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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 312**

**LEGAL AID AND ADVICE**

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

*Made* - - - - - *3rd September 2010*  
*Laid before the Scottish*  
*Parliament* - - - - - *6th September 2010*  
*Coming into force* - - - - - *30th September 2010*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 33(2), (3) and (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 Assistance (Fees) (No. 2) (Scotland) Regulations 2010 and come into force on 30th September 2010.

**Application**

2. These Regulations apply only in relation to a case where criminal legal assistance is first provided to the assisted person on or after 30th September 2010.

**Amendment of the Advice and Assistance (Scotland) Regulations 1996**

3. In the table of fees in Part II of Schedule 3 to the Advice and Assistance (Scotland) Regulations 1996(b) (table of fees allowed to solicitors for advice and assistance other than assistance by way of representation)—

- (a) in paragraph A, for “E” substitute “G”; and
- (b) after paragraph E insert—

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(a) 1986 c.47; section 33(2) was amended by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 67; section 33(3A) was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 51. 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. 1996/2447; the table of fees was inserted in its present form by S.S.I. 2005/171 and has been amended by S.S.I. 2008/240.

- “F. For the first half hour (or part thereof) providing advice and assistance to the client if—
- (a) the client is being detained under section 14(1) of the Criminal Procedure (Scotland) Act 1995(c) £30.94 — — or is otherwise at a police station for the purposes of questioning; and
- (b) the period—
- (i) concludes after 2200 hours; or
- (ii) begins before 0700 hours.
- G. For each quarter hour (or part thereof), subsequent to the first half hour, providing advice and assistance to the client in the circumstance mentioned in paragraph F(a), if the quarter hour period— £15.47 — —
- (a) concludes after 2200 hours; or
- (b) begins before 0700 hours.”

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

**4.** In regulation 4 of the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999(d) (fixed payments allowable to solicitors)—

- (a) in paragraph (6A)(a)—
- (i) for “7(5)(a)(ii)” substitute “7(5)(a)(ii)(aa)”; and
- (ii) for “at a police station” substitute “while the assisted person is being detained under section 14(1) of the 1995 Act or is otherwise at a police station for the purposes of questioning”; and
- (b) after paragraph (6B) insert—
- “(6BA) Paragraphs (6A) and (6B) do not apply—

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(d) S.I. 1999/491; amended by S.I. 1999/1820 and S.S.I. 1998/48, 2001/307, 2002/247 and 442, 2003/249, 2004/51, 126 and 263, 2005/93, 2006/234, 2008/240 and 2010/237, 267 and 270.

- (a) if the time spent by solicitor A at the police station or other place of detention, together with the time spent reasonably and proportionately (as compared to the time involved in the attendance) travelling to and from that place, exceeds 2 hours;
- (b) to the extent that the advice and assistance was provided, and any relative travel was undertaken, between 2200 hours and 0700 hours.”

**Amendment of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008**

5. For regulation 7(5)(a) of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008(e) (which specifies work in respect of which solicitors are entitled to separate payment despite paragraphs (3) and (4) of that regulation) substitute—

- “(a) the provision of advice or assistance to, or representation of, the assisted person while the assisted person is being detained under section 14(1) of the Criminal Procedure (Scotland) Act 1995 or is otherwise at a police station—
  - (i) if the time spent at the police station or other place of detention, together with the time spent reasonably and proportionately (as compared to the time involved in the attendance) travelling to and from that place, exceeds 2 hours;
  - (ii) where the assisted person is at the police station, or other place of detention, for the purposes of questioning—
    - (aa) if the solicitor who provided the advice and assistance does not go on to provide any further criminal legal assistance to the assisted person in respect of the same matter; or
    - (ab) to the extent that the advice and assistance is provided, and any relative travel is undertaken, between 2200 hours and 0700 hours.”

St Andrew’s House, Edinburgh  
3rd September 2010

*KENNY MACASKILL*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

These Regulations amend legal aid and advice legislation to allow solicitors an increased, or in certain circumstances an additional, fee for providing advice and assistance between 2200 hours and 0700 hours to a person who is being detained under section 14(1) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) or who is not being so detained but is nevertheless at a police station for the purposes of questioning.

The amendments made by these Regulations only apply to cases in relation to which criminal legal assistance (as defined by section 41 of the Legal Aid (Scotland) Act 1986<sup>(f)</sup>) is first provided to the person on or after 30th September 2010 (regulation 2).

Regulation 3 amends the Advice and Assistance (Scotland) Regulations 1996 to prescribe £30.94 for the first half hour and £15.47 for each subsequent quarter hour as the fee rates for providing advice and assistance in the circumstances described above.

Regulation 4 amends the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“the 1999 Regulations”). Paragraph (a) makes amendments to reflect the amendments made by regulation 5 of these Regulations to regulation 7(5) of the Criminal Legal Assistance (Fees and Information etc.) (Scotland) Regulations 2008 (“the 2008 Regulations”).

Regulation 4(b) of these Regulations clarifies the operation of regulation 4(6A) and (6B) of the 1999 Regulations. Those provisions apply where one solicitor provides advice and assistance to a person at a police station (or other place of detention if the client is being detained under section 14(1) of the 1995 Act) and a different solicitor (or solicitors) act for the person in respect of any related prosecution under summary procedure. In such cases, except where the case proceeds before a designated drug court, the effect of regulation 4(6A) and (6B) is that the fee that the solicitor who provided the advice and assistance at the police station (or other place of detention) is entitled to, is to be deducted from any fixed payment payable to the solicitor (or solicitors) who subsequently acted for the person. Regulation 4(b) of these Regulations inserts a new regulation 4(6BA) into the 1999 Regulations which provides that no amount is to be deducted from the fixed payment payable to the solicitor (or solicitors) who subsequently acted for the person if the provision of the advice and assistance to the person at the police station (or other place of detention) took more than 2 hours or, where it took less than 2 hours, to the extent that the advice and assistance was provided between 2200 hours and 0700 hours.

Regulation 7 of the 2008 Regulations provides that where more than one type of criminal legal assistance is made available in relation to summary proceedings, payment is to be made in respect of one type of assistance only. Exceptions to the single payment rule are set out in regulation 7(5). Prior to these Regulations there were two exceptions to the single payment rule. The single payment rule did not apply if providing the advice and assistance took more than 2 hours, or if the solicitor who provided the advice and assistance was not the same solicitor who went on to provide the further criminal legal assistance. Regulation 5 of these Regulations amends regulation 7(5) of the 2008 Regulations to add a further exception. The added exception allows a solicitor to be paid for spending less than 2 hours providing advice and assistance to a person at a police station where, and only insofar as, that advice and assistance is provided between 2200 hours and 0700 hours. The new regulation 7(5)(a) of the 1999 Regulations inserted by regulation 5 of these Regulations also differs

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<sup>(f)</sup> The definition of “criminal legal assistance” was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 1, paragraph 12(10)(b).

from regulation 7(5)(a) as originally enacted in referring not only to the person being at a police station, but to the person being at any place where he or she is being detained under section 14(1) of the 1995 Act.