

1989 No. 342

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Legal Advice and Assistance at Police Stations
(Remuneration) Regulations 1989**

Made - - - - - *3rd March 1989*

Laid before Parliament *9th March 1989*

Coming into force *1st April 1989*

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

Citation, commencement, revocations and transitional provisions

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

(2) The Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1988(b) are hereby revoked except in relation to work done before 1st April 1989.

(3) Where a review under regulation 7 relates to a claim made before 1st June 1989, regulation 8(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.—(1) In these Regulations, unless the context otherwise requires,—

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

“advice” and “assistance” mean respectively advice and assistance under the 1988 Act;

“appropriate area committee” means the area committee in whose area is situated the police station or other premises at which a solicitor has given advice or assistance in accordance with arrangements made by the Board under regulation 6 of the Legal Advice and Assistance Regulations 1989(c);

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

“duty period” means any period of 24 hours during which a duty solicitor holds himself available to give advice and assistance in accordance with a duty solicitor scheme;

“duty solicitor” means any solicitor, and any representative of a solicitor, who provides advice and assistance in accordance with a duty solicitor scheme;

(a) 1988 c.34; section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulations”.

(b) S.I. 1988/446.

(c) S.I. 1989/340.

(d) S.I. 1989/339.

“duty solicitor scheme” means any arrangements made by the Board under regulation 6 of the Legal Advice and Assistance Regulations 1989(a);

“own solicitor” means a solicitor who gives advice and assistance to a person arrested and held in custody or to a volunteer otherwise than as a duty solicitor;

“serious service offence” means an offence under any of the Army Act 1955(b), the Air Force Act 1955(c) or the Naval Discipline Act 1957(d) which cannot be dealt with summarily or which appears to an interviewing service policeman to be serious;

“unsocial hours” means between the hours of 5.30 pm and 9.30 am on any weekday and any time on a Saturday, Sunday or bank holiday;

“volunteer” means a person who, for the purpose of assisting with an investigation, attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested.

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 or an own 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 period or of the day on which the advice and assistance was given.

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

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

Determination of remuneration

5.—(1) The determining officer may allow work done in the following classes:

- (a) availability during duty period;
- (b) advice and assistance given to a person arrested and held in custody or being interviewed in connection with a serious service offence or to a volunteer;
- (c) travelling and waiting;
- (d) advising and assisting over the telephone;
- (e) routine telephone calls.

(2) The determining officer shall consider the claim, any further particulars, information or documents submitted by the solicitor under regulation 4 and any other relevant information, and allow:

- (a) such work as appears to him to have been actually and reasonably done by a duty solicitor or an own solicitor, classifying it according to the classes specified in paragraph (1); and
- (b) such time in respect of each class of work allowed by him (other than advising over the telephone and dealing with routine telephone calls) as he considers reasonable.

(3) Subject to paragraph (5), the determining officer shall allow fees for the work allowed by him under this regulation in accordance with the Schedule.

(4) Subject to paragraph (5), the determining officer may allow a reasonable sum in respect of:

(a) S.I. 1989/340.

(b) 1955 c.18.

(c) 1955 c.19.

(d) 1957 c.53.

- (a) hotel expenses actually and reasonably incurred by a duty solicitor where attendance in accordance with a rota is allowed under paragraph (1)(a);
- (b) travelling expenses actually and reasonably incurred by a duty solicitor or an own solicitor where travelling and waiting is allowed under paragraph (1)(c);
- (c) any disbursement actually and reasonably incurred by a duty solicitor or an own solicitor.

(5) Subject to paragraph (6) the fees allowed under the Schedule, except any fee allowed in respect of work done under paragraph (1)(a), together with any expenses allowed under paragraph (4)(b) and (c), shall not exceed the limit prescribed by regulation 4(1)(a) of the Legal Advice and Assistance Regulations 1989(a).

(6) Paragraph (5) shall not apply to fees for advice or assistance which the determining officer is satisfied was required in the interests of justice be given as a matter of urgency.

Payment of remuneration

6.—(1) The determining officer shall authorise payment to the duty solicitor or an own 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

7.—(1) If a solicitor is dissatisfied with the determination of a determining officer under these Regulations, the solicitor may within 21 days of receipt of notification of the costs payable under regulation 6(1) apply to the appropriate area committee to review that determination.

(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 his determination.

Appeal to committee appointed by the Board

8.—(1) A solicitor who is dissatisfied with the decision of an area committee on a review under regulation 7 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.

*Kenneth Carlisle
Alan Howard*

Dated 3rd March 1989

Two of the Lords Commissioners of
Her Majesty's Treasury

(a) S.I. 1989/340.

SCHEDULE

Regulation 5

1.—(1) The Board shall, subject to paragraph 2 in the case of item (a), allow fees for work allowed by it under regulation 5 at the following rates:

<i>Class of work</i>	<i>Rate</i>
(a) availability during duty period	£2.95 per hour served, to a maximum of £70.80 (£3.00 per hour served to a maximum of £72.00 in respect of a solicitor whose office is situated within legal aid area 1, 13 or 14)
(b) advice and assistance to a person arrested and held in custody, or being interviewed in connection with a serious service offence or to a volunteer, given	
(i) by a duty solicitor in unsocial hours	£48.50 per hour
(ii) by a duty solicitor in all other hours	£36.50 per hour (£38.75 per hour in respect of a solicitor whose office is situated within legal aid area 1, 13 or 14)
(iii) by an own solicitor	£36.50 per hour (£38.75 per hour in respect of a solicitor whose office is situated within legal aid area 1, 13 or 14)
(c) travelling and waiting	
(i) by a duty solicitor in unsocial hours	£48.50 per hour
(ii) by a duty solicitor in all other hours	£36.50 per hour (£38.75 per hour in respect of a solicitor whose office is situated within legal aid area 1, 13 or 14)
(iii) by an own solicitor	£20.50 per hour
(d) advising and assisting over the telephone	£16.50 per item (£17.00 per item in respect of a solicitor whose office is situated within legal aid area 1, 13, or 14)
(e) routine telephone calls	£1.75 per item (£1.85 per item in respect of a solicitor whose office is situated within legal aid area 1, 13 or 14)

(2) In paragraph 1(1), "legal aid area 1, 13 or 14" means the area so numbered by the Board under regulation 4(1) of the Civil Legal Aid (General) Regulations 1989(a)

2. The fee allowed under paragraph 1(1)(a) shall be reduced by the amount of any other fees allowed under that paragraph for work done as a duty solicitor during that duty period to a maximum of one half of the fee allowed under paragraph 1(1)(a).

(a) S. I. 1989/339.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace with amendments the Legal Advice and Assistance at Police Stations (Remuneration) Regulations 1988 (which are revoked except in relation to work done before 1st April 1989).

The Regulations provide for determination and review by the Legal Aid Board of the remuneration of solicitors (including duty solicitors acting in accordance with arrangements made under regulation 6 of the Legal Advice and Assistance Regulations 1989) who give advice and assistance to suspects at police stations, and prescribe rates of payment for that remuneration. The main changes are:-

- (a) to reflect the taking over of responsibility for administration of legal aid by the Legal Aid Board;
- (b) to remove the lower limit on fees hitherto applied to certain work (regulation 5(1));
- (c) to increase the rates previously payable under the 1988 Regulations by 6% overall (Schedule).