

2011 No. 160

LEGAL AID AND ADVICE

**The Civil Legal Aid (Scotland) (Fees) Amendment
Regulations 2011**

Made - - - - - *24th February 2011*

Laid before the Scottish Parliament *28th February 2011*

Coming into force - - - *1st April 2011*

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

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2011 and come into force on 1st April 2011.

Application

2. These Regulations apply—

- (a) as regards regulation 4, only in relation to proceedings in which fees and outlays have been recovered on or after the coming into force of these Regulations;
- (b) as regards regulation 5, only in relation to proceedings in which the date of completion of the proceedings is on or after the coming into force of these Regulations; and
- (c) as regards regulations 6, 7 and 9, only in relation to work done and outlays incurred on or after the coming into force of these Regulations.

Amendment of the Civil Legal Aid (Scotland) (Fees) Regulations 1989

3. The Civil Legal Aid (Scotland) (Fees) Regulations 1989(b) are amended in accordance with regulations 4 to 9.

4. In regulation 3 (Fees and outlays regulated by these Regulations)—

- (a) in paragraph (2) for “paragraphs (3)(b), (4) and (5)” substitute “paragraph 3(b) and paragraphs (4) to (6)”;

(a) 1986 c.47. Section 33(2) was amended by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) (“the 2007 Act”), section 67(7)(b). Section 36(2) was amended by the Legal Aid Act 1988 (c.34), Schedule 4, paragraph 6 and by the 2007 Act, section 76(2). The functions of the Secretary of State were transferred to the Scottish Ministers, in so far as they are within devolved competence, by the Scotland Act 1998 (c.46), section 53.

(b) S.I. 1989/1490; amended by S.I. 1990/473, 1991/565, 1994/1015 and 1233, 1995/1044, 1997/689, 1999/1042 and S.S.I. 2002/496, 2003/178, 2004/281, 2005/449, 2007/14, 181 and 438, 2009/203 and 312, and 2010/166.

(b) for paragraph 3(b) substitute—

“(b) the Board may, at the request of the solicitor or any counsel acting for the person in receipt of legal aid at the conclusion of the proceedings, and subject to paragraphs (4) to (6), instead of making payment to that solicitor (or counsel as the case may be) in accordance with paragraph (2), pay to the solicitor (or counsel as the case may be) the amount of any fees and outlays so recovered.”;

(c) for paragraph (4) substitute—

“(4) Where the Board agrees to a request from the solicitor for payment in accordance with paragraph (3)(b), the Board shall also make payment in accordance with paragraph (3)(b) to any counsel entitled to request such payment.

(4A) Where counsel requests payment in accordance with paragraph (3)(b) in a case where the solicitor last acting requests payment in accordance with paragraph (2)—

- (a) the solicitor’s fees and outlays shall be paid in accordance with paragraph (2);
- (b) the Board shall determine as accurately as is reasonable what part of the fees and outlays recovered represents fees payable to any counsel;
- (c) the solicitor and counsel shall supply the Board with such information as the Board may require for the purpose of determining the sum referred to in paragraph (b);
- (d) subject to paragraph (5), the Board may make payment to counsel of the sum determined in accordance with sub-paragraph (b) if satisfied that it is reasonable to do so having regard to all the circumstances including—
 - (i) the respective roles of counsel and any counsel previously acting for the person in receipt of legal aid;
 - (ii) any sums paid or due to be paid to any counsel previously acting for the person in receipt of legal aid;
 - (iii) the sum that would be paid to counsel in accordance with paragraph (2); and
 - (iv) any resultant cost to the fund or to the person in receipt of legal aid.”;

(d) in paragraph (5) for “paragraph (4)” substitute, “that paragraph”;

(e) after paragraph (5) insert—

“(6) Where a payment is made to counsel in accordance with paragraph 3(b) no counsel who previously acted for the person in receipt of legal aid in those proceedings may refer to the auditor any question or dispute as to the amount of fees allowable in the proceedings.”.

5. For regulation 8 (accounts in respect of solicitors’ fees and outlays) substitute—

“**8.**—(1) Subject to paragraph (2) below, accounts prepared in respect of fees and outlays allowable to solicitors and fees allowable to counsel shall be submitted to the Board no later than 4 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 allowable to solicitors and fees allowable to counsel later than the 4 months referred to in paragraph (1) if it considers that there is a special reason for the late submission.”.

6. For regulation 9 (fees allowable to counsel) substitute—

“**9.** Subject to the provisions of regulation 8 regarding the submission of accounts, and the provisions of regulation 10 regarding the calculation of fees, the fees allowable to counsel shall be fees for such work as shall be determined by the Board to have been actually and reasonably done, due regard being had to economy.”.

7. In regulation 10 (fees allowable to counsel)—

- (a) in paragraph (1) after “Court of Session” insert “and sheriff court”; and
- (b) in paragraph (2) omit “sheriff court”.

8.—(1) In regulation 11, for paragraphs (2), (3) and (4)(a) substitute—

“(2) A claim by counsel under this regulation may be made only in relation to any case where—

- (a) a period of no less than 6 months has elapsed since the date on which the Board gave notice in writing of the grant of civil legal aid;
- (b) an interval of no less than 6 months has elapsed since the immediately preceding claim was made; or
- (c) counsel reasonably anticipates not receiving further instructions in the proceedings.

(3) The amount of any payment in respect of a claim by counsel under this regulation in relation to proceedings referred to in regulation 10(2) and (2A) shall be limited to 75% of the fees that will become eligible for payment and earned during the period covered by the claim.

(4) When assessing the fee payable to a solicitor in respect of legal aid the Board may have regard to any payment, or payments, made to account under advice and assistance in relation to the same matter and, where the work in respect of which such payment, or payments, is made might reasonably have been carried out under legal aid, it may reduce the amount of the fee payable accordingly.”.

(2) In so far as relating to payments to counsel, paragraph (1) applies only in relation to fees for work carried out after the coming into force of these Regulations.

9. For Schedule 4 (fees of counsel for proceedings in the Court of Session) substitute the Schedule set out in the Schedule to these Regulations.

Revocation

10. Regulation 10 of the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003**(b)** is revoked.

KENNY MACASKILL

A member of the Scottish Executive

St Andrew's House,
Edinburgh
24th February 2011

(a) Paragraphs (2), (3) and (4) of regulation 11 were previously amended by S.S.I. 2003/178, but only in so far as relating to payments to solicitors.

(b) S.S.I. 2003/178.

SCHEDULE

Regulation 9

“SCHEDULE 4

Regulation 10

FEES OF COUNSEL FOR PROCEEDINGS IN THE COURT OF SESSION AND SHERIFF COURT

1. Subject to the following provisions of this Schedule, the fees of counsel shall be calculated by the Board, or in the event of dispute by the auditor, in accordance with the fees prescribed in the Tables of Fees set out after paragraph 17 to this Schedule, and the fee of a solicitor-advocate for undertaking an item of work in the Court of Session shall be—

- (a) where that person is acting as a junior solicitor-advocate, the same as that allowable to a junior counsel for undertaking an item of work equivalent to that undertaken by the solicitor-advocate; or
- (b) where that person is acting as a senior solicitor-advocate, the same as that allowable to a senior counsel for undertaking an item of work equivalent to that undertaken by the solicitor-advocate.

2. Where the Tables of Fees in this Schedule prescribe a range of fees for any item of work the Board, or as the case may be the auditor, shall allow such fee as appears to provide reasonable remuneration for the work, subject to the following—

- (a) it shall be for counsel to identify any factors justifying a higher fee than the minimum prescribed;
- (b) where a fee relates to the drafting of any document the length of the document shall be a subordinate consideration to the content of the document;
- (c) in determining the appropriate fee for drafting a summons, petition, defences, or answers regard shall be had to the volume of documentation that required to be considered, and the novelty or difficulty of the work involved;
- (d) in determining the appropriate level of fee for a consultation, regard shall be had to the length of the consultation and any reasonable and proportionate preparation required which has not otherwise been reflected in an additional fee for preparation, or in a fee for a proof or other hearing; and
- (e) in determining the appropriate fee for drafting a note, regard shall be had to the issues involved, the importance, novelty or complexity of the applicable law and, as appropriate, the absence of previous authority or the existence of adverse authority.

3. Where the Tables of Fees in this Schedule do not prescribe a fee for any class of proceedings or any item of work, the Board, or as the case may be the auditor, shall allow such fee as appears to be appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the Tables of Fees.

4. Subject to paragraphs 5 to 7, the fees prescribed in the Tables of Fees in this Schedule include all associated preparation work.

5. Subject to paragraph 6, an additional fee for preparation shall only be allowed if it relates to a proof, debate or like hearing and the hearing—

- (a) does not proceed (a date or dates having been assigned for the hearing);
- (b) does not exceed a day in duration;
- (c) does not exceed four days in duration, and the Board is satisfied that the case is abnormal in magnitude, difficulty or any other respect; or

- (d) exceeds four days in duration, and the Board is satisfied that the case is abnormal in magnitude, difficulty of any other respect, and also that counsel required to consider an abnormally large quantity of documentation.

6. An additional fee for preparation as provided for in paragraph 5 above shall be allowed only on the following conditions—

- (a) the fee is only chargeable in respect of work undertaken following the instruction of counsel for the hearing;
- (b) in respect of any hearing, except on cause shown, such a fee is allowable only once to junior or senior counsel, or as the case may be junior and senior counsel, notwithstanding that the applicant or assisted person is represented by more than one junior or senior counsel during the course of the proceedings;
- (c) the Board, or as the case may be the auditor, must be satisfied that the time engaged in preparation was reasonable and proportionate in all the circumstances of the case; and
- (d) counsel shall provide the Board with a detailed summary of the work undertaken and the documentation perused at each stage of the process and shall, if required by the Board, provide details of authorities referred to, the time engaged, dates and locations as to when and where the work was undertaken, and any contemporaneous records or notes made in the course of preparation.

7. The additional fee for preparation shall be calculated by dividing the time allowed, as determined in accordance with paragraphs 5 and 6, into units of 8 hours, each unit being payable at the rate of two thirds of the daily rate applicable to that hearing as prescribed in the Tables of Fees.

8. The fees prescribed in the Tables of Fees for drafting any summons, petition, other initiating document, defences or answers include any work involved in revising such a document.

9. Paragraphs 10 and 11 apply where, in respect of any hearing, counsel claims a fee for keeping free from other commitments (“a commitment fee”), and regulation 9 shall apply subject to those paragraphs.

10. A commitment fee is allowable only where—

- (a) counsel has accepted instructions to appear at a proof, debate or similar hearing assigned for 8 days or more over consecutive weeks;
- (b) the proceedings settle on or before the first day of the hearing;
- (c) counsel is notified that the hearing is not proceeding no more than two working days before the start of the hearing; and
- (d) in the case of a hearing assigned for fewer than 12 days, counsel is not otherwise entitled to a fee for attendance at the first day of the hearing.

11. Where a commitment fee is allowable the fee is payable at a unit rate equal to the daily rate applicable to the hearing to which it relates, as prescribed in the Tables of Fees, and—

- (a) 2 units shall be payable in the case of a hearing assigned for 12 days or more where counsel is not otherwise entitled to a fee for attendance at the first day of the hearing; and
- (b) 1 unit shall be payable in any other case.

12. In the calculation of counsel’s fees—

- (a) counsel’s fees are allowable only where the Board has approved the employment of counsel or where the approval of the Board is not required;

- (b) junior counsel shall only be allowed the fees prescribed in Part 1 of the applicable Table of Fees even where sanction has been granted for the employment of senior counsel;
- (c) except on cause shown, fees to counsel shall be allowed for no more than two consultations in the course of proceedings;
- (d) notwithstanding that sanction may have been granted for the employment of senior counsel, or for the employment of a second junior counsel, fees shall not be payable for the attendance of two counsel at a hearing which by its nature does not require the attendance of a second counsel, or for the attendance of senior counsel at a hearing that by its nature does not require the attendance of senior counsel; and
- (e) correspondence, telephone calls and meetings between counsel acting for the same assisted person are not allowable as separate items and shall be subsumed within the fees prescribed for the associated item of work in the Tables of Fees.

13. In the calculation of counsel's fees for proceedings in the sheriff court—

- (a) no fee shall be allowed to counsel for drafting defences in skeleton form;
- (b) except on cause shown, no fee shall be allowed to counsel for drafting or revising a motion or for attendance at the calling of a motion; and
- (c) except on cause shown, no fee shall be allowed to counsel for attendance at hearings which are routine, or procedural in nature, or unopposed.

14. The fee for time engaged in necessary travel specified in paragraph 13 of Chapter 6 of Part 1 and paragraph 7 of Part 2 of Table of Fees A and in paragraph 10 of Part 1 and paragraph 7 of Part 2 of Table of Fees B is chargeable only as follows—

- (a) the travel undertaken must involve a round trip exceeding 60 miles in each direction;
- (b) counsel shall, if required, produce vouching of the travel undertaken; and
- (c) the fee is chargeable only once in respect of each round trip, irrespective of the number of cases for which the travel is undertaken.

15.—(1) Travel costs are chargeable as an outlay only in circumstances where a fee for time engaged in necessary travel is chargeable under paragraph 14.

(2) Counsel shall if required provide vouching of the costs incurred.

16.—(1) The cost of necessary accommodation and subsistence is chargeable as an outlay up to the level specified in paragraph 14 of Chapter 6 of Part 1 and paragraph 8 of Part 2 of Table of Fees A and in paragraph 11 of Part 1 and paragraph 8 of Part 2 of Table of Fees B only in circumstances where a fee for time engaged in necessary travel is chargeable under paragraph 14, and on cause shown.

(2) Counsel shall if required provide vouching of the costs incurred.

17. In any taxation of counsel's fees in terms of regulation 12, the auditor shall have regard to information not previously made available to the Board only if the information was not available to be provided to the Board at the time it made the offer to counsel which is the subject of taxation, or on cause shown.

TABLE OF FEES A
FEES OF COUNSEL FOR PROCEEDINGS IN THE COURT OF
SESSION

PART 1 – JUNIOR COUNSEL
CHAPTER 1 - FAMILY ACTIONS

| | | |
|----|--|---------|
| 1. | <i>Summons or other initiating writ</i> | £300.00 |
| 2. | <i>Minute</i> | |
| | (a) minute relating to orders for parental responsibilities or parental rights and/or aliment or financial provision | £200.00 |
| | (b) any other minute containing a conclusion or crave | £150.00 |
| 3. | <i>Defences or answers</i> | |
| | (a) Defences or answers in purely skeleton form to preserve the rights of parties | £50.00 |
| | (b) Defences or answers to which sub-paragraph (a) does not apply | £275.00 |
| 4. | <i>Joint minute or minute of agreement regulating aliment, financial provision, orders relating to parental responsibilities or parental rights or any other matter in respect of which orders may be sought</i> | |
| | (a) straightforward cases | £50.00 |
| | (b) other cases | £125.00 |
| | (c) minute of agreement | £200.00 |
| 5. | <i>Minute for decree</i> | £50.00 |
| 6. | <i>All other work</i> | |

The fees prescribed in Chapter 6 shall apply

CHAPTER 2 - PETITIONS (OTHER THAN PETITIONS TO WHICH CHAPTERS 3
TO 5 APPLY)

1. *Petition*
 - (a) petition for interdict
 - (i) straightforward cases £200.00
 - (ii) other cases £300.00
 - (b) other Outer House petitions £300.00
 - (c) the fee for Inner House petitions shall be as appears to the Board, or as the case may be the auditor, to provide reasonable remuneration for the work having regard to the level of fees in this Table of Fees
2. *Answers*
 - (a) petition for interdict £150.00
 - (b) other Outer House petitions £150.00
 - (c) the fee for Inner House petitions shall be as appears to the Board, or as the case may be the auditor, to provide reasonable remuneration for the work having regard to the level of fees in this Table of Fees
3. *All other work*

The fees prescribed in Chapter 6 shall apply

CHAPTER 3 - PETITIONS FOR JUDICIAL REVIEW

1. *Petition for judicial review* £350.00
2. *Motion for first orders*
 - (a) where the hearing does not exceed 30 minutes £60.00
 - (b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof £50.00
3. *First or second hearing (per day)*
 - (a) junior alone £900.00
 - (b) junior with senior £650.00

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|----|--------------------------------|---------|
| 4. | Written statement of arguments | £200.00 |
| 5. | <i>All other work</i> | |

The fees prescribed in Chapter 6 shall apply

CHAPTER 4 – PETITIONS ON CHILD ABDUCTION AND ON THE
RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO
CHILDREN

- | | | |
|----|---|---------|
| 1. | <i>Petition</i> | £325.00 |
| 2. | <i>Answers</i> | £325.00 |
| 3. | <i>Motion for interim orders</i> | |
| | (a) where the hearing does not exceed 30 minutes | £60.00 |
| | (b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof | £50.00 |
| 4. | <i>First or second hearing (per day)</i> | |
| | (a) junior alone | £900.00 |
| | (b) junior with senior | £650.00 |
| 5. | <i>Revising any affidavit which requires to be lodged</i> | £50.00 |
| 6. | <i>All other work</i> | |

The fees prescribed in Chapter 1, which failing Chapter 6 shall apply

CHAPTER 5 - APPLICATIONS FOR ADOPTION ORDERS, CONVENTION
ADOPTION ORDERS AND PERMANENCE ORDERS AND OTHER
PROCEEDINGS UNDER THE ADOPTION AND CHILDREN (SCOTLAND) ACT
2007(a)

- | | | |
|----|--|---------|
| 1. | <i>Petition</i> | £300.00 |
| 2. | <i>Revising any affidavit which requires to be lodged</i> | £50.00 |
| 3. | <i>Note for revocation of permanence order or other note in the adoption process</i> | £200.00 |

(a) 2007 asp 4.

- | | | |
|----|--|--------|
| 4. | <i>Hearing to set timetable or determine procedure (per half hour)</i> | £50.00 |
| 5. | <i>All other work</i> | |

The fees prescribed in Chapter 1, which failing Chapter 6 shall apply

CHAPTER 6 – ORDINARY ACTIONS

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|----|---|---------------------|
| 1. | <i>Summons</i> | £300.00 |
| 2. | <i>Defences</i> | |
| | (a) where in purely skeleton form to preserve rights of parties | £50.00 |
| | (b) otherwise | £275.00 |
| 3. | <i>Adjustment of pleadings</i> | |
| | (a) adjustment of skeleton defences | £225.00 |
| | (b) otherwise (each occasion) | £75.00 |
| 4. | <i>Specification of documents</i> | |
| | (a) specification with standard calls only | £50.00 |
| | (b) other specification of documents | £125.00 |
| 5. | <i>Minutes etc</i> | |
| | (a) formal amendments or answers | £75.00 |
| | (b) amendments or answers other than formal | £150.00 |
| | (c) drafting, revising and signing tender or acceptance | £50.00 |
| | (d) note of exceptions | £50.00 |
| | (e) abandonment, sist, restriction, etc. | £50.00 |
| | (f) issue or counter issue | £75.00 |
| 6. | <i>Notes</i> | |
| | (a) note on liability and/or quantum | £150.00– £350.00 |

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| (b) note advising on tender or extra-judicial offer, where not merely confirming advice at consultation | £125.00 |
| (c) note on line of evidence | £200.00– £400.00 |
| (d) other types of note | £150.00 |
| | |
| 7. <i>Consultations</i> | |
| (a) before proof or trial, or otherwise involving a significant degree of preparation or lengthy discussion— | |
| (i) junior alone | £250.00– £400.00 |
| (ii) junior with senior | £200.00– £300.00 |
| (b) other consultations— | |
| (i) junior alone | £125.00– £250.00 |
| (ii) junior with senior | £100.00– £200.00 |
| | |
| 8. <i>Pre-trial meetings</i> | |
| Pre-trial meeting with opponent with a view to settlement of the case (to include preparation of minute of pre-trial meeting and any associated joint minute) | |
| (i) junior alone | £450.00 |
| (ii) junior with senior | £350.00 |
| | |
| 9. <i>Motions (including By Order hearings)</i> | |
| (a) where the hearing does not exceed 30 minutes | £60.00 |
| (b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof | £50.00 |
| | |
| 10. <i>Procedure roll, proof or jury trial (per day)</i> | |
| (a) junior alone | £900.00 |
| (b) junior with senior | £650.00 |

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| 11. | <i>Inner House</i> | |
| | (a) Single Bills | |
| | (i) where the hearing does not exceed 30 minutes | £75.00 |
| | (ii) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof | £50.00 |
| | (b) reclaiming motion (per day) | |
| | (i) junior opening or appearing alone | £1,000.00 |
| | (ii) junior otherwise | £700.00 |
| | (c) motion for new trial (per day) | |
| | (i) junior opening or appearing alone | £750.00 |
| | (ii) junior otherwise | £500.00 |
| 12. | <i>Attendance at judgment</i> | |
| | (a) Outer House | £50.00 |
| | (b) Inner House | £50.00 |
| 13. | <i>Time engaged in necessary travel</i> | |
| | Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken | £100.00 |
| 14. | <i>Accommodation and associated subsistence</i> | |
| | Payment of necessary accommodation and associated subsistence per day | £100.00 |

PART 2 – SENIOR COUNSEL

FAMILY ACTIONS, PETITIONS (INCLUDING JUDICIAL REVIEW, ABDUCTION AND ADOPTION) AND ORDINARY ACTIONS

| | | |
|----|--|---------------------|
| 1. | <i>Drafting or revisal of pleadings</i> | |
| | (a) drafting of summons, defences, petition or answers | £425.00– £500.00 |
| | (b) revisal of summons, defences, petition or answers | £150.00 |
| | (c) adjustment fee (open record) (each occasion) | £125.00 |

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| 2. | <i>Minutes, etc – revisal fees</i> | |
| | (a) amendments (other than formal) or answers | £200.00 |
| | (b) admissions, tender or acceptance (in appropriate cases) | £75.00 |
| | (c) note of exceptions | £100.00 |
| 3. | <i>Notes</i> | |
| | (a) note on liability and/or quantum | £225.00– £550.00 |
| | (b) advice on tender or extra-judicial offer when not merely confirming advice at consultation | £200.00 |
| | (c) note on line of evidence | £300.00– £600.00 |
| | (d) other notes | £225.00 |
| 4. | <i>Consultations</i> | |
| | before proof or trial, or otherwise involving a significant degree of preparation or lengthy discussion with senior alone or with senior and junior | £300.00– £550.00 |
| 5. | <i>Pre-trial meetings</i> | |
| | Pre-trial meetings with opponent with a view to settlement of case (to include preparation of minute of pre-trial meeting and any associated joint minute) | £650.00 |
| 6. | <i>Day in court</i> | |
| | (a) Inner House | £1,500.00 |
| | (b) Outer House | £1,350.00 |
| 7. | <i>Time engaged in necessary travel</i> | |
| | Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken | £100.00 |
| 8. | <i>Accommodation and associated subsistence</i> | |
| | Payment of necessary accommodation and associated subsistence per day | £100.00 |

TABLE OF FEES B

FEES OF COUNSEL FOR PROCEEDINGS IN THE SHERIFF COURT

PART 1 - JUNIOR COUNSEL

| | | |
|----|---|---------------------|
| 1. | <i>Initial writ (or minute in family action)</i> | £275.00 |
| 2. | <i>Defences (or answers to minute in family action)</i> | £225.00 |
| 3. | <i>Adjustment of pleadings</i> | |
| | Adjustment fee (each occasion) | £67.50 |
| 4. | <i>Specification of documents</i> | |
| | (a) straightforward cases | £45.00 |
| | (b) other cases | £110.00 |
| 5. | <i>Minutes, etc.</i> | |
| | (a) formal amendments or answers | £45.00 |
| | (b) amendments or answers other than formal | £115.00 |
| | (c) drafting, revising and signing tender or acceptance | £45.00 |
| | (d) note of exceptions | £40.00 |
| | (e) abandonment, sist, restriction, etc. | £40.00 |
| 6. | <i>Notes</i> | |
| | (a) note on liability and/or quantum | £135.00– £315.00 |
| | (b) note advising on tender or extra-judicial offer, where not merely confirming advice at consultation | £110.00 |
| | (c) note on line of evidence | £180.00– £360.00 |
| | (d) other notes | £135.00 |
| 7. | <i>Applications for adoption orders and permanence orders and other proceedings under the Adoption and Children (Scotland) Act 2007</i> | |
| | (a) petition | £275.00 |

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|-----|--|---------------------|---------------------|
| | (b) minute for revocation of permanence order or other minute in the adoption process | | £225.00 |
| | (c) revising each affidavit | | £45.00 |
| | (d) hearing to set timetable or determine procedure | | £45.00 |
| 8. | <i>Applications under section 85(1) of the Children (Scotland) Act 1995(a)</i> | | |
| | Written application under section 85(1) for a review of establishment of grounds of referral | | £225.00 |
| 9. | <i>Motions</i> | | |
| | Attendance at opposed motion for up to half hour, and for each subsequent half hour or part thereof | | £45.00 |
| 10. | <i>Time engaged in necessary travel</i> | | |
| | Supplementary fee chargeable where necessary travel undertaken | | £100.00 |
| 11. | <i>Accommodation and associated subsistence</i> | | |
| | Payment of necessary accommodation and associated subsistence per day | | £100.00 |
| | | Junior with senior | Junior alone |
| 12. | <i>Consultations (including joint consultations with opponent with a view to negotiating settlement)</i> | | |
| | Before proof, or otherwise involving a significant degree of preparation or lengthy discussion | £180.00– £270.00 | £225.00– £360.00 |
| 13. | <i>Child welfare hearing</i> | | |
| | Attendance up to half hour, and for each subsequent half hour or part thereof | £40.00 | £55.00 |
| 14. | <i>Hearings under Part II of Chapter 3 of the Children (Scotland) Act 1995</i> | | |
| | (a) under section 55 to defend an application for a child assessment order | £40.00 | £55.00 |

(a) 1995 c.36.

| | | | |
|-----|--|---------|---------|
| | (b) under section 60(7) for an application to set aside or vary a child protection order | £40.00 | £55.00 |
| | (c) under section 67 to defend a warrant for further detention of a child | £40.00 | £55.00 |
| 15. | <i>Proof, debate (or like hearing) or appeal under section 51(1) of the Children (Scotland) Act 1995 (per day)</i> | | |
| | (a) up to 20 days | £625.00 | £810.00 |
| | (b) subsequent days | £562.50 | £729.00 |
| 16. | <i>Appeal to the Sheriff Principal (per day)</i> | £650.00 | £850.00 |

PART 2 - SENIOR COUNSEL

| | | | |
|----|--|--|---------------------|
| 1. | <i>Revisal of pleadings</i> | | |
| | (a) revisal of initial writ, defences, petition or answers | | £135.00 |
| | (b) adjustment fee (open record) (each occasion) | | £112.50 |
| 2. | <i>Other revisal fees</i> | | |
| | (a) amendments (other than formal) or answers | | £180.00 |
| | (b) admissions, tender or acceptance (in appropriate cases) | | £67.50 |
| 3. | <i>Notes</i> | | |
| | (a) note on liability and/or quantum | | £202.50– £500.00 |
| | (b) advice on tender or extra-judicial offer where not merely confirming advice at consultation | | £270.00 |
| | (c) note on line of evidence | | £270.00– £540.00 |
| | (d) other notes | | £202.50 |
| 4. | <i>Consultations (including joint consultations with opponent with a view to negotiating settlement)</i> | | |
| | Before proof, or otherwise involving a significant degree of preparation or lengthy discussion | | £270.00– £500.00 |

| | | |
|----|--|-----------|
| 5. | <i>Proof, debate (or like hearing) or appeal under section 51(1) of the Children (Scotland) Act 1995 (per day)</i> | |
| | (a) up to 20 days | £1,215.00 |
| | (b) subsequent days | £1,093.50 |
| 6. | <i>Appeal to Sheriff Principal (per day)</i> | £1,300.00 |
| 7. | <i>Time engaged in necessary travel</i> | |
| | Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken | £100.00 |
| 8. | <i>Accommodation and associated subsistence</i> | |
| | Payment of necessary accommodation and associated subsistence per day | £100.00" |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (“the 1989 Regulations”), principally in so far as relating to the payment of fees to counsel.

Regulation 4 amends the provisions in regulation 3 of the 1989 Regulations relating to the circumstances in which a solicitor or counsel may elect to receive payment of expenses recovered in favour of an assisted person instead of payment in accordance with regulation 3(2). In particular it introduces provisions whereby counsel can request payment of the expenses recovered in respect of counsel’s fees in circumstances where the solicitor has elected to receive payment in accordance with regulation 3(2).

Regulation 5 amends regulation 8 of the 1989 Regulations by shortening the period within which a solicitor requires to submit an account to the Scottish Legal Aid Board (“the Board”) from 6 months after the completion of proceedings to 4 months, and by introducing the same requirement for counsel.

Regulation 6 substitutes for regulation 9 of the 1989 Regulations a provision specifying that the work for which fees are payable to counsel is such work as shall be determined by the Board to have been actually and reasonably done, due regard being had to economy.

Regulations 7 and 9 and the Schedule to the Regulations amend the fees payable to counsel for proceedings in the Court of Session and sheriff court by—

- amending regulation 10 of the 1989 Regulations so as to provide that counsel’s fees in relation to proceedings in both the Court of Session and the sheriff court should be calculated in accordance with Schedule 4 to those Regulations; and
- substituting for Schedule 4 to the 1989 Regulations a new Schedule containing separate Tables of Fees specifying the fees payable to counsel for proceedings in the Court of Session and sheriff court.

Regulation 8 amends regulation 11 of the 1989 Regulations by altering the circumstances in which counsel instructed on behalf of an assisted person is entitled to claim a payment to account of fees incurred. The position in so far as relating to claims by solicitors, which had previously been amended by the Civil Legal Aid (Scotland) (Fees) Amendment Regulation 2003, is restated.

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LEGAL AID AND ADVICE

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Regulations 2011