POLICY NOTE

THE LEGAL AID AND ADVICE AND ASSISTANCE (FEES) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2026

SSI 2026/XXX

The above instrument was made in exercise of the powers conferred by sections 9(1) and 9(2)(e), 33(2), (3)(a), (b), (c) and (f), and (3A) and 36(1) and (2)(b) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Summary Box

This instrument makes provision to implement an increase of 13% to legal aid and advice and assistance solicitor fees. It also makes some changes omitted from previous regulations and makes minor drafting and clarificatory changes.

Policy Objectives

This instrument increases legal aid and advice and assistance fees payable to solicitors by 13%. Amendments are made to the following Scottish Statutory Instruments by regulations 3 – 8 and schedules 1 – 15 of this instrument:

- Civil Legal Aid (Scotland) (Fees) Regulations 1989
- Criminal Legal Aid (Scotland) (Fees) Regulations 1989
- Legal Aid in Contempt of Court Proceedings (Scotland) (Fees) Regulations 1992
- Advice and Assistance (Financial Limit) (Scotland) Regulations 1993
- Advice and Assistance (Scotland) Regulations 1996
- Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999[1]

The instrument also makes some changes omitted from the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 and the Criminal Legal Aid and Assistance by Way of Representation (Miscellaneous Amendment) (Scotland) Regulations 2026.

Further, the instrument meets a commitment given to the Delegated Powers and Law Reform Committee of the Scottish Parliament to make corrections and minor drafting and clarificatory changes to the Civil Legal Aid (Scotland) Regulations 2002 and the Advice and Assistance by Way of Representation (Scotland) Regulations 2003.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

[1] Regulation 7 of the Criminal Legal Aid and Assistance by Way of Representation (Miscellaneous Amendment) (Scotland) Regulations 2026 inserts new schedules 3 and 4 into the 1999 Regulations. The 13% uplift will be applied to the fixed payments in these tables https://www.legislation.gov.uk/sdsi/2026/9780111064665/schedule.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Legal Aid and Advice and Assistance (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
No formal consultation has been conducted on these regulations, the purpose of which is primarily to introduce a 13% fee increase to legal aid and advice and assistance solicitors fees. However, throughout 2025 the Scottish Government has been involved in substantial engagement with representatives of the Law Society of Scotland, Bar Associations and the Scottish Legal Aid Board regarding support to legal aid providers and legal aid fee reform.

Impact Assessments
The following impact assessments were considered:

Business & Regulatory Impact Assessment – additional spend to the legal aid fund has been identified and a BRIA has been completed.
Child Rights & Wellbeing Impact Assessment – any impact these Regulations have on children and young people is considered to be positive.

Equality Impact Assessment – no negative impacts on groups with protected characteristics are anticipated.
Fairer Scotland Duty – not required
Strategic Environmental Assessment – not required
Data Protection Impact assessment – not required

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed.

For financial impact in respect of the uplift to fees, and based on current levels of business, we anticipate the following additional spend to the Legal Aid Fund in Scotland – £2.6m in 2026/27, rising to £11.8m in 2027/28.

The delay in full spend is due to the length of time it takes some cases to conclude.

The impact of this policy on business is minimal, but is likely to be positive to the relevant stakeholders.

Scottish Government
Directorate for Justice

January 2026