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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 178**

**LEGAL AID AND ADVICE**

**The Civil Legal Aid (Scotland)  
(Fees) Amendment Regulations 2003**

<i>Made</i>	- - - -	<i>11th March 2003</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>11th March 2003</i>
<i>Coming into force</i>	- -	<i>1st October 2003</i>

The Scottish Ministers, in exercise of the powers conferred by sections 33(2)(a) and (3) and 36(1) and (2)(a) of the Legal Aid (Scotland) Act 1986(1), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 and shall come into force on 1st October 2003.

**Application**

2. These Regulations shall apply only to fees for work done and outlays incurred in relation to any case where civil legal aid is granted on or after 1st October 2003, except regulation 4, which shall apply to fees for work done and outlays incurred on or after 1st October 2003.

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

3. The Civil Legal Aid (Scotland) (Fees) Regulations 1989(2) are amended in accordance with the following regulations.

4. In regulation 4, for the words from “a solicitor” to the end substitute—

“a solicitor shall be allowed such amount of fees and outlays as shall be determined by the Board to be reasonable remuneration for work actually, necessarily and reasonably done and outlays actually, necessarily and reasonably incurred, for conducting the proceedings in a proper manner, as between solicitor and client, third party paying”.

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(1) 1986 c. 47. 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, amended by S.I. 1990/473, 1991/565, 1994/1015 and 1233, 1995/1044, 1997/689 and 1999/1042 and S.S.I. 2002/496.

5. For regulation 5(1) and (2) substitute –

“(1) A solicitor’s fees in relation to proceedings in the Court of Session shall be calculated in accordance with Schedule 5.

(2) A solicitor’s fees in relation to proceedings in the sheriff court–

(a) shall, subject to sub-paragraphs (b) and (c), be calculated in accordance with chapters I and II of Schedule 6;

(b) which are listed in Schedule 7 shall be calculated in accordance with Schedule 5; and

(c) which consist of a summary cause or executry business shall be calculated in accordance with chapter III or IV respectively of Schedule 2.

(2A) For the purpose of calculating the fees set out in Schedule 6, a unit has the value of £19.

(2B) Where a solicitor does work which comes within chapter I of Schedule 6 (undefended cases) and, in the same case, does work which comes within chapter II of that Schedule (defended cases) the fee for all work in that case shall be calculated on the basis of the fees set out in chapter II of that Schedule.

(2C) Subject to paragraph (2D), the Board may at its discretion allow a fee additional to the fees prescribed in chapter II of Schedule 6 where it is satisfied that any of the circumstances prescribed in chapter III of that Schedule exist, and have a significant effect on the conduct of the case.

(2D) The additional fee allowable in accordance with paragraph (2C) shall be 10 per cent of the fee authorised by chapter II of Schedule 6 in respect of each of the circumstances specified in chapter III of that Schedule, up to a maximum in any case of 40 per cent of that fee.

(2E) Fees for sequestration in bankruptcy (other than summary sequestrations) or proceedings under the Children (Scotland) Act 1995(3) shall be chargeable only on the basis of Schedule 3 and fees for summary sequestrations shall be chargeable only on the basis of 80 per cent of the fees in that Schedule.”.

6. In regulation 5(3), for “Schedule 3” substitute “Schedule 5”.

7. In regulation 5(4)–

(a) for “Schedules 1 or 3” substitute “Schedule 5 and not exceeding 50 per cent of those fees”; and

(b) omit “in a cause on the Ordinary Roll, not exceeding 50 per cent, and”.

8. In regulation 5(6), for “Schedules 1 or 2” substitute “Schedules 1, 2 or 6”.

9. In regulation 6, for “Schedule 3” substitute “Schedule 5 or 6”.

10.—(1) Subject to paragraph (2), regulation 11 is amended as follows:–

(a) for paragraph (2) substitute–

“(2) 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.”; and

(b) omit paragraphs (3) and (4).

- (2) Regulation 11 is amended by paragraph (1) only insofar as it relates to payments to solicitors.
- 11.** At the end insert the Schedules set out in the Schedule to these Regulations.

St Andrew's House, Edinburgh  
11th March 2003

*HUGH HENRY*  
Authorised to sign by the Scottish Ministers

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SCHEDULE

Regulation 11

NEW TABLES OF FEES TO BE INSERTED INTO THE  
LEGAL AID (SCOTLAND) (FEES) REGULATIONS 1989

“SCHEDULE 5

Regulations 5 and 6

TABLE OF DETAILED FEES CHARGEABLE BY SOLICITORS FOR PROCEEDINGS  
IN THE COURT OF SESSION, PROCEEDINGS LISTED AT REGULATION 5(3)  
AND PROCEEDINGS IN THE SHERIFF COURT LISTED IN SCHEDULE 7

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- |    |  |
|----|--|
| 1. | The fee for–<br><br>(a) Any time to £34.00<br>the first half hour<br>spent by a solicitor<br>conducting a proof or<br>hearing<br><br>(b) Each quarter £17.00<br>hour (or part thereof)<br>subsequent to the first<br>half hour   |
| 2. | The fee for–<br><br>(a) Each quarter £13.15<br>hour (or part thereof)<br>spent by a solicitor<br>in carrying out<br>work other than<br>that prescribed in<br>paragraphs 1 and 3<br>to 6 hereof, provided<br>that any time is<br>additional to the total<br>time charged for<br>under paragraph 1<br>above<br><br>(b) Each quarter £6.50<br>hour (or part thereof)<br>spent by a solicitor’s<br>clerk in carrying<br>out work other than<br>that prescribed in<br>paragraphs 3 to 6<br>hereof |
| 3. | The fee for–<br><br>Framing affidavits – per sheet £11.15<br>(or part thereof)   |
| 4. | The fee for–   |

- (a) Framing and drawing all necessary papers, other than affidavits or papers of a formal character
- (b) Each citation of a party, witness or haver including execution thereof
- (c) Instructing messengers-at-arms and sheriff officers, including examining execution and settling fee
- (d) Agency accepting service of any writ
- (e) Lodging first step of process
- (f) Lengthy telephone calls (of over 4 minutes and up to 10 minutes duration)
- (g) Letters, including instructions to counsel – per page (or part thereof), subject to paragraph 5(f) below
- (h) Perusing any document (other than a letter) consisting of not more than 12 sheets – for the first 2 sheets and each 2 sheets thereafter–

*Note:* Where the document perused consists of more than 12 sheets the fee for perusing the whole document shall be charged in accordance with paragraph 2 above

in each of sub paragraphs (a)- £7.50  
(h).

5.

The fee for–

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- (a) Attendance at court offices for carrying out formal work including making up process and each necessary lodging in (other than first step) uplifting from or borrowing of process (to include return of same) or enquiry for documents due to be lodged
- (b) Revising papers drawn by counsel, open and closed records etc. or where revisal ordered – per 5 sheets (or part thereof)
- (c) Framing formal papers such as inventories, title pages and accounts of expenses per sheet (or part thereof)
- (d) Certifying or signing a document
- (e) Short telephone calls (of up to 4 minutes duration)
- (f) Short letters of a formal nature, intimations, and letters confirming telephone calls–

in each of sub paragraphs (a) to (f) £2.95

6. Where an exceptional amount of copying proves necessary, for each sheet a fee of £0.08

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### **Interpretation**

In this Table–

“court” means court or tribunal as the case may be;

a “sheet” shall consist of 250 words or numbers;

a “page” shall consist of 125 words or numbers; and  
“exceptional” means the production of more than 20 output copy sheets (whether 20 of 1 sheet, 5 of 4 sheets or whatever) when a document has been copied.”.

SCHEDULE 6

Regulations 5 and 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)

CHAPTER I

SHERIFF COURT CIVIL FEES (UNDEFENDED)

<i>Work Done</i>	<i>Inclusive Fee in Units</i>
<i>Part I – All actions except those actions of divorce or separation and aliment to which Part II applies</i>	
1. Actions (other than those specified in paragraph 2 of this Part) in which decree is granted without proof–	
Inclusive fee to cover all work from taking instructions up to and including obtaining extract decree.	6
<i>Note:</i> In cases where settlement is effected after service of a writ but before the expiry of the period of notice.	5
Additional fee to cover–	
(a) (a) drawing, intimating and lodging any written motion for interim orders or diligence, including the first quarter hour of argument, even if involving appearances on different dates (to include instructing service and implementation)	6
(b) (b) thereafter, attendance fee at any hearing (including any continuation of the diet) per quarter hour (payable only in relation to time engaged in the conduct of the hearing)	1
To framing all necessary affidavits per sheet (to include notarial fee unless on cause shown the affidavit cannot be notarised within the principal agent’s firm, in which case a fee to the external notary is 1 unit).	1

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<i>Work Done</i>	<i>Inclusive Fee in Units</i>
<p>Note: charges levied by notaries outwith the United Kingdom shall be payable according to the circumstances of the case; and</p> <p>affidavits in this Part do not include those required to prove a divorce.</p> <p>2. Actions of separation and aliment (not being actions to which Part II of this chapter applies) adherence and aliment or residence and aliment where proof takes place –</p> <p>inclusive fee to cover all work from taking instructions up to and including obtaining extract decree.</p>	20

*Part II – Actions of divorce or separation and aliment where proof is by means of affidavits*

1. In any undefended action of divorce or separation and aliment where–

- (a) the facts set out in section 1(2)(b) (unreasonable behaviour) of the Divorce (Scotland) Act 1976 are relied upon; and
- (b) the pursuer seeks to prove those facts by means of affidavits,

the pursuer’s solicitor may be in respect of the work specified in column 1 of Table A in this paragraph charge the inclusive fee specified in respect of that work in column 2 of that Table.

**TABLE A**

<i>Column 1 Work done</i>	<i>Column 2 Inclusive fee in Units</i>
1. All work to and including the period of notice.	14
2. All work from the period of notice to and including swearing affidavits.	10
3. All work from swearing affidavits to and including sending extract decree.	3
4. All work to and including sending extract decree.	27



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<i>Work Done</i>	<i>Inclusive Fee in Units</i>
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2. In any undefended action of divorce or separation and aliment where—

- (a) the facts set out in section 1(2)(a) (adultery), 1(2)(c) (desertion), 1(2)(d) (two years' non cohabitation and consent) or 1(2)(e) (five years' non cohabitation) of the Divorce (Scotland) Act 1976 are relied on; and
- (b) the pursuer seeks to prove those facts by means of affidavits,

the pursuer's solicitor may in respect of the work specified in column 1 of Table B in this paragraph charge the inclusive fee specified in respect of that work in column 2 of that Table.

**TABLE B**

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<i>Column 1</i> <i>Work done</i>	<i>Column 2</i> <i>Inclusive fee in Units</i>
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1. All work to and including the period of notice.

2. All work from the period of notice to and including swearing affidavits.

3. All work from swearing affidavits to and including sending extract decree.

4. All work to and including sending extract decree.

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3. If—

- (a) the pursuer's solicitor charges an inclusive fee under either paragraph 1 or paragraph 2 of this Part; and
- (b) the action to which the charge relates includes a crave relating to an ancillary matter,

in addition to that fee, he may charge in respect of the work specified in column 1 of Table C in this paragraph the inclusive fee specified in respect of that work in column 2 of that Table.

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<i>Work Done</i>	<i>Inclusive Fee in Units</i>
<b>TABLE C</b>	
<i>Column 1 Work done</i>	<i>Column 2 Inclusive fee in Units</i>
1. All work to and including the period of notice.	5
2. All work from the period of notice to and including swearing affidavits.	3
3. All work under items 1 and 2.	8

## CHAPTER II

### SHERIFF COURT CIVIL FEES (DEFENDED)

#### *Notes on the operation of chapter II*

Payment of the fees set out in the table in this chapter is subject to the following provisions.

1. In assessing any account lodged with the Board on a solicitor and client, third party paying basis, regard shall be had to—
  - (a) what would be considered reasonable in a judicial taxation, on a party and party basis, for conducting the proceedings in a proper manner; and
  - (b) any work or expense specifically sanctioned, certified or authorised by the Board.
2. It shall be competent for the Auditor to disallow any fee which he shall judge irregular or unnecessary.
3. In the taxation of accounts where counsel is employed—
  - (a) counsel's fees are allowed only where the Board has sanctioned the employment of counsel;
  - (b) except on cause shown, fees to counsel for only two consultations in the course of the cause are allowed; and
  - (c) except on cause shown, fees to counsel shall not be payable for attendance at hearings which are routine or procedural or which do not advance the cause.
4. A fee in respect of a Minute of Amendment is only payable to the solicitor bringing the amendment where—
  - (a) the Minute was necessary due to a new development in the case;
  - (b) relevant information which was previously unknown to the solicitor came to the solicitor's attention; or
  - (c) the work could not have been done at an earlier stage in the proceedings.
5. The fees set out in this chapter include—
  - (a) all correspondence, telephone calls or communication of whatever nature with the Board;

- (b) all fees incurred by any other solicitor in relation to work done in any part of the case, which shall not be a chargeable outlay; and
- (c) copyings,

and include not only the work expressly set out within the terms of each paragraph but also (unless specifically provided for) all meetings, correspondence, precognitions, negotiation ancillary thereto, and all posts and incidental expenses.

6. The fee under paragraph 1(d) is payable on each transfer of agency but is not payable where an advice and assistance account in respect of the same matter is charged to the Board or the client. Where there is a transfer of agency, the solicitor from whom agency is transferred shall be paid the whole fee for work done by that solicitor in respect of any paragraph or sub-paragraph; and where work done under any paragraph or sub-paragraph is only partially completed by that solicitor, the fee payable in respect of that work shall be apportioned equally between the solicitor from whom agency is transferred and the solicitor to whom agency is transferred.

7. A fee is payable under either paragraph 2(a) or paragraph 2(b); both fees cannot be claimed. The fee under paragraph 2(b) is only payable where it is unlikely that the action would have settled without the input of the solicitor and the solicitor certifies that settlement took place in consequence of one or both of the following circumstances:—

- (a) settlement was expressed within an extraneous Minute of Agreement or a Joint Minute (other than a Joint Minute for dismissal or decree simpliciter) encompassing an outcome materially different from the terms of any interim order of court in force immediately prior to the execution of that Joint Minute or Minute of Agreement;
- (b) settlement followed upon an exercise of sustained negotiation involving a significant level of discussion between solicitor, the client or the opponent (or their agent) taking place after the conclusion of the work payable under paragraph 1 and clearly documented on the file for perusal, if required, by the Board.

8. The factors that the Auditor shall take into account in assessing a claim based on paragraph 2(b) will be a lengthy meeting or series of meetings or correspondence or other communication between the parties which, together, justify the conclusion that, but for this significant work, the case would have proceeded further at potential cost to the Fund or the parties.

9. The fee under paragraph 3(a) is payable only in relation to time engaged in the conduct of the hearing and any continued hearing. The conduct of the hearing is the actual time involved in the substantive argument and does not include any formal attendance at a hearing for the purpose of seeking an adjournment or other formal attendance not devoted to the stating of the argument.

10. The fee payable under paragraph 3(a)(i) includes the first quarter hour of argument, even if involving appearances on different dates. The fee is not chargeable on a quarter hour block but rather on the total number of minutes taken up in argument at a hearing or continued hearings.

11. The fee payable under paragraph 4(a) includes the notarial fee unless, on cause shown, the affidavit cannot be notarised within the principal agent's firm, in which case a fee of one unit is payable to the external notary. Charges levied by notaries outwith the United Kingdom shall be paid according to the circumstances of the case.

12. The fees under paragraph 4(b), (c), (d) and (e) are payable only once in any case.

13. The fee under paragraph 4(e) is payable only where the settlement conference or negotiation takes place in one location or by telephone. This fee is payable in relation to one meeting (including a continued meeting) in relation to any case and is payable only where—

- (a) negotiation commences at least 14 days prior to the proof; and
- (b) the fee under paragraph 4(f) is not charged in the case,

and where this fee is claimed the work done should be clearly documented on the file, for perusal, if required, by the Board.

14. The fee under paragraph 4(f) is payable only where no other attendance fee is charged in relation to any appearance at which authority is interponed to the Joint Minute and is not payable in addition to any fee under paragraph 5(a)(ii) to (iii).

15. The fee under paragraph 5(a) is only payable once in any case and the fee under paragraph 5(a)(iii) includes preparation for a debate on evidence.

16. The fee under paragraph 5(b) is payable only in respect of a debate in law.

17. The fee payable under paragraph 5(c) includes all continued diets and a further fee under paragraph 5(c) is only payable in the event of a further and distinct Child Welfare Hearing being fixed by the court in response to further identifiable circumstances.

18. Notwithstanding paragraph 5(e), the taking of an appeal to the Sheriff Principal is a distinct proceeding and shall require a separate application for civil legal aid and nothing in this table shall imply otherwise.

19. The fee under paragraph 6 is payable on the total time engaged, even if on different occasions and is payable cumulatively between waiting and conduct time. The actual time over the proceedings incurred in waiting and conduct of hearings shall be added together and rounded up to the nearest 15 minutes.

20. The fees payable under this chapter include all travel to court, except as otherwise provided for by paragraph 21.

21. Excess travel time, in addition to the fees payable under this chapter, is payable at 0.8 units per 15 minutes and is allowable only in relation to an attendance at court, subject to the following conditions:—

- (a) the solicitor claiming travel time is a solicitor with whom the client has had significant contact in relation to the conduct of the case;
- (b) the solicitor's attendance was necessary for the advancement of the case;
- (c) the distance travelled is at least 10 miles in each direction from the solicitor's normal place of work (and no travel time shall be payable in respect of the first 10 miles travelled in each direction);
- (d) when payment for travel time is claimed for more than one case, the time shall be apportioned equally between the various cases for which the solicitor attended court (including non legally aided cases); and

22. Travel expenses may only be incurred where travel time is chargeable.

23. Where it would be more cost effective to travel by public transport the solicitor shall do so.

24. Waiting time in a case shall only be payable in respect of the hearings which are referred to in paragraph 5 of the table of fees in this chapter and shall be payable—

- (a) from the time appointed by the court for the Hearing; or
- (b) from the conclusion of any other business ending prior to the case (including non legal aid cases),

whichever is the shorter.

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*Fee Payable*

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*Units*

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**1. Instruction Fee—**

<i>Fee Payable</i>	<i>Units</i>
(a) (a) All work from the taking of instructions to the conclusion of proceedings where no fee under paragraph (b) is allowable.	10
(b) (b) To cover all work from the taking of instructions to commence or defend proceedings until the date appointed for the lodging of defences or the making of an order dispensing with written defences (except as specifically provided for below).	20
(c) (c) <i>Counterclaim</i> – Additional fee where a counterclaim is lodged.	4
(d) (d) <i>Transfer of Agency</i> – receiving instructions after a transfer of agency, where defences have, or should already have been, lodged, to include familiarising the incoming agent with the file.	8
<b>2. Progress Fees–</b>	
(a) (a) To cover all additional work (including adjustment, attendance at Options Hearing and Continued Options Hearing) from the conclusion of the work in Paragraph 1 until the allowance of a Proof or Debate (except as specifically provided below)	19
or	
(b) (b) To cover all additional work (e.g. negotiation, discussion, voluntary disclosure and all meetings and correspondence) involving the active participation of agents and resulting, prior to the allowance of a proof or debate, in the negotiated settlement of the action (except as specifically provided below).	19
<b>3. Motions and Minutes etc.–</b>	
(a) (a) Fee to cover drawing, intimating, lodging, receiving and opposing (if so advised) any reponing note or written motion or minute (including Motions for interim orders) for any party–	
(i) where opposed or unopposed and involving a hearing before the Sheriff, to include the first quarter hour of argument,	6

<i>Fee Payable</i>	<i>Units</i>
even if involving appearances on different dates	
(ii) where unopposed and not involving a hearing	2
(iii) thereafter attendance fee per quarter hour, including any continuation of the diet ordered by the Sheriff to allow a minute of amendment to be received and answered	1
(b) (b) Fee to cover drawing, or receiving Minute of Amendment, in addition to motion fee, if appropriate–	
(i) where assisted person is party bringing amendment and no answers lodged;	4
(ii) where amendment is sought by another party and no answers lodged by assisted person;	2
(iii) where answered, to include adjustment as required, for any party.	6
(c) (c) Specification of Documents, in addition to motion fee, if appropriate–	
(i) fee to cover drawing, intimating and lodging Specification	4
(ii) fee to opposing solicitor.	2
<b>4. Miscellaneous Fees</b>	
(a) (a) Affidavits – to framing all necessary affidavits, per sheet.	1
(b) (b) Contact Arrangements – fee arranging or attempting to arrange interim contact arrangements where appropriate.	6
(c) (c) Notice to Admit – preparing and serving/receiving a Notice to admit and serving a counter notice if required.	4
(d) (d) Joint Minute of Admissions – preparing and/or considering and executing a joint minute of admissions with a view to avoiding unnecessary evidence or disposing of some (but not all) craves.	4
(e) (e) Settlement conference/ negotiation – participating in a settlement conference or negotiation after the allowance of a proof or debate	1

<i>Fee Payable</i>	<i>Units</i>
where the solicitor making the claim is authorised in advance by the client to participate, per quarter hour (subject to a maximum charge of 8 units).	
(f) (f) Extra Judicial Settlement – fee to cover work to formalise settlement.	8
(g) (g) Minute of Agreement – to drawing/revising Minute of Agreement necessary to accomplish or record overall settlement per sheet (subject to a maximum charge of 8 units).	1
(h) (h) Report Fee – to instructing (if required) perusing and taking instructions on any report extending to at least four sheets obtained from a professional or expert person, either–	
(i) where the report is commissioned by the solicitor for the assisted person; or	4
(ii) the report is commissioned by order of Court.	
(i) (i) Additional Procedure – additional fee where Additional Procedure invoked (to include attendance at any procedural hearing(s).	4
(j) (j) Additional fee where the action involves a third party minuter at any stage.	4
<b>5. Preparation</b>	
(a) (a) <i>Preparation for proof fee</i>	
(i) If action settled or abandoned not later than 14 days before the diet of proof.	18
(ii) Where the action settles within 14 days of, or on the day of, or after the diet of proof but without evidence being lead.	24
(iii) In any other case where evidence is lead (to include settling with witnesses and enquiring for cause at avizandum (if required).	36
(b) (b) <i>Preparation for Debate</i> – Fee to cover all work in connection with preparing for any debate, where such debate takes place prior to proof or Proof Before Answer.	8

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<i>Fee Payable</i>	<i>Units</i>
(c) (c) <i>Preparation for Child Welfare Hearing</i> – Fee to cover all work preparing for Child Welfare Hearing.	4
(d) (d) <i>Commission to Take Evidence</i> – Fee to cover all work preparing for the taking of evidence or executing specification on open commission or proceeding as provided in (iii) below–	
(i) For solicitor arranging commission.	8
(ii) For opposing solicitor.	4
(iii) If optional procedure adopted-fee for each person on whom specification is served.	1
(iv) Fee for perusing documents recovered-per quarter hour.	1
(e) (e) <i>Preparing for Appeal</i> – Fee to cover all work preparing for an appeal to the Sheriff Principal (to include marking appeal or noting marking of appeal).	12
<b>6. Conduct &amp; Waiting</b>	
To waiting for or attending by solicitor at the conduct of any hearing referred to in paragraphs 5(a) to (e) above (including any continued hearing and ancillary hearing on expenses or other miscellaneous subsequent hearing) per quarter hour.	1

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### CHAPTER III

#### CIRCUMSTANCES IN WHICH THE BOARD MAY ALLOW A FEE ADDITIONAL TO THE FEES PRESCRIBED IN CHAPTER II

1. That the assisted person's inadequate knowledge of English required the obtaining of instructions through an interpreter.
2. That the assisted person, although able to attend at the solicitor's office suffered from a significant period of the case from a mental disorder within the meaning of section 1 of the Mental Health (Scotland) Act 1984(4).
3. That the assisted person suffered from a physical disability which necessitated a significantly lengthier process than would normally have been encountered in the taking and obtaining of instructions.
4. That the assisted person was, for a significant period in relation to the overall duration of the case, unable to attend at the solicitor's office by reason of disability, illness or imprisonment.

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(4) 1984 c. 36.



5. That the nature or circumstances of the case necessitated significant attendance to its progress outwith normal office hours.

6. That the law in relation to the matter at issue was particularly complex and involved an area of law with which a solicitor engaged in general court practice would be unlikely to be familiar.

*Note on the application of chapter III*

- (a) Except where an uplift is granted on ground 5 or 6 above, the element of the solicitor's fee subject to an uplift will exclude any amount charged in relation to time spent travelling to, or waiting or appearing at, court.
- (b) Only 1 of paragraphs 2, 3 and 4 may be claimed in any case.

## SCHEDULE 7

Regulation 5

### SHERIFF COURT PROCEEDINGS FOR WHICH FEES FOR WORK DONE SHALL ONLY BE PAYABLE UNDER SCHEDULE 5

Adoptions;

conveyancing work required to implement an Order of the Court;

fatal accident inquiries;

minute procedure in a closed process;

proceedings where the assisted person is a curator *ad litem*;

proceedings where the assisted person is a third party minuter;

work carried out under Regulation 18 of the Civil Legal Aid (Scotland) Regulations 2002(5) in a case which does not proceed to a grant of civil legal aid;

work in connection with drafting and submitting an account of expenses, or disputing (on receipt) an opponent's account of expenses, including attendance at taxation and taking/opposing Notes of Objections, including taxations instructed by the Board; and

summary applications.

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## EXPLANATORY NOTE

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

These Regulations amend the Civil Legal Aid (Scotland) (Fees) Regulations 1989 ("the 1989 Regulations") to provide a new scheme for the payment of civil legal aid fees to solicitors.

Regulation 5 amends regulation 5 of the 1989 Regulations to provide that a solicitor's fees in relation to certain proceedings shall be paid in accordance with Schedules 5, 6 and 7 (inserted by regulation 11 and the Schedule).

Schedule 5 updates, with minor amendments, the table of fees set out in Schedule 3 to the 1989 Regulations. This table applies to fees for work done in the Court of Session, certain other

proceedings mentioned at regulation 5(3) of the 1989 Regulations and the proceedings listed at Schedule 7.

Chapters I and II of Schedule 6 set out new tables of fees, expressed in units, for work done in relation to certain proceedings in the sheriff court. Regulation 5 of these Regulations inserts a new regulation 5(2A) into the 1989 Regulations which fixes the value of a unit at £19.

Regulation 5 inserts a new regulation 5(2C) and (2D) into the 1989 Regulations, which provides for a fee additional to the unit fee allowable under Chapters I and II of Schedule 6 where certain circumstances, set out at Chapter III of that Schedule, exist.

Regulations 6 to 9 make consequential amendments to regulations 5 and 6 of the 1989 Regulations.

Regulation 10 amends regulation 11 of the 1989 Regulations so that the Scottish Legal Aid Board (“the Board”) may take into account any payment made to a solicitor under the advice and assistance scheme in respect of a case when assessing a civil legal aid account. It also amends that regulation to remove restrictions on the Board’s ability to make payments to account in respect of work done by solicitors.

These Regulations, except regulation 4, only apply to fees for work done in connection with cases where civil legal aid is granted on or after 1st October 2003. Regulation 4 applies to all work done in relation to civil legal aid after 1st October 2003.