1964 No. 1410 (S. 92)

LEGAL AID AND ADVICE, SCOTLAND

The Act of Adjournal (Criminal Legal Aid Fees) 1964

Made - - - - 31*st August* 1964
Coming into Operation 1*st October* 1964

ACT OF ADJOURNAL
RELATIVE TO CRIMINAL LEGAL AID FEES.

At Edinburgh, the 31*st day of August* 1964

Present—

The Right Honourable
The LORD JUSTICE-GENERAL;

The Honourable
LORD CARMONT;

The Honourable
LORD CAMERON.

The Lord Justice-General, Lord Justice-Clerk and Lords Commissioners of Justiciary, by virtue of the powers conferred upon them by section 13 of the Legal Aid (Scotland) Act 1949(a), as amended by the Legal Aid Act 1960(b) and the Criminal Justice (Scotland) Act 1963(c), and of all other powers competent to them in that behalf, do hereby enact as follows:—

1. This Act of Adjournal may be cited as the Act of Adjournal (Criminal Legal Aid Fees) 1964 and shall come into operation on 1st October 1964.

2.—(1) In this Act of Adjournal the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them:—

"the Act" means the Legal Aid (Scotland) Act 1949(a), as amended by the Legal Aid Act 1960(b) and the Criminal Justice (Scotland) Act 1963(c);

"appeal certificate" means a certificate issued by the Supreme Court Committee under the Scheme;

"duty solicitor" means a solicitor acting under a duty plan in terms of the Scheme;

"High Court" means the High Court of Justiciary;

"interim appeal certificate" means a preliminary appeal certificate issued in appeals as matter of urgency under the Regulations;

"interim solicitor" means a solicitor appointed as matter of urgency under the Regulations;

(a) 12, 13 & 14 Geo. 6. c. 63. (b) 8 & 9 Eliz. 2. c. 28. (c) 1963 c. 39.

"Law Society" means the Law Society of Scotland established by the Solicitors (Scotland) Act 1949;

"legal aid" means legal aid in criminal proceedings under section 1 of the Act;

"nominated solicitor" means a solicitor appointed to act for an assisted person under the Scheme where legal aid has been granted by a court of first instance or where an appeal certificate has been issued;

"the Regulations" means the Legal Aid (Scotland) (Criminal Proceedings) Regulations 1964, and any regulations amending those Regulations;

"the Scheme" means the Legal Aid (Scotland) (Criminal Proceedings) Scheme 1964 made by the Law Society under section 8 of the Act and includes any scheme amending that Scheme;

"the sheriff court" shall, where appropriate, include a juvenile court constituted in pursuance of section 51 of the Children and Young Persons (Scotland) Act 1937(a).

(2) The Interpretation Act 1889(b) shall apply for the interpretation of this Act of Adjournal as it applies for the interpretation of an Act of Parliament.

3.—(1) There shall be allowed to the duty solicitor representing accused persons in the sheriff court on rota in terms of article 6 of the Scheme, fees on the following scale:—

(*a*) attendance at court in forenoon—sessional fee of £5 for the first case and £1 for each additional case up to a maximum of £10.

(*b*) attendance at court in afternoon—sessional fee of £5 for the first case and £1 for each additional case up to a maximum of £7.

(2) Where, following a plea of guilty, one or more adjournments are ordered by the court, and the duty solicitor requires to appear again, then an additional fee shall be payable to the duty solicitor in respect of:

(*a*) additional interviews with the accused or others;

(*b*) attendances at court other than during the course of the duty solicitor's period of duty.

The amount of such fees shall be such sum not exceeding £10 10s. 0d. as shall form reasonable remuneration having regard to the additional work and time involved: together with any reasonable consequential outlays.

4. There shall be allowed to the nominated solicitor acting for an accused person to whom legal aid has been granted in summary proceedings in the sheriff court a fee of not less than £6 6s. 0d. and not exceeding £47 5s. 0d. and a further fee not exceeding £15 15s. 0d. in respect of every day on which an adjourned hearing takes place.

5.—(1) There shall be allowed to the nominated solicitor acting for an accused person to whom legal aid has been granted in solemn proceedings in the sheriff court a fee of not less than £8 8s. 0d. and not exceeding £78 15s. 0d.

(2) Where a trial has not been concluded on the day on which it started there shall be allowed to the solicitor in addition to the fee allowed under the foregoing paragraph a daily fee in respect of the second and every subsequent day (*a*) where counsel has not been instructed, not exceeding £21 (*b*) where counsel has been instructed, not exceeding £15 15s. 0d.

(a) 1 Edw. 8 & 1 Geo. 6. c. 37. (b) 52 & 53 Vict. c. 63.

6.—(1) There shall be allowed to the nominated solicitor acting for an accused person to whom legal aid has been granted in solemn proceedings in the High Court a fee of not less than £10 10s. 0d. and not exceeding £78 15s. 0d.

(2) Where a trial has not been concluded on the day on which it started there shall be allowed to the solicitor in addition to the fee allowed under the foregoing paragraph a daily fee in respect of the second and every subsequent day not exceeding £15 15s. 0d.

7. There shall be allowed to the interim solicitor nominated under an interim appeal certificate such fee not exceeding £10 10s. 0d. as appears to represent fair remuneration according to the work done:

Provided that when the interim solicitor becomes the nominated solicitor, the solicitor shall be allowed one account only in respect of the appeal.

8.—(1) There shall be allowed to the nominated solicitor acting for an accused person to whom an appeal certificate has been granted in connection with an appeal from summary proceedings in any court of summary jurisdiction a fee of not less than £8 8s. 0d. and not exceeding £78 15s. 0d.

(2) Where the hearing of an appeal has not been concluded on the day on which it started there shall be allowed to the nominated solicitor in addition to the fee allowed under the foregoing paragraph a daily fee in respect of the second and every subsequent day not exceeding £15 15s. 0d.

9.—(1) There shall be allowed to the nominated solicitor acting for an accused person to whom an appeal certificate has been granted in connection with an appeal from solemn proceedings in the sheriff court a fee of not less than £8 8s. 0d. and not exceeding £78 15s. 0d.

(2) Where the hearing of an appeal has not been concluded on the day on which it started there shall be allowed to the nominated solicitor in addition to the fee allowed under the foregoing paragraph a daily fee in respect of the second and every subsequent day not exceeding £15 15s. 0d.

10.—(1) There shall be allowed to the nominated solicitor acting for an accused person to whom an appeal certificate has been granted in connection with an appeal in respect of proceedings in the High Court a fee of not less than £8 8s. 0d. and not exceeding £78 15s. 0d.

(2) Where the hearing of an appeal has not been concluded on the day on which it started there shall be allowed to the nominated solicitor in addition to the fee allowed under the foregoing paragraph a daily fee in respect of the second and every subsequent day not exceeding £15 15s. 0d.

11.—(1) Where a nominated solicitor or interim solicitor represents two or more persons charged in the same indictment or complaint, or appealing against conviction or sentence in respect of the same indictment or complaint, the fee to be allowed to the solicitor whether one or more legal aid certificates, interim appeal certificates or appeal certificates have been granted, shall be increased in respect of each such person other than the first person so represented whose name appears in the relative indictment or complaint, by such amount as appears to be proper in all the circumstances of the case.

(2) The increases allowed by virtue of the last preceding sub-paragraph shall not exceed—

(*a*) in respect of the second person so represented whose name appears in the relative indictment or complaint, 40 per cent. of the amount payable in respect of the first person so represented whose name appears therein;

(*b*) in respect of any other person so represented, 20 per cent. of the amount payable in respect of the first person so represented whose name appears in the relative indictment or complaint.

12.—(1) In addition to the fees payable under the provisions of the foregoing paragraphs the solicitor shall be allowed:—

(*a*) Expenses actually and reasonably incurred by himself or his clerk in travelling to and from the court at which the accused appears or the trial or appeal takes place (not being a court in the town or place where the solicitor has a place of business) and to and from the prison and any place visited for the purpose of preparing or conducting the defence or appeal:

Provided that in connection with this subparagraph—

(i) where public transport is not used then a reasonable mileage allowance shall be treated as an outlay;

(ii) in considering the whole circumstances of any case time taken in travelling shall be treated as time employed in the case.

(*b*) Fees paid to witnesses who are not on the Crown list, which fees shall not exceed the sums payable from time to time by the Crown to witnesses of the same categories.

(*c*) Any other out of pocket expenses actually and reasonably incurred, including fees to counsel.

(2) Where the nominated solicitor requires to instruct another solicitor, whether an Edinburgh solicitor in connection with an appeal, or a solicitor at the place of the prison or the court, or a local solicitor for the purpose of local precognitions or enquiry, nevertheless only one account shall be rendered by the nominated solicitor in accordance with this Act of Adjournal (payment of the other solicitor being a matter for adjustment between the nominated solicitor and the other solicitor out of the fees payable hereunder) but in determining the sum to be allowed to the nominated solicitor, account shall be taken also of the work carried out by that other solicitor.

13.—(1) The determination of the sum to be allowed to a solicitor shall take into account all the relevant circumstances including the nature, importance, complexity or difficulty of the work and the time involved, including time spent at the court on any day in waiting for the case or for the appeal to be heard, and shall include such amount as appears to represent fair remuneration for the work actually and reasonably done.

(2) If it appears at any time after the final disposal of the case that for any reason, including the exceptional length, complexity or difficulty of the case, the sums payable by virtue of the foregoing paragraphs or any of them would not provide fair remuneration according to the work actually and reasonably done by the solicitor, then any limitation contained in these provisions on the amount of any fee payable shall not apply and such fees shall be allowed, after taking into account all the relevant circumstances of the case, in respect of the work done as appears to represent fair remuneration according to the work actually and reasonably done.

14. There shall be allowed to counsel in respect of the representation of any person receiving legal aid in connection with any criminal proceedings such sum as appears to the Law Society to represent fair remuneration for the work actually and reasonably done.

15.—(1) If any question or dispute arises as to the amount payable to any solicitor or counsel in respect of any remuneration payable for the representation of any person receiving legal aid in connection with any criminal proceedings in the High Court, including appeals, the matter shall be referred to the Auditor of the Court of Session for his decision as to what represents fair remuneration.

(2) If any question or dispute arises as to the amount payable to any solicitor or counsel in respect of any remuneration payable for the representation of any person receiving legal aid in connection with any criminal proceedings in the sheriff court, the matter shall be referred to the Auditor of the Sheriff Court for the district in which those proceedings took place for his decision as to what represents fair remuneration.

And the Lords Appoint this Act of Adjournal to be recorded in the Books of Adjournal, and to be published in the *Edinburgh Gazette.*

(Signed) *J. L. Clyde,*
I.P.D.

EXPLANATORY NOTE

(This Note is not part of the Act of Adjournal, but is intended to indicate its general purport.)

This Act of Adjournal prescribes the maximum fees and certain minimum fees payable to solicitors acting for accused persons to whom legal aid has been granted, and the manner in which the sums payable to solicitors in respect of fees and outlays, and to counsel in respect of fees, are to be fixed. It also provides for any dispute as to the amount payable to a solicitor or counsel to be referred in the case of criminal proceedings in the High Court to the Auditor of the Court of Session, and in the case of criminal proceedings in the sheriff court to the Auditor of that sheriff court.