1960 No. 260

The Poor Prisoners' Defence (Defence Certificate) Regulations, 1960

Made - - - - 12*th February*, 1960
Coming into Operation 14*th March*, 1960

In pursuance of the power conferred upon me by section twelve of the Costs in Criminal Cases Act, 1952(a), as that section applies in relation to costs directed by virtue of section three of the Poor Prisoners' Defence Act, 1930(b), to be paid out of local funds, and as read with section twenty-one of the Legal Aid and Advice Act, 1949(c), I hereby make the following Regulations:—

1.—(1) There shall be allowed to the solicitor assigned under a defence certificate a fee of not less than £8 8s. 0d. and not exceeding £78 15s. 0d. or, in a case where two counsel have been assigned under the certificate, such fee as appears to represent fair remuneration according to the work done.

(2) Where a trial has not been concluded on the day on which it started there shall be allowed to the solicitor, in addition to the fee allowed under the foregoing paragraph, a daily fee in respect of the second and every subsequent day—

(*a*) where the court is one where a party may appear by a solicitor and counsel has not been instructed, not exceeding £21 0s. 0d.;

(*b*) in any other case, not exceeding £15 15s. 0d.

(3) In addition to the fees payable under the foregoing provisions of this Regulation, the solicitor shall be allowed—

(*a*) expenses actually and reasonably incurred by himself or his clerk in travelling to and from the court at which the trial takes place or to and from any place visited for the purpose of preparing or conducting the defence;

(*b*) subject to taxation thereof, any other out-of-pocket expenses actually and reasonably incurred.

2.—(1) There shall be allowed to counsel assigned under a defence certificate or to counsel who has undertaken a defence at the request of the presiding Judge under subsection (3) of section three of the Poor Prisoners' Defence Act, 1930, a fee of not less than £8 13s. 0d. and not exceeding £64 10s. 0d., or in the case of two counsel being so assigned or requested to act, such fees as appear to be proper in all the circumstances of the case.

(2) Where a trial has not concluded at the end of the first relevant period thereof there shall be allowed to counsel in respect of each relevant period or, in the case of an incomplete period, part thereof, after the first a refresher fee.

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 48. (b) 20 & 21 Geo. 5. c. 32.
(c) 12, 13 & 14 Geo. 6. c. 51.

In this paragraph—

(*a*) "relevant period" means either, as the court may determine, either generally or in relation to any particular trial, any day on any part of which the trial is going on or any period of five hours, whether continuous or not, during which the trial is going on;

(*b*) "refresher fee" means such fee in addition to the fee allowed under the foregoing paragraph, not exceeding half the fee allowed as aforesaid, as appears to be proper in all the circumstances of the case.

(3) There shall be allowed to counsel, in addition to any fees allowed under the foregoing paragraphs—

(*a*) in respect of any conference or consultation in chambers or elsewhere lasting not more than half an hour, a fee not exceeding £2 7s. 0d., or, in the case of two counsel being assigned or requested to act such fees as appear to be proper in all the circumstances of the case;

(*b*) in respect of any conference or consultation in chambers or elsewhere lasting more than half an hour, such fee as appears to be proper in all the circumstances of the case;

(*c*) in respect of any application to the court for the case to stand out of the list, such fee as appears to be proper in all the circumstances of the case;

(*d*) for advice in writing, if in the opinion of the court it was reasonably necessary to obtain counsel's advice in writing, a fee not exceeding £11 0s. 0d., or, in the case of two counsel being assigned or requested to act, such fees as appear to be proper in all the circumstances of the case.

3. Where a solicitor or counsel assigned under a defence certificate or counsel who has undertaken a defence at the request of the presiding Judge under subsection (3) of section three of the Poor Prisoners' Defence Act, 1930, represents two or more persons charged in the same indictment, the amount to be allowed, whether one or more defence certificates have been given, to the solicitor or counsel under, as the case may be, paragraphs (1) and (2) of Regulation 1 or paragraphs (1) and (2) of Regulation 2 of these Regulations shall be increased, in respect of each such person other than the person charged first in the indictment, by such amount as appears to be proper in all the circumstances of the case, but save as aforesaid no payment, other than one allowed under paragraph (3) of Regulation 1, paragraph (3) of Regulation 2 or Regulation 6 of these Regulations shall be allowed to the solicitor or counsel under these Regulations in respect of any person charged other than the person charged first in the indictment:

Provided that any increases allowed by virtue of this Regulation shall not exceed—

(i) in respect of the person charged second in the indictment, forty per cent. of the amount which would be payable but for the said increase;

(ii) in respect of any person other than the persons charged first or second in the indictment, twenty per cent. of the said amount.

4.—(1) Subject to the provisions of these Regulations, the sum to be paid to a solicitor or counsel assigned under a defence certificate or to counsel who has undertaken a defence at the request of the presiding Judge under subsection (3) of section three of the Poor Prisoners' Defence Act, 1930, shall be determined by the court, which shall take into account all the relevant circumstances, including the nature, importance, complexity

or difficulty of the work, and the time involved, including time spent at the court on any day in waiting for the case to be heard if the case was in that day's list, and shall allow such amounts as appear to it to represent fair remuneration for the work actually and reasonably done.

(2) In determining as aforesaid the sums to be paid to a solicitor or counsel, the court shall not allow any payment in respect of any conference, consultation, attendance or visit unless it is satisfied that such conference, consultation, attendance or visit was reasonably necessary.

(3) In determining as aforesaid the sums to be paid to a solicitor or counsel, the court shall take into account any payment which has already been made to him in the same case under a legal aid certificate.

5. If it appears to the court at any time after the conclusion of a case in respect of which a defence certificate was granted or counsel undertook a defence at the request of the presiding Judge under subsection (3) of section three of the Poor Prisoners' Defence Act, 1930, that for any reason, including the exceptional length, complexity or difficulty of the case, the sums payable by virtue of these Regulations or any of them would not provide fair remuneration according to the work actually and reasonably done by the solicitor or, as the case may be, by counsel, it shall certify accordingly, and where it so certifies any limitation contained in these Regulations or, as the case may be, in such Regulation as is mentioned in the certificate, on the amount of any fee payable shall not apply, and the court shall, after taking into account all the relevant circumstances of the case, and having regard to the considerations mentioned in Regulation 4 of these Regulations, allow such fees in respect of the work to which the certificate relates as appear to it to represent fair remuneration according to the work actually and reasonably done.

6. Where a solicitor assigned under a defence certificate reasonably undertakes in connection therewith work to which this regulation applies, there shall, in addition to the fees which may be paid to him under the foregoing regulations, be allowed sums in respect of his disbursements on the said work, including, in a case where counsel is also assigned, counsel's fee not exceeding £11 0s. 0d. for his opinion, if any is given, in connection with the work, and a fee not exceeding £10 10s. 0d. in respect of the said work.

The work to which this regulation applies is work in giving notice of appeal or of application for leave to appeal or applying for a case to be stated, and in matters preliminary thereto, being work done within the ordinary time for giving the notice or making the application for the case to be stated.

7. Any solicitor or counsel assigned under a defence certificate, or any counsel who has undertaken a defence at the request of the presiding Judge under subsection (3) of section three of the Poor Prisoners' Defence Act, 1930, may, as regards any sum allowed under the foregoing Regulations in respect of that defence certificate, or defence, or as regards any refusal by the court to grant a certificate under Regulation 5 of these Regulations, make written representations to the presiding Judge, and the presiding Judge may, having regard to the provisions of the foregoing Regulations, make such alteration, if any, as appears to him to be proper in any sum which has been allowed as aforesaid before such representations, or, as the case may be, may grant the certificate previously refused by the court, and where a certificate is so granted the said Regulation 5 shall have effect as if the certificate had been granted thereunder.

8.—(1) In these Regulations—

" defence certificate " and " legal aid certificate " have the same meanings as in the Poor Prisoners' Defence Act, 1930 ;

" presiding Judge " includes a recorder and a chairman of quarter sessions or their deputies or assistants.

(2) The Interpretation Act, 1889(a), shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

9. The Poor Prisoners' Defence (Fees and Expenses) Regulations, 1953(b), and the Poor Prisoners' Defence (Fees and Expenses) Regulations, 1959(c), are hereby revoked.

10. These Regulations shall apply in respect of any defence certificate granted on or after the fourteenth day of March, 1960, and in respect of any fee allowed to counsel who has, at the request of the presiding Judge, under subsection (3) of section three of the Poor Prisoners' Defence Act, 1930. on or after the said date undertaken the defence of any person, and accordingly these Regulations shall come into operation on the said date.

11. These Regulations may be cited as the Poor Prisoners' Defence (Defence Certificate) Regulations, 1960.

R. A. Butler,
One of Her Majesty's Principal Secretaries of State.

Home Office,
Whitehall.
12th February, 1960.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations make provision as to the amount payable to a solicitor or counsel assigned under a defence certificate granted under section one of the Poor Prisoners' Defence Act, 1930, or to counsel who undertakes the defence at the request of the presiding Judge. Regulation 1 relates to the fees and other sums to be allowed to a solicitor ; Regulation 2 relates to the fees to be allowed to counsel ; Regulation 3 makes special provision for a case where two or more prisoners charged in the same indictment are represented by the same solicitor or counsel ; Regulation 4 relates to the assessment of the sums to be allowed ; Regulation 5 makes provision for the allowance of higher fees to be paid in cases where the fees otherwise payable would not represent fair remuneration for the work done ; Regulation 6 provides for the allowance to a solicitor of sums in respect of certain disbursements in connection with appeals and like matters ; and Regulation 7 provides for a review by the presiding Judge, on representations made by a solicitor or counsel, of certain matters arising under the Regulations.

(a) 52 & 53 Vict. c. 63. (b) S.I. 1953/1429 (1953 I, p. 418).
(c) S.I. 1959/2240 (1959 I, p. 841).