

1989 No. 341

**LEGAL AID AND ADVICE,
ENGLAND AND WALES**

**The Legal Advice and Assistance (Duty Solicitor)
(Remuneration) Regulations 1989**

<i>Made</i> - - - -	<i>3rd March 1989</i>
<i>Laid before Parliament</i>	<i>9th March 1989</i>
<i>Coming into force</i>	<i>1st April 1989</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 34 and 43 of the Legal Aid Act 1988(a), with the concurrence of the Treasury, hereby makes the following Regulations:-

Title, commencement, revocations and transitional provisions

1.—(1) These Regulations may be cited as the Legal Advice and Assistance (Duty Solicitor) (Remuneration) Regulations 1989 and shall come into force on 1st April 1989.

(2) The Regulations specified in the schedule are hereby revoked.

(3) Where a review under regulation 8 relates to a claim made before 1st June 1989, regulation 9(1) and (2) shall not apply and the solicitor may appeal in writing within 21 days of receipt of notification of the decision on the review to a committee appointed by the Board.

Interpretation

2. In these Regulations, unless the context otherwise requires:-

“the 1988 Act” means the Legal Aid Act 1988;

“appropriate area committee” means the area committee in whose area is situated the magistrates’ court at which a solicitor has given advice or assistance in accordance with arrangements made by the Board under regulation 7 or 8 of the Legal Advice and Assistance Regulations 1989(b);

“area committee” has the meaning assigned to it by regulation 4 of the Civil Legal Aid (General) Regulations 1989(c);

“bank holiday” means a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(d);

“duty day” means a day during which a duty solicitor is present at a magistrates’ court in accordance with a scheme;

(a) 1988 c.34; section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulation”. (b) S.I. 1989/340. (c) S.I. 1989/339. (d) 1971 c.80.

“duty solicitor means a solicitor who is present at a magistrates’ court in accordance with a scheme;

“duty solicitor scheme” means any arrangements made by the Board under regulation 31 or 33 of the Legal Advice and Assistance Regulations 1989(a);

“the 1989 regulations” means the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989(b).

General

3.—(1) Remuneration shall be determined by the Board in accordance with these Regulations.

(2) The Board shall appoint or authorise the appointment of determining officers to act on its behalf under these Regulations in accordance with directions given by it or on its behalf.

Claims for remuneration

4.—(1) A claim for remuneration by a duty solicitor shall be submitted to the determining officer in such form and manner as the Board may direct and any such claim shall be submitted within 3 months of the duty day in respect of which the claim is made.

(2) The duty solicitor shall supply such further particulars, information and documents as the determining officer may require.

(3) The time limit within which the claim for remuneration must be submitted may, for good reason, be extended by the determining officer.

Determination of remuneration

5.—(1) The determining officer shall consider the claim, any further particulars, information or documents submitted by the duty solicitor and any other relevant information and allow:—

- (a) such time as he considers reasonable in respect of work done, including attendance and waiting, at a magistrates’ court which he considers has been actually and reasonably done in accordance with a scheme; and
- (b) such time as he considers was reasonably taken by a duty solicitor in travelling from his place of work (or, on a bank holiday, a Saturday or a Sunday from his place of residence) to a magistrates’ court; and in returning therefrom, where that solicitor is called out to (or, on a bank holiday, a Saturday or a Sunday, attends at) the Court to act as a duty solicitor.

(2) Subject to paragraph (3), the determining officer shall allow remuneration:—

- (a) in respect of (1)(a) above at such rate as is the average of the two separate basic rates provided for advocacy and for travelling and waiting respectively in paragraph 1(1)(a) of part I of Schedule 1 to the 1989 Regulations; and
- (b) in respect of (1)(b) above at the same rate as the basic rate provided for travelling and waiting in paragraph 1(1)(a) of Part 1 of Schedule 1 to the 1989 Regulations;

provided that the basic rates shall be those which would apply to work done under the 1989 Regulations on the same day as the duty day in respect of which the claim is made.

(3) Remuneration allowed in accordance with paragraph (2)(a) shall be increased by 25% in respect of work done on a bank holiday, a Saturday or a Sunday.

Travelling expenses

6. Where the determining officer allows travelling time under Regulation 5(1)(b) above, he may also allow such travelling expenses as he considers have been actually and reasonably incurred.

(a) S.I. 1989/340. (b) S.I. 1989/343

Payment of remuneration

7.—(1) The determining officer shall authorise payment to the duty solicitor in the amounts determined (whether by him or on review or appeal) in accordance with these Regulations.

(2) Where the costs payable under paragraph (1) are varied as a result of any review or appeal in accordance with these regulations, then –

- (a) where the costs are increased, the determining officer shall authorise payment of the increase;
- (b) where the costs are decreased the solicitor shall repay the amount of such decrease.

Review of determination

8.—(1) If a solicitor is dissatisfied with the decision of a determining officer under these Regulations, the solicitor may within 21 days of receipt of notification of the costs payable under regulation 7(1) apply to the appropriate area committee to review that decision.

(2) On an application under paragraph (1), the appropriate area committee shall review the determination of the determining officer whether by confirming, increasing or decreasing the amount of the determination.

Appeals to Committee Appointed by the Board

9.—(1) A solicitor who is dissatisfied with the decision of an area committee on a review under regulation 8 may within 21 days of receipt of notification of the decision apply to that committee to certify a point of principle of general importance.

(2) Where an area committee certifies a point of principle of general importance, the solicitor may within 21 days of receipt of notification of that certification appeal in writing against the decision of the area committee to a committee appointed by the Board.

(3) On an appeal under this regulation the committee appointed by the Board may reverse, affirm or amend the decision of the area committee.

Dated 1st March 1989

Mackay of Clashfern, C.

We concur

*Kenneth Carlisle
Alan Howarth*

Dated 3rd March 1989

Two of the Lords Commissioners of Her Majesty's
Treasury

SCHEDULE REVOCATIONS

Regulation 1(2)

Regulations revoked

References

The Legal Advice and Representation (Duty Solicitor) (Remuneration) S.I. 1987/443.
Regulations 1987.

The Legal Advice and Representation (Duty Solicitor) (Remuneration) S.I. 1988/447
(Amendment) Regulations 1988.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace with amendments the Legal Advice and Representation (Duty Solicitor) (Remuneration) Regulations 1987. They provide for determination and review by the Legal Aid Board of the remuneration payable to duty solicitors providing advice and assistance by way of representation at magistrates' court under regulations 7 and 8 of the Legal Advice and Assistance Regulations 1989. The main changes are:-

- (a) to reflect the taking over of responsibility for the administration of legal aid by the Legal Aid Board; and
- (b) to increase by 25% remuneration for work done at a magistrates' court on a bank holiday, a Saturday or a Sunday (regulation 5).

The rates of remuneration are fixed by reference to the rates provided for advocacy and for travelling and waiting (currently £46 and £20.50 per hour respectively) in paragraph 1(1)(a) of Part I of Schedule 1 to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

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