

1972/176



THE OFFENDERS LEGAL AID REGULATIONS 1972

ARTHUR PORRITT, Governor-General

By his Deputy

ALEXANDER TURNER

ORDER IN COUNCIL

At the Government House at Wellington this 14th day of August 1972

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Offenders Legal Aid Act 1954, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Offenders Legal Aid Regulations 1972.

(2) These regulations shall come into force on the 7th day after the date of their notification in the *Gazette*.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“The Act” means the Offenders Legal Aid Act 1954:

“Magistrate’s Court” includes a Children’s Court:

“Practitioner” means a barrister or a solicitor of the Supreme Court.

3. List of practitioners—(1) The Secretary of every District Law Society shall from time to time forward to the Registrar of the Supreme Court in the town where the Secretary has his office the name and address of every practitioner who in the opinion of the Society is a fit and proper person to be assigned and is willing to accept assignment in accordance with these regulations, and the Registrar shall keep a list of such practitioners.

(2) The Registrar shall from time to time, on the request in writing of the District Law Society, remove any name from the list.

(3) A Judge of the Supreme Court may at any time direct that any name be removed from or added to the list.

(4) The Registrar shall send a copy of the list of practitioners to every Registrar of the Supreme Court, and every Registrar of a Magistrate's Court, within the Law Society district, and shall notify those Registrars of any addition to or removal from the list.

4. Application for legal aid—(1) An application for the grant of legal aid shall be made in writing, unless the Court otherwise allows.

(2) Any written application shall specify—

(a) The occupation and the wages, salary, and income of the applicant:

(b) Particulars of any money or other property owned by the applicant:

(c) Particulars of any dependants of the applicant:

(d) Any other relevant facts relating to the financial circumstances of the applicant.

5. Hearing of application—(1) The power conferred by the Act or these regulations on the Supreme Court or the Court of Appeal may be exercised either by the Court at the hearing or at any other time by a Judge of the Court.

(2) The power conferred by the Act or these regulations on a Magistrate's Court may be exercised either by the Court at the hearing or at any other time by a Magistrate.

(3) Any application for the grant of legal aid may be heard wholly in private.

(4) An inquiry into the means of the applicant shall in any case be heard in private.

6. Grant of legal aid by Magistrate's Court in respect of Supreme Court proceedings—Where a Magistrate's Court commits any person to the Supreme Court for trial or sentence, or where any person appeals to the Supreme Court against a conviction or sentence of a Magistrate's Court, the Magistrate's Court may direct that legal aid be granted in respect of the proceedings in the Supreme Court.

7. Persons jointly charged—Unless for special reasons the Court directs otherwise, where legal aid is granted to two or more persons who are jointly charged, only one practitioner shall be assigned and one set of fees allowed.

8. Assignment of practitioner—(1) Where a Court has directed that legal aid be granted to any person, the Registrar of the Court giving the direction, or the Registrar of the Court in which the proceeding is to be determined, shall, subject to any direction of the Court, assign a practitioner from the list kept pursuant to regulation 3 of these regulations or, if there is no such list or if none of the practitioners named therein is willing or reasonably available to act, some other practitioner who is willing to act:

Provided that in respect of a charge of murder or treason any practitioner whom the accused person desires to defend him, and who is willing to act, may be assigned, whether or not his name appears on the list.

(2) Except in respect of a charge of murder or treason, no more than one counsel shall be assigned in any case, unless because of the complexity of the proceedings the Court thinks fit to direct otherwise.

(3) At the request of the assigned practitioner, the Registrar may at any stage of the proceedings assign any other practitioner in his place.

9. Record of result of applications—The Registrar of any Court in which an application for the grant of legal aid is heard shall keep a record of the result of the application.

10. Cancellation of legal aid—(1) If at any time after the grant of legal aid it appears to a Court that the applicant has sufficient means to enable him to obtain legal assistance, the Court may direct that no legal aid or, as the case may require, no further legal aid shall be afforded under these regulations to that applicant.

(2) On the communication to any practitioner of a direction under subclause (1) of this regulation, he shall not be entitled to payment under these regulations for anything done after the communication.

11. Practitioners not to receive other remuneration—(1) No practitioner assigned under these regulations shall, except under these regulations, receive directly or indirectly from any person any fee or remuneration, or take the benefit of any contract or promise to pay any fee or remuneration, in respect of his services rendered pursuant to the assignment:

Provided that a Judge or a Magistrate, as the case may require, may upon application in writing signed by the practitioner and upon the full disclosure of all facts connected therewith allow such fee or remuneration as he may specify instead of or in addition to any fee prescribed by these regulations.

(2) The name of any practitioner receiving any fee or remuneration in breach of this regulation shall be removed from any list of practitioners kept pursuant to regulation 3 of these regulations:

Provided that a Judge may at any time direct the restoration of the name of the practitioner to a list.

12. Fees of assigned practitioners—(1) On the completion of any hearing, appeal, or other matter to which these regulations relate, or at such earlier time as the Court thinks fit, the Court shall determine under which scale in the Schedule to these regulations the fees of the assigned practitioner shall be payable and shall note the application accordingly.

(2) In determining the scale of fees payable to an assigned practitioner the Court shall have regard to—

(a) The seriousness of the offence charged:

(b) The complexities of the legal or factual issues involved:

(c) The skill, labour, and responsibilities of the practitioner in the conduct of the case:

(d) Whether the transaction or proceeding is one of a number or series of transactions or proceedings which are similar or which arise out of the same set of circumstances:

(e) Such other factors as the Court thinks fit.

(3) A Judge or Magistrate, in any case in which he considers that exceptional circumstances render such a course desirable, may authorise any of the scales set out in the Schedule to these regulations to be exceeded in any particular case.

(4) Any assigned practitioner who is aggrieved at the determination of the Court under subclause (1) of this regulation may apply to the Court for a review of that determination. The Court, after giving the practitioner an opportunity of being heard, shall confirm or vary its determination and the determination as confirmed or varied shall have effect accordingly.

(5) The provisions of subclauses (1) and (2) of regulation 5 of these regulations shall apply to determinations and applications under this regulation as if they were applications for the grant of legal aid.

(6) The proceedings relating to any determination or application under this section may be heard wholly in private.

(7) The Registrar of the Court shall keep a record of every determination, authorisation, or review made under this regulation.

13. Fees where no fee prescribed—Subject to the provisions of subclauses (4) to (6) of regulation 17 of these regulations, in any case where no fee is prescribed in the Schedule to these regulations for the business, matter, or proceeding, the fee payable for that business, matter, or proceeding shall be at such rate, based upon the rates payable under that Schedule, as the Registrar certifies as being fair and reasonable.

14. Expenses of assigned practitioners—The expenses payable to assigned practitioners shall be in accordance with the Schedule to these regulations.

15. Disbursements—Payment may be made of all disbursements certified under regulation 17 of these regulations as having been reasonable and properly incurred.

16. Payment of witnesses—Subject to any direction of the Court, a witness for any person to whom legal aid has been granted may be paid fees, allowances, and expenses in accordance with the Witnesses and Interpreters Fees Regulations 1969*.

17. Claim for fees, expenses, or disbursements—(1) Any person having a claim for fees, expenses, or disbursements under these regulations shall set out full particulars thereof in a voucher to be prepared and signed by him, and shall forward the voucher to the Registrar of the Court in which the proceedings were held:

Provided that any amount payable to a witness in respect of his appearance in the Supreme Court may be paid by the Registrar from an Imprest Account.

(2) Except where a Judge or Magistrate has given a direction pursuant to the proviso to subclause (1) of regulation 11 of these regulations, every claim for payment of practitioners' fees under these regulations shall contain a certificate by the claimant that he has not received from any person, either directly or indirectly, any fee or remuneration, and an undertaking that, except under these regulations, he will not receive any such fee or remuneration or take the benefit of any contract or promise to pay any fee or remuneration, in respect of his services rendered pursuant to his assignment.

(3) The Registrar of the Court shall examine the voucher and if he is satisfied—

- (a) That the services have been duly performed in accordance with an assignment; and
- (b) That the amounts claimed are fair and reasonable and are in accord with any determination or authorisation made pursuant to regulation 12 of the regulations; and
- (c) That such of those amounts as are expenses or disbursements have been reasonably and properly incurred,—

he shall certify the voucher accordingly.

(4) If the Registrar is not so satisfied he shall either—

- (a) Give his certificate for such of the amounts claimed, or for such proportion of any of those amounts, as he considers are fair and reasonable and, in the case of expenses and disbursements, are reasonably and properly incurred; or
- (b) Refer the voucher to a Magistrate, if the voucher relates only to proceedings in a Magistrate's Court or, in any other case, to a Judge of the Supreme Court.

(5) Where a Registrar gives a certificate for less than all the amounts claimed on any voucher the person who made the claim may, within 10 days of the date of the certificate, require the Registrar, by notice in writing, to refer the voucher to a Magistrate or to a Judge of the Supreme Court, as the case may require.

(6) Where any voucher is referred to a Magistrate or a Judge of the Supreme Court under paragraph (b) of subclause (4) or subclause (5) of this regulation, the Magistrate or Judge, after giving the Registrar and the person who made the claim an opportunity of being heard, shall certify the voucher for such amounts as he considers are fair and reasonable, having regard to these regulations and to the scales prescribed in the Schedule to these regulations and, in the case of expenses and disbursements, are reasonably and properly incurred, or shall confirm or vary the Registrar's certificate or shall refer the voucher or the certificate back to the Registrar with such directions as may be requisite.

18. Revocation and saving—(1) The Offenders Legal Aid Regulations 1956* are hereby revoked.

(2) The Offenders Legal Aid Regulations 1956* shall, notwithstanding their revocation, continue to apply in respect of any stage of any criminal proceedings if, before the date of the coming into force of these regulations, a Court has directed that legal aid be granted to any person in respect of that stage and a practitioner has been assigned.

*S.R. 1956/186

Reg. 12 (1)

SCHEDULE

FEES AND EXPENSES OF ASSIGNED PRACTITIONERS

PART I—FEES IN PROCEEDINGS UNDER THE SUMMARY PROCEEDINGS ACT 1957

A. *Hearings*

	Scale I \$	Scale II \$	Scale III \$
For conducting the defence in cases that are dealt with before a Magistrate or before one or more Justices (including the preliminary hearing of an indictable offence), one of the following scales shall apply:			
(a) For receiving instructions and advising generally, irrespective of the number of charges	5.75	8.60	11.50
(b) For appearance on a plea of guilty or where the information is withdrawn	3.00	4.50	6.00
(c) On a plea of not guilty; for preparation, for each hour occupied (excluding the first hour)	4.50	6.75	9.00
with a maximum of	17.00	25.50	34.00
For appearance conducting defence, irrespective of the number of charges or persons charged, each half day or part half day	17.00	25.50	34.00

B. *Appeals and Other Proceedings*

	Scale I \$	Scale II \$	Scale III \$
1. In proceedings in the Supreme Court under or relating to the Summary Proceedings Act 1957, whether by way of appeal against conviction or order, certiorari, mandamus, prohibition or otherwise (except appeals against sentence), one of the following scales shall apply:			
For preparation, including all matters connected with or incidental to the proceedings, for each hour occupied	4.50	6.75	9.00
with a maximum of	23.00	34.50	46.00
For appearance; for each half day or part half day	23.00	34.50	46.00
2. On an appeal against sentence only before the Supreme Court the fee for preparation and appearance, including all matters and proceedings shall be	11.50	17.25	23.00
Provided that, if more than one appearance is necessary, there shall be allowed for each additional appearance a further fee of	4.50	6.75	9.00

SCHEDULE—continued

PART II—FEES IN PROCEEDINGS UNDER THE CRIMES ACT 1961

A. Trials

	Scale I \$	Scale II \$	Scale III \$
In proceedings in the Supreme Court on trials of indictable offences, one of the following scales shall apply:			
(a) Preparing for trial with all matters incidental thereto—			
(i) Indictments for murder and treason, for each hour	4.50	6.75	9.00
(ii) Other cases, for each hour	4.50	6.75	9.00
with a maximum in these other cases of	28.50	42.75	57.00
(b) Appearance—			
(i) On defence of indictments (including appearance on interlocutory or ancillary proceedings or matters), for each half day or part half day	28.50	42.75	57.00
(ii) On arraignment, where for any reason the trial does not proceed further	7.00	10.50	14.00

B. Sentences

	Scale I \$	Scale II \$	Scale III \$
For appearances upon the sentencing of prisoners, in respect of each indictment or information or as the result of one preliminary hearing, irrespective of the number of charges	4.50	6.75	9.00

Provided that no fee shall be payable in respect of appearance upon the sentencing of a prisoner where the sentence is pronounced on the same day as the verdict unless that appearance alone necessitates a separate attendance of counsel.

PART III—FEES IN PROCEEDINGS BEFORE THE COURT OF APPEAL

	Scale I \$	Scale II \$	Scale III \$
In any appeal to or review of proceedings by the Court of Appeal, one of the following scales shall apply:			
(a) For preparation and appearance on application to a Judge for a certificate that the case is a fit case for appeal (but excluding cases arising under rule 9 of the Criminal Appeal Rules 1946*)	5.75	8.60	11.50

*S.R. 1946/94

Amendment No. 1: S.R. 1967/94

SCHEDULE—*continued*PART III—FEES IN PROCEEDINGS BEFORE THE COURT OF APPEAL—*continued*

	Scale I \$	Scale II \$	Scale III \$
(b) For preparation on appeal against conviction or sentence or both or against any interlocutory order or any other matter not otherwise provided for; for each hour	4.50	6.75	9.00
(c) For appearance on appeal against conviction or sentence or both, or reference of an application for the exercise of the mercy of the Crown; for each half day or part half day	28.50	42.75	57.00
(d) For appearance on appeal against any interlocutory order; for each half day or part half day	28.50	42.75	57.00
(e) For appearance on any matter not otherwise provided for other than the making of fixtures; for each half day or part half day	28.50	42.75	57.00

PART IV—PROVISIONS OF GENERAL APPLICATION

A. *Second Counsel*

Where second counsel is assigned, the fees payable to second counsel shall, if second counsel is from the same office as first counsel, be at the rates above prescribed, reduced by half. If second counsel is from another office the fees payable shall be at rates not exceeding two-thirds of the rates above prescribed.

B. *Travelling Expenses and Allowances*

1. Where a practitioner is required in pursuance of an assignment to travel more than 3 miles from the place where he carries on business, travelling expenses will be allowed as follows:

- (a) Fares paid for public transport, subject to the production of receipts for fares exceeding \$1 and not fixed by law or readily ascertainable:
- (b) Car allowance at 10c a mile each way where a private car is used:
- (c) Subsistence expenses reasonably incurred by him during the period of his absence from his residence, subject to the production of a receipt for any item in excess of \$1, plus a sum of 25c per day or part of a day:

SCHEDULE—*continued*PART IV—PROVISIONS OF GENERAL APPLICATION—*continued*

- (d) The cost paid for hiring a rental car if that cost together with subsistence expenses under paragraph (c) of this clause and the special allowance provided for in clause 2 hereof does not exceed the total of the fares, subsistence expenses, and special allowance that would have been payable if public transport had been used.

2. A special allowance at the rate of up to but not exceeding \$6 for each hour occupied on any day between the hours of 8 a.m. and 6 p.m. in travelling on business related to the assignment will be paid in addition to the travelling expenses provided under clause 1 hereof:

Provided that such special allowance shall not be payable in addition to any other payment for preparation or otherwise in respect of the same time:

Provided also that where there is a transfer of the proceedings for which a practitioner was assigned to a court other than that whereby legal aid was granted, the practitioner shall not incur travelling expenses without the consent of the Registrar who assigned him to the case.

C. *Bail*

	Scale I	Scale II	Scale III
	\$	\$	\$
For arranging bail, one of the following scales shall apply:			
For the time actually involved, per hour	4.50	6.75	9.00

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

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

These regulations consolidate and amend the Offenders Legal Aid Regulations 1956.

The new regulations—

- (a) Incorporate a new, increased, and more flexible scale of fees.
- (b) Authorise a Judge or Magistrate to authorise above scale fees in exceptional circumstances. Under the existing regulations this power is vested in the Minister of Justice.
- (c) Abolish the requirement that a Crown Solicitor must certify that the attendance of a witness for a person to whom legal aid has been granted was reasonably necessary before that witness may be paid fees, allowances, and expenses in accordance with the Witnesses and Interpreters Fees Regulations 1969.
- (d) Make provision for a Registrar to refer a claim under the regulations to a Magistrate or a Judge of the Supreme Court if the Registrar is not satisfied that the claim is fair and reasonable.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 17 August 1972.

These regulations are administered in the Department of Justice.