conducting, a hearing;
- (g) time spent waiting;
- (h) post conviction work, except for the work described in paragraph 5 of Part 2 of the Table of Fees; and
- (i) the work described in paragraph 3 of Part 2 of the Table of Fees, where the Board is satisfied that the case raised unusually complex issues of fact.

2. In relation to summary criminal proceedings, including appeals, the fee for any item of work is to be calculated in accordance with Part 1 of the Table of Fees.

3. Without prejudice to the discretion of the Board or auditor in relation to summary proceedings, in solemn proceedings no fee is chargeable for—

- (a) making a telephone call that is not answered;
- (b) making a telephone call that is answered only by an automated device or system that allows the caller to record a message, except on cause shown;
- (c) framing a file note;
- (d) framing a precognition following a meeting where a file note would suffice;
- (e) perusing correspondence;
- (f) a letter of acknowledgement, unless expressly requested or required;
- (g) more than two consultations, except on cause shown;
- (h) a meeting with the client, unless it is clear from a brief narrative in the account that information was received from or imparted to the client at the meeting advancing the case;
- (i) more than one solicitor attending a meeting with the client, without the prior sanction of the Board;
- (j) preparing for a hearing, except as provided for in Part 2 of the Table of Fees;
- (k) preparing for a hearing to which paragraph 4(a) of Part 2 of the Table of Fees relates unless—
  - (i) the indictment, containing a libel against the client, proceeds to trial; or
  - (ii) on or after the day fixed for trial, the Crown withdraws any libel against the client;
- (l) preparing for a hearing to which paragraph 4(a) of Part 2 of the Table of Fees relates if a fee under that paragraph has already been charged in respect of the case;
- (m) preparing for a subsequent day of trial or diet of deferred sentence if more than two fees have already been charged under paragraph 4(b) of Part 2 of the Table of Fees;
- (n) more than one solicitor attending a hearing, without the prior sanction of the Board;
- (o) during the court's lunch break, time spent at court for a hearing or travelling to or from court, except on cause shown;

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- (p) settling with witnesses in respect of a trial where a fee is charged in terms of paragraph 4(a) of Part 2 of the Table of Fees.

#### **Time spent waiting and travelling**

4. A fee for time spent waiting is chargeable only for time necessarily spent waiting at court for a hearing, provided that time has not been occupied in connection with another case (legally aided or not).

5.—(1) Subject to sub-paragraph (2), a fee for travelling time is chargeable only for time necessarily spent travelling to and from—

- (a) court, provided that—
  - (i) a fee is chargeable for the work undertaken at the court; and
  - (ii) the court is not in a town or place where the solicitor has a place of business;
- (b) a meeting with the client—
  - (i) in prison; or
  - (ii) elsewhere, if the client is unable to travel on medical grounds;
- (c) a meeting with the Procurator Fiscal or Advocate Depute at their office;
- (d) a consultation with counsel or an expert witness;
- (e) a locus inspection;
- (f) an examination of productions.

(2) A fee for travelling time is chargeable in circumstances other than those listed in sub-paragraph (1) only if the Board, or as the case may be the auditor, is satisfied that it was necessary for the advancement of the case that the solicitor be physically present at the place travelled to.

(3) A fee for travelling time is not chargeable if it would have been more economical to use a local solicitor, unless it was reasonable in the interests of the client that the nominated solicitor, or a solicitor assisting the nominated solicitor in terms of regulation 4(3), attended personally.

(4) The fee chargeable for travelling time is the fee for time necessarily spent travelling divided by the number of cases (legally aided or not) in connection with which the travel was undertaken.

#### **Transfer of agency**

6. Where agency is transferred from one solicitor to another—
- (a) the fee for a block of work commenced and completed by the same solicitor is payable to that solicitor;
  - (b) the fee for a block of work commenced by one solicitor but completed by another is to be apportioned equally between the solicitors who undertook work falling within that block.

#### **Uplifts**

7.—(1) The fee for time spent by a solicitor travelling and taking a statement in connection with a precognition to which this paragraph applies is £12.67 for each quarter of an hour.

- (2) This paragraph applies to a precognition in relation to solemn proceedings if—
- (a) it is the first precognition of the client; or
  - (b) cause is shown that the statement had to be taken by a solicitor.

## Interpretation

### 8. In this Schedule—

“court” means the Supreme Court, the High Court of Justiciary, the sheriff court, the justice of the peace court or any remaining district court as the case may be;

“hearing” includes diet;

“quarter of an hour” will be read as if immediately followed by the words “(or part thereof)”;

a “sheet” shall consist of 250 words or numbers; and

a “page” shall consist of 125 words or numbers.

## TABLE OF FEES

### PART 1

#### DETAILED FEES

	<i>Summary Procedure</i>	<i>Solemn Procedure</i>
<b>1.</b> In connection with the conduct of a hearing—		
(a) in summary proceedings, the fee for—		
(i) any time up to the first half hour spent by a solicitor conducting the hearing	£27.40	—
(ii) each quarter hour spent, subsequent to the first half hour, conducting the hearing	£13.70	—
(b) in solemn proceedings, the fee for each quarter of an hour spent by a solicitor conducting the hearing		£19.00
<b>2.</b> The fee for any of the following:—	£6.00	£7.20
(a) each citation of a witness, including execution;		
(b) framing and drawing necessary papers other than those referred to in paragraph 3(c);		
(c) instructing messengers at arms and sheriff officers, including examining execution and settling fee;		
(d) lengthy telephone calls (of over 4 and up to 10 minutes’ duration), subject to paragraph 4(e); and		
(e) letters, including instructions to counsel, per page (or part thereof), subject to paragraph 3(b).		
<b>3.</b> The fee for any of the following:—	£2.40	£2.88

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	<i>Summary Procedure</i>	<i>Solemn Procedure</i>
(a) attendance at court offices for performance of formal work including each necessary lodging in or uplifting from court or each necessary inquiry for documents due to be lodged;		
(b) short formal letters, letters of acknowledgement, letters each having a similar nature, intimations and letters confirming telephone calls;		
(c) framing formal papers, including inventories and title pages, per sheet (or part thereof);		
(d) revising papers drawn by counsel or where revisal ordered by court, per 5 sheets (or part thereof); and		
(e) subject to paragraph 4(e), short telephone calls (of up to 4 minutes' duration) and telephone calls (of any duration) where the intended recipient is not reached or insufficient narrative is provided in the account to ascertain the duration of the call.		
<b>4.</b> In connection with taking a precognition in relation to solemn proceedings—		
(a) subject to paragraph 7 of the notes on the operation of Schedule 1, the fee for each hour (or part thereof) spent—		
(i) travelling	—	£12.00
(ii) taking a statement	—	£12.00
(b) the fee for—		
(i) framing the precognition, per sheet	—	£2.50
(ii) each letter making arrangements for taking a statement	—	£1.50
(iii) a telephone call, of any duration	—	£1.00
<b>5.</b> Where a document is copied and it is necessary to take a copy of more than 20 sheets (whether 20 of one sheet, 5 of 4 sheets or whatever) for each sheet copied a fee of	£0.08	£0.09
<b>6.</b> The fee for each quarter of an hour spent carrying out work other than that prescribed in the preceding paragraphs—		



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	<i>Summary Procedure</i>	<i>Solemn Procedure</i>
(a) by a solicitor, provided the time is additional to the total time charged for under paragraph 1	£10.55	£12.67
(b) by a solicitor's clerk	£5.25	£6.33

## PART 2

### INCLUSIVE FEES FOR SOLEMN FIRST INSTANCE PROCEEDINGS

	<i>Column A</i>	<i>Column B</i>	<i>Column C</i>
<b>1.</b> The fee for all work from the taking of initial instructions up until the client is admitted to bail or committed until liberated in due course of law, where—			
(a) at the first examination the client is either—			
(i) not committed for further examination; or	£152.00	£133.00	£57.00
(ii) committed for further examination and admitted to bail.			
(b) at the first examination the client is committed for further examination and not admitted to bail.	£228.00	£209.00	£133.00
<b>2.</b> The fee for all work preparing for a bail appeal hearing including any continued diet and, where necessary, instructing Edinburgh agents	£57.00	£57.00	£57.00
<b>3.</b> The fee for arranging and attending all meetings, including consultations, in prison with the client after full committal for trial up to the conclusion of the case	£437.00	£304.00	£152.00
<b>4.</b> The fee for preparation, including citing and settling with witnesses, perusing evidence and preparing lines of enquiry and submissions but excluding relative consultations, in respect of—			
(a) the first day of trial	£399.00	£285.00	£152.00
(b) a subsequent day of trial or diet of deferred sentence	£152.00	£114.00	£38.00

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	<i>Column A</i>	<i>Column B</i>	<i>Column C</i>
5. The fee for all work in connection with post conviction discussions and advice, including advising and giving an opinion on the prospects of any appeal	£152.00	£152.00	£76.00
6. Unless dealt with in the course of the preliminary hearing, the fee for all work in connection with any of the following:–	£152.00	£152.00	£152.00
(a) a devolution issue, in terms of Schedule 6 to the Scotland Act 1998(6);			
(b) a vulnerable witnesses application, in terms of section 271A, B, C or D of the 1995 Act;			
(c) a specification of documents;			
(d) a precognition on oath;			
(e) an evidence on commission;			
(f) an application to lead evidence relating to sexual offences under section 275(1) of the 1995 Act;			
(g) a proof in mitigation; and			
(h) an examination of facts.”			

## EXPLANATORY NOTE

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

These Regulations amend the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (“the principal Regulations”). The amendments apply in relation to proceedings commenced on or after 5th July 2010 or, if the solicitor involved so chooses, 1st April 2008.

Regulation 4(2) of these Regulations substitutes for regulation 5 of the principal Regulations a modified version. Regulation 5 of the principal Regulations deals with two matters. First, it makes provision about the fee allowed to a solicitor for attending an identification parade. The substitute regulation 5 provides for a new fee rate in respect of identification parades held in relation to solemn criminal proceedings. Where the new fee rate does not apply, the fee for attending an identification parade is unchanged. The new fee rate does not apply if the solicitor attends the identification parade as the duty solicitor and does not go on to represent the accused person in the subsequent criminal

(6) 1998 c. 46.

proceedings. The new fee rate also does not apply where the identification parade is held in relation to summary criminal proceedings.

The second matter regulation 5 of the principal Regulations deals with is the fee allowed to a solicitor representing an accused person at a judicial examination. Regulation 5 made provision for the fee allowed to both nominated and duty solicitors. The substitute regulation 5 makes provision only for the fee allowed to a duty solicitor, provided that solicitor does not go on to become the accused person's nominated solicitor in the solemn criminal proceedings. The fee allowed to a solicitor representing an accused person at a judicial examination is otherwise provided for by Schedule 1 to the principal Regulations.

Regulation 4(3) of these Regulations removes regulation 7(2) of the principal Regulations. Regulation 7(2) made provision relating to the fees due to a solicitor for time necessarily spent waiting at court and for travel. Those matters are now dealt with in paragraphs 4 and 5 (respectively) of the notes on the operation of Schedule 1 to the principal Regulations.

Regulation 4(4) of these Regulations substitutes for regulation 8(1)(a) of the principal Regulations a modified version. Regulation 8(1)(a) made provision about the circumstances in which travel outlays were allowed to a solicitor. The substitute regulation 8(1)(a) provides for this by linking the circumstances in which travel outlays are allowed to the circumstances in which a fee for travelling time is allowed in terms of paragraph 5 of the notes on the operation of Schedule 1 to the principal Regulations.

Fees are allowed to solicitors and counsel in terms of the principal Regulations only for work "actually and reasonably done" (this is stated in regard to solicitors in regulation 7 and in regard to counsel in regulation 10 of the principal Regulations). Regulation 4(5) of these Regulations makes clear that in determining whether work has actually and reasonably been done, the Scottish Legal Aid Board and the auditor should start from the premise that solicitors and counsel are up to date with the law in their field of practice.

Regulation 4(6) of these Regulations replaces, with a new version, Schedule 1 to the principal Regulations. The new Schedule 1—

- (a) creates a new structure for solicitors' fees in solemn criminal proceedings; whereby rather than specifying a fee for all items of work, it provides for solicitors to receive block fees covering all work undertaken during designated stages of the case;
- (b) provides for increased fee rates for those items of work in respect of solemn criminal proceedings which do not attract a block fee and for items of work in respect of summary criminal proceedings; and
- (c) makes further provision about the circumstances in which fees are chargeable and to whom they are payable in the event that an accused person changes solicitor in the course of proceedings.