

**Reprint  
as at 1 July 2013**



**Crown Solicitors Amendment  
Regulations 2012**

(SR 2012/108)

Crown Solicitors Amendment Regulations 2012: revoked, on 1 July 2013, pursuant to clause 3 of the Crown Solicitors Regulations Revocation Order 2013 (SR 2013/191).

Rt Hon Dame Sian Elias, Administrator of the Government

**Order in Council**

At Wellington this 5th day of June 2012

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 81(1)(g) of the Public Finance Act 1989, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**These regulations are administered by the Crown Law Office.**

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## Regulations

### 1 Title

These regulations are the Crown Solicitors Amendment Regulations 2012.

### 2 Commencement

These regulations come into force on 1 July 2012.

### 3 Principal regulations

These regulations amend the Crown Solicitors Regulations 1994 (the **principal regulations**).

### 4 Regulation 1 amended (Title and commencement)

- (1) In regulation 1(2), replace “Except as provided in regulation 6(2), these regulations shall” with “These regulations (except regulation 6 as in force before 1 July 2012)”.
- (2) After regulation 1(2), insert:
- “(3) Regulation 6 (as in force before 1 July 2012) came into force on 15 July 1994.”

### 5 Regulation 2 amended (Interpretation)

- (1) In regulation 2, definition of **certified scale of fees**, replace “fees payable” with “regular fees claimable”.
- (2) In regulation 2, insert in its appropriate alphabetical order:  
“**Crown Solicitor appropriation criminal case** means a criminal case to the extent only that work done on the case by or on behalf of a Crown Solicitor under, or pursuant to, the Crown Solicitor’s warrant of appointment is to be funded by way of an appropriation that—  
“(a) is in Vote Attorney-General; and  
“(b) covers outputs that are or include work of that kind”.

### 6 New regulation 2A inserted (Crown Solicitor appropriation criminal cases)

After regulation 2, insert:

**“2A Crown Solicitor appropriation criminal cases**

The Solicitor-General must make available to Crown Solicitors information that enables them to determine what classes, descriptions, or kinds of work done on a criminal case by them or on their behalf under, or pursuant to, their warrants of appointment fall, at a particular time or times on or after 1 July 2012, within the definition in regulation 2 of a Crown Solicitor appropriation criminal case.”

**7 Regulation 3 amended (Application of regulations)**

After regulation 3(1), insert:

- “(1A) Despite subclause (1), Crown Solicitors’ claims for fees for work done (whether on criminal cases or civil matters) before 1 July 2012 must be dealt with as if the Crown Solicitors Amendment Regulations 2012 had not been made, except that this subclause and the following regulations (as inserted, amended, or replaced, on 1 July 2012) apply to those claims:
- “(a) regulation 4(2) (senior hourly rate of remuneration):
  - “(b) regulation 12 (special cases).”

**8 Regulation 4 amended (Senior hourly rate of remuneration)**

Replace regulation 4(1) to (5) with:

- “(1) In preparing under regulation 6(1) and after 30 June 2012 a certified scale of fees, the Solicitor-General must determine, for the purposes of these regulations and of the certified scale of fees, the senior hourly rate of remuneration for each financial year to which the certified scale of fees is to apply.
- “(2) The senior hourly rate of remuneration determined under subclauses (1) to (5) (as in force before 1 July 2012), and in force immediately before 1 July 2012, continues in force, and applies or continues to apply in respect of claims for fees for work done before, on, or after 1 July 2012 in respect of criminal cases or civil matters, until it is replaced by a new rate determined under subclause (1) (as replaced on 1 July 2012).
- “(3) After 30 June 2012 and until a replacement certified scale of fees is prepared and certified under regulation 6(1), the hourly rates prescribed in the certified scale of fees in force imme-

diately before 1 July 2012 and prescribed for the purposes of regulation 15(2)(c) (as in force before 1 July 2012) must be taken to be the hourly rates prescribed for the purposes of regulations 14A(2)(b) and 15(2)(b) (as replaced on 1 July 2012).

“(4) Subclause (3) does not limit the generality of subclause (2).”

**9 Regulation 6 amended (Certified scale of fees)**

(1) In regulation 6(1), replace “shall, before the commencement of the base period and before the commencement of each year beginning on or after 1 June 1995, prepare and certify a scale of all fees payable” with “may, before 1 July in any year, prepare and certify a scale of all regular fees claimable”.

(2) Replace regulation 6(2) with:

“(2) Each of the following applies to each financial year until it is revoked and replaced under subclause (1):

“(a) the certified scale of fees in force immediately before 1 July 2012:

“(b) each scale of fees prepared and certified under subclause (1) after 30 June 2012.”

**10 Regulation 11 replaced (Basis for claiming fees)**

Replace regulation 11 with:

**“11 Basis for claiming fees**

Fees that a Crown Solicitor claims from the Crown must be—

“(a) assessed not on the ordinary solicitor and client basis, but under these regulations; and

“(b) claimed under regulation 14A so far as they are fees for work done after 30 June 2012 in respect of Crown Solicitor appropriation criminal cases; and

“(c) claimed under regulation 15 so far as they are fees for work done after 30 June 2012 in respect of—

“(i) criminal cases that are not Crown Solicitor appropriation criminal cases; or

“(ii) civil matters.”

**11 Regulation 12 replaced (Special cases)**

Replace regulation 12 with:

**“12 Special cases**

- “(1) This regulation applies to a fee claimed under the rest of these regulations by a Crown Solicitor after 30 June 2012 (whether for work done before, on, or after 30 June 2012 in respect of a criminal case or a civil matter) (the **fee claimed**) if the Solicitor-General—
- “(a) is, under regulation 14A(4), to determine under this regulation the amount payable; or
  - “(b) is, under regulation 15(4), referred the invoice for the fee claimed to determine under this regulation the amount payable; or
  - “(c) is satisfied that the fee claimed (whether or not it could properly be claimed under the rest of these regulations) is inadequate or excessive having regard to exceptional circumstances.
- “(2) The Solicitor-General may authorise, instead of the fee claimed, any special fee (whether lesser or greater than the fee that could properly be claimed under the rest of these regulations) the Solicitor-General considers fair and reasonable.
- “(3) In determining whether to authorise under subclause (2) a special fee greater than the fee that could properly be claimed under the rest of these regulations, the Solicitor-General may have regard to the extent (if any) to which—
- “(a) the Solicitor-General was so far as practicable notified promptly by or on behalf of the Crown Solicitor of—
    - “(i) the work for which the special fee is claimed by the Crown Solicitor; and
    - “(ii) every reason why the Solicitor-General might under subclause (2) authorise the special fee; and
  - “(b) the Crown Solicitor has complied with any current relevant guidelines issued under subclause (4).
- “(4) The Solicitor-General may for the purposes of this regulation issue guidelines relating to special fees.
- “(5) Subclauses (3) and (4) do not limit the generality of the Solicitor-General’s discretion under subclause (2), and subclause (2) does not limit, and is not limited by, the Solicitor-General’s discretion under regulation 26(2).”

**12 Part 4 heading amended**

In the Part 4 heading, replace “**Certification**” with “**Approval and certification**”.

**13 Regulation 15 replaced (Certification of fees)**

Replace regulation 15 with:

**“14A Crown Solicitor appropriation criminal cases:  
Solicitor-General approval**

- “(1) A Crown Solicitor who has a claim against the Crown for fees under these regulations for work done after 30 June 2012 in respect of a Crown Solicitor appropriation criminal case must—
- “(a) claim those fees at the rate or rates applicable when the work, or each part of the work, concerned was done or, as the case may be, as special fees payable only if authorised by the Solicitor-General under regulation 12; and
  - “(b) set out full particulars of the claim in an invoice prepared and signed by the Crown Solicitor; and
  - “(c) forward the invoice to the Solicitor-General.
- “(2) The Solicitor-General must (unless subclause (3) or (4) requires the Solicitor-General to do otherwise) approve the fees claimed as payable in accordance with these regulations if,—
- “(a) so far as the fees claimed are subject to a maximum specified in, or are of a kind or kinds otherwise provided for in, the certified scale of fees, the Solicitor-General is satisfied that,—
    - “(i) so far as they are required by these regulations to be fixed by reference to a maximum, they are fair and reasonable and do not exceed the maximum specified in the certified scale of fees:
    - “(ii) so far as they are not required by these regulations to be fixed by reference to a maximum, they are correct in accordance with the certified scale of fees; and
  - “(b) so far as the fees claimed are not subject to a maximum specified in, or are not of a kind or kinds otherwise provided for in, the certified scale of fees, in the Solicitor-General’s opinion they are fair and reasonable and do not exceed, for each hour actually involved,—

- “(i) in the case of a Crown Solicitor or senior counsel, the senior hourly rate of remuneration; or
  - “(ii) in the case of an intermediate counsel, 80% of the senior hourly rate of remuneration; or
  - “(iii) in the case of a junior counsel, 65% of the senior hourly rate of remuneration.
- “(3) The Solicitor-General must, however, approve a fee that is less than the fee claimed, but that the Solicitor-General nevertheless considers fair and reasonable, if, in the Solicitor-General’s opinion,—
- “(a) the time involved or the nature of the service actually performed in any case does not justify the payment of the fee claimed; or
  - “(b) the work occasioned in any transaction or proceeding is reduced by the fact that the transaction or proceeding is one of a number or series of transactions or proceedings that are similar, or that arise out of the same set of circumstances; or
  - “(c) the fee claimed appears to the Solicitor-General to be excessive in the light of the amount that, in the Solicitor-General’s opinion, could properly be claimed under subclause (2), experience with comparable claims, or both.
- “(4) The Solicitor-General must, however, determine under regulation 12 the amount payable (instead of approving all, or the relevant part, of the invoice, under subclause (2) or (3)) if—
- “(a) the fee claimed exceeds the amount that, in the Solicitor-General’s opinion, could properly be claimed under subclause (2), and is claimed by reason of special circumstances; or
  - “(b) the Solicitor-General considers that the fee is not a proper fee to approve under subclause (2) or (3).
- “(5) The Solicitor-General must arrange the payment by the Crown Law Office of the following:
- “(a) an invoice approved under subclause (2) or (3):
  - “(b) a special fee authorised under regulation 12 for work done in respect of a Crown Solicitor appropriation criminal case.

**“15 Other criminal cases or civil matters: Registrar certification**

- “(1) A Crown Solicitor who has a claim against the Crown for fees under these regulations for work done after 30 June 2012 in respect of a criminal case that is not a Crown Solicitor appropriation criminal case, or for work done after 30 June 2012 in respect of a civil matter, must—
- “(a) claim those fees at the rate or rates applicable when the work, or each part of the work, concerned was done or, as the case may be, as special fees payable only if authorised by the Solicitor-General under regulation 12; and
  - “(b) set out full particulars of the claim in an invoice prepared and signed by the Crown Solicitor; and
  - “(c) forward the invoice to a Registrar (as defined in regulation 2).
- “(2) The Registrar must (unless subclause (3) or (4) requires the Registrar to do otherwise) certify that the fees claimed are payable in accordance with these regulations if,—
- “(a) so far as the fees claimed are subject to a maximum specified in, or are of a kind or kinds otherwise provided for in, the certified scale of fees, the Registrar is satisfied that,—
    - “(i) so far as they are required by these regulations to be fixed by reference to a maximum, they are fair and reasonable and do not exceed the maximum specified in the certified scale of fees:
    - “(ii) so far as they are not required by these regulations to be fixed by reference to a maximum, they are correct in accordance with the certified scale of fees; and
  - “(b) so far as the fees claimed are not subject to a maximum specified in, or are not of a kind or kinds otherwise provided for in, the certified scale of fees, in the Registrar’s opinion they are fair and reasonable and do not exceed, for each hour actually involved,—
    - “(i) in the case of a Crown Solicitor or senior counsel, the senior hourly rate of remuneration; or

- “(ii) in the case of an intermediate counsel, 80% of the senior hourly rate of remuneration; or
  - “(iii) in the case of a junior counsel, 65% of the senior hourly rate of remuneration.
- “(3) The Registrar must, however, certify a fee that is less than the amount that, in the Registrar’s opinion, could properly be claimed under subclause (2), but that is a lesser fee that the Registrar nevertheless considers fair and reasonable, and must certify on the invoice that the Registrar is doing so if, in the Registrar’s opinion,—
- “(a) the time involved or the nature of the service actually performed in any case does not justify the payment of the full fees set out in the certified scale of fees; or
  - “(b) the work occasioned in any transaction or proceeding is reduced by the fact that the transaction or proceeding is one of a number or series of transactions or proceedings that are similar, or that arise out of the same set of circumstances.
- “(4) The Registrar must, however, refer all, or the relevant part, of the invoice uncertified (along with a memorandum setting out the Registrar’s reasons for referring all, or the relevant part, of the invoice) to the Solicitor-General to determine under regulation 12 the amount payable, if—
- “(a) the fee claimed exceeds the amount that, in the Registrar’s opinion, could properly be claimed under subclause (2), and is claimed by reason of special circumstances; or
  - “(b) the Registrar is in doubt as to whether the fee is a proper fee for the Registrar to certify.
- “(5) If the Registrar certifies the invoice under subclause (2) or (3), or receives a copy of the Solicitor-General’s authorisation under regulation 12 of a special fee for work done in respect of a criminal case that is not a Crown Solicitor appropriation criminal case or in respect of a civil matter,—
- “(a) the Registrar must return the certified invoice, or the copy of the authorisation of the special fee, to the Crown Solicitor for submission to the appropriate government department (for example, to the Crown Law Office if the invoice or the special fee is for work done by the

Crown Solicitor for the Crown Law Office in respect of a criminal case that is not a Crown Solicitor appropriation criminal case); and

- “(b) the appropriate government department’s chief executive or other authorised certifying officer, if satisfied that the services charged for have been duly performed, must so certify and arrange payment.”

**14 Regulation 19 amended (Special allowance for travelling time)**

In regulation 19(2), replace “payable” with “claimable”.

**15 Regulation 20 amended (Fees for preparation)**

- (1) In regulation 20(1),—
- (a) replace “Subject to subclauses (2) and (3), for” with “For”; and
  - (b) replace “there shall be paid remuneration” with “remuneration may be claimed”.
- (2) After regulation 20(1), insert:
- “(1A) Subclause (1) is subject to subclauses (2) and (3).”

**16 Regulation 21 amended (Fees for appearances)**

- (1) In regulation 21(1),—
- (a) replace “Subject to subclauses (2) to (4), for” with “For”; and
  - (b) replace “there shall be paid remuneration” with “remuneration may be claimed”.
- (2) After regulation 21(1), insert:
- “(1A) Subclause (1) is subject to subclauses (2) to (4).”

**17 Regulation 22 amended (Appeals to High Court against sentence)**

In regulation 22, replace “there shall be paid the following fee” with “the following fee may be claimed”.

**18 Regulation 23 amended (Fee for instructing other counsel)**

In regulation 23, replace “shall be paid” with “may be claimed”.

- 19 Regulation 24 amended (Fees for arranging fixtures, attending callovers, etc)**  
In regulation 24,—
- (a) replace “there shall be paid” with “a Crown Solicitor may claim”; and
  - (b) replace “payable” with “claimable”.
- 20 Regulation 25 amended (Second counsel)**  
In regulation 25, replace “payable to” with “claimable in respect of”.
- 21 Regulation 26 amended (Fees where civil proceedings settled before trial)**
- (1) In regulation 26(1), replace “Subject to subclause (2), the fee to be allowed in any civil matter that is settled between the parties before the trial shall be” with “The claimable fee in any civil matter that is settled between the parties before the trial is”.
  - (2) After regulation 26(1), insert:  
“(1A) Subclause (1) is subject to subclause (2).”
  - (3) In regulation 26(2),—
    - (a) replace “Without limiting the generality of the powers conferred on the Solicitor-General by regulation 12, the” with “The”; and
    - (b) replace “payable” with “claimable”.
  - (4) After regulation 26(2), insert:  
“(3) Subclause (2) does not limit, and is not limited by, regulation 12(2).”
- 22 Regulation 27 amended (Counsel assisting)**  
In regulation 27, replace “payable to” with “claimable by”.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 July 2012, are made under the Public Finance Act 1989. They amend the Crown Solicitors Regulations 1994. Those regulations regulate the employment of Crown Solicitors (not being members of the Public Service) for the conduct of the legal business of the Crown. Those regulations also provide for the payment to such Crown Solicitors of such fees, allowances, and expenses as may be fixed or determined by or in accordance with those regulations. The amendments relate to the fees that a Crown Solicitor claims from the Crown. In particular,—

- the Solicitor-General's duty to prepare before 1 June each year a certified scale of fees is replaced with a discretion to prepare a new one before 1 July in 2013 or a later year, and that is a scale to apply, until replaced, for all future financial years:
- the senior hourly rate of remuneration (which is part of the certified scale of fees) is to be determined not using the former formula, but by the Solicitor-General exercising a discretion:
- claims for fees for Crown Solicitor appropriation criminal cases are subject to approval by the Solicitor-General (or his or her delegate) instead of (as formerly, and as will continue for claims for fees for other criminal cases, or civil matters) certification by specified Registrars of the High Court:
- the discretion to authorise, instead of the fee claimed, a special fee (greater or lesser than the regular fee properly claimable) is continued, but in determining whether to authorise a special greater fee the Solicitor-General may have regard to whether the Crown Solicitor gave prompt notice of the work concerned and the reasons why the fee might be authorised, and complied with relevant guidelines relating to special greater fees.

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**Notes****1 *General***

This is a reprint of the Crown Solicitors Amendment Regulations 2012. The reprint incorporates all the amendments to the regulations as at 1 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Crown Solicitors Regulations Revocation Order 2013 (SR 2013/191)

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