

2013 No. 92

LEGAL AID AND ADVICE

**The Criminal Legal Aid (Fixed Payments) (Scotland)
Amendment Regulations 2013**

Made - - - - *7th March 2013*

Laid before the Scottish Parliament *11th March 2013*

Coming into force - - *26th April 2013*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 33(3AA), (3AB), (3C), (3D), (3F) to (3J) and 36(1) and (2)(a) and (e) 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 2013 and come into force on 26th April 2013.

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

2.—(1) Regulation 4A of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(b) is amended as follows.

(2) In paragraph (1)—

(a) after “relevant criminal legal aid” insert “or relevant ABWOR”; and

(b) for “in Schedule 1” insert “(as the case may be) in Schedule 1 or Schedule 1B”.

(3) In paragraph (5), after “relevant criminal legal aid” where it each time appears insert “or relevant ABWOR”.

(4) After paragraph (9) insert—

“(10) Where the Board has granted an application for change of solicitor under regulation 14A(2) of the Advice and Assistance (Scotland) Regulations 1996(c), any solicitor who has provided relevant ABWOR prior to that grant is, where the Board has determined that the circumstances prescribed at paragraph (3) exist, instead of receiving the fixed payments specified in Schedule 1B, to be paid out of the Fund in accordance with regulations made under section 33(2) and (3) of the Act.

(a) 1986 c.47; section 33(3AA), (3AB), (3AC), (3C), (3D), (3E) and (3F) to (3J) were inserted by the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7), section 7. Section 33(3AC) and (3E) contain definitions relevant for the purpose of section 33(3AA), (3AB), (3C) and (3D). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (c.46), section 53.

(b) S.I. 1999/491; relevant amending instruments are S.S.I. 2002/247 and 2011/161.

(c) S.I. 1996/2447; relevant amending instrument is S.S.I. 2008/240.

(11) A solicitor to whom paragraph (10) applies is only to be paid where that solicitor has kept proper records of all professional services provided by way of, and outlays incurred in the provision of, that relevant ABWOR.”.

St Andrew's House,
Edinburgh
7th March 2013

KENNY MACASKILL
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 S.I. 1999/491 (“the 1999 Regulations”) to provide that in certain circumstances, and subject to certain conditions, the Scottish Legal Aid Board (“the Board”) may determine that a solicitor is not to receive fixed payments for work done in connection with a grant of assistance by way of representation but instead is to receive payment based on the amount of time spent and work done in providing the assistance by way of representation.

The Regulations amend regulation 4A of the 1999 Regulations, which already makes provision for payment other than by fixed payments in respect of criminal legal aid, to extend that regulation to assistance by way of representation. Regulation 4A of the 1999 Regulations prescribes the factors to be taken into account by the Board in deciding whether to determine that a solicitor should not receive fixed payments; makes provision in relation to the form of application for a determination by the Board; requires solicitors to keep proper records of professional services and provide for a procedure for review of the Board’s decision.

These Regulations also amend regulation 4A of the 1999 Regulations to provide that, where there has been a change of solicitor, any solicitor who provided assistance by way of representation to the assisted person at any time before that change is, in certain circumstances and subject to certain conditions, to receive payment based on the amount of time spent and work done.