

# Auditor of the Court of Session

SCOTTISH LEGAL AID BOARD

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[REDACTED]  
COUNSEL'S FEE

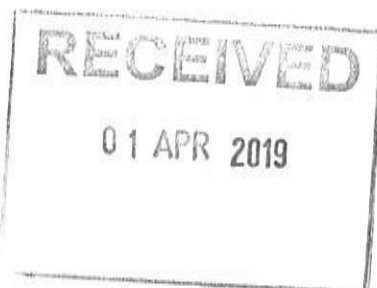
EDINBURGH. 29 March 2019. At a diet of taxation on 24 January 2019 the Auditor heard representation by [REDACTED] on behalf of the Scottish Legal Aid Board and Mr Mungo Bovey QC., and [REDACTED]. Having considered the papers submitted to him, together with the submissions made at the diet of taxation, the Auditor now taxes the fee, in respect of the Application for permission to appeal, at the sum of FIVE HUNDRED AND SIXTY TWO POUNDS AND FIFTY PENCE (£562.50). To the said sum there falls to be added VAT @ 20%, £112.50, altogether SIX HUNDRED AND SEVENTY FIVE POUNDS (£675.00).



AUDITOR OF THE COURT OF SESSION

The Auditor  
Kenneth M. Cumming, W.S.

Principal Clerk  
Mrs Sheila Muir



# AUDITOR OF THE COURT OF SESSION

## POINTS OF OBJECTION

for

THE SCOTTISH LEGAL AID BOARD

In the application for permission to  
appeal to the Inner House of the Court  
of Session

of

FO



(Assisted Person)

v

The Secretary of State for the Home  
Department

Diet of Taxation: 24 January 2019 @ 12.15pm

Auditors Reference: 71596

In terms of Rule of Court 42.2.1A, the Auditors attention is respectfully drawn to the following Points of Objections made by the Scottish Legal Aid Board in relation to the fee incurred by Mungo Bovey Q.C, issued on 13 October 2016.

### Introduction

1. The Civil Legal Aid (Scotland) (Fees) Regulations 1989 (the “Civil Fees Regulations”), Schedule 4 prescribes Fees of counsel for proceedings in the Court of Session, Sheriff Appeal Court, Sheriff Court and Upper Tribunal for Scotland.
2. Regulation 9 of the Civil Fees Regulations states that the provisions of regulation 8 regarding the submission of accounts, and the provisions of regulation 10 regarding the calculation of fees, the fees allowable to counsel shall be fees for such work as shall be determined by the Board to have been actually and reasonably done, due regard being had to economy. No provision is made for the auditor to determine the level of fee payable. It is for the Board to assess whether a fee is allowable or not, provided the assessment is done in accordance with the regulations. In this regard a copy of the decision of Lady Rae in the *Note of Objections of Mark Stewart QC to the Report to the Auditor of the Court of Session*, is attached for information (**Appendix A**).
3. Regulation 10 provides that counsel's fees in relation to proceedings in the Court of Session shall be calculated in accordance with Schedule 4.
4. Regulation 12 (1) of the Civil Fees Regulations, provides that where any question or dispute arises between the Board and a solicitor or counsel as to the amount of fees or outlays allowable to the solicitor, or as to the amount of fees allowable to counsel, from the Fund under these Regulations, other than regulation 11, the matter shall be referred for taxation by the auditor.

5. Regulation 12(2) of the Civil Fees Regulations, provides for a reference to the auditor under paragraph (1) at the instance of the solicitor concerned or, where the question or dispute affects the fees allowable to counsel, of the counsel concerned, or of the Board, and the auditor shall give reasonable notice of the diet of taxation to the solicitor or counsel as appropriate and to the Board.
6. The fees payable to Junior Counsel have been agreed and paid.
7. Senior Counsel has elected to exercise his right under Regulation 12(1), of the Civil Fees Regulations.
8. Both fees (minute of amendment and revisal of written argument) that counsel has claimed on the 11-09-2016 have been paid as claimed.
9. **The only question or dispute relates to the fee claimed by counsel for the entry dated 26-09-16 "Application for Permission to Appeal (1 hour in court and 6 hours 45 minutes preparation before the day) - £1,500.00".**

## Background

10. Legal Aid was made available to allow the assisted person to make an application for permission to appeal to the Inner House of the Court of Session following the Upper Tribunals (Immigration and Asylum Chamber) decision to refuse permission to appeal. Legal aid was granted on 13 May 2016, although cover was made available prior to this date under the special urgency provisions to allow the solicitors and junior counsel to initiate the application for leave to appeal.
11. Sanction was sought and approved for the employment of senior counsel for the following work activities:
  - 8 August 2016 - to revise pleadings and attend the permission hearing; and
  - 8 September 2016 - to provide an opinion, in the event, that having considered papers he does not accept Junior Counsels views that the case should proceed.
12. The sanction application of 8 September 2016, on reflection, was unnecessary as senior counsel proceeded with the application for permission to appeal.
13. On the 27 September 2016, Lord Glennie pronounced the following Interlocutor:
 

*"The Lords, having heard counsel on the application for leave to appeal and answers thereto, on the applicant's unopposed motion, made at the bar, allow the said application and answers thereto to be amended in terms of the applicant's Minute of Amendment and the respondent's answers thereto, Nos. 16 and 18 of process respectively; thereafter, refuse leave to appeal and decern; on the unopposed motion of the respondent, made at the bar, reserve expenses meantime."*

## Submissions in support of SLABs approach to the assessment of senior counsels fees

14. The Table of Fees for senior counsel in civil legal aid cases does not, either historically or currently, replicate the more detailed Table of Fees prescribed for junior counsel as prescribed in Schedule 4, Table of Fees A and B, Part 1. Senior counsels fees have always traditionally been prescribed in an abbreviated version to reflect the work activities which would ordinarily be associated with senior counsels role in the proceedings. In this

regard a copy of the originally enacted Civil Legal Aid (Scotland) (Fees) Regulations 1989 [S.S.I. 1989 No. 1490 (S.119)] and current Schedule 4 of the Civil Fees Regulations is attached at **Appendix B & C**, respectively.

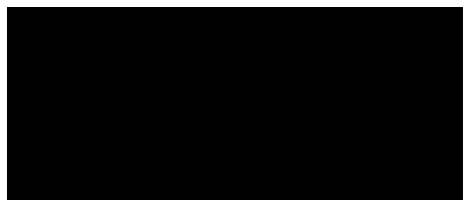
15. By contrast Schedule 2 of the Criminal Legal Aid (Scotland)(Fees) Regulations 1989, which prescribes the Tables of Fees payable to counsel in respect of criminal proceedings, both historically and currently, effectively replicate one another in terms of structure, as per **Appendix D** attached.
16. The fees payable to Senior Counsel for proceedings in the Court of Session are prescribed in Schedule 4, Table of Fees A, Part 2 of the Civil Legal Aid (Scotland)(Fees) Regulations 1989.
17. No claim has been made by Counsel for any separate preparation fee and against this background it is understood that the issue of preparation is not the subject of dispute at this taxation. However, for the avoidance of any doubt SLABs position is that no separate fee is payable for preparation at a permission hearing which it is submitted is consistent with the Auditor of the Court of Sessions decision and subsequent Opinion of Lord Arthurson in the *Note of Objections by Tim Haddow to the report by the Auditor of Court dated 11 April 2018, in the cause of [REDACTED] against the Secretary of State for the Home Department*, as per **Appendix E** attached. Whilst it is acknowledged that decision was in the context of a judicial review permission hearing it is submitted that the same principles would equally apply to applications seeking permission to appeal.
18. It is a matter of concession that the only two fees prescribed for senior counsel for an attendance at court in the Court of Session can be found in Schedule 4, Table of Fees A, Part 2, paragraph 6 (a) and (b), which prescribes a fee for a “*Day in court*” in the Inner House and Outer House respectively. That reflects the structure of both the originally enacted (save that senior counsels fee for Inner House work was per half day) and current Schedule 4 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989.
19. It is however respectfully submitted that those fees are clearly intended to be payable only in circumstances where an equivalent “*per day*” hearing fee would be payable for junior counsel (e.g. reclaiming motion, appeal under s163, 164 or 165 of the 2011 Act, proof, procedure roll debate, substantive hearing, first or second hearing, etc.).
20. For example, the fee for junior counsel conducting such substantive hearings is £1,000 per day for a reclaiming motion and £900 per day for a diet of proof. The equivalent fee payable to senior counsel is £1,500 and £1,350 respectively. This maintains the general relationship in the Table of Fees between juniors and seniors fees which are, in the main, set at the ratio of circa 1:1.5. This reflects the traditional “*2/3 rds*” relationship which is often applied when settling senior and junior counsels fees in the same proceedings.
21. The “*Day in court*” fee for senior counsel is not however intended to be engaged for those hearings where a prescribed fee is payable to junior counsel based on the actual duration of the hearing. For example, hearings at the permission stage, motions (including By Order hearings), hearings on the Single Bills, etc.
22. A permission hearing in the Inner House, as it was in this case, is dealt with routinely on the Single Bills.
23. Where there is no corresponding prescribed time based fee for a hearing, or any other item of work for that matter, for senior counsel then it is respectfully submitted that

SLAB, or the auditor, require to engage the terms of schedule 4, paragraph 3 *“Where the Tables of Fees in this Schedule do not prescribe a fee for any class of proceedings or any item of work, the Board, or as the case may be the auditor, shall allow such fee as appears to be appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the Tables of Fees”*. That reflects SLABs approach to assessment since the amendment regulations were introduced in April 2011.

24. That approach ensures a natural coherence and negates any unfairness, absurdity or inconsistency of application in the allowance and calculation of the fees payable to senior and junior counsel respectively.
25. SLAB have therefore made an offer of payment to senior counsel by taking the fee payable to junior counsel for an appearance on the Single Bills, as prescribed in Schedule 4, Part 1, Chapter 6, paragraph 11(a)(i) and (ii) (£75 for the first 30 minutes and £50 for each subsequent half hour) and uprated those fees by 50% to retain the 1:1.5 ratio or 2/3rds relationship. That results in a fee payable to senior counsel at £112.50 for the first 30 minutes and £75 for each subsequent 30 minutes. For a 3.5 hour hearing, which it is understood despite senior counsels narrative was the actual duration of this hearing, that would equate to a fee of £562.50, which is a restriction of £937.50 on the fee claimed.
26. It is respectfully submitted that this approach to the assessment of senior counsels fee is consistent with:
  - the intended purpose and parliamentary intention of the 2011 amendment regulations (SSI 2011 No. 160);
  - Regulation 9, of the Civil Fees Regulations *“Subject to the provisions of regulation 8 regarding the submission of accounts, and the provisions of regulation 10 regarding the calculation of fees, the fees allowable to counsel shall be fees for such work as shall be determined by the Board to have been actually and reasonably done, due regard being had to economy.”*; and
  - Schedule 4, paragraph 3 *“Where the Tables of Fees in this Schedule do not prescribe a fee for any class of proceedings or any item of work, the Board, or as the case may be the auditor, shall allow such fee as appears to be appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the Tables of Fees”*.
27. The payment system is largely based on a standard fee system and operates on a *“swings and roundabouts”* basis. In looking at whether a balance has been struck, it is necessary to look beyond an individual fee or indeed an individual case and consider the payment arrangements across the whole spread of the work which counsel undertakes by way of civil legal assistance over a given period.

**The Auditor for the reasons outlined above is therefore invited to tax senior counsels fee for the attendance at the permission hearing in the sum of £562.50.**

IN RESPECT WHEREOF



Thistle House,  
91 Haymarket Terrace,  
EDINBURGH EH12 5HE



DECISION BY LADY RAE

in

NOTE OF OBJECTIONS

by

MARK STEWART QC

to

THE REPORT OF THE AUDITOR OF  
THE COURT OF SESSION  
under Regulation 11 of the Criminal  
Legal Aid (Scotland) Fees  
Regulation 1989

in causa

HER MAJESTY'S ADVOCATE

against

GM

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Act: A Smith QC  
Alt: R Crawford QC

3 July 2014

[1] For the purposes of this *ex tempore* decision I do not propose to detail all of the background to this case or the submissions made.

[2] In short, between 2012 and 2013 the Noter represented the accused, GM, on charges of attempted murder and culpable homicide. The case was ultimately dealt with by way of a plea of guilty tendered at a preliminary hearing on 7 March 2013. An *interim* compulsion order was pronounced and this led to subsequent procedure culminating in an evidential hearing on 2 August 2013 relating to a restriction order and compulsion order.

[3] The Noter lodged a number of fee notes and no issue is taken with the rate or fee charged for the particular entries. The only issue taken by the Scottish Legal Aid Board, hereinafter referred to as "the Board", was the separate preparation fee charged by the Noter. As a result of this, the present case was remitted to the Auditor of the Court of Session and a diet of taxation was fixed for 20 November 2013. The Auditor heard representations on behalf of the Noter and the Board. As a result of that taxation, the preparation fee charged by the Noter was disallowed.

[4] A Note of Objections was lodged to this Court under Regulation 11 of the Criminal Legal Aid (Scotland) Fees Regulation 1989 and I heard submissions on behalf of both parties on Friday 27 June 2014.

[5] I was referred to various parts of the regulations which I need not detail at this stage. What is clear from these regulations is that all preparation is included in the level of fees prescribed in the Table of Fees, but that a separate fee for preparation can be claimed, and "shall be allowed" but only on certain restricted conditions. In addition it is clear that it is for the Board or, as the case may be, the Auditor to decide, in terms of the regulations, whether such a fee falls within the regulations and is or is not allowable. It is also clear that a fee for preparation is allowed only once in any case and is not payable until the case to which it relates has concluded.



[6] Paragraph 14 of Schedule 2 of the regulations sets out the circumstances in which a separate preparation fee shall be allowed. It seems to me that on a proper reading of that paragraph (14) there are three options open for a separate preparation fee. The first is where the case is dealt with in terms of section 76 of the Criminal Procedure (Scotland) Act 1995 where a guilty plea has been tendered. The second option covers situations where a case proceeds to trial or for a hearing where a fee is payable at the full rate under paragraph 4(q) to (t) of Chapters 1 and 2 of Part 1 or paragraphs 3(p) to (t) of Chapters 1 and 2 of Part 3 of the Table of Fees. In the case of the first and second option the level of preparation is that to which paragraph 15d applies. Where paragraph 15d applies, preparation is only allowable if counsel has had to peruse in excess of 7,500 sheets. The third option covers situations including where a plea of guilty is tendered, as in the present case, and the level of preparation is that to which paragraph 15c applies. 15c permits charges depending on the number of sheets which counsel requires to peruse including the range of 1,000 to 3500 sheets where counsel would be entitled to three days preparation.

[7] In the course of submissions it was clear that the Noter believed that he was entitled to select which option would apply to his claim for fees. It was argued that the circumstances of the present case came under the third option and he would be entitled to charge preparation for his perusal of 1,271 sheets.

[8] The view of the Board was that, having regard to the evidential hearing dealt with in August 2013, preparation should be assessed under option 2, as I have called it, and as the Noter had not perused in excess of 7,500 sheets, he was not entitled to a preparation fee. The Auditor agreed with this approach.

[9] The argument on behalf of the Noter was to the effect that the Auditor had erred in law and had misdirected himself in his interpretation of the regulations.

[10] Senior counsel for the Board addressed me on the various parts of the regulations, including paragraphs 12-15. In essence the Board took the view that the circumstances of this case, looking at the whole case and having regard to the subsequent evidential hearing, fell within option 2 and in terms of the level of fees which the Noter was entitled to charge, this case came fairly and squarely within paragraph 4(qa) of Chapter 2 of the Table of Fees which regulates fees chargeable by senior ounsel. As a result the Board and subsequently the Auditor were fully entitled to disallow the separate fee for preparation having regard to the fact that the number of sheets perused by the Noter fell below the 7,500 allowable under option 2. In these circumstances, the Auditor had not misdirected himself.

[11] In the course of submissions, I asked Mr Smith QC, acting for the Noter, whether the factual circumstances existing in the present case could fall within option 2. While Mr Smith conceded that they did he was of the view that they also fell within option 3.

[12] Looking at the whole circumstances of this case, it seems to me that, on a proper reading of the regulations, this case does indeed fall within option 2. The Board was in my view fully entitled to disallow the separate preparation fee and that being the case, the Auditor has not misdirected himself. I do not agree with the submission that it is for counsel to select which option he is entitled to charge under. If that were correct it would mean that the Board would not be permitted to consider what else may have occurred in the case, such as a subsequent evidential hearing which is what occurred here. It is, in my view, a matter for the Board and as the case

may be the Auditor to assess whether a fee is allowable or not, providing of course any assessment is done in accordance with the regulations. Standing the fact that there are circumstances existing in the present case which fall under option 2, the Auditor was perfectly entitled to disallow the preparation fee.

[13] Accordingly I shall repel the Note of Objections and there being no motion for expenses I shall make no further order.



## SCHEDULE 4

Regulation 10

## FEES OF COUNSEL FOR PROCEEDINGS IN THE COURT OF SESSION

1. Subject to the following provisions of this Schedule, fees shall be calculated in accordance with the Table of Fees in this Schedule.

2. Where the Table of Fees in this Schedule does not prescribe a fee for any class of proceedings or any item of work, the auditor shall allow such fee as appears to him appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the said Table of Fees.

3. Where the Table of Fees in this Schedule prescribes a range of fees, the auditor shall (subject to paragraphs 4 and 5 of this Schedule) allow such fee within that range as appears to him to provide reasonable remuneration for the work.

4. The auditor shall have power to increase any fee set out in the Table of Fees in this Schedule where he is satisfied that because of the particular complexity or difficulty of the work or any other particular circumstances such an increase is necessary to provide reasonable remuneration for the work.

5. The auditor shall have power to reduce any fee set out in the Table of Fees in this Schedule where he is satisfied that because of any particular circumstances a reduced fee is sufficient to provide reasonable remuneration for the work.

## TABLE OF FEES

**CHAPTER I — JUNIOR COUNSEL***Part I — Undefended actions of divorce or separation — affidavit procedure*

- |    |  |        |
|----|--|--------|
| 1. | <i>Summons or other initiating writ</i>  |        |
|    | (a) (a) Subject to sub-paragraph (b) below the fees shall be—  |        |
|    | (i) Where the facts set out in section 1(2)(b) (unreasonable behaviour) of the Divorce (Scotland) Act 1976(1) are relied on                                    | £24.50 |
|    | (ii) Where the facts set out in section 1(2)(a) (adultery) or section 1(2) (c) (desertion) of the said Act are relied on and the action is not straightforward | £24.50 |
|    | (iii) Where the facts set out in the said section 1(2)(a) (adultery) or section 1(2) (c) (desertion) are relied  | £20.00 |

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(1) 1976 c. 39

on and the action is  
straightforward

- (iv) Where the facts set out in £20.00  
section 1(2)(d) (2 years'  
non-cohabitation and  
consent) or 1(2)(e) (5  
years' non-cohabitation)  
of the said Act are relied  
on

- (b) (b) Where  
common law interdict  
and/or any order  
under the  
Matrimonial Homes  
(Family Protection)  
(Scotland) Act  
1981(2) or any other  
ancillary order is  
also sought, the fee  
shall be within the  
following range—

From £24.50

To £46.00

2. *Minute*

- (a) (a) Minute £18.00  
involving  
arrangements for a  
child or children and/  
or financial provision
- (b) (b) Any other £14.00  
minute

3. *By Order Roll appearance* £14.00

4. *All other work*

The fees specified in Part IV  
shall apply.

*Part II — Consistorial actions other than those to which Part I applies*

1. *Summons or other initiating writ*

The fees specified in Part I  
shall apply.

2. *Minute for pursuer relating to £20.50  
custody, aliment or access*

3. *Defences or answers*

(a) (a) Defences or £11.50  
answers in purely  
skeleton form to  
preserve rights of  
parties

(b) (b) Answers to £18.00  
minute

(c) (c) The fee  
for defences or  
answers to which  
sub-paragraph (a) or  
(b) does not apply  
shall be within the  
following range:—

From £20.00

To £41.00

4. *Joint minute regulating  
custody, aliment or access*

Framing or adjusting the £17.50  
minute

5. *By Order Roll appearance* £14.00

6. *All other work*

The fees specified in Part IV  
shall apply.

### *Part III — Petitions*

1. *Petition (including any revisals  
thereto)*

(a) (a) Petition for £52.00  
interdict

(b) (b) Other Outer £34.50  
House petitions

(c) (c) Inner House  
petition: such fee  
shall be allowed as  
appears to the auditor  
to provide reasonable  
remuneration for the  
work.

2. *Answers (including any  
revisals thereto)*

(a) (a) Petition for £52.00  
interdict

(b) (b) Other Outer £32.00  
House petitions

- (c) (c) Inner House petitions: such fee shall be allowed as appears to the auditor to provide reasonable remuneration for the work.

3. *All other work*

The fees specified in Part IV shall apply.

*Part IV — Ordinary actions*

1. *Summons (including any revisals thereto)*

- (a) (a) Straightforward cases £43.50  
(b) (b) Other cases £57.00

2. *Defences (including any revisals thereto)*

- (a) (a) Where purely skeleton form to preserve rights of parties in £11.50  
(b) (b) Otherwise the fee shall be within the following range, having regard to nature of summons:

—  
From £43.50  
To £57.00

3. *Adjustment of record*

- (a) (a) Adjustment fee (each occasion) £18.00  
(b) (b) Additional adjustment fee, where skeleton defences require to be amplified, where additional parties are introduced, etc. £43.50

4. *Specification of documents*

Standard calls only £18.00

5. *Minutes etc.*



- (a) (a) Formal £16.50  
amendments or  
answers
- (b) (b) Amendments £29.00  
or answers other than  
formal
- (c) (c) Revising and £7.50  
signing tender or  
acceptance
- (d) (d) Note of £18.00  
exceptions
- (e) (e) Abandonment, £9.00  
sist, restriction, etc.
- (f) (f) Issue or £9.00  
counter issue

6.

*Notes*

- (a) (a) Note on £46.00  
quantum only
- (b) (b) Note advising £52.00  
on tender or  
extra-judicial offer,  
where not merely  
confirming advice at  
consultation
- (c) (c) Note on line of £52.00  
evidence
- (d) (d) The fee for  
other tyhpes of note  
shall be within the  
following range:—

From £17.50  
To £52.00

7.

*Consultations*

- (a) (a) Before  
proof or trial, or  
otherwise involving  
a significant degree  
of preparation or  
lengthy discussion—
  - (i) Junior alone £63.50
  - (ii) Junior with Senior £34.50
- (b) (b) Other  
consultations—

- (i) Junior alone £52.00
- (ii) Junior with Senior £29.00
8. *Motions*
- (a) (a) Unopposed £9.00  
motions on By Order  
(Adjustment) Roll,  
etc.
- (b) (b) Opposed  
motions—
- Attendance for up to half hour £18.00
- Attendance for each £14.00  
subsequent half hour or part  
thereof
- (c) (c) Motions on By £16.50  
Order roll (including  
advice)
9. *Procedure Roll, proof or jury  
trial*
- (a) (a) Junior alone — £189.00  
per day
- (b) (b) Junior with £143.50  
Senior — per day
10. *Inner House*
- (a) (a) Single Bills
- (i) Unopposed £14.00
- (ii) Opposed — Attendance £20.50  
for each half hour or part  
thereof
- (b) (b) Reclaiming  
motion
- (i) Junior opening or £201.00  
appearing alone — per  
day
- (ii) Junior otherwise — per £155.50  
day
- (c) (c) Motion for  
new trial
- (i) Junior alone — per day £201.00
- (ii) Junior with Senior — per £155.50  
day
11. *Attendance at judgement*

- (a) (a) Outer House £16.50
- (b) (b) Inner House £20.50

## **CHAPTER II — SENIOR COUNSEL CONSISTORIAL ACTIONS, PETITIONS AND ORDINARY ACTIONS**

1. *Revisal of pleadings*
  - (a) (a) Revisal of £75.50  
summons, defences,  
petition or answers
  - (b) (b) Adjustment £29.00  
fee (open record)  
(each occasion)
2. *Minutes — revisal fees*
  - (a) (a) Amendments £32.00  
(other than formal) or  
answers
  - (b) (b) Admissions, £9.00  
tender or acceptance  
(in appropriate cases)
  - (c) (c) Note of £9.00  
exceptions
3. *Notes*
  - (a) (a) Note on £69.00  
quantum only
  - (b) (b) Advice £75.50  
on tender or  
extra-judicial offers  
where not merely  
confirming advice at  
consultation
  - (c) (c) Note on line in £75.50  
evidence (revisal)
  - (d) (d) The fee for  
other notes shall be  
within the following  
range:—

From	£23.50
To	£75.50
4. *Consultations*
  - (a) (a) Before £91.00  
proof or trial, or  
otherwise involving  
a significant degree  
of preparation or  
lengthy discussion

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(b) (b) Other £75.50  
consultations

5.

*Day in court*

(a) (a) Inner House — £270.00  
per half day

(b) (b) Outer house — £252.00  
per day

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**THE CIVIL LEGAL AID (SCOTLAND)(FEES) REGULATIONS 1989**

**APPLYING TO WORK DONE AND OUTLAYS INCURRED ON OR AFTER 1 APRIL 2011**

**Regulation 10**

**SCHEDULE 4 FEES OF COUNSEL FOR PROCEEDINGS IN THE COURT OF SESSION, SHERIFF APPEAL COURT AND SHERIFF COURT**

**1.** Subject to the following provisions of this Schedule, the fees of counsel shall be calculated by the Board, or in the event of dispute by the auditor, in accordance with the fees prescribed in the Tables of Fees set out after paragraph 17 to this Schedule, and the fee of a solicitor-advocate for undertaking an item of work in the Court of Session shall be—

(a) where that person is acting as a junior solicitor-advocate, the same as that allowable to a junior counsel for undertaking an item of work equivalent to that undertaken by the solicitor-advocate; or

(b) where that person is acting as a senior solicitor-advocate, the same as that allowable to a senior counsel for undertaking an item of work equivalent to that undertaken by the solicitor-advocate.

**2.** Where the Tables of Fees in this Schedule prescribe a range of fees for any item of work the Board, or as the case may be the auditor, shall allow such fee as appears to provide reasonable remuneration for the work, subject to the following—

(a) it shall be for counsel to identify any factors justifying a higher fee than the minimum prescribed;

(b) where a fee relates to the drafting of any document the length of the document shall be a subordinate consideration to the content of the document;

(c) in determining the appropriate fee for drafting a summons, petition, defences, or answers regard shall be had to the volume of documentation that required to be considered, and the novelty or difficulty of the work involved;

(d) in determining the appropriate level of fee for a consultation, regard shall be had to the length of the consultation and any reasonable and proportionate preparation required which has not otherwise been reflected in an additional fee for preparation, or in a fee for a proof or other hearing; and

(e) in determining the appropriate fee for drafting a note, regard shall be had to the issues involved, the importance, novelty or complexity of the applicable law and, as appropriate, the absence of previous authority or the existence of adverse authority.

**3.** Where the Tables of Fees in this Schedule do not prescribe a fee for any class of proceedings or any item of work, the Board, or as the case may be the auditor, shall allow such fee as appears to be appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the Tables of Fees.

**4.** Subject to paragraphs 5 to 7, the fees prescribed in the Tables of Fees in this Schedule include all associated preparation work.

**5.** Subject to paragraph 6, an additional fee for preparation shall only be allowed if it relates to a proof, debate or like hearing and the hearing—

(a) does not proceed (a date or dates having been assigned for the hearing);

(b) does not exceed a day in duration;

(c) does not exceed four days in duration, and the Board is satisfied that the case is abnormal in magnitude, difficulty or any other respect; or

(d) exceeds four days in duration, and the Board is satisfied that the case is abnormal in magnitude, difficulty of any other respect, and also that counsel required to consider an abnormally large quantity of documentation.

**6.** An additional fee for preparation as provided for in paragraph 5 above shall be allowed only on the following conditions—

(a) the fee is only chargeable in respect of work undertaken following the instruction of counsel for the hearing;

(b) in respect of any hearing, except on cause shown, such a fee is allowable only once to junior or senior counsel, or as the case may be junior and senior counsel, notwithstanding that the applicant or assisted person is represented by more than one junior or senior counsel during the course of the proceedings;

(c) the Board, or as the case may be the auditor, must be satisfied that the time engaged in preparation was reasonable and proportionate in all the circumstances of the case; and

(d) counsel shall provide the Board with a detailed summary of the work undertaken and the documentation perused at each stage of the process and shall, if required by the Board, provide details of authorities referred to, the time engaged, dates and locations as to when and where the work was undertaken, and any contemporaneous records or notes made in the course of preparation.

**7.** The additional fee for preparation shall be calculated by dividing the time allowed, as determined in accordance with paragraphs 5 and 6, into units of 8 hours, each unit being payable at the rate of two thirds of the daily rate applicable to that hearing as prescribed in the Tables of Fees.

**8.** The fees prescribed in the Tables of Fees for drafting any summons, petition, other initiating document, defences or answers include any work involved in revising such a document.

**9.** Paragraphs 10 and 11 apply where, in respect of any hearing, counsel claims a fee for keeping free from other commitments (“a commitment fee”), and regulation 9 shall apply subject to those paragraphs.

**10.** A commitment fee is allowable only where—

(a) counsel has accepted instructions to appear at a proof, debate or similar hearing assigned for 8 days or more over consecutive weeks;

(b)the proceedings settle on or before the first day of the hearing;

(c)counsel is notified that the hearing is not proceeding no more than two working days before the start of the hearing; and

(d)in the case of a hearing assigned for fewer than 12 days, counsel is not otherwise entitled to a fee for attendance at the first day of the hearing.

**11.** Where a commitment fee is allowable the fee is payable at a unit rate equal to the daily rate applicable to the hearing to which it relates, as prescribed in the Tables of Fees, and—

(a)2 units shall be payable in the case of a hearing assigned for 12 days or more where counsel is not otherwise entitled to a fee for attendance at the first day of the hearing; and

(b)1 unit shall be payable in any other case.

**12.** In the calculation of counsel's fees—

(a)counsel's fees are allowable only where the Board has approved the employment of counsel or where the approval of the Board is not required;

(b)junior counsel shall only be allowed the fees prescribed in Part 1 of the applicable Table of Fees even where sanction has been granted for the employment of senior counsel;

(c)except on cause shown, fees to counsel shall be allowed for no more than two consultations in the course of proceedings;

(d)notwithstanding that sanction may have been granted for the employment of senior counsel, or for the employment of a second junior counsel, fees shall not be payable for the attendance of two counsel at a hearing which by its nature does not require the attendance of a second counsel, or for the attendance of senior counsel at a hearing that by its nature does not require the attendance of senior counsel; and

(e)correspondence, telephone calls and meetings between counsel acting for the same assisted person are not allowable as separate items and shall be subsumed within the fees prescribed for the associated item of work in the Tables of Fees.

**13.** In the calculation of counsel's fees for proceedings in the sheriff court or the Sheriff Appeal Court —

(a)no fee shall be allowed to counsel for drafting defences in skeleton form;

(b)except on cause shown, no fee shall be allowed to counsel for drafting or revising a motion or for attendance at the calling of a motion; and

(c)except on cause shown, no fee shall be allowed to counsel for attendance at hearings which are routine, or procedural in nature, or unopposed.

**14.** The fee for time engaged in necessary travel specified in paragraph 13 of Chapter 6 of Part 1 and paragraph 7 of Part 2 of Table of Fees A and in paragraph 10 of Part 1 and paragraph 7 of Part 2 of Table of Fees B is chargeable only as follows—

- (a) the travel undertaken must involve a round trip exceeding 60 miles in each direction;
- (b) counsel shall, if required, produce vouching of the travel undertaken; and
- (c) the fee is chargeable only once in respect of each round trip, irrespective of the number of cases for which the travel is undertaken.

**15.—**(1) Travel costs are chargeable as an outlay only in circumstances where a fee for time engaged in necessary travel is chargeable under paragraph 14.

- (2) Counsel shall if required provide vouching of the costs incurred.

**16.—**(1) The cost of necessary accommodation and subsistence is chargeable as an outlay up to the level specified in paragraph 14 of Chapter 6 of Part 1 and paragraph 8 of Part 2 of Table of Fees A and in paragraph 11 of Part 1 and paragraph 8 of Part 2 of Table of Fees B only in circumstances where a fee for time engaged in necessary travel is chargeable under paragraph 14, and on cause shown.

- (2) Counsel shall if required provide vouching of the costs incurred.

**17.** In any taxation of counsel's fees in terms of regulation 12, the auditor shall have regard to information not previously made available to the Board only if the information was not available to be provided to the Board at the time it made the offer to counsel which is the subject of taxation, or on cause shown.



## TABLE OF FEES A - FEES OF COUNSEL FOR PROCEEDINGS IN THE COURT OF SESSION

## PART 1 – JUNIOR COUNSEL

## CHAPTER 1 - FAMILY ACTIONS

1. <i>Summons or other initiating writ</i>	£300.00
2. <i>Minute</i>	
(a) minute relating to orders for parental responsibilities or parental rights and/or aliment or financial provision	£200.00
(b) any other minute containing a conclusion or crave	£150.00
3. <i>Defences or answers</i>	
(a) Defences or answers in purely skeleton form to preserve the rights of parties	£50.00
(b) Defences or answers to which sub-paragraph (a) does not apply	£275.00
4. <i>Joint minute or minute of agreement regulating aliment, financial provision, orders relating to parental responsibilities or parental rights or any other matter in respect of which orders may be sought</i>	
(a) straightforward cases	£50.00
(b) other cases	£125.00
(c) minute of agreement	£200.00
5. <i>Minute for decree</i>	£50.00
6. <i>All other work</i>	
The fees prescribed in Chapter 6 shall apply	

## CHAPTER 2 - PETITIONS (OTHER THAN PETITIONS TO WHICH CHAPTERS 3 TO 5 APPLY)

1. <i>Petition</i>	
(a) petition for interdict	
(i) straightforward cases	£200.00
(iii) other cases	£300.00

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(b)other Outer House petitions	£300.00
(c)the fee for Inner House petitions shall be as appears to the Board, or as the case may be the auditor, to provide reasonable remuneration for the work having regard to the level of fees in this Table of Fees	

2. *Answers*

(a)petition for interdict	£150.00
(b)other Outer House petitions	£150.00
(c)the fee for Inner House petitions shall be as appears to the Board, or as the case may be the auditor, to provide reasonable remuneration for the work having regard to the level of fees in this Table of Fees	

3. *All other work*

The fees prescribed in Chapter 6 shall apply

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**CHAPTER 3 - PETITIONS FOR JUDICIAL REVIEW**

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1. <i>Petition for judicial review</i>	£350.00
2. <i>Oral hearing at permission stage or procedural hearing</i>	
(a)where the hearing does not exceed 30 minutes	£60.00
(b)where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof	£50.00
3. <i>Substantive hearing</i>	
(a)junior alone	£900.00
(b)junior with senior	£650.00
4. Written statement of arguments	£200.00
5. <i>All other work</i>	
The fees prescribed in Chapter 6 shall apply	

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**CHAPTER 4 – PETITIONS ON CHILD ABDUCTION AND ON THE RECOGNITION AND ENFORCEMENT  
OF DECISIONS RELATING TO CHILDREN**

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1. <i>Petition</i>	£325.00
2. <i>Answers</i>	£325.00
3. <i>Motion for interim orders</i>	
(a) where the hearing does not exceed 30 minutes	£60.00
(b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof	£50.00
4. <i>First or second hearing (per day)</i>	
(a) junior alone	£900.00
(b) junior with senior	£650.00
5. <i>Revising any affidavit which requires to be lodged</i>	£50.00
6. <i>All other work</i>	

The fees prescribed in Chapter 1, which failing Chapter 6 shall apply

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**CHAPTER 5 - APPLICATIONS FOR ADOPTION ORDERS, CONVENTION ADOPTION ORDERS AND  
PERMANENCE ORDERS AND OTHER PROCEEDINGS UNDER THE ADOPTION AND CHILDREN  
(SCOTLAND) ACT 2007**

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1. <i>Petition</i>	£300.00
2. <i>Revising any affidavit which requires to be lodged</i>	£50.00
3. <i>Note for revocation of permanence order or other note in the adoption process</i>	£200.00
4. <i>Hearing to set timetable or determine procedure (per half hour)</i>	£50.00
5. <i>All other work</i>	

The fees prescribed in Chapter 1, which failing Chapter 6 shall apply

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## CHAPTER 6 – ORDINARY ACTIONS

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1. <i>Summons</i>	£300.00
2. <i>Defences</i>	
(a) where in purely skeleton form to preserve rights of parties	£50.00
(b) otherwise	£275.00
3. <i>Adjustment of pleadings</i>	
(a) adjustment of skeleton defences	£225.00
(b) otherwise (each occasion)	£75.00
4. <i>Specification of documents</i>	
(a) specification with standard calls only	£50.00
(b) other specification of documents	£125.00
5. <i>Minutes etc</i>	
(a) formal amendments or answers	£75.00
(b) amendments or answers other than formal	£150.00
(c) drafting, revising and signing tender or acceptance	£50.00
(d) note of exceptions	£50.00
(e) abandonment, sist, restriction, etc.	£50.00
(f) issue or counter issue	£75.00
6. <i>Notes</i>	
(a) note on liability and/or quantum	£150.00– £350.00
(b) note advising on tender or extra-judicial offer, where not merely confirming advice at consultation	£125.00
(c) note on line of evidence	£200.00– £400.00
(d) other types of note	£150.00

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7. *Consultations*

(a) before proof or trial, or otherwise involving a significant degree of preparation or lengthy discussion—

(i) junior alone	£250.00– £400.00
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(ii) junior with senior	£200.00– £300.00
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(b) other consultations—

(i) junior alone	£125.00– £250.00
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(ii) junior with senior	£100.00– £200.00
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8. *Pre-trial meetings*

Pre-trial meeting with opponent with a view to settlement of the case (to include preparation of minute of pre-trial meeting and any associated joint minute)

(i) junior alone	£450.00
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(ii) junior with senior	£350.00
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9. *Motions (including By Order hearings)*

(a) where the hearing does not exceed 30 minutes	£60.00
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(b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof	£50.00
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9A. *Any other hearing where no other fee is specified*

(a) where the hearing does not exceed 30 minutes	£60.00
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(b) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof	£50.00
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10. *Procedure roll, proof or jury trial (per day)*

(a) junior alone	£900.00
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(b) junior with senior	£650.00
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11. *Inner House*

(a) Single Bills

(i) where the hearing does not exceed 30 minutes £75.00

(ii) where the hearing exceeds 30 minutes, for each subsequent half hour or part thereof £50.00

(b) reclaiming motion including appeal under section 163, 164 or 165 of the 2011 Act (per day)

(i) junior opening or appearing alone £1,000.00

(ii) junior otherwise £700.00

(c) motion for new trial (per day)

(i) junior opening or appearing alone £750.00

(ii) junior otherwise £500.00

12. *Attendance at judgment*

(a) Outer House £50.00

(b) Inner House £50.00

13. *Time engaged in necessary travel*

Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken £100.00

14. *Accommodation and associated subsistence*

Payment of necessary accommodation and associated subsistence per day £100.00

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## PART 2 – SENIOR COUNSEL

FAMILY ACTIONS, PETITIONS (INCLUDING JUDICIAL REVIEW, ABDUCTION AND ADOPTION) AND  
ORDINARY ACTIONS

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1. *Drafting or revisal of pleadings*

(a)drafting of summons, defences, petition or answers	£425.00– £500.00
(b)revisal of summons, defences, petition or answers	£150.00
(c)adjustment fee (open record) (each occasion)	£125.00

2. *Minutes, etc – revisal fees*

(a)amendments (other than formal) or answers	£200.00
(b)admissions, tender or acceptance (in appropriate cases)	£75.00
(c)note of exceptions	£100.00

3. *Notes*

(a)note on liability and/or quantum	£225.00– £550.00
(b)advice on tender or extra-judicial offer when not merely confirming advice at consultation	£200.00
(c)note on line of evidence	£300.00– £600.00
(d)other notes	£225.00

4. *Consultations*

before proof or trial, or otherwise involving a significant degree of preparation or lengthy discussion with senior alone or with senior and junior	£300.00– £550.00
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5. *Pre-trial meetings*

Pre-trial meetings with opponent with a view to settlement of case (to include preparation of minute of pre-trial meeting and any associated joint minute)	£650.00
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6. *Day in court*

(a) Inner House including appeal under section 163, 164 or 165 of the 2011 Act	£1,500.00
(b) Outer House	£1,350.00

7. *Time engaged in necessary travel*

Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken	£100.00
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8. *Accommodation and associated subsistence*

Payment of necessary accommodation and associated subsistence per day	£100.00
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**TABLE OF FEES B****FEES OF COUNSEL FOR PROCEEDINGS IN THE SHERIFF COURT AND THE SHERIFF APPEAL COURT****PART 1 - JUNIOR COUNSEL**


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1.	<i>Initial writ (or minute in family action)</i>	£275.00
2.	<i>Defences (or answers to minute in family action)</i>	£225.00
3.	<i>Adjustment of pleadings</i>	
	Adjustment fee (each occasion)	£67.50
4.	<i>Specification of documents</i>	
	(a) straightforward cases	£45.00
	(b) other cases	£110.00
5.	<i>Minutes, etc.</i>	
	(a) formal amendments or answers	£45.00
	(b) amendments or answers other than formal	£115.00
	(c) drafting, revising and signing tender or acceptance	£45.00
	(d) note of exceptions	£40.00
	(e) abandonment, sist, restriction, etc.	£40.00
6.	<i>Notes</i>	

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	(a)note on liability and/or quantum	£135.00–£315.00
	(b)note advising on tender or extra-judicial offer, where not merely confirming advice at consultation	£110.00
	(c)note on line of evidence	£180.00–£360.00
	(d)other notes	£135.00
7.	<i>Applications for adoption orders and permanence orders and other proceedings under the Adoption and Children (Scotland) Act 2007</i>	
	(a)petition	£275.00
	(b)minute for revocation of permanence order or other minute in the adoption process	£225.00
	(c)revising each affidavit	£45.00
	(d)hearing to set timetable or determine procedure	£45.00
8.	<i>Applications under section 85(1) of the Children (Scotland) Act 1995 or under section 110 of the 2011 Act</i>	
	Written application under section 85(1) of the Children (Scotland) Act 1995 for a review of establishment of grounds of referral	£225.00
	Written application under section 110 of the 2011 Act for review of grounds of determination	£225.00
9.	<i>Motions</i>	
	Attendance at opposed motion for up to half hour, and for each subsequent half hour or part thereof	£45.00
10.	<i>Time engaged in necessary travel</i>	
	Supplementary fee chargeable where necessary travel undertaken	£100.00
11.	<i>Accommodation and associated subsistence</i>	
	Payment of necessary accommodation and associated subsistence per day	£100.00
		Junior with senior    Junior alone

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12.	<i>Consultations (including joint consultations with opponent with a view to negotiating settlement)</i>		
	Before proof, or otherwise involving a significant degree of preparation or lengthy discussion	£180.00– £270.00	£225.00–£360.00
13.	<i>Child welfare hearing</i>		
	Attendance up to half hour, and for each subsequent half hour or part thereof	£40.00	£55.00
14.	<i>Hearings under Part II of Chapter 3 of the Children (Scotland) Act 1995</i>		
	(a)under section 55 to defend an application for a child assessment order	£40.00	£55.00
	(b)under section 60(7) for an application to set aside or vary a child protection order	£40.00	£55.00
	(c)under section 67 to defend a warrant for further detention of a child	£40.00	£55.00
14A.	<i>Applications to the sheriff under the 2011 Act</i>		
	(a)under section 48 to vary or terminate a child protection order	£40.00	£55.00
	(b)under section 98 to extend or vary an interim compulsory supervision order	£40.00	£55.00
	(c)under section 99 to further extend or vary an interim compulsory supervision order	£40.00	£55.00
	(d)under section 166 to review a decision or determination to impose a duty on a local authority	£40.00	£55.00

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15.	<i>Proof, debate (or like hearing) or appeal under section 51(1) of the Children (Scotland) Act 1995 and hearing or appeal under section 101, 110, 154, 160, 161 or 162 of the 2011 Act (per day)</i>		
	(a) up to 20 days	£625.00	£810.00
	(b) subsequent days	£562.50	£729.00
16.	<i>Appeal to the Sheriff Appeal Court <sup>2</sup>including appeal under section 163, 164, 165 or 167 of the 2011 Act (per day)</i>	£650.00	£850.00
17.	<i>Any other hearing where no other fee is specified</i>		
	Attendance for up to half hour, and for each subsequent half hour or part thereof	£55.00	

## PART 2 - SENIOR COUNSEL

1.	<i>Revisal of pleadings</i>		
	(a) revisal of initial writ, defences, petition or answers		£135.00
	(b) adjustment fee (open record) (each occasion)		£112.50
2.	<i>Other revisal fees</i>		
	(a) amendments (other than formal) or answers		£180.00
	(b) admissions, tender or acceptance (in appropriate cases)		£67.50
3.	<i>Notes</i>		
	(a) note on liability and/or quantum		£202.50– £500.00
	(b) advice on tender or extra-judicial offer where not merely confirming advice at consultation		£270.00
	(c) note on line of evidence		£270.00– £540.00
	(d) other notes		£202.50
4.	<i>Consultations (including joint consultations with opponent with a view to negotiating settlement)</i>		
	Before proof, or otherwise involving a significant degree of preparation or lengthy discussion		£270.00– £500.00

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4A. *Applications to the sheriff under the 2011 Act*

(a)	under section 48 to vary or terminate a child protection order	£82.50
(b)	under section 98 to extend or vary an interim compulsory supervision order	£82.50
(c)	under section 99 to further extend or vary an interim compulsory supervision order	£82.50
(d)	under section 166 to review a decision or determination to impose a duty on a local authority	£82.50
5.	<i>Proof, debate (or like hearing) or appeal under section 51(1) of the Children (Scotland) Act 1995 and hearing or appeal under section 101, 110, 154, 160, 161 or 162 of the 2011 Act (per day)</i>	
(a)	up to 20 days	£1,215.00
(b)	subsequent days	£1,093.50
6.	<i>Appeal to Sheriff Appeal Court including appeal under section 163, 164, 165 or 167 of the 2011 Act (per day)</i>	£1,300.00
7.	<i>Time engaged in necessary travel</i>	
	Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken	£100.00
8.	<i>Accommodation and associated subsistence</i>	
	Payment of necessary accommodation and associated subsistence per day	£100.00

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**The Criminal Legal Aid (Scotland) (Fees) Regulations 1989****SCHEDULE 2  
FEES OF COUNSEL****Regulation 10****Notes on the operation of Schedule 2**

**1.** Subject to the following provisions of this Schedule, fees including those within a range of fees, shall be determined or calculated by the Board, and in the event of a question or dispute by the auditor, in accordance with the Table of Fees in this Schedule.

**2.** Where the Table of Fees does not prescribe a fee for any item of work or category of proceedings the Board, or as the case may be the auditor, shall allow such fee as appears appropriate to provide reasonable remuneration for the work with regard to all the circumstances, including the general levels of fees in the Table of Fees.

**3.** In the assessment and taxation of counsel's fees—

- (a) counsel's fees are allowed only where the Board has sanctioned the employment of counsel or counsel is automatically available;
- (b) junior counsel's fees shall be allowable as prescribed in Chapter 1 of Parts I to III of the Table of Fees even where sanction has been granted for the employment of senior counsel in the case, except in any case to which sub-paragraph (c) below applies;
- (c) where a senior junior is representing an accused person in a multiple accused case at first instance and where any co-accused is represented by senior counsel, the fees payable to senior junior shall be those prescribed in the Table of Fees for junior as leader, and the fees payable to any junior counsel assisting senior junior shall be those of junior with leader;
- (d) except on cause shown, fees for only two consultations in the case shall be allowed;
- (e) except on cause shown (and subject to sub-paragraphs (ea) and (eb)), fees for senior counsel or, as the case may be, for both senior and junior counsel or for more than one junior counsel shall not be payable for attendance at hearings which do not require the attendance of senior or, as the case may be, both senior and junior counsel or more than one junior counsel;
- (ea) a fee is to be allowed to one counsel only in respect of a hearing of the type described in paragraph 6A of chapters 1 and 2 of Part 2 of the Table of Fees that did not involve a debate, motion for re-trial or further procedure;
- (eb) a fee, under part 1 or 3 of the Table of Fees, is to be allowed to one counsel only in respect of—
  - (i) a diet of deferred sentence, except where there is in contemplation the imposition of any of the following—
    - (a) a mandatory or discretionary life sentence;
    - (b) an order for lifelong restriction;
    - (c) any disposal under Part 6 of the 1995 Act (mental disorder),or where there is a hearing of evidence in mitigation; and

- (ii) a continued preliminary hearing, except where designated as a hearing at which any of the following matters is intended to be heard-
  - (a) A preliminary minute;
  - (b) A preliminary issue;
  - (c) A devolution minute;
  - (d) An application under section 275 of the 1995 Act;
  - (e) A petition to recover documents under a specification of documents where the petition is opposed or likely to involve substantial legal argument, or an evidential hearing or any other hearing involving substantive legal argument;
- (f) except on cause shown, the auditor shall not have regard to any information produced by counsel at taxation which was not made available to the Board at the time the Board made the offer to counsel which is subject to taxation;
- (g) although counsel may keep records of professional services based on the number of hours expended on the work, counsel shall not be entitled to fees at an hourly rate in addition to the fees prescribed in the Table of Fees; and
- (h) correspondence, telephone calls, written work (other than work for which fees are prescribed in the Table of Fees) and meetings between counsel acting for the same assisted person are not allowable as separate items and shall be subsumed within the fees set out for the conduct of a hearing.

## **Appeals**

**4.** In a hearing as specified in paragraph 1(c) or (d) or 2(b) of Chapter 1 or 2 of Part 2 of the Table of Fees which is set down for half a day or longer or where the appellant has been sentenced to a period of imprisonment of 10 years or more, to life imprisonment or where an order for lifelong restriction has been made, the fee payable shall be that in the range specified in paragraph 3(d) of Chapter 1 or 2 of Part 2 respectively.

**4A.** Where a hearing on a bill of advocacy is set down for half a day or longer, counsel is to be paid (in addition to the fees payable under paragraph 2 of the applicable Chapter of Part 2 of the Table of Fees) a fee for relative written work in the range specified in paragraph 3(b) of the applicable Chapter of Part 2 of the Table of Fees.

**5.** Subject to paragraphs 9 to 11B below, the fees including those within a range of fees, as prescribed in Part II of the Table of Fees, shall include all preparation.

**6.** Where counsel is seeking a higher fee within the range under paragraph 3(d) or (da) or 6(a), (b), (c), **(ca) or (cb)** (hearings) of Chapter 1 or 2 of Part 2 he or she will need to justify this by establishing that due to the nature of the case an unusually high level of preparation was required or that any of the factors below exist and that they have had a significant effect on the conduct of the case:—

- (a) novelty of the issues of law;
- (b) unusually complex issues of fact;
- (c) issues of considerable legal significance.

**7.** Where the Auditor determines the appropriate fee he or she shall specify which of the factors in paragraph 6 justify such a fee and the extent to which each of those factors contribute to that fee.

***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

**8.** Where counsel is seeking a higher fee within the range under paragraph 2(a), 3(a), (b), (e), 6(d) or 11 (written work) of Chapter 1 or 2 of Part 2 he or she will need to justify this by reference to either or both of the following factors:—

- (a) the content rather than the length of the document; and
- (b) the amount of documentation necessarily referred to.

**9.** Where a hearing has been fixed in an appeal under paragraph 3, 4 or 6 of Chapter 1 or 2 of Part 2 of the Table of Fees counsel may claim an additional fee for preparation for the hearing only where:—

- (a) it is set down for a day or more and counsel has spent more than 2 hours per day on preparation; or
- (b) the case is abnormal in magnitude, or difficulty, or in any other material respect.

**10.** Where an additional fee for preparation is claimed counsel must provide the Board with details of the nature of the preparation including:—

- (a) where a higher fee has been claimed or received within a range of fees, identification of the part or parts of that fee which relate to those factors mentioned in subparagraphs (a) to (c) of paragraph 6 above or to the factor of an unusually high level of preparation;
- (b) records providing a detailed summary of the nature of the work or, if applicable, the nature of the documentation perused at each stage of the process, the time taken and when and where the work was undertaken and the details of authorities referred to in the course of preparation; and
- (c) any contemporaneous record or notes made in the course of preparation.

**11.** Except on cause shown, an additional fee for preparation shall only be allowable once to both junior and senior counsel notwithstanding that the assisted person may be represented by more than one junior or senior counsel or both during the course of the case.

**11A.** In assessing the amount of time for which an additional fee for preparation is payable the Board, or the Auditor as the case may be, will consider the amount of time that is reasonable having regard to the following factors:—

- (a) the facts and circumstances of the case; and
- (b) the extent to which payment for preparation is already covered by the prescribed fee or the fee deemed appropriate within the range of fees, taking into account that in cases set down for a day or more 2 hours preparation is covered by that fee by virtue of paragraph 9(a).

**11B.** The additional fee shall be calculated by dividing the time allowed for additional preparation in terms of paragraph 11A above into units of 8 hours, each unit payable at the rate of two thirds of the prescribed fee or the fee deemed appropriate within the range of fees in Chapter 1 or 2 of Part II of the Table of Fees.

**11C.—** (1) This paragraph applies in relation to a hearing on appeal against conviction or conviction and sentence if rule 15.15A (requirement for case and argument) of the Act of Adjournal (Criminal Procedure Rules) 1996 applies to all aspects of the appeal.

(2) For the purposes of sub-paragraph (1), rule 15.15A is to be deemed to apply to an appeal if the court has ordered under rule 19.18A (presentation of summary conviction appeals in writing) of the Act of Adjournal (Criminal Procedure Rules) 1996 that rules 15.15A and 15.15B of those Rules are to apply to the appeal as if it were an appeal to which those rules apply.

(3) In respect of a hearing in the course of an appeal against conviction or against conviction and sentence to which this paragraph applies, a fee is to be paid under paragraph 3(da) of Chapter 1, or as the case may be Chapter 2, of Part 2 of the Table of Fees.

(4) In respect of a hearing in the course of an appeal against conviction or against conviction and sentence to which this paragraph does not apply, a fee is to be paid under paragraph 3(d) of Chapter 1, or as the case may be Chapter 2, of Part 2 of the Table of Fees.

**11D.** In Chapters 1 and 2 of Part 2 of the Table of Fees, the fees prescribed in paragraphs 1 to 6 do not apply to a hearing of the type described in paragraph 6A in each of those Chapters.

**11E.** This paragraph applies to a hearing of the type described in paragraph 6A of Chapters 1 and 2 of Part 2 of the Table of Fees if the Board is satisfied that a fee in accordance with paragraph 6A(a) of the relevant Chapter is justified on the grounds that the hearing involved a debate, motion for re-trial or further procedure.

**11F.** A fee is to be allowed to counsel for an opinion concluding that there is no stateable appeal case only if—

(a) the counsel who prepared the opinion did not represent the assisted person at the trial; and

(b) the Board, or as the case may be the auditor, is satisfied that it would not have been possible, or would not have been reasonable, in the circumstances for the counsel who represented the assisted person at the trial to have prepared the opinion.”.

### **Proceedings in the High Court of Justiciary (other than appeals) and the Sheriff Court**

**12.** Subject to paragraphs 13 to 15 below, the fees prescribed in Parts I and III of the Table of Fees in this Schedule shall include all preparation.

**13.** A fee for separate preparation shall be allowed only on the following conditions:—

(a) such a fee is allowable only once in any case to junior or senior, **junior and senior or junior and junior**, counsel representing an applicant or assisted person, notwithstanding that the applicant or assisted person is represented by more than one junior or senior counsel during the course of the case;

(b) in allowing such a fee the Board, or as the case may be the auditor, must be satisfied that the level of preparation was necessary, reasonable and proportionate in all the circumstances of the case;

(c) counsel shall produce records providing a detailed summary of the nature of the work or, if applicable, the nature of the documentation perused, at each stage of the process, the time taken and when and where the work was undertaken and shall retain and produce, if requested, any contemporaneous record or notes made in the course of preparation; **and**

(d) **such a fee is not payable until the case to which it relates has concluded.**

**14.** A fee for separate preparation shall be allowed only in any case—

(a) where—

(i) the case is disposed of at a hearing under section 76 of the 1995 Act; or

(ii) the case proceeds to trial **or for a hearing where a fee is payable at the full rate for a trial under paragraphs 4(q) to (t) of Chapters 1 and 2 of Part 1 or paragraphs 3(p) to (t) of Chapters 1 and 2 of Part 3 of the Table of**



**Fees; and**

and the level of preparation is that to which paragraph 15 (d) below applies; or

- (b) where a plea of guilty is tendered, or a plea of not guilty is accepted, **or where a case is deserted simpliciter or deserted and the Crown does not intend to re-raise proceedings** up to and including the first day of trial and the case does not proceed to trial, and the level of preparation is that to which paragraph 15 (c) below applies.

**15.** A fee for separate preparation allowed under paragraphs 13 and 14 above shall be calculated by reference to the total number of **actual** sheets of documentation **considered by counsel** as follows:—

- (a) no fee for separate preparation for the first 1,000 sheets shall be allowed under any circumstances;
- (b) each range set out in sub-paragraphs (c) and (d) below specifies a total number of days which may be allowed per total number of sheets within the range, and each day shall be paid at the rate of two-thirds of the fee prescribed for the conduct of a trial at paragraph 3 of Chapters 1 and 2 of Part I, or as the case may be, paragraph 2 of Chapters 1 and 2 of Part III of the Table of Fees in this Schedule depending on the nature of the charges and the status of counsel;
- (c) the ranges are—
  - (i) 3 days are allowable for 1,001-3,500 sheets;
  - (ii) 5.5 days are allowable for 1,001-7,000 sheets;
  - (iii) 7.5 days are allowable for 1,001-10,000 sheets;
  - (iv) 2.5 days are allowable for each additional 2,500 sheets;**
- (d) where the total number of sheets exceeds 7,500, 2.5 days are allowable for each additional 2,500 sheets;**
- (e) omitted**
- (f) a fee for separate preparation allowed under—
  - (i) paragraph 14(a) above shall be calculated on the basis of sub-paragraph (d); **and**
  - (ii) paragraph 14(b) above shall be calculated on the basis of sub-paragraph (c) above.

**15A.—**(1) Where a case has more than one preliminary hearing, the fee payable for any further preliminary hearings as prescribed in paragraphs 1B(a) of Chapters 1 and 2 of Part 1 of the Table of Fees is reduced as specified in sub-paragraphs (2) and (3).

(2) Where charges in a case have been split into more than one indictment, the fee payable for any further preliminary hearings is half that prescribed.

(3) Where in a case an indictment is deserted and subsequently re-raised, the fee for any further preliminary hearings is two thirds that prescribed.

**15B.**For the purposes of the fees prescribed in paragraphs 1A and 6 of Chapters 1 and 2 of Part 1 and paragraphs 1A and 5 of Chapters 1 and 2 of Part 3 of the Table of Fees—

- (a) the fee for drafting defence statements is payable only once in any case, regardless of how many statements are drafted in that case;

(b) a fee is only payable for a second necessary note in a case on cause shown and where counsel establishes there were exceptional circumstances in the case, and in any case fees for no more than two necessary notes are payable; and

(c) where written work, for which there is a prescribed fee, or a necessary note is drafted and revised, the fee payable for the written work or necessary note is, if there is more than one counsel, shared equally between counsel who made the revisions.

**16.** Where a fee is claimed in respect of paragraph 1B(c) of Chapter 1 or 2 of Part I of the Table of Fees or adjournment of any other hearing including trial—

- (a) information shall be provided by or on behalf of counsel as to the reason for the adjournment; and
- (b) no fee shall be allowed by the Board or the auditor where satisfied that an adjournment was caused because the defence was not prepared to proceed, or where the preliminary hearing could have been altered in advance under section 75A(5) of the 1995 Act.

16A.—(1) A consultation fee is payable under paragraph 5 of Chapter 1 or 2 of Part 1 and paragraph 4 of Chapter 1 or 2 of Part 3 of the Table of Fees only once a day for a case, regardless of how many consultations in relation to that case are held that day. This applies where any of the following parties attend more than one consultation in one day—

- (a) the same counsel and solicitor;
- (b) the same counsel and accused;
- (c) the same counsel and Crown counsel or Procurator Fiscal; or
- (d) the same counsel and expert.

(2) A fee for an abortive consultation is payable under paragraph 5A of Chapter 1 or 2 of Part 1 and paragraph 4A of Chapter 1 or 2 of Part 3 of the Table of Fees where counsel attended for a consultation but the consultation did not proceed due to no fault of counsel.

**17.** For the purposes of the fees prescribed in Parts I and III of the Table of Fees in this Schedule—

- (a) a trial shall be taken to commence when the jury is empanelled;
- (aa) where a trial, or other hearing where a prescribed fee is payable at the full rate for a trial, exceeds 30 days in total, the fee payable is reduced by 10% for every day in excess of 30 days;
- (ab) where counsel attends in one day more than one trial, or other hearing where a prescribed fee is payable at the full rate for trial, the fee payable to counsel for the first trial or other hearing of that day is as prescribed and the fee payable for any subsequent trial or other hearing is half that prescribed in those Parts;
- (b) where the trial of an accused person proceeds in respect of more than one offence, the fee payable in terms of paragraphs 3 of Chapters 1 and 2 of Part I and paragraphs 2 of Chapters 1 and 2 of Part III shall be that for the offence for which the highest fee is prescribed;
- (ba) where at a trial diet there is more than one accused and counsel represents an accused who pled guilty at an earlier diet, the fee under paragraph 3 of Chapter 1 or 2 of Part 1 or under paragraph 2 of Chapter 1 or 2 of Part 3 is not payable, but a fee may be payable on cause shown under paragraph 4(pa) of Chapter 1 or 2 of Part 1 or paragraph 3(oa) of Chapter 1 or 2 of Part 3;
- (c) where counsel conducts a number of deferred sentences on the same day the prescribed fee shall be reduced by half for a second deferred sentence, and by a further half for a third and any subsequent deferred sentence;

***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

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- (d) the fees allowed under Part III shall be no more than four fifths of the fees prescribed in Part I of the Table of Fees in this Schedule, and except on cause shown, fees for counsel in the Sheriff Court shall not be allowable for attendance at hearings which are routine or procedural only or which do not materially advance the case;
- (e) subject to paragraph (ee), the prescribed fees for a trial or any hearing shall include all work undertaken in the case that day;
- (ee) a fee for a consultation with an expert, in addition to the prescribed fees for a trial or a hearing under paragraph (e), may be payable where counsel establishes that—
  - (i) previous attempts had been made to consult with the expert which were unsuccessful;
  - (ii) the need to hold the consultation was urgent; and
  - (iii) the consultation took place on the same day as the trial or hearing before 0800 hours or after 1800 hours due to the limited availability of the expert;
- (f) fees for a waiting day shall be allowed on the basis of paragraph 18 below;
- (g) the fees prescribed in Parts I and III cannot be increased or reduced in terms of paragraphs 4 to 11 above;
- (h) where the trial of an accused person proceeds in respect of the offence of attempting to pervert the course of justice, the fee payable in terms of paragraph 3 of Chapter 1 or 2 of Part I and paragraph 2 of Chapter 1 or 2 of Part III shall be that for the offence to which the charge of attempting to pervert the course of justice relates. Where the offence to which the charge relates is not prescribed in Schedule 2, the fee payable shall be in terms of paragraph 3(b) of Chapter 1 or 2 of Part I and paragraph 2(b) of Chapter 1 or 2 of Part III; and
- (ha) where a trial of an accused person proceeds in respect of the offence of conspiracy to commit an offence, the fee payable in terms of paragraph 3 of Chapter 1 or 2 of Part 1 and paragraph 2 of Chapter 1 or 2 of Part 3 of the Table of Fees, is that for the offence to which the charge of conspiracy relates. Where the offence to which the charge of conspiracy relates is not prescribed in Schedule 2, the fee payable is in terms of paragraph 3(b) of Chapter 1 or 2 of Part 1 and paragraph 2(b) of Chapter 1 or 2 of Part 3 of the Table of Fees;
- (i) where an accused person pleads guilty at a hearing fixed for trial before the jury is empanelled, or where the case is brought to an end by the Crown's acceptance of a plea of not guilty, or where, following the court deserting the trial simpliciter or pro loco et tempore, the indictment falls or, for any other reason, is not brought to trial and where no order is made by the court to postpone or appoint a further trial diet, the fee payable shall be two-thirds of the fee payable in terms of paragraph 3(a) or (b) of Chapter 1 or 2 of Part I and paragraph 2 of Chapter 1 or 2 of Part III; and
- (j) in the same circumstances as those described at paragraph (i) above, but where the category of charge falls under paragraph 3(c) of Chapter 1 or 2 of Part I, the fee payable shall be that prescribed in paragraph 4(a) of Chapter 1 or 2 of Part I.

**17A.** Where counsel claims a fee in respect of the first diet under paragraph 3(t) of Chapter 1 or 2 of Part III of the Table of Fees, the fee shall only be payable where a plea of guilty is tendered at that hearing or where the case is brought to an end by the Crown's acceptance of a plea of not guilty, withdrawal of the libel, desertion of the diet or by other means.

**18.** Where counsel claims a fee for a waiting day—

- (a) the fee payable to junior counsel, depending on the status of counsel in the case, for such a day shall be—
  - (i) half of the fee prescribed at paragraph 4(a) of Chapter 1 of Part I of the Table of Fees or at paragraph 3(a) of Chapter 1 of Part III depending on the applicable court, where no travel for the purposes of paragraph 7 of Chapter 2 of Part I or paragraph 6 of Chapter 2 of Part III is incurred; or
  - (ii) two-thirds of the fee prescribed at either paragraph referred to in sub paragraph (a)(i) above, depending on the applicable court, where such travel is incurred;
- (b) the fee payable to senior counsel for such a day shall be—
  - (i) half the fee prescribed at paragraph 4(a) of Chapter 2 of Part I of the Table of Fees or at paragraph 3(a) of Chapter 2 of Part III depending on the applicable court, where no travel for the purposes of paragraph 7 of those Chapters is incurred; or
  - (ii) two-thirds of the fee prescribed at either paragraph referred to in sub paragraph (b)(i) above, depending on the applicable court, where such travel is incurred;
- (c) no other chargeable work shall be undertaken in the case that day; and
- (d) provided that counsel remains available at court in case the trial proceeds that day, chargeable work in respect of other cases may be undertaken on that day, other than conducting a hearing or trial.

**19.** Where counsel claims a fee in respect of paragraph 2 of Chapter 1 or 2 of Part I, or paragraph 1B of Chapter 1 or 2 of Part III, of the Table of Fees—

- (a) subject to sub-paragraphs (b) and (c) below, no fee shall be payable under paragraph 1B, 3 or 4 of each Chapter of Part I, or paragraph 2 or 3 of each Chapter of Part III, of the Table of Fees;
- (b) a fee shall be payable for all post conviction hearings including hearings for which a prescribed fee is set out in paragraphs 4(j), (k), (l) and (m) of each Chapter of Part I, and paragraphs 3(j), (k), (l) and (m) of each Chapter of Part III, of the Table of Fees; and
- (c) where a case proceeded by indictment, was deserted, and proceedings were re-raised and disposed of by way of a hearing under section 76 of the 1995 Act, the following fees are chargeable by counsel in the Tables of Fees:
  - (i) a fee for the section 76 hearing under the re-raised indictment, as prescribed in paragraph 2 of Chapters 1 and 2 of Part 1 and paragraph 1B of Chapters 1 and 2 of Part 3, and fees for any court hearings which took place under the initial indictment, as prescribed in paragraph 4 of Chapters 1 and 2 of Part 1 and paragraph 3 of Chapters 1 and 2 of Part 3; or
  - (ii) fees prescribed in Parts 1 and 3 of the Table of Fees for any hearings, including trial, which took place under the initial indictment, and fees for any hearings under the re-raised indictment, as prescribed in paragraph 4 of Chapters 1 and 2 of Part 1 and paragraph 3 of Chapters 1 and 2 of Part 3, but not the fee for the section 76 hearing under the re-raised indictment, as prescribed in paragraph 2 of Chapters 1 and 2 of Part 1 and paragraph 1B of Chapters 1 and 2 of Part 3.

**20. (1)** The supplementary fee for travel prescribed in paragraph 7 of Chapters 1 and 2 of Part

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***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

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1, paragraph 9 of Chapters 1 and 2 of Part 2 and paragraph 6 of Chapters 1 and 2 of Part 3 of the Table of Fees is chargeable only as provided for in this regulation.

(2) the fee is only chargeable where the travel involves a round trip exceeding 60 miles in each direction.

(3) the fee is not chargeable for travel to courts in any of the following locations for the purposes of a trial or any other hearing-

- (a) Edinburgh
- (b) Glasgow
- (c) Airdrie
- (d) Alloa
- (e) Dunfermline
- (f) Falkirk
- (g) Hamilton
- (h) Kirkcaldy
- (i) Lanark
- (j) Livingston
- (k) Paisley
- (l) Stirling

(4) Where counsel travels to a court in any of the locations listed in paragraph (3) for the purposes of a trial or any other hearing and also attends to business relating to any case on the same day, (subject to paragraph 5) the fee is not chargeable.

(5) The fee may be chargeable in the circumstances set out in paragraph (4) where the Board is satisfied that the trip relating to business in any case is separate and additional to the trip relating to the court.

(6) Counsel must, if required, produce vouching of the travel undertaken.

(7) The fee is chargeable once only in respect of each round trip, irrespective of the number of cases for which the trip is undertaken.

(8) The fee chargeable excludes any travel costs.

**20A.** Travel costs are chargeable as an outlay only in circumstances where a supplementary fee for travel is chargeable under paragraph 20.

**21.** Necessary accommodation and subsistence is chargeable only-

- (a) as an outlay up to the amount specified in paragraph 8 of Chapters 1 and 2 of Part 1, paragraph 10 of Chapters 1 and 2 of Part 2 or paragraph 7 of Chapters 1 and 2 of Part 3 of the Table of Fees;
- (b) where a supplementary fee for travel is chargeable in accordance with paragraph 20; and

(c) on cause shown.

## **Interpretation**

**22.** In this Schedule–

“the 2010 Act” means the Criminal Justice and Licensing (Scotland) Act 2010(4);

“commercial premises” means a bank, building society, post office, security vehicle, currency exchange or licensed gambling premises;

“consultation” means a formal meeting, including meeting by means of a conference call with counsel on the instructions of the solicitor concerning a significant issue which advances the cause taking place usually, but not always, in the presence of the accused or an expert witness, including formal meetings with Crown Counsel taking place following the first preliminary hearing;

“documentation” means Crown statements, precognitions, productions, including defence productions, and labels;

“retail premises” means any premises, other than commercial premises;

“waiting day” means a day where counsel is required to attend court and does so but the trial does not proceed; and

“sheet” shall consist of 250 words and numbers, or each minute of an un-transcribed tape.

**TABLE OF FEES****PART I****FEES OF COUNSEL FOR PROCEEDINGS IN THE HIGH COURT OF JUSTICIARY****CHAPTER 1 – JUNIOR COUNSEL****1A. Written work**

(a) petition to Nobile Officium	£225.00
(b) drafting devolution minute	£150.00
(c) drafting section 275 application under the 1995 Act	£150.00
(d) drafting specification of documents	£125.00
(e) drafting interrogatories	£125.00
(f) drafting defence statement under section 70A of the 1995 Act or section 125 of the 2010 Act	£125.00

**1B. Preliminary hearing**

(a) Preliminary hearing including all managed meetings or equivalent communication with Crown counsel or the Procurator Fiscal by whatever means and including any note on the line of evidence	Payable at one and a half times the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(aa) preliminary hearing, adjourned or continued in which witnesses called to give evidence	Payable at the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(b) which involves substantive debate or the resolution of outstanding issues, preliminary pleas, objections to the admissibility of evidence by minute, devolution minutes or applications under section 275 of the 1995 Act	Payable at two thirds of the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(c) adjourned diet under section 75A of the 1995 Act, or continued diet	Payable at one-half of the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(d) attendance at managed meeting or work in connection with equivalent communication with the Crown by whatever means and including any note on the line of evidence where counsel does not attend preliminary hearing	Payable at one-half of the fee prescribed at paragraph 1B(a) above.
(e) conduct of preliminary hearing on receipt of detailed instructions not having been involved in pre hearing communication with the	Payable at one-half of the fee prescribed at

**Criminal Legal Aid (Scotland) (Fees) Regulations 1989**  
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Crown				paragraph 1B(a) above.
	<i>Junior as leader</i>	<i>Junior Alone</i>	<i>Junior with leader</i>	
<i>2. Early Plea</i>				
Hearing under section 76 of the 1995 Act	£1,250.00	£1,250.00	£625.00	
<i>3. Trial per day</i>				
<i>Category Charges Prosecuted in the High Court</i>				
(a) Murder, Multiple attempted murder, Culpable homicide, Rape, Assault and Robbery (involving commercial premises), Importation of controlled drugs, Fraud and related offences, Section 1 of the 1988 Act (causing death by dangerous driving), Section 3A of the 1988 Act (causing death by careless driving when under the influence of drink or drugs), Sedition, Treason, Offences under the 2000 Act, Torture, War crimes, Offences under the Explosive Substances Act 1883, Sections 327 to 333 and 339(1A) of the Proceeds of Crime Act 2002 (Money Laundering), Firearms offences, Incest, Sodomy, Embezzlement, Lewd and libidinous behaviour against children under the age of 12, Section 2B of the 1998 Act, Section 3ZB of the 1998 Act, Sections 1,2, 3(2)(a) and 18 to 27 of the 2009 Act;	£750.00	£650.00	£450.00	
(b) Attempted Murder, Assault to severe injury (with aggravations), Indecent Assault, Assault and Robbery (involving retail premises), Possession with intent to supply or being concerned in the supply of a Class A drug, Attempted Rape, Lewd and libidinous behaviour, (other than under category (a) above) Offences under the Sexual Offences Act, Offences against Children under the 1995 Consolidation Act, Offences under section 16A of the 1995 Consolidation Act, Abduction and/or unlawful imprisonment, Extortion, Counterfeiting, Bribery and Corruption, Mobbing and rioting, Indecent or Obscene Publications, Environmental Protection prosecutions, Health and Safety offences, Intellectual Property offences, Offences under the Immigration Act 1971, Offences under section 52 or 52A of the Civic Government (Scotland) Act 1982, Offences under section 12(1) of the Children and Young Persons (Scotland) Act 1937, All offences under the 2009 Act not otherwise prescribed in this Table of Fees;	£617.50	£535.00	£375.00	
(c) Possession with intent to supply or being concerned in the supply of a class B or class C drug, Assault to severe injury, Assault and robbery, Mobbing, Wilful fire raising, Housebreaking, Opening lockfast places, Bigamy, Contempt of Court, Perjury, Theft, Forgery, Uttering, Reset, Concealing a pregnancy, Deforcement of Sheriff's Officers, Malicious mischief, Brothel keeping,	£495.00	£430.00	£305.00	



***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

Public order offences (stirring of racial hatred, wearing of uniforms, disrupting lawful meetings), Harassment, Road traffic offences (other than section 1 or 3A of the 1998 Act), Possession of offensive weapons, Violation of sepulchres, Robbery, Breach of the peace.

***4. Miscellaneous Hearings***

(a) fee for a day in court for miscellaneous hearings other than those for which a fee is prescribed	£360.00	£315.00	£225.00
(aa) judicial examination	£360.00	£315.00	£225.00
(b) preliminary diet	£360.00	£315.00	£225.00
(c) hearing under section 275 of the 1995 Act	£360.00	£315.00	£225.00
(d) hearing on specification of documents	£360.00	£315.00	£225.00
(e) hearing on a devolution minute	£360.00	£315.00	£225.00
(f) hearing on an application by the Crown for an extension of time	£360.00	£315.00	£225.00
(g) hearing under section 72 of the 1995 Act	£180.00	£157.50	£112.50
(h) hearing on a motion to adjourn	£180.00	£157.50	£112.50
(i) hearing on an application for special measures	£180.00	£157.50	£112.50
(j) confiscation diet in which substantial evidence is led or where full settlement is agreed where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges categorised as below or follow a trial as specified in this Chapter in–			
(i) paragraph 3(a)	£750.00	£650.00	£450.00
(ii) paragraph 3(b)	£617.50	£535.00	£375.00
(iii) paragraph 3(c)	£495.00	£430.00	£305.00
(iv) Deleted			
(k) confiscation diet where no substantial evidence is led	£360.00	£315.00	£225.00
(l) deferred sentence where mitigation is led	£360.00	£315.00	£225.00
(m) deferred sentence where no mitigation is led	£180.00	£157.50	£112.50
(n) remit for sentence	£360.00	£315.00	£225.00
(na) drug treatment and testing order review	£180.00	£157.50	£112.50
(nb) drug treatment and testing order review where mitigation led and order revoked	£360.00	£315.00	£225.00
(o) adjourned trial diet	£180.00	£157.00	£112.00
(p) adjourned trial diet (trial having commenced)	£360.00	£315.00	£225.00

***Criminal Legal Aid (Scotland) (Fees) Regulations 1989***  
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(pa) trial diet where there is more than one accused and counsel represents an accused who pled guilty at an earlier diet.	£360.00	£315.00	£225.00
(q)trial within a trial	Payable at the full rate for a trial (paragraph 3 above) depending on category of case and status of counsel.		
(qa) commission on evidence and any other hearing, other than one for which a fee is prescribed, at which evidence is adduced.	Payable at full rate of trial (paragraph 3 above) depending on the category of case and status of counsel		
(r) examination of the facts in a case of insanity or diminished responsibility	Payable at the full rate for a trial (paragraph 3 above) depending on category of case and status of counsel.		
(s) proof in mitigation	Payable at the full rate for a trial (paragraph 3 above) depending on category of case and status of counsel.		
(t) deferred sentence in which evidence is taken from an expert witness	Payable at the full rate for a trial (paragraph 3 above) depending on category of case and status of counsel.		
5. Fee for consultations, accused and counsel meetings and locus visits			
	£210.00	£184.00	£135.00
5A. Fee for abortive consultation	£105.00	£92.00	£67.50
6. Fee for a necessary Note	£50.00	£50.00	£50.00
7. Travel			
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken within Scotland, including travel to a Procurator Fiscal's office or elsewhere to view productions	£100.00	£100.00	£100.00
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken furth of Scotland	£200.00	£200.00	£200.00
8. Accommodation and associated subsistence			
Payment of necessary accommodation and associated subsistence per day	£100.00	£100.00	£100.00

**CHAPTER 2 – SENIOR COUNSEL****1A. Written work**

(a) petition to Nobile Officium	£225.00
(b) drafting devolution minute	£150.00
(c) drafting section 275 application under the 1995 Act	£150.00
(d) drafting specification of documents	£125.00
( e) drafting interrogatories	£125.00
( f) drafting defence statement under section 70A of the 1995 Act or section 125 of the 2010 Act	£125.00

**1B. Preliminary hearing**

(a) Preliminary hearing including all managed meetings or equivalent communication with Crown counsel or the Procurator Fiscal by whatever means and including any note on the line of evidence	Payable at one and a half times the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(aa) preliminary hearing, adjourned or continued in which witnesses called to give evidence	Payable at the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(b) which involves substantive debate or the resolution of outstanding issues, preliminary pleas, objections to the admissibility of evidence by minute, devolution minutes or applications under section 275 of the 1995 Act	Payable at two thirds of the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(c) adjourned diet under section 75A of the 1995 Act, or continued diet	Payable at one-half of the full rate for a trial (paragraph 3 below) depending on category of case and status of counsel.
(d) attendance at managed meeting or work in connection with equivalent communication with the Crown by whatever means and including any note on the line of evidence where counsel does not attend preliminary hearing	Payable at one-half of the fee prescribed at paragraph 1B(a) above.
(e) conduct of preliminary hearing on receipt of detailed instructions not having been involved in pre hearing communication with the Crown	Payable at one-half of the fee prescribed at paragraph 1B(a) above.

**Criminal Legal Aid (Scotland) (Fees) Regulations 1989**  
**Schedule 2 fees for counsel**

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*2. Early Plea*

Hearing under section 76 of the 1995 Act	£1,250.00
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*3. Trial (per day)*

*Category Charges Prosecuted in the High Court*

(a) Murder, Multiple attempted murder, Culpable homicide, Rape, Assault and Robbery (involving commercial premises), Importation of controlled drugs, Fraud and related offences, Section 1 of the 1988 Act (causing death by dangerous driving), Section 3A of the 1988 Act (causing death by careless driving when under the influence of drink or drugs), Sedition, Treason, Offences under the 2000 Act, Torture, War crimes, Offences under the Explosive Substances Act 1883, Sections 327 to 333 and 339(1A) of the Proceeds of Crime Act 2002 (Money Laundering), Firearms offences, Incest, Sodomy, Embezzlement, Lewd and libidinous behaviour against children under the age of 12, Section 2B of the 1998 Act, Section 3ZB of the 1998 Act, Sections 1,2, 3(2)(a) and 18 to 27 of the 2009 Act;	£900.00
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(b) Attempted Murder, Assault to severe injury (with aggravations), Indecent Assault, Assault and Robbery (involving retail premises), Possession with intent to supply or being concerned in the supply of a Class A drug, Attempted Rape, Lewd and libidinous behaviour, (other than under category (a) above) Offences under the Sexual Offences Act, Offences against Children under the 1995 Consolidation Act, Offences under section 16A of the 1995 Consolidation Act, Abduction and/or unlawful imprisonment, Extortion, Counterfeiting, Bribery and Corruption, Mobbing and rioting, Indecent or Obscene Publications, Environmental Protection prosecutions, Health and Safety offences, Intellectual Property offences, Offences under the Immigration Act 1971, Offences under section 52 or 52A of the Civic Government (Scotland) Act 1982, Offences under section 52 or 52A of the Civic Government (Scotland) Act 1982, Offences under section 12(1) of the Children and Young Persons (Scotland) Act 1937, All offences under the 2009 Act not otherwise prescribed in this Table of Fees;	£700.00
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(c) Possession with intent to supply or being concerned in the supply of a class B or class C drug, Assault to severe injury, Assault and robbery, Mobbing, Wilful fire raising, Housebreaking, Opening lockfast places, Bigamy, Contempt of Court, Perjury, Theft, Shameless indecency, Offences under the Sexual Offences Act 2003, Forgery, Concealing a pregnancy, Deforcement of Sheriff's Officers, Malicious mischief, Brothel keeping, Public order offences (stirring up racial hatred, wearing of uniforms, disrupting lawful meetings), Harassment, Road traffic offences (other than section 1 or 3A of the 1988 Act), Possession of offensive weapons, Violation of sepulchres, Robbery, Breach of the peace.	£560.00
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*4. Miscellaneous Hearings*

(a) fee for a day in court for miscellaneous hearings other than those for which a fee is prescribed	£410.00
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(aa) judicial examination	£410.00
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(b) preliminary diet	£410.00
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***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

(c) hearing under section 275 of the 1995 Act	£410.00
(d) hearing on specification of documents	£410.00
(e) hearing on a devolution minute	£410.00
(f) hearing on an application by the Crown for an extension of time	£410.00
(g) hearing under section 72 of the 1995 Act	£205.00
(h) hearing on a Motion to adjourn	£205.00
(i) hearing on an application for special measures	£205.00
(j) confiscation diet in which substantial evidence is led or where full settlement is agreed where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges categorised as below or follow a trial as specified in this Chapter in–	
(i) paragraph 3(a)	£900.00
(ii) paragraph 3(b)	£700.00
(iii) paragraph 3(c)	£560.00
(iv) Deleted	
(k) confiscation diet where no substantial evidence is led	£410.00
(l) deferred sentence where mitigation is led	£410.00
(m) deferred sentence where no mitigation is led	£205.00
(n) remit for sentence	£410.00
(na) drug treatment and testing order review	£205.00
(nb) drug treatment and testing order review where mitigation led and order revoked	£410.00
(o) adjourned trial diet	£205.00
(p) adjourned trial diet (trial having commenced)	£410.00
(pa) trial diet where there is more than one accused and counsel represents an accused who pled guilty at an earlier diet	£410.00
(q) trial within a trial	Payable at the full rate for a trial (paragraph 3 above) depending on category of case.
(qa) commission on evidence and any other hearing, other than one for which a fee is prescribed, at which evidence is adduced	Payable at the full rate for a trial (paragraph 3 above) depending on the category of case and status of counsel
(r) examination of the facts in a case of insanity or diminished responsibility	Payable at the full rate for a trial (paragraph 3 above) depending on

	category of case.
(s) proof in mitigation	Payable at the full rate for a trial (paragraph 3 above) depending on category of case.
(t) deferred sentence in which evidence is taken from an expert witness	Payable at the full rate for a trial (paragraph 3 above) depending on category of case.
<i>5. Fee for consultations, accused and counsel meetings and locus visits</i>	£250.00
<i>5A Fee for abortive consultation</i>	£125.00
<i>6. Fee for a necessary Note</i>	£50.00
<i>7. Travel</i>	
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken within Scotland, including travel to a Procurator Fiscal's office or elsewhere to view productions	£100.00
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken furth of Scotland	£200.00
<i>8. Accommodation and associated subsistence</i>	
Payment of necessary accommodation and associated subsistence per day	£100.00

**PART II****FEES OF COUNSEL IN APPEAL PROCEEDINGS  
CHAPTER 1 – JUNIOR COUNSEL**

		<i><b>Junior as leader</b></i>	<i><b>Junior alone</b></i>	<i><b>Junior with leader</b></i>
1.	Appeal against Sentence			
	(a)	drafting Grounds or Note of Appeal against sentence	£82	£82
	(b)	written Submissions in Appeal against Sentence	£125	£100
	(c)	any hearing under sections 107 and 187 of the Criminal Procedure (Scotland) Act 1995, including any consultation on the day of the appeal	£201	£150
	(d)	any hearing on appeal against sentence, including any consultation on the day of the appeal	£201	£150
	(e)	opinion (or note) on appeal against sentence (where not otherwise prescribed)	£75	£75
2.	Appeal by way of Bill of Suspension, Bill of Advocation or Stated Case			
	(a)	drafting Bill of Suspension or Bill of Advocation or adjustment of Stated Case	£85-£266	£82-£200
	(b)	appearance at any hearing on Stated Case, Bill of Suspension or Advocation	£335	£250
	(c)	Opinion	£125	£125
3.	Appeal against Conviction or Conviction and Sentence			
	(a)	drafting Grounds of Appeal against conviction or conviction and sentence	£250-£420	£200-£350
	(b)	written Submissions in Appeal against conviction or conviction and sentence	£250-£420	£200-£350
	(c)	[Omitted]		
	(d)	Hearing on Appeal against conviction or conviction and sentence (to which paragraph 11C of the notes on the operation of Schedule 2 does not apply)	£700-£1,089	£500-£825
	(da)	Hearing on appeal against conviction or conviction and sentence (to which paragraph 11C of the notes on the operation of Schedule 2 applies)-		£400-£625
		Where the hearing lasts fewer than 3 (i)hours	£395	£350

**Criminal Legal Aid (Scotland) (Fees) Regulations 1989**  
**Schedule 2 fees for counsel**

		(ii) Where the hearing lasts more than 3 hours, but fewer than 6 hours	£467-£726	£334-£550	£267-£417
		(iii) Where the hearing last 6 hours or more -	£700-£1,089	£500-£825	£400-£625
		(aa) for each 6 hour period	£395	£350	£250
		(ab) for any remaining period of fewer than 3 hours	£467-£726	£334-£550	£267-£417
		(ac) for any remaining period of more than 3 hours			
	(e)	opinion	£250-£400	£200-£350	£140-£300
4.	Appeal Hearing before a Full Bench (5 or more Judges)		£1,300	£1000	£750
5.	Appeals in relation to Bail or Interim Liberation				
	(a)	all work in connection with an appeal relating to granting of bail or interim liberation, except (ab) or (b) below	£30	£30	£30
	(ab)	all work in connection with a continued diet in relation to such an appeal	£30	£30	£30
	(b)	all work in connection with an application for interim liberation before 3 judges	£140	£100	£75
6.	Appeals Conduct Other				
	(a)	hearing on petition to the Nobile Officium	£700-£1,089	£500-£825	£305-£625
	(b)	reference to the High Court (devolution issue)	£700-1,089	£500-825	£400-£625
	(c)	appeal arising from pre-trial or continuing trial hearing	£700-£1,089	£500-£825	£400-£625
	(ca)	appeal from the Sheriff Appeal Court to the High Court under section 194ZB of the 1995 Act(a)	£700-£1089	£500-£825	£400-£625
	(cb)	referral from the Sheriff Appeal Court to the High Court under section 175A of the 1995 Act(b)	£700-£1089	£500-£825	£400-£625
	(d)	Opinion	£250-£400	£200-£350	£140-£300
6A	Advising Hearing				
	Any hearing relative to proceedings of a type described in the preceding paragraphs held subsequent to the court making avizandum, if paragraph 11E of the notes on the operation of schedule 2-				
	(a)	applies	£360	£315	£225
	(b)	does not apply	£150	£150	£150



**Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel**

7.	Appeals Written Work Other				
	(a)	drafting Devolution Minute	£150	£150	£150
	(b)	drafting Petition to the Nobile Officium	£225	£225	£225
	(c)	opinion in connection with an application under section 94(2A) of the Criminal Procedure (Scotland) Act 1995 (transcripts of record and documentary productions)	£50	£50	£50
8.	Consultations		£210	£184	£135
9.	Travel Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken within Scotland, including travel to a Procurator Fiscal's office or elsewhere to view productions		£100	£100	£100
	Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken furth of Scotland		£200	£200	£200
10.	Accommodation and associated subsistence				
	Payment of necessary accommodation and associated subsistence per day		£100.00	£100.00	£100.00
11.	Opinion where, in the circumstance mentioned in paragraph 11F of the notes on the operation of Schedule 2, counsel concludes that there is no stateable case		£250-£800	£200-£700	£140-£600

## CHAPTER 2 – SENIOR COUNSEL

				Senior
1.	Appeal against Sentence			
	(a)	drafting Grounds or Note of Appeal against sentence		£124
	(b)	written Submissions in Appeal against Sentence		£152
	(c)	any hearing under sections 107 and 187 of the Criminal Procedure (Scotland) Act 1995, including any consultation on the day of the appeal		£228
	(d)	any hearing on appeal against sentence, including any consultation on the day of the appeal		£228
	(e)	opinion (or note) on appeal against sentence (where not otherwise prescribed)		£114
2.	Appeal by way of Bill of Suspension, Bill of Advocation or Stated Case			
	(a)	drafting Bill of Suspension or Bill of Advocation or adjustment of Stated Case		£124-£300
	(b)	appearance at any hearing on Stated Case, Bill of Suspension or Advocation		£393
	(c)	opinion		£187.50
3.	Appeal against Conviction or Conviction & Sentence			
	(a)	drafting Grounds of Appeal against conviction or conviction and sentence		£250-£506
	(b)	written Submissions in Appeal against conviction or conviction and sentence		£250-£506
	(d)	Hearing on Appeal against conviction or conviction and sentence (to which paragraph 11C of the notes on the operation of Schedule 2 does not apply)		£900-£1,250
	(da) <sup>1</sup>			

**Criminal Legal Aid (Scotland) (Fees) Regulations 1989**  
**Schedule 2 fees for counsel**

		Hearing on Appeal against conviction or conviction and sentence (to which paragraph 11C of the notes on the operation of Schedule 2 applies) –	
		(j)Where the hearing lasts fewer than 3 hours	£450
		(ii) Where the hearing lasts more than 3 hours, but fewer than 6 hours	£600-£834
		(iii) Where the hearing lasts 6 hours or more –	£900-£1250
		(aa) for each 6 hour period	
		(ab) for any remaining period of fewer than 3 hours	£450
		(ac) for any remaining period of more than 3 hours	£600-£834
	(e)	opinion	£350-£700
4.	Appeal Hearing before a Full Bench (5 or more Judges)		£1,500
5.	Appeals in relation to Bail or Interim Liberation		
	(a)	all work in connection with an appeal relating to granting of bail or interim liberation, except (ab) or (b) below	£50
	(ab)	all work in connection with a continued diet in relation to such an appeal	£50
	(b)	all work in connection with an application for interim liberation before 3 judges	£150
6.	Appeals Conduct Other		
	(a)	hearing on petition to the Nobile Officium	£900-£1,250
	(b)	reference to the High Court (devolution issue)	£900-£1,250
	(c)	any appeal arising from pre-trial or continuing trial hearing	£900-£1,250
	(ca)	appeal from the Sheriff Appeal Court to the High Court under section 194ZB of the 1995 Act	£900-£1250
	(cb)	referral from the Sheriff Appeal Court to the High Court under section 175A of the 1995 Act	£900-£1250
	(d)	opinion	£350-£700
6A	Advising Hearing		
	Any hearing relative to proceedings of a type described in the preceding paragraphs held subsequent to the court making avizandum, if paragraph 11E of the notes on the operation of Schedule 2-		
	(a)	applies	£410
	(b)	does not apply	£150
7.	Appeals Written Work Other		
	(a)	drafting Devolution Minute	£150
	(b)	drafting Petition to the Nobile Officium	£225
	(c)	Opinion in connection with an application under section 94(2A) of the Criminal Procedure (Scotland) Act 1995 (transcripts of the record and documentary productions)	£50
8.	Consultations		£250
9.	Travel		
	Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken within Scotland, including travel to a Procurator Fiscal's office or elsewhere to view productions		£100

***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken furth of Scotland	£200
10. Accommodation and associated subsistence	
Payment of necessary accommodation and associated subsistence per day	£100.00
11. Opinion where, in the circumstance mentioned in paragraph 11F of the notes on the operation of Schedule 2, counsel concludes that there is no stateable case	£350-£1400

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**FEES OF COUNSEL FOR PROCEEDINGS IN THE SHERIFF AND DISTRICT COURT**

**CHAPTER 1 – JUNIOR COUNSEL**

	<i>Junior as leader</i>	<i>Junior alone</i>	<i>Junior with leader</i>
<i>1A. Written work</i>			
(a) petition to Nobile Officium	£225.00	£225.00	£225.00
(b) drafting devolution minute	£150.00	£150.00	£150.00
(c) drafting section 275 application under the 1995 Act	£150.00	£150.00	£150.00
(d) drafting specification of documents	£125.00	£125.00	£125.00
(e) drafting interrogatories	£125.00	£125.00	£125.00
(f) drafting defence statement under section 70A of the 1995 Act or section 125 of the 2010 Act	£125.00	£125.00	£125.00
<i>1B. Early plea</i>			
Hearing under section 76 of the 1995 Act	£1,250.00	£1,250.00	£625.00
<i>2. Trial (per day )</i>			
<i>Category Charges Prosecuted in the Sheriff Court</i>			
(a) Culpable Homicide, Assault and Robbery (involving commercial premises), Importation of controlled drugs, Fraud and related offence, Section 1 of the 1988 Act (causing death by dangerous driving), Section 3A of the 1988 Act (causing death by careless driving when under the influence of drink or drugs) Sedition, Treason, Offences under the 2000 Act, Torture, War crimes, Rape, Multiple attempted murder, Offences under the Explosive Substances Act 1883, sections 327 to 333 and 339(1A) of the Proceeds of Crime Act 2002 (Money Laundering), Firearms offences, Incest, Sodomy, Embezzlement, Lewd and libidinous behaviour against children under the age of 12, Section 2B of the 1998 Act, Section 3ZB of the 1998 Act, Sections 1,2, 3(2)(a) and 18 to 27 of the 2009 Act;	£647.50	£575.00	£360.00
(b) Attempted murder, Assault to severe injury (with aggravations), Indecent assault, Assault and robbery (involving retail premises), Possession with intent to supply or being concerned in the supply of a class A drug, Attempted rape, Lewd and libidinous behaviour (other than under category (a) above), Offences under the Sexual Offences Act, Offences against children under the 1995 Consolidation Act, Offences under section 16A of the 1995 Consolidated Act, Abduction and/or unlawful imprisonment, Extortion, Counterfeiting, Bribery and corruption, Mobbing and rioting, Mobbing, Environmental	£495.00	£430.00	£305.00

***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

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protection prosecutions, Health and safety offences, Intellectual property offences, Indecent or obscene publications, Possession with intent to supply or being concerned in the supply of a class B or class C drug, Assault to severe injury, Assault and robbery, Wilful fire raising, Housebreaking, Opening lockfast places, Bigamy, Contempt of Court, Perjury, Theft, Forgery, Uttering, Reset, Concealing a pregnancy, Deformation of Sheriff's Officers, Malicious mischief, Brothel keeping, Public order offences (stirring up racial hatred, wearing of uniforms, disrupting lawful meetings), Harassment, Road traffic offences (other than section 1 or 3A of the 1988 Act), Possession of offensive weapons, Violation of sepulchres, Offences under the Immigration Act 1971, Offences under section 52 or 52A of the Civic Government (Scotland) Act 1982, Offences under section 52 or 52A of the Civic Government (Scotland) Act 1982, Offences under section 12(1) of the Children and Young Persons (Scotland) Act 1937, All offences under the 2009 Act not otherwise prescribed in this Table of Fees, Robbery, Breach of the peace;

**Criminal Legal Aid (Scotland) (Fees) Regulations 1989**  
**Schedule 2 fees for counsel**

*3. Miscellaneous Hearings*

(a) fee for a day in court for miscellaneous hearings other than those for which a fee is prescribed	£288.00	£252.00	£180.00
(aa) judicial examination	£288.00	£252.00	£180.00
(b) preliminary diet	£288.00	£252.00	£180.00
(c) hearing under section 275 of the 1995 Act	£288.00	£252.00	£180.00
(d) hearing on specification of documents	£288.00	£252.00	£180.00
(e) hearing on a devolution minute	£288.00	£252.00	£180.00
(f) hearing on an application by the Crown for an extension of time	£288.00	£252.00	£180.00
(g) hearing under section 72 of the 1995 Act	£144.00	£126.00	£90.00
(h) hearing on a Motion to adjourn	£144.00	£126.00	£90.00
(i) hearing on an application for special measures	£144.00	£126.00	£90.00
(j) confiscation diet in which substantial evidence is led or where full settlement is agreed where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges categorised as below or follow a trial as specified in this Chapter in–			
(i) paragraph 2(a)	£647.50	£575.00	£360.00
(ii) paragraph 2(b)	£495.00	£430.00	£305.00
(iii) Deleted			
(k) confiscation diet where no substantial evidence is led	£288.00	£252.00	£180.00
(l) deferred sentence where mitigation is led	£288.00	£252.00	£180.00
(m) deferred sentence where no mitigation is led	£144.00	£126.00	£90.00
(ma) drug treatment and testing order	£144.00	£126.00	£90.00
(mb) drug treatment and testing order review where mitigation led and order revoked	£288.00	£252.00	£180.00
(n) adjourned trial diet	£144.00	£126.00	£90.00
(o) adjourned trial diet (trial having commenced)	£288.00	£252.00	£180.00
(oa) trial diet where there is more than one accused and counsel represents an accused who pled guilty at an earlier diet	£288.00	£252.00	£180.00
(p) trial within a trial		Payable at the full rate for a trial (paragraph 2 above) depending on category of case and status of counsel.	
(pa) commission on evidence and any other hearing, other than one		Payable at the full rate	

***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

for which a fee is prescribed, at which evidence is adduced	for a trial (paragraph 2 above) depending on the category of case and status of counsel.
(q) examination of the facts in a case of insanity or diminished responsibility	Payable at the full rate for a trial (paragraph 2 above) depending on category of case and status of counsel.
(r) proof in mitigation	Payable at the full rate for a trial (paragraph 2 above) depending on category of case and status of counsel.
(s) deferred sentence in which evidence is taken from an expert witness	Payable at the full rate for a trial (paragraph 2 above) depending on category of case and status of counsel.
(t) first diet	Payable at the full rate for a trial (paragraph 2 above) depending on category of case and status of counsel.

***4. Fee for consultations, accused and counsel meetings and locus visits***

	£178.00	£154.00	£108.00
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***4A. Fee for abortive consultation***

	£89.00	£77.00	£54.00
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***5. Fee for a necessary Note***

	£50.00	£50.00	£50.00
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***6. Travel***

Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken within Scotland, including travel to a Procurator Fiscal's office or elsewhere to view productions

	£100.00	£100.00	£100.00
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Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken furth of Scotland

	£200.00	£200.00	£200.00
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***7. Accommodation and associated subsistence***

Payment of necessary accommodation and associated subsistence per day

	£100.00	£100.00	£100.00
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**CHAPTER 2 – SENIOR COUNSEL**

*1A. Written work*

(a) petition to Nobile Officium	£225.00	£225.00	£225.00
(b) drafting devolution minute	£150.00	£150.00	£150.00
(c) drafting section 275 application under the 1995 Act	£150.00	£150.00	£150.00
(d) drafting specification of documents	£125.00	£125.00	£125.00
(e) drafting interrogatories	£125.00	£125.00	£125.00
(f) drafting defence statement under section 70A of the 1995 Act or section 125 of the 2010 Act	£125.00	£125.00	£125.00

*1B. Early plea*

Hearing under section 76 of the 1995 Act	£1,250.00	£1,250.00	£625.00
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*2. Trial (per day)*

*Category Charges Prosecuted in the Sheriff Court*

(a) Culpable Homicide, Assault and Robbery (involving commercial premises i.e. banks, post offices, warehouses etc.), Importation of Controlled Drugs, Fraud and related offence. Section 1 of the 1988 Act (causing death by dangerous driving), Section 3A of the 1988 Act (causing death by careless driving when under the influence of drink or drugs), Sedition, Treason, Offences under the 2000 Act, Torture, War crimes, Rape, Multiple attempted murder, Offences under the Explosive Substances Act 1883, sections 327 to 333 and 339(1A) of the Proceeds of Crime Act 2002 (Money Laundering), Firearms offences, Incest, Sodomy, Embezzlement, Lewd and libidinous behaviour against children under the age of 12, Section 2B of the 1998 Act, Section 3ZB of the 1998 Act, Sections 1,2, 3(2)(a) and 18 to 27 of the 2009 Act;	£720.00
(b) Attempted murder, Assault to severe injury (with aggravations), Indecent assault, Assault and robbery (involving retail premises), Possession with intent to supply or being concerned in the supply of a class A drug, Attempted rape, Lewd and libidinous behaviour (other than under category (a) above), Offences under the Sexual Offences Act, Offences against children under the 1995 Consolidation Act, Offences under section 16A of the 1995 Consolidated Act, Abduction and/or unlawful imprisonment, Extortion, Counterfeiting, Bribery and corruption, Mobbing and rioting, Mobbing, Environmental protection prosecutions, Health and safety offences, Intellectual property offences, Indecent or obscene publications, Possession with intent to supply or being concerned in the supply of a class B or class C drug, Assault to severe injury, Assault and robbery, Wilful fire raising, Housebreaking, Opening lockfast places, Bigamy, Contempt of Court, Perjury, Theft, Forgery, Uttering, Reset, Concealing a pregnancy, Deforcement of Sheriff's Officers, Malicious mischief, Brothel keeping, Public order offences (stirring up racial hatred, wearing of uniforms, disrupting lawful meetings), Harassment, Road traffic offences (other than section 1 or 3A of the 1988 Act), Possession of offensive weapons, Violation of sepulchres, Offences under the Immigration Act	£560.00



***Criminal Legal Aid (Scotland) (Fees) Regulations 1989 Schedule 2 fees for counsel***

1971, Offences under section 52 or 52A of the Civic Government (Scotland) Act 1982, Offences under section 52 or 52A of the Civic Government (Scotland) Act 1982, Offences under section 12(1) of the Children and Young Persons (Scotland) Act 1937, All offences under the 2009 Act not otherwise prescribed in this Table of Fees, Robbery, Breach of the peace;

***3. Miscellaneous Hearings***

(a) fee for a day in court for miscellaneous hearings other than for which a fee is prescribed	£328.00
(aa) judicial examination	£328.00
(b) preliminary diet	£328.00
(c) hearing under section 275 of the 1995 Act	£328.00
(d) hearing on specification of documents	£328.00
(e) hearing on a devolution minute	£328.00
(f) hearing on an application by the Crown for an extension of time	£328.00
(g) hearing under section 72 of the 1995 Act	£164.00
(h) hearing on a motion to adjourn	£164.00
(i) hearing on an application for special measures	£164.00
(j) confiscation diet in which substantial evidence is led or where full settlement is agreed where the confiscation proceedings follow acceptance of a guilty plea to the charge or charges categorised as below or follow a trial as specified in this Chapter in–	
(i) paragraph 2(a)	£720.00
(ii) paragraph 2(b)	£560.00
(iii) Deleted	
(k) confiscation diet where no substantial evidence is led	£328.00
(l) deferred sentence where mitigation is led	£328.00
(m) deferred sentence where no mitigation is led	£164.00
(ma) drug treatment and testing order review	£164.00
(mb) drug treatment and testing order review where mitigation led and order revoked	£328.00
(n) adjourned trial diet	£164.00
(o) adjourned trial diet (trial having commenced)	£328.00
(oa) trial diet where there is more than one accused and counsel represents an accused who pled guilty at an earlier diet	£328.00
(p) trial within a trial	Payable at the full rate for a trial (paragraph 2

	above) depending on category of case.
(pa) commission on evidence and any other hearing, other than one for which a fee is prescribed, at which evidenced is adduced	Payable at the full rate for trial (paragraph 2 above) depending on the category of case and status of counsel.
(q) examination of the facts in a case of insanity or diminished responsibility	Payable at the full rate for a trial (paragraph 2 above) depending on category of case.
(r) proof in mitigation	Payable at the full rate for a trial (paragraph 2 above) depending on category of case.
(s) deferred sentence in which evidence is taken from an expert witness	Payable at the full rate for a trial (paragraph 2 above) depending on category of case.
(t) first diet	Payable at the full rate for a trial (paragraph 2 above) depending on category of case.
<i>4. Fee for consultations, accused and counsel meetings and locus visits</i>	£200.00
<i>4A. Fee for abortive consultation</i>	£100.00
<i>5. Fee for a necessary Note</i>	£50.00
<i>6. Travel</i>	
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken within Scotland, including travel to a Procurator Fiscal's office or elsewhere to view productions	£100.00
Supplementary fee chargeable in addition to any of the above fees where necessary travel is undertaken furth of Scotland	£200.00
<i>7. Accommodation and associated subsistence</i>	
Payment of necessary accommodation and associated subsistence per day	£100.00



OUTER HOUSE, COURT OF SESSION

P1157/16

OPINION OF LORD ARTHURSON

In Note of Objections by Tim Haddow to the report by the Auditor of Court dated 11 April 2018 in the cause of Ermiyas Tadesse Wondimu against the Secretary of State for the Home Department

**Noter: Dunlop QC; Brown**  
**Respondent: Crawford QC; Scottish Legal Aid Board**

6 July 2018

[1] Let me begin by attempting to summarise counsel's respective submissions to the court today in respect of this note of objections. For the noter, Mr Dunlop referred at various points in his submission to the exercise the court required to engage with as anchored in the terms of paragraph 5 of schedule 4 of the 1989 Regulations in which the core words for the purposes of statutory interpretation were "an additional fee for preparation shall only be allowed if it relates to a proof, debate or like hearing". Albeit the remainder of paragraph 5 and paragraph 6 set further parameters in respect of such a putative additional fee.

[2] Mr Dunlop proceeded to offer what he described as a non-exhaustive list of examples of "like hearing" in paragraph 27 in his note of argument and to a shorter list of common features or attributes shared by his list of examples thereof in paragraph 22 of that

note. Mr Dunlop then listed and made powerful submissions on a series of anomalies and set out at length the decision and dicta of Lord Tyre in *O'Neil* on matters of legislative intent which despite changes to the 1989 Regulations were still in play today as they were in 2010. Centring his submission on the core issue or as he has put matters this afternoon "true question of interpretation of the words "like hearing"", Mr Dunlop invited the court to sustain the note and remit the matter to the auditor.

[3] For the Board Ms Crawford began by expressing her sympathy for the counsel involved in the note and for counsel in general, a sympathy which the court shares, but contended, under reference to the normal and natural meaning of the words in issue in paragraph 5 of schedule 4 and to the statutory context, that the regulations required a construction such that permission hearings did not attract a preparation fee. The phrase and issue, Ms Crawford argued, comprised hearings in which there is a prescribed daily fee under reference to a comparison with the former un-amended version of the Regulations. It was plain that the present regime for fee recovery had as its starting point a system of recovery of prescribed fees (schedule 4, paragraph 1) and only where there was no prescribed fee (paragraph 3) or a range of fee available was the former link to reasonable remuneration, a matter which could properly be founded upon. The correct test, she submitted, under Regulation 9 was one where the focus is on work actually and reasonably done with due regard being had to matters of economy. This submission was cogently contested by Mr Dunlop for the noter.

[4] In any event, permission hearings, Ms Crawford submitted, were not like proofs or debates and involved the court asking the question "Is there anything in the argument disclosed on the face of the petition which could lead to a discussion of substance in due course"?

[5] Stepping back from counsel's detailed submissions, at the heart of their discussion both counsel joined issue on the wording of paragraph 5 and invited the court to view the phrase "like hearing" akin to the proverbial elephant which one may have difficulty in describing to another but which one will recognise as an elephant as instantly as one encounters it.

[6] In deciding this point I propose, if I may, to begin and end by looking at what is actually involved in a permission hearing, taken as read, the terms of the Regulations and the relevant statutory background elaborated upon so helpfully by counsel in their submissions. A permission hearing must require preparation of necessity, will be inevitably opposed, may well involve the engagement during the hearing of counsel with authority and in the event of refusal is of course potentially dispositive of the petition process but it is not, nevertheless in my view, a "like hearing" to a proof or debate. It involves the succinct elaboration of a point or points already set out within the petition itself in which full argument to resolve a substantive point in any determinative sense is not required.

[7] The court is, in fixing the hearing, inviting counsel to make submissions of brevity on the potential strength or weakness of matters arising in the petition and focused by the answers which in turn can form the subject of a separate substantive later hearing in due course.

[8] Put short, having taken that view, I have concluded that giving the words in issue here, their natural meaning and in the particular context of recovery of counsel's fees under the auspices of the Regulations which we have been looking at today, that a judicial review permission hearing is not a "like hearing" to a proof or debate and accordingly I now propose to repel this note of objections. Putting matters another way I cannot recognise this species of hearing as the "elephant" that Mr Dunlop has sought to describe today.

[9] I do not anticipate any consequent motion in respect of expenses and on that basis, unless there are any further applications, make no further order today.