

2011 No. 162

LEGAL AID AND ADVICE

**The Criminal Legal Aid (Fixed Payments) (Scotland)
Amendment Regulations 2011**

Made - - - - *24th February 2011*

Laid before the Scottish Parliament *28th February 2011*

Coming into force - - *22nd March 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 33(3A) 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 Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2011 and come into force on 22nd March 2011.

Application

2. These Regulations apply only in respect of proceedings commenced on or after 22nd March 2011.

Amendment of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999

3. The Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(b) are amended as follows.

4. For regulation 4(3)(b) substitute—

“(b) proceedings under any of the following provisions of the 1995 Act arising out of the complaint or complaints referred to in sub-paragraph (a):—

- (i) section 22(2), where it is alleged that the assisted person breached the undertaking by reason of failure to appear at court in accordance with the undertaking;
- (ii) section 27(1)(a);
- (iii) section 28; or
- (iv) section 150(8).”.

(a) 1986 c.47; section 33(3A) was inserted by section 51 of the Crime and Punishment (Scotland) Act 1997 (c.48). 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).

(b) S.I. 1999/491; amended by S.I. 1999/1820 and S.S.I. 1999/48, 2001/307, 2002/247 and 442, 2003/249, 2004/51, 126 and 263, 2005/93, 2006/234, 2008/240 and 2010/237, 267, 270 and 312.

5. After regulation 4(5) insert—

“(5A) Where—

- (a) a solicitor provides relevant ABWOR to an assisted person when, in the same court on the same day, that person is first brought before a court to answer to two or more summary complaints which are not to be treated as a single matter by virtue of paragraph (3); and
- (b) a guilty plea is tendered to the charge libelled in each complaint at the first diet at which the assisted person is called upon to plead to the charge,

the amount payable under paragraph 1 of Part 1 of Schedule 1B is 100% of the prescribed amount in respect of the first complaint, 40% of that amount in respect of the second complaint and 20% in respect of any other complaints.

(5B) The amount payable under (as the case may be) paragraph 1 of Part 1 of Schedule 1 or paragraph 1 of Schedule 1A is half the amount that would otherwise be payable if the assisted person—

- (a) was represented by a solicitor arranged by the Board to provide criminal legal aid pursuant to regulation 7(1) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 at the first diet at which the assisted person was called upon to plead;
- (b) tendered a plea of not guilty at that diet; and
- (c) before the commencement of the trial tendered a plea of guilty.”.

6. After regulation 4(6) insert—

“(6ZA) Where paragraphs (5B) and (6) both apply, the amount payable under paragraph 1 of Part 1 of Schedule 1 is to be halved in accordance with paragraph (5B) and £100 added to the quotient in accordance with paragraph (6).”.

7. In Part 1 of Schedule 1—

(a) in paragraph 1—

- (i) for the entry in the second column (which relates to the JP court), substitute—
“£295; or
£270 where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 below”;
- (ii) for the entry in the third column (which relates to the sheriff court or stipendiary magistrate), substitute—
“£485 in relation to proceedings in the sheriff court;
£460 where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 in relation to proceedings in the sheriff court;
£390 in relation to proceedings in the JP court(a); or
£365 where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 in relation to proceedings in the JP court”;
- (iii) for the entry in the fourth column (which relates to certain specified sheriff courts), substitute—
“£535; or
£510 where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 below”;

(a) By virtue of regulation 8(2) of S.S.I. 2008/240, any reference to “the JP court” in S.I. 1999/491 means the justice of the peace court and includes any remaining district court.

(b) for the entry in the first column of paragraph 10 substitute—

“**10.** Representation, per appearance—

- (a) in a court which has been designated as a youth court by the sheriff principal;
- (b) in a court which has been designated as a domestic abuse court by the sheriff principal;
- (c) at a hearing in respect of a community supervision order.”;

(c) after paragraph 10 insert—

“ 10ZA. Representation in court, per appearance, at a deferred sentence hearing.	£25 where the hearing relates to one complaint; or £37.50 where the hearing relates to more than one complaint	£50 where the hearing relates to one complaint; or £75 where the hearing relates to more than one complaint	£50 where the hearing relates to one complaint; or £75 where the hearing relates to more than one complaint”.
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8. In paragraph 1 of Schedule 1A—

(a) for the entry in the second column (which relates to the sheriff court or stipendiary magistrate), substitute—

“£485 in relation to proceedings in the sheriff court;
£460 where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 of Part 1 of Schedule 1 in relation to proceedings in the sheriff court;
£390 in relation to proceedings in the JP court; or
£365 where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 of Part 1 of Schedule 1 in relation to proceedings in the JP court”; and

(b) for the entry in the third column (which relates to certain specified sheriff courts), substitute—

“£485; or
£460 where criminal legal aid has been made available in the circumstances referred to in paragraphs 11 or 12 of Part 1 of Schedule 1”.

9. In Part 1 of Schedule 1B—

(a) in paragraph 1, for the entry in the third column (which relates to the sheriff court or stipendiary magistrate), substitute—

“£485; or
£390 in relation to proceedings in the JP court”;

(b) for the entry in the first column of paragraph 8 substitute—

“**8.** Representation, per appearance—

- (a) in a court which has been designated as a youth court by the sheriff principal;
- (b) in a court which has been designated as a domestic abuse court by the sheriff principal;
- (c) at a hearing in respect of a community supervision order.”; and

(c) after paragraph 8 insert—

“ 8A. Representation in court, per appearance, at a deferred sentence hearing.	£25 where the hearing relates to one complaint; or £37.50 where the hearing relates to more than one complaint	£50 where the hearing relates to one complaint; or £75 where the hearing relates to more than one complaint”.
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Reference to a solicitor arranged by the Board

10. In regulation 4(5B) of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999, the reference to a solicitor arranged by the Board to provide criminal legal aid pursuant to regulation 7(1) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 includes a solicitor available by virtue of arrangements made by the Board in accordance with regulation 5(1) of the Criminal Legal Aid (Scotland) Regulations 1996(a).

St Andrew’s House,
Edinburgh
24th February 2011

KENNY MACASKILL
A member of the Scottish Executive

(a) S.I. 1996/2555.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“the principal Regulations”) as follows—

- (a) regulation 4 extends the category of proceedings that are to be treated as a single matter by virtue of regulation 4(3) of the principal Regulations to include proceedings under sections 22(2) and 150(8) of the Criminal Procedure (Scotland) Act 1995;
- (b) regulation 5 provides for the fixed payments payable to a solicitor under paragraph 1 of Part 1 of Schedule 1B to the principal Regulations to be reduced where the solicitor represents a person in the same court on the same day in respect of more than one complaint and the person pleads guilty to all of the charges;
- (c) regulation 5 further provides for the fixed payment payable to a solicitor under paragraph 1 of Part 1 of Schedule 1 or paragraph 1 of Schedule 1A to the principal Regulations to be halved if the duty solicitor tenders a not guilty plea on the person’s behalf and the person subsequently pleads guilty before the trial begins;
- (d) regulation 6 clarifies that where a fixed payment payable to a solicitor under paragraph 1 of Part 1 of Schedule 1 to the principal Regulations is to be halved under the new provision inserted by regulation 5 and regulation 4(6) of the principal Regulations also applies, the payment is to halved before the additional £100 provided for by regulation 4(6) of the principal Regulations is added;
- (e) regulations 7 to 9 amend Schedules 1, 1A and 1B to the principal Regulations to provide that only a single payment is to be made in respect of a deferred sentence hearing which relates to more than one complaint;
- (f) regulations 7 to 9 also reduce the amounts payable under paragraph 1 of Part 1 of Schedule 1 and 1B and paragraph 1 of Schedule 1A and provide for the amounts payable under those paragraphs to differ depending on whether the proceedings are in the sheriff court or in the justice of the peace court before a stipendiary magistrate;
- (g) regulation 10 relates to the reference, which is to be inserted by regulation 5, to a solicitor arranged by the Scottish Legal Aid Board (“the Board”) pursuant to regulation 7(1) of the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011 (“the 2011 Regulations”). Regulation 5(1) of the Criminal Legal Aid (Scotland) Regulations 1996 (“the 1996 Regulations”) provides that the Board is to make solicitors available in certain circumstances. With effect from 6th June 2011 provision to the same effect is to be made by the 2011 Regulations which will, in consequence, revoke regulation 5 of the 1996 Regulations. Regulation 10 of these Regulations provides for the reference to a solicitor arranged by the Board pursuant to regulation 7 of the 2011 Regulations to include a solicitor arranged by the Board in accordance with the regulation 5 of the 1996 Regulations.

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