
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 380

LEGAL AID AND ADVICE

The Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2015

Made - - - - *5th November 2015*
Laid before the Scottish
Parliament - - - - *9th November 2015*
Coming into force - - *1st January 2016*

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

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2015 and come into force on 1st January 2016.

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

2.—(1) The Civil Legal Aid (Scotland) (Fees) Regulations 1989⁽²⁾ are amended as follows.

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

(a) in the definition of “auditor”, after paragraph (a) insert—

“(aa) in relation to proceedings in the Sheriff Appeal Court, the auditor of the sheriff court for the sheriffdom in which the proceedings were heard;”;

(b) for the definition of “solicitor-advocate” substitute—

““solicitor-advocate” means a solicitor having a right of audience, whether instructed by another solicitor or not, when and only when—

(a) that solicitor is exercising that right of audience or acting in connection with the exercise of that right; or

(1) 1986 c.47 (“the 1986 Act”). Section 33(2) of the 1986 Act was amended by section 67(7)(b) of the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5). 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. 1989/1490; relevant amending instruments are S.S.I. 1994/1015, S.S.I. 2003/178, S.S.I. 2004/281, S.S.I. 2007/14, S.S.I. 2009/203, S.S.I. 2011/160 and 2013/144.

- (b) in relation to proceedings in the Sheriff Appeal Court—
 - (i) the Board has authorised the employment of counsel under regulation 21(1)(ca) of the Civil Legal Aid (Scotland) Regulations 2002(3); and
 - (ii) that solicitor would have been exercising that right of audience, or acting in connection with the exercise of that right, had the proceedings taken place in a court to which section 25A of the Solicitors (Scotland) Act 1980 applied;”.
- (3) In regulation 4 (fees and outlays allowable to solicitors), for “regulation 8” substitute “regulations 7A and 8”.
- (4) In regulation 5 (fees and outlays allowable to solicitors)—
 - (a) after paragraph (1) insert—
 - “(1A) A solicitor’s fees in relation to proceedings in the Sheriff Appeal Court shall be calculated in accordance with either Schedule 5 or Schedule 6 but it shall not be competent to charge fees partly on the basis of Schedule 5 and partly on the basis of Schedule 6.”;
 - (b) in paragraph (4)—
 - (i) after “In all Court of Session proceedings” insert “or proceedings in the Sheriff Appeal Court”; and
 - (ii) for “The Court of Session in deciding” substitute “The Court of Session, or as the case may be the Sheriff Appeal Court, in deciding”.
- (5) After regulation 7 insert—

“Single account where other solicitor employed

- 7A.—(1) Paragraphs (2) and (3) apply where a solicitor (“the nominated solicitor”) instructs another solicitor to carry out work in relation to proceedings (other than proceedings in the Sheriff Appeal Court, the Court of Session or the Supreme Court).
- (2) Accounts in respect of fees and outlays allowable to solicitors shall be submitted to the Board only by the nominated solicitor, payment of the other solicitor being a matter for adjustment between the nominated solicitor and the other solicitor out of the fees and outlays allowed to the nominated solicitor.
- (3) In determining the sum to be allowed to the nominated solicitor, the Board shall take into account also the work carried out by the other solicitor.”.
- (6) In regulation 10(1) (fees allowable to counsel), after “Court of Session” insert “, Sheriff Appeal Court”.
- (7) In regulation 12(4) (taxation of fees and outlays)—
 - (a) after sub-paragraph (a) insert—
 - “(aa) in relation to any report of the auditor of a sheriff court in relation to proceedings in the Sheriff Appeal Court, the Sheriff Appeal Court;”;
 - (b) in sub-paragraph (b), after “auditor of a sheriff court” insert “(other than a report in relation to proceedings in the Sheriff Appeal Court)”.
- (8) In Schedule 2 (fees of solicitors for proceedings in the sheriff court)—

(3) S.S.I. 2002/494; regulation 21(1)(ca) is inserted by regulation 3(4) of these Regulations.

- (a) in Chapter II of the Table of Fees (defended actions (other than actions to which Chapter III or IV applies)), omit paragraph 19 (appeals); and
 - (b) in Part II (defended actions) of Chapter III of the Table of Fees (summary cause), omit paragraph 21.
- (9) In Schedule 4 (fees of counsel for proceedings in the Court of Session and sheriff court)—
- (a) in paragraph 13, after “sheriff court” insert “or the Sheriff Appeal Court”;
 - (b) in Table of Fees B (fees of counsel for proceedings in the sheriff court)—
 - (i) in paragraph 16 of Part 1 (junior counsel), for “sheriff principal” substitute “Sheriff Appeal Court”;
 - (ii) in paragraph 6 of Part 2 (senior counsel), for “sheriff principal” substitute “Sheriff Appeal Court”; and
 - (iii) the heading becomes “Table of Fees B – Fees of Counsel for proceedings in the sheriff court and the Sheriff Appeal Court”; and
 - (c) the heading of the Schedule becomes “Fees of Counsel for proceedings in the Court of Session, Sheriff Appeal Court and sheriff court”.
- (10) The heading of Schedule 5 becomes “Table of detailed fees chargeable by solicitors for proceedings in the Court of Session and the Sheriff Appeal Court, proceedings listed at regulation 5(3) and proceedings in the sheriff court listed in Schedule 7”.
- (11) In Schedule 6 (table of fees chargeable by solicitors for proceedings in the sheriff court (except summary cause and executry proceedings and the proceedings listed in Schedule 7))—
- (a) in Chapter II (sheriff court civil fees (defended))—
 - (i) in paragraph 18, for “Sheriff Principal” substitute “Sheriff Appeal Court”; and
 - (ii) in paragraph 5(e) of the table (preparation), for “Sheriff Principal” substitute “Sheriff Appeal Court”; and
 - (b) the heading of the Schedule becomes “Table of fees chargeable by solicitors for proceedings in the sheriff court (except summary cause and executry proceedings and the proceedings listed in Schedule 7) and in the Sheriff Appeal Court”.
- (12) The amendments made by paragraphs (8) to (11) do not apply in the case of an appeal made to the sheriff principal prior to the commencement of section 109(1) of the Courts Reform (Scotland) Act 2014 (abolition of appeal from a sheriff to the sheriff principal).

Amendment of the Civil Legal Aid (Scotland) Regulations 2002

- 3.—(1) The Civil Legal Aid (Scotland) Regulations 2002(4) are amended as follows.
- (2) In regulation 2(1) (interpretation), for the definition of “solicitor-advocate” substitute—
- ““solicitor-advocate” means a solicitor having a right of audience, whether instructed by another solicitor or not, when and only when—
- (a) that solicitor is exercising that right of audience or acting in connection with the exercise of that right; or
 - (b) in relation to proceedings in the Sheriff Appeal Court, that solicitor would have been exercising that right of audience, or acting in connection with the exercise of that right, had the proceedings taken place in a court to which section 25A of the Solicitors (Scotland) Act 1980 applied;”.
- (3) In regulation 4 (distinct proceedings for the purposes of legal aid)—

(4) [S.S.I. 2002/494](#); relevant amending instruments are [S.S.I. 2009/312](#) and [S.S.I. 2010/166](#).

- (a) in paragraph (1)(b), for “sheriff principal” substitute “Sheriff Appeal Court”; and
- (b) for paragraph (2), substitute—
 - “(2) Where proceedings are—
 - (a) initiated in the sheriff court and remitted to the Court of Session;
 - (b) initiated in the Court of Session and remitted to the sheriff court;
 - (c) initiated in the sheriff court and remitted to the Scottish Land Court; or
 - (d) initiated in the Sheriff Appeal Court and remitted to the Court of Session,the proceedings in the court to which the case is remitted are not to be treated as distinct from the proceedings in the initial court.”
- (4) In regulation 21(1) (employment of counsel etc.), after sub-paragraph (c) insert—
 - “(ca) for the employment of counsel in the Sheriff Appeal Court;”.

St Andrew’s House, Edinburgh
5th November 2015

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 1989 and the Civil Legal Aid (Scotland) Regulations 2002.

Regulation 2 amends the Civil Legal Aid (Scotland) (Fees) Regulations 1989 to make provision consequential upon the transfer of appeal jurisdiction from the sheriff principal to the Sheriff Appeal Court by virtue of section 109 of the Courts Reform (Scotland) Act 2014. It provides for the calculation of a solicitor's fees in relation to proceedings in the Sheriff Appeal Court and for the auditing of accounts of fees and outlays in relation to such proceedings. It replaces the existing definition of "solicitor-advocate" to allow solicitor-advocates to be paid on the same basis as counsel where the Scottish Legal Aid Board ("SLAB") has authorised the employment of counsel in the Sheriff Appeal Court. It also provides, in relation to proceedings other than in the Sheriff Appeal Court, the Court of Session or the Supreme Court, that in any case where a solicitor ("the nominated solicitor") instructs another solicitor to carry out work (as, for example, where the solicitor instructs an Edinburgh solicitor in relation to an appeal, or a local solicitor to take precognitions or make inquiries), the only account to be submitted to SLAB shall be that of the nominated solicitor, who shall include the other solicitor's fees as an outlay in the nominated solicitor's account. (Similar provision is made in relation to criminal legal aid by regulation 4(3) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989 (S.I. 1989/1491)).

Regulation 3 amends the Civil Legal Aid (Scotland) Regulations 2002 to take account of the transfer of appeal jurisdiction from the sheriff principal to the Sheriff Appeal Court; to provide for certain proceedings remitted between courts not to be treated as distinct proceedings for the purposes of legal aid; and to require the prior approval of SLAB for the employment of counsel (including solicitor-advocates) in the Sheriff Appeal Court.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh EH1 3DG.