
STATUTORY INSTRUMENTS

1994 No. 228

**The Legal Aid in Civil Proceedings
(Remuneration) Regulations 1994**

Citation, commencement and transitional provisions

1.—(1) These Regulations may be cited as the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994 and shall come into force on 25th February 1994.

(2) Subject to paragraph (3) below, these Regulations apply to proceedings in respect of which a certificate is granted on or after 25th February 1994.

(3) Where a certificate was granted before 25th February 1994 to an assisted person whose solicitor represents any other assisted person in the same proceedings under a certificate granted on or after 25th February 1994, the provisions of these Regulations shall not apply as regards the costs payable under the later certificate.

(4) Proceedings in respect of which a certificate was granted before 25th February 1994 shall be treated as if these Regulations had not been made notwithstanding any amendment issued under Part VII of the General Regulations(1) on or after that date.

Interpretation

2.—(1) In these Regulations—

“CCR Order 38” means Order 38 of the County Court Rules 1981(2);

“General Regulations” means the Civil Legal Aid (General) Regulations 1989;

“legal aid area” means an area specified by the Board under regulation 4(1) of the General Regulations and “legal aid area 1” means the area so numbered by the Board;

“prescribed rate” means the fee or hourly rate specified in the Schedule to these Regulations corresponding to the relevant item or class of work, the level of court and the location of the solicitor’s office;

“relevant authority” means the Area Director in the case of an assessment and the taxing officer in the case of a taxation;

“RSC Order 62” means Order 62 of the Rules of the Supreme Court 1965(3).

(2) Unless the context otherwise requires, expressions used in RSC Order 62, CCR Order 38 or in the General Regulations shall have the same meanings as in those Rules or Regulations.

Scope

3. These regulations apply to proceedings to which Part IV of the Legal Aid Act 1988 applies except—

(1) S.I. 1989/339, as amended by S.I. 1991/524, 2036 and 2784, S.I. 1992/590 and 721, S.I. 1993/565 and 1756 and S.I. 1994/229.
(2) S.I. 1981/1687. Relevant amendments are S.I. 1983/1716, S.I. 1984/878, S.I. 1986/636, S.I. 1988/278, S.I. 1989/ 236 and 2426, S.I. 1991/1328 and S.I. 1992/793.
(3) S.I. 1965/1776. Relevant amendments are S.I. 1986/632, S.I. 1987/1423, S.I. 1988/1340, S.I. 1990/1689, S.I. 1991/ 1884 and S.I. 1992/638.

- (a) proceedings in the House of Lords;
- (b) proceedings in the Court of Appeal;
- (c) proceedings in magistrates' courts;
- (d) proceedings to which regulation 3(2)(a) or 3(2)(b) of the Legal Aid in Family Proceedings (Remuneration) Regulations 1991(4) applies;
- (e) proceedings to which section 29 of the Legal Aid Act 1988 applies;
- (f) proceedings to which Part XV of the General Regulations (Particular Courts and Tribunals) applies.

Remuneration

4.—(1) The amounts to be allowed to solicitors on a determination of the costs of an assisted person under regulation 107A of the General Regulations(5) shall be:—

- (a) in accordance with the Schedule to these Regulations;
- (b) in accordance with paragraph (2) of RSC Order 62, rule 17 where the costs incurred relate to the kind of work to which that paragraph applies;
- (c) in accordance with paragraph 1(1) of Appendix 2, Part I to RSC Order 62, or CCR Order 38 rule 3(3A) or (3B), whichever is applicable, where no provision is made in the Schedule to these Regulations for the kind of work to which the costs relate.

(2) The relevant authority, in determining costs referred to at 3. in the Schedule to these Regulations, shall allow costs at the higher rate specified where the office of the solicitor for the assisted person where the work was done is situated within legal aid area 1.

(3) The relevant authority shall determine disbursements (including counsel's fees) in accordance with RSC Order 62 or CCR Order 38, whichever is applicable.

(4) Subject to these Regulations, the sums to be allowed to legal representatives in connection with the representation of an assisted person in proceedings to which these Regulations apply, shall be determined in accordance with Part XII of the General Regulations, RSC Order 62 and CCR Order 38.

Enhancement

5.—(1) Upon a determination the relevant authority may allow fees at more than the prescribed rate subject to the provisions of this regulation where it appears to the relevant authority, taking into account all the relevant circumstances, that

- (a) the work was done with exceptional competence, skill or expertise;
- (b) the work was done with exceptional dispatch; or
- (c) the case involved exceptional circumstances or complexity.

(2) Where the relevant authority considers that any item or class of work should be allowed at more than the prescribed rate, it shall apply to that item or class of work a percentage enhancement in accordance with the following provisions of this regulation.

(3) In determining the percentage by which fees should be enhanced above the prescribed rate the relevant authority shall have regard to:—

- (a) the degree of responsibility accepted by the solicitor;
- (b) the care, speed and economy with which the case was prepared;

(4) S.I. 1991/2038, as amended by S.I. 1991/2112, S.I. 1992/596, S.I. 1993/1117 and S.I. 1994/230.

(5) Regulation 107A of the General Regulations is introduced by a concurrent amendment in S.I. 1994/229.

(c) the novelty, weight and complexity of the case.

(4) Except in proceedings to which paragraph (5) applies, the percentage above the prescribed rate by which fees for work may be enhanced shall not exceed 100%.

(5) In proceedings in the High Court, the relevant authority may allow an enhancement exceeding 100% where it considers that, in comparison with work in other High Court proceedings which would merit 100% enhancement, the item or class of work relates to exceptionally complex matters which have been handled with exceptional competence or dispatch.

(6) In proceedings to which paragraph (5) applies, the percentage above the prescribed rate by which fees for work may be enhanced may exceed 100% but shall not exceed 200%.

(7) The relevant authority may have regard to the generality of proceedings to which these Regulations apply in determining what is exceptional within the meaning of this regulation.

Reduction of costs

6.—(1) Upon a determination the relevant authority may allow costs in respect of any item or class of work at less than the prescribed rate where it appears reasonable to do so having regard to the competence or dispatch with which the item or class of work was done.

(2) Paragraph (1) is without prejudice to regulation 109 of the General Regulations.

Dated 28th January 1994

Mackay of Clashfern, C.

We consent,

*Irvine Patnick
Tim Wood*

Two of the Lords Commissioners of Her Majesty's Treasury.

Dated 2nd February 1994