



STATUTORY INSTRUMENTS

**S.I. No. 206 of 2008**



COURTS-MARTIAL (LEGAL AID) REGULATIONS 2008

**(Prn. A8/0874)**

## COURTS-MARTIAL (LEGAL AID) REGULATIONS 2008

I, WILLIE O’DEA, Minister for Defence, in exercise of the powers conferred on me by section 33 of the Courts-Martial Appeals Act 1983 (No. 19 of 1983) and, in so far as these Regulations are in relation to rates or scales of payment of fees, costs or expenses payable out of monies provided by the Oireachtas pursuant to legal aid certificates, with the consent of the Minister for Finance, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the Courts-Martial (Legal Aid) Regulations 2008.

*Definitions*

2. In these Regulations—

“accused person” means a person who has been remanded for trial by court-martial under Chapter IV of Part V of the Act of 1954 or a person who has appealed to the Summary Court-Martial pursuant to section 178E of the Act of 1954;

“Act of 1954” means the Defence Act 1954 (No. 18 of 1954);

“Act of 2007” means the Defence (Amendment) Act 2007 (No. 24 of 2007);

“Bar Council” means the General Council of the Bar of Ireland;

“Court-Martial Administrator” means the Court-Martial Administrator appointed under Chapter IVA (inserted by the Act of 2007) of Part V of the Act of 1954 or any person to whom he or she may have delegated his or her functions in accordance with section 184B of the Act of 1954;

“legal aid certificate” means a legal aid (preliminary proceedings) certificate, a legal aid (court-martial) certificate, a legal aid (case stated) certificate, a legal aid (Courts-Martial Appeal Court) certificate or a legal aid (Supreme Court) certificate;

“military judge” means a military judge appointed under Chapter IVC (inserted by the Act of 2007) of Part V of the Act of 1954;

“Minister” means the Minister for Defence;

“Principal Act” means the Courts-Martial Appeals Act 1983 (No. 19 of 1983);

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 11th July, 2008.*

“Summary Court-Martial” means the summary court-martial established under section 187A (inserted by the Act of 2007) of the Act of 1954;

“tax clearance certificate” means a certificate which has been issued by the Collector-General pursuant to section 1095 of the Taxes Consolidation Act 1997 (No. 39 of 1997).

*Prescribed authority*

3. A military judge presiding at the Summary Court-Martial shall be the prescribed authority for the purposes of Part III of the Principal Act.

*List of solicitors*

4. (1) As soon as may be after the making of these Regulations, the Minister shall compile, in respect of areas determined by the Minister, a list of solicitors who have notified the Minister, in writing, of their willingness to act for persons to whom legal aid certificates are granted in relation to the proceedings to which the certificates relate and the list shall specify those places within the area to which it relates, and the Courts, if any, in and in relation to which the solicitors are willing so to act.

(2) The Minister shall send a copy of the list compiled pursuant to paragraph (1) to—

- (a) the registrar of the Supreme Court,
- (b) the registrar of the Courts-Martial Appeal Court,
- (c) the Director General of the Law Society of Ireland, and
- (d) the Court-Martial Administrator.

(3) (a) A solicitor who wishes to have varied the particulars specified in respect of him or her in a list compiled pursuant to paragraph (1) shall notify the Minister in writing.

(b) The Minister shall vary those particulars in accordance with the notification and shall notify the solicitor concerned and the persons specified in paragraph (2), in writing, of the variation.

(4) Where at any time after the compilation of a list pursuant to this Regulation—

- (a) the Minister is notified by a solicitor of his or her willingness to act for persons to whom legal aid certificates are granted or of his or her wish to have his or her name deleted from the list,
- (b) an order is made removing from or striking off the roll maintained under section 9 of the Solicitors’ Act 1954 (No. 36 of 1954) the name of a solicitor whose name is on the list, or restoring to such roll the name of a solicitor whose name was on the list, or suspending from practice a solicitor whose name is on the list, or

- (c) the period of suspension from practice of a solicitor whose name was on the list at the time of the commencement of the suspension has ended,

the Minister shall amend the list by adding thereto or deleting therefrom, as the case may be, the name of the solicitor and shall notify the persons specified in paragraph (2), in writing, of the amendment.

(5) A solicitor who—

- (a) is willing to act for persons to whom legal aid certificates are granted and who wishes to have his or her name included in the list compiled pursuant to this Regulation, or
- (b) wishes to have his or her name deleted from such list,

shall notify the Minister in writing and, upon making the amendment referred to in paragraph (4), the Minister shall notify the solicitor, in writing, of the amendment.

- (6) (a) Where the Minister receives notification from a solicitor pursuant to paragraphs (1), (4) or (5), as the case may be, to have his or her name included in or added to the list compiled pursuant to paragraph (1), the Minister shall request the solicitor to furnish a tax clearance certificate to the Minister.
- (b) The Minister shall not include in or add to the list the name of the solicitor concerned until a tax clearance certificate has been furnished to the Minister pursuant to a request under subparagraph (a), which certificate has an expiry date that is later than the date on which it is received by the Minister.

*List of counsel*

5. (1) As soon as may be after the making of these Regulations, the Bar Council shall give to the Minister, in writing, the names of the counsel who have notified it of their willingness to act for persons to whom legal aid certificates are granted pursuant to the Principal Act.

(2) The Minister shall keep a list of the names referred to in paragraph (1) and shall send a copy of the list to—

- (a) the registrar of the Supreme Court,
- (b) the registrar of the Courts-Martial Appeal Court, and
- (c) the Court-Martial Administrator.

(3) Where, at any time after the compilation of a list pursuant to this Regulation, the Bar Council is notified by a counsel of his or her willingness to act for persons to whom legal aid certificates have been granted or of his or her wish to have his or her name deleted from the list, the Bar Council shall notify

the Minister, in writing, accordingly and the Minister shall amend the list by adding thereto or deleting therefrom, as the case may be, the name of the counsel and the Minister shall notify the persons specified in paragraph (2), in writing, of the amendment.

(4) A counsel who—

- (a) is willing to act for persons to whom legal aid certificates are granted and who wishes to have his or her name included in the list kept by the Minister pursuant to this Regulation, or
- (b) wishes to have his or her name deleted from such list,

shall notify the Bar Council and, upon making the amendment referred to in paragraph (3), the Minister shall notify the counsel, in writing, of the amendment.

- (5) (a) Where the Minister receives notification from the Bar Council pursuant to paragraphs (1), (3) or (4), as the case may be, of the name of counsel for inclusion in or addition to the list compiled pursuant to paragraph (1), the Minister shall request the counsel to furnish a tax clearance certificate to the Minister.
- (b) The Minister shall not include in or add to the list the name of the counsel concerned until a tax clearance certificate has been furnished to the Minister pursuant to a request under subparagraph (a) which certificate has an expiry date that is later than the date on which it is received by the Minister.

#### *Register*

6. (1) The registrar of the Supreme Court, the registrar of the Courts-Martial Appeal Court and the Court-Martial Administrator shall each keep a register of all cases in which application is made to the court of which he or she is registrar or clerk, as the case may be, for a legal aid certificate and shall record therein in respect of each case—

- (a) the date of the application,
- (b) the name of the applicant,
- (c) in general terms, the charge or charges involved and the nature of the proceedings,
- (d) the result of the application, and
- (e) if the application is granted, the names of the solicitor and of counsel (if any) assigned.

(2) Each officer specified in paragraph (1) shall send to the Secretary General of the Department of Defence, at such times as the Minister may from time to time direct, a copy of the entries in the register kept pursuant to this Regulation.

*Assignment of solicitor and counsel*

7. (1) Upon the grant of a legal aid certificate, the Summary Court-Martial, the Courts-Martial Appeal Court or the Supreme Court, as the case may be, shall, having taken into consideration the representations (if any) of the person to whom the certificate was granted, assign to the person a solicitor from the list kept pursuant to Regulation 4 to act for the person in the preparation and conduct of the case concerned.

(2) The Summary Court-Martial, the Courts-Martial Appeal Court or the Supreme Court, as the case may be, in granting a legal aid certificate (other than a legal aid (preliminary proceedings) certificate) may, if the person to whom it is granted is charged with an offence for which he or she would be required on conviction to be sentenced to imprisonment for life or the case concerning the person appears to present exceptional difficulty and the Summary Court-Martial, the Courts-Martial Appeal Court or the Supreme Court, as the case may be, is of opinion that the case cannot be conducted adequately without the assistance of 2 counsel, direct that 2 counsel be assigned to the person to act for the person in the preparation and conduct of the person's case.

(3) Where a legal aid certificate is granted to a person and the certificate entitles the person to have counsel assigned to him or her—

(a) in case the certificate includes a direction under paragraph (2), any 2 counsel whose names are included in the list kept by the Minister pursuant to Regulation 5, and

(b) in any other case, any one counsel whose name is included in such list,

may be retained on behalf of the person by the solicitor who has been assigned pursuant to the certificate to act for the person in the preparation and conduct of the person's case and, upon such retention, the counsel shall be deemed to have been assigned to the person pursuant to the certificate to act for the person in the preparation and conduct of the person's case.

(4) Where 2 or more legal aid certificates are granted to a person and the cases in relation to which they are granted are heard together or in immediate succession, one certificate only shall (unless the Summary Court-Martial, being satisfied that there is good reason for so doing, otherwise directs and the cases are cases to which Regulation 11(2)(a) applies) be deemed, for the purposes of these Regulations, to have been granted to the person.

*Assignment of solicitor in respect of place where no name on list*

8. Where, in relation to proceedings at any place, no solicitor's name is on the list kept pursuant to Regulation 4 and a legal aid certificate falls to be granted to a person, the Summary Court-Martial may, having taken into consideration the representations (if any) of the person, request any solicitor to act for the person in the preparation and conduct of the person's case and, if that solicitor is willing so to act, the Summary Court-Martial may, upon the grant of the certificate, assign that solicitor to the person to act for the person in the preparation and conduct of the person's case.

*Notification of grant or refusal to grant legal aid certificate*

9. (1) Where a legal aid (case stated) certificate or a legal aid (Courts-Martial Appeal Court) certificate is granted by the Summary Court-Martial, a copy of the certificate shall be sent by the Court-Martial Administrator to the registrar of the Courts-Martial Appeal Court.

(2) Where a legal aid (Supreme Court) certificate is granted by the Courts-Martial Appeal Court, a copy of the certificate shall be sent by the registrar of the Courts-Martial Appeal Court to the registrar of the Supreme Court and to the Court-Martial Administrator.

(3) Where an application by a person pursuant to section 27A(2) (inserted by the Act of 2007) of the Principal Act for a legal aid (case stated) certificate is refused, the Court-Martial Administrator shall notify the registrar of the Courts-Martial Appeal Court of the refusal.

(4) Where an application by a person pursuant to section 28(2) of the Principal Act for a legal aid (Courts-Martial Appeal Court) certificate is refused, the Court-Martial Administrator shall notify the registrar of the Courts-Martial Appeal Court of the refusal.

(5) Where an application by a person pursuant to section 29(2) of the Principal Act for a legal aid (Supreme Court) certificate is refused, the registrar of the Courts-Martial Appeal Court shall notify the registrar of the Supreme Court and the Court-Martial Administrator of the refusal.

*Form of legal aid certificate*

10. (1) A legal aid certificate shall be in such one of the forms set out in Schedule 1 as may be appropriate.

(2) Where a person is required, pursuant to section 32 of the Principal Act, to furnish a statement about matters relevant for determining whether the person's means are insufficient to enable the person to obtain legal aid, the statement shall be in the form set out in Schedule 2.

*Fees*

11. (1) (a) The fees (payable under the Principal Act) of a solicitor assigned in relation to any particular case (other than a case to which paragraph (2)(a) applies) pursuant to a legal aid certificate or certificates shall be those specified in column (2) of Schedule 3 opposite the mention of the particular type of hearing in column (1) of the said Schedule together with, if the hearing lasts for more than one day, those specified in column (3) of the said Schedule opposite the mention of the particular type of hearing in the said column (1) for each day or part of a day after the first for which the hearing lasts.

(b) A reference in column (2) of Schedule 3, in relation to a case, to junior counsel's fee is a reference to the fee that was or would be payable under these Regulations to the junior counsel in respect of the hearing, or, if the hearing has lasted for more than one day, the first day thereof, if a junior counsel was or had been assigned in relation to

that case pursuant to a legal aid certificate or certificates and was or had been present in court during the hearing to the same extent as the solicitor assigned in relation to the case pursuant to the certificate or certificates aforesaid was present.

- (c) A reference in column (3) of Schedule 3, in relation to a case, to junior counsel's refresher is a reference to the fee that was or would be payable under these Regulations to the junior counsel in respect of each day or part of a day after the first for which the hearing has lasted if a junior counsel was or had been assigned in relation to that case pursuant to a legal aid certificate or certificates and was or had been present as aforesaid.
- (d) A reference in column (2) of Schedule 3, in relation to a case, to senior counsel's fee is a reference to the fee that was or would be payable under these Regulations to the senior counsel in respect of the hearing, or, if the hearing has lasted for more than one day, the first day thereof, if a senior counsel was or had been assigned in relation to that case pursuant to a legal aid certificate or certificates and was or had been present in court during the hearing to the same extent as the solicitor assigned in relation to the case pursuant to the certificate or certificates aforesaid was present.
- (e) A reference in column (3) of Schedule 3, in relation to a case, to senior counsel's refresher is a reference to the fee that was or would be payable under these Regulations to the senior counsel in respect of each day or part of a day after the first for which the hearing has lasted if a senior counsel was or had been assigned in relation to that case pursuant to a legal aid certificate or certificates and was or had been present as aforesaid.
- (f) Where—
  - (i) the same counsel is or are assigned pursuant to 2 or more legal aid certificates to 2 or more accused persons and the cases to which they relate are heard together and are not cases to which paragraph (2)(a)(i) applies, and
  - (ii) the same solicitors are not assigned in relation to all the cases pursuant to legal aid certificates to all the accused persons aforesaid,

the fees of counsel in the cases shall be deemed, for the purposes of these Regulations, to be, in relation to each such solicitor, such amount as, in the opinion of the Attorney General, would have been payable to the counsel if the prosecution had related only to the accused person or persons represented by that solicitor and the counsel had been present in court during the hearing to the same extent as that solicitor.



- (g) Where the same solicitor is assigned pursuant to 2 or more legal aid certificates to one or more accused persons and the cases to which they relate are heard together and are not cases to which paragraph (2)(a) applies, the solicitor so assigned shall be deemed, for the purposes of these Regulations, to have been assigned to the said accused person or persons, as the case may be, in relation to one case only.
- (h) (i) Subject to clause (ii), where, in a case referred to in subparagraph (g), there is more than one accused person and the same counsel are not assigned pursuant to the certificates referred to therein to all the accused persons, the fees of counsel who are so assigned shall be deemed, for the purposes of these Regulations, to be the fees that would, in the opinion of the Attorney General, have been payable if the same counsel had been so assigned to all the accused persons in respect of whom the said certificates were granted.
- (ii) If any of the cases to which clause (i) applies is one in relation to which 2 counsel are assigned pursuant to a legal aid certificate or certificates and relates to a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life, the case in relation to which the solicitor is deemed to have been assigned as aforesaid shall be deemed to be such a case.
- (i) No fees shall be paid under the Principal Act to a solicitor assigned in relation to any particular case, other than a case to which paragraph (2)(a) applies, pursuant to a legal aid certificate or certificates in respect of any day on which the hearing of the case consists only of one or more of the following, that is to say, an application for an adjournment or in relation to bail or the suspension of the operation of a sentence of imprisonment or detention or both.
- (2) (a) The fees (payable under the Principal Act) of a solicitor assigned in relation to any particular case pursuant to—
- (i) a legal aid (preliminary proceedings) certificate,
  - (ii) a legal aid (court-martial) certificate, or
  - (iii) a legal aid (case stated) certificate,
- the grant of which did not entitle the person to whom the certificate was granted to have counsel assigned to him or her in relation to that case, shall be as follows:
- (I) from the date these Regulations are made to 31 August 2008, those set out at item 1 of Part 1 of Schedule 4, and
  - (II) from 1 September 2008, those set out at item 2 of Part 1 of Schedule 4.

- (b) No fees shall be paid under the Principal Act to a solicitor assigned in relation to any particular case pursuant to a legal aid certificate to which subparagraph (a) applies in respect of any day on which the hearing consists only of an application for an adjournment by or on behalf of the solicitor, or the prosecution, made, in the opinion of the Summary Court-Martial, for the purposes of the solicitor's convenience.
- (c) There shall be paid to a solicitor, assigned in relation to any particular case pursuant to a legal aid certificate to which subparagraph (a) applies, a fee in lieu of fees provided for in Part 1 of Schedule 4 for the first day of a hearing involving one accused person and the first accused person in cases involving more than one accused person, which the Minister, after consultation with the Attorney General, decides is an exceptional case, as follows:
- (i) from the date these Regulations are made to 31 August 2008, that set out at item 1 of Part 3 of Schedule 4, and
- (ii) from 1 September 2008, that set out at item 2 of Part 3 of Schedule 4.
- (3) The fees (payable under the Principal Act) for any particular case of a solicitor assigned to a person in relation to that case pursuant to a legal aid certificate the grant of which entitled the person to have counsel assigned to him or her in relation to that case shall, if the person is represented at the hearing of the case by the solicitor and not by counsel and counsel appear for the prosecution in that case, be fees of the same amount as the fees that would, in the opinion of the Attorney General, have been payable to counsel assigned to the person in relation to that case pursuant to the certificate aforesaid if the counsel so assigned were present in court during the whole of the case.
- (4) The fees (payable under the Principal Act) of a solicitor assigned pursuant to legal aid certificates on behalf of 2 or more persons whose cases are being heard together and are cases to which paragraph (2)(a) applies shall be those to which the solicitor would have been entitled under the Principal Act if the solicitor had been assigned pursuant to a legal aid certificate on behalf of one person only increased by such amount (if any) as the Summary Court-Martial may think proper not exceeding—
- (a) in case the assignments are on behalf of 2 persons only, 40 per cent of such fees, and
- (b) in case the assignments are on behalf of 3 or more persons, 40 per cent of such fees in respect of 2 of the persons and 20 per cent of such fees in respect of the other person or each of the other persons, as the case may be.
- (5) Where a solicitor assigned pursuant to a legal aid certificate in relation to a case does not attend the hearing or part of the hearing of the case, the fees and expenses payable under the Principal Act in connection with the hearing

shall be paid to the solicitor if he or she was properly represented at the hearing or the part thereof which the solicitor did not attend.

*Counsel's fees*

12. (1) The fees (payable under the Principal Act) for any particular case of senior counsel (subsequently referred to in this paragraph as the “defence counsel”) assigned in relation to that case pursuant to a legal aid certificate or certificates shall—

- (a) in a case where the same number of senior counsel appear for the prosecution in relation to that particular case and are present in court during the whole of the case and the prosecution relates only to the accused person or persons to whom the defence counsel are assigned, be fees of the same amount as the fees of the senior counsel appearing for the prosecution, and
- (b) in any other case, be fees of the same amount as the fees that would, in the opinion of the Attorney General, have been payable to senior counsel appearing for the prosecution in that particular case if the same number of senior counsel appeared for the prosecution and were present in court during the whole of the case and the prosecution related only to the accused person or persons to whom the defence counsel were assigned.

(2) The fees (payable under the Principal Act) for any particular case of junior counsel (subsequently referred to in this paragraph as the “defence counsel”) assigned in relation to that case pursuant to a legal aid certificate or certificates shall—

- (a) in a case where the same number of junior counsel appear for the prosecution in relation to that particular case and are present in court during the whole of the case and the prosecution relates only to the accused person or persons to whom the defence counsel are assigned, be fees of the same amount as the fees of the junior counsel appearing for the prosecution, and
  - (b) in any other case, be fees of the same amount as the fees that would, in the opinion of the Attorney General, have been payable to junior counsel appearing for the prosecution in that particular case if the same number of junior counsel appeared for the prosecution and were present in court during the whole of the case and the prosecution related only to the accused person or persons to whom the defence counsel were assigned.
- (3) (a) Notwithstanding paragraphs (1) and (2), where any counsel assigned in relation to a case pursuant to a legal aid certificate is not present in court during the whole of the case, the question whether the fees of that counsel calculated under paragraph (1) or (2), as the case may be, should be modified and the nature and extent of the modification

(if any) shall be determined by the Attorney General by the application of the criteria applied in determining the like matters in relation to the fees of counsel appearing for the prosecution in a case and any modification so determined shall be made accordingly.

(b) Notwithstanding paragraphs (1) and (2), where the fees of counsel appearing for the prosecution in a case include a fee that is specifically for attendance at a conference or consultation in relation to the case, the amount of such fee shall, unless the Attorney General otherwise directs, be disregarded in the calculation of the fees (payable under the Principal Act) of counsel assigned in relation to that case pursuant to a legal aid certificate.

(4) (a) Subject to subparagraph (b), where the same counsel are assigned—

(i) pursuant to 2 or more legal aid certificates to 2 or more accused persons and the cases to which they relate are heard together, or

(ii) pursuant to 2 or more legal aid certificates to one accused person, the counsel so assigned shall be deemed, for the purposes of these Regulations, to have been assigned to the said accused persons or accused person, as the case may be, in relation to one case only.

(b) If the cases in relation to which the certificates are granted are treated, for the purposes of the determination of the fees of counsel appearing for the prosecution in the cases, as being any number of cases other than one, the counsel so assigned shall be deemed, for the purposes of these Regulations, to have been assigned to the said accused persons or accused person, as the case may be, in relation to the same number of cases.

(5) References in this Regulation to fees of counsel appearing for the prosecution in a case do not include references to any fee paid to such counsel in respect of the preparation of statements of the evidence to be given on behalf of the prosecution in the case.

(6) Where 2 senior counsel are assigned to a person in relation to any particular case pursuant to a legal aid certificate or certificates and 2 or more senior counsel do not appear for the prosecution in that case, one senior counsel only and one junior counsel only shall be deemed, for the purposes of these Regulations, to have been assigned to the person in relation to that particular case pursuant to the certificate or certificates aforesaid.

(7) No fees shall be paid under the Principal Act to counsel assigned in relation to any particular case pursuant to a legal aid certificate or certificates in respect of any day on which the hearing of the case consists only of an application in relation to bail or the suspension of the operation of a sentence of imprisonment or detention or both.

*Claim for fees*

13. (1) No payment shall be made in respect of a claim, to which this Regulation applies, for fees (payable under the Principal Act) in respect of any case pursuant to a legal aid certificate or legal aid certificates, unless the solicitor or counsel, as the case may be, who makes the claim furnishes a current tax clearance certificate when requested to do so for the purposes of the authorisation of payment.

(2) This Regulation applies to a claim where the amount of fees (including the fee concerned) claimed by the solicitor or counsel, as the case may be, during the 12 months up to and including the date of the claim is more than €10,000.

*Travelling and other expenses*

14. Where, in connection with a case or cases in relation to which a solicitor has been assigned pursuant to a legal aid certificate or certificates, it is essential for a solicitor to visit a prison, detention barrack or other custodial centre—

(a) there shall be paid under the Principal Act in respect of each such visit a fee as follows:

(i) from the date these Regulations are made to 31 August 2008, that set out at item 1 of Part 2 of Schedule 4, and

(ii) from 1 September 2008, that set out at item 2 of Part 2 of Schedule 4,

and

(b) in addition, there shall be paid under the Principal Act travelling expenses actually and necessarily incurred as follows:

(i) in case the solicitor makes the whole journey in his or her own motor car, a sum calculated at the rate of €0.47 per kilometre of the journey, and

(ii) in any other case, a sum equal to whichever of the following is the lesser—

(I) the actual cost of the journey, or

(II) the cost of the journey by public transport and (to the extent (if any) that public transport is not available) hired car, or if no public transport is available for the journey, hired car.

15. (1) There shall be paid to a solicitor under the Principal Act any sum necessarily expended by the solicitor—

(a) in respect of the service of documents, or

(b) in payment of court fees prescribed by or under statute,

in connection with a case in relation to which the solicitor has been assigned pursuant to a legal aid certificate.

(2) Any disbursements that were reasonably made for the purposes of a case by a solicitor assigned in relation to the case pursuant to a legal aid certificate and are of a reasonable amount shall be payable under the Principal Act.

16. (1) Subject to paragraphs (2), (4), (5) and (6), the travelling expenses actually and necessarily incurred by a solicitor in attending the investigation of a charge pursuant to such regulations or rules of procedure, as may from time to time be prescribed by the Minister under the Act of 1954, or a court-martial, on any day in any place in connection with a case in relation to which he or she has been assigned pursuant to a legal aid certificate shall be payable under the Principal Act as follows—

- (a) in case the solicitor makes the whole journey in his or her own motor-car, a sum calculated at the rate of €0.47 per kilometre of the journey shall be paid, and
- (b) in any other case, a sum equal to the lesser of the following shall be paid, namely:
  - (i) the actual cost of the journey,
  - (ii) the cost of the journey by public transport and (to the extent (if any) that public transport is not available) hired car, or if no public transport is available for the journey, hired car.

(2) No travelling expenses shall be payable under the Principal Act to a solicitor practising in the county or county borough of Dublin in connection with his or her attendance at the investigation of a charge pursuant to such regulations or rules of procedure, as may from time to time be prescribed by the Minister under the Act of 1954, or a court-martial, on any day in the county or county borough of Dublin in connection with a case to which the solicitor has been assigned pursuant to a legal aid certificate.

(3) Subject to paragraphs (4), (5) and (6), the travelling and subsistence expenses actually and necessarily incurred by a solicitor practising elsewhere than in the county or county borough of Dublin in attending sittings of the Courts-Martial Appeal Court or the Supreme Court in connection with a case in relation to which the solicitor has been assigned pursuant to a legal aid certificate and travelling and subsistence expenses actually and necessarily incurred by a solicitor in travelling to and from any place visited for the purposes of the case shall be payable under the Principal Act as follows—

- (a) in the case of travelling expenses—
  - (i) in case the solicitor makes the whole journey in his or her own motor-car, a sum calculated at the rate of €0.47 per kilometre of the journey shall be paid, and

(ii) in any other case, a sum equal to the lesser of the following shall be paid—

(I) the actual cost of the journey,

(II) the cost of the journey by public transport and (to the extent (if any) that public transport is not available) hired car, or if no public transport is available for the journey, hired car,

and

(b) in the case of subsistence allowances, on a scale corresponding to the scale for the time being at which the subsistence expenses of civil servants of the highest grade are paid.

(4) No travelling or subsistence expenses shall be paid under the Principal Act to a solicitor assigned in relation to any particular case pursuant to a legal aid certificate in respect of any day on which the hearing of the case consists only of one or more of the following, that is to say, an application for an adjournment in respect of which fees are not payable under Regulation 11 or in relation to bail or the suspension of the operation of a sentence of imprisonment or detention or both.

(5) No travelling or subsistence expenses shall be paid under the Principal Act to a solicitor in connection with a case to which Regulation 11(3) applies and in relation to which the solicitor is assigned pursuant to a legal aid certificate.

(6) Where a solicitor is engaged on business in connection with legal proceedings other than business in connection with a case in relation to which the solicitor has been assigned pursuant to a legal aid certificate in any place on any day, no travelling or subsistence expenses shall be payable under the Principal Act to the solicitor in connection with the hearing on that day in that place of a case in relation to which the solicitor has been assigned pursuant to a legal aid certificate.

#### *Witness expenses*

17. (1) Allowances to witnesses attending on behalf of the accused person, in obedience to a summons or order or in compliance with a request, being a request which in the opinion of—

(a) the Summary Court-Martial in relation to the investigation of a charge pursuant to such regulations or rules of procedure, as may from time to time be prescribed by the Minister under the Act of 1954, or a court-martial,

(b) the Courts-Martial Appeal Court in relation to a hearing in that court, or

(c) the Supreme Court in relation to a hearing in that court,

was reasonable, at the hearing of a case in relation to which a legal aid certificate has been granted, shall be payable under the Principal Act on a scale corresponding to the scale for the time being at which allowances to similar witnesses attending on behalf of the prosecution at the hearing or at similar hearings are paid.

(2) The fees and expenses of witnesses who are qualified medical practitioners attending on behalf of the accused person, in obedience to a summons or order or in compliance with a request, being a request which in the opinion of—

- (a) the Summary Court-Martial in relation to the investigation of a charge pursuant to such regulations or rules of procedure, as may from time to time be prescribed by the Minister under the Act of 1954, or a court-martial,
- (b) the Courts-Martial Appeal Court in relation to a hearing in that court, or
- (c) the Supreme Court in relation to a hearing in that court,

was reasonable, to give professional evidence at the hearing of a case in relation to which a legal aid certificate has been granted, shall be payable under the Principal Act on a scale corresponding to the scale for the time being at which fees and expenses of such witnesses attending on behalf of the prosecution to give professional evidence at the hearing or at similar hearings are paid.

(3) The fees and expenses of witnesses (other than those referred to in paragraph (2)) holding a professional qualification attending on behalf of the accused person, in obedience to a summons or order or in compliance with a request, being a request which in the opinion of—

- (a) the Summary Court-Martial in relation to the investigation of a charge pursuant to such regulations or rules of procedure, as may from time to time be prescribed by the Minister under the Act of 1954, or a court-martial,
- (b) the Courts-Martial Appeal Court in relation to a hearing in that court, or
- (c) the Supreme Court in relation to a hearing in that court,

was reasonable, to give professional evidence at the hearing of a case in relation to which a legal aid certificate has been granted, shall be payable under the Principal Act on a scale corresponding to the scale for the time being at which fees and expenses of such witnesses attending on behalf of the prosecution to give professional evidence at the hearing or at similar hearings are paid.

(4) The expenses of obtaining medical and technical reports necessarily required for use by the accused person in a case in relation to which a legal aid certificate has been granted, shall be payable under the Principal Act at a rate



corresponding to the rate for the time being at which the expenses of obtaining such reports for use by the prosecution in the case or in similar cases are paid.

18. (1) Notwithstanding anything contained in these Regulations, where a legal aid certificate has been granted to a person and a payment has been made or agreed to be made by or on behalf of the person towards the costs or expenses of the case in relation to which the certificate was granted, a payment shall not be made under the Principal Act in respect of those costs or expenses.

(2) If the Minister so thinks fit, he or she may refuse to make a payment under the Principal Act in relation to a case in respect of which a legal aid certificate has been granted unless the person in respect of whom the payment falls to be made furnishes to the Minister a document stating that he or she has not made or agreed to make and will not make or agree to make a payment towards the costs or expenses of the case in relation to which the certificate was granted and is not aware of a payment or intention to make a payment by any other person (other than under the Principal Act) towards such costs or expenses.

#### *Revocations*

19. The following Regulations are revoked:

- (a) the Courts-Martial (Legal Aid) Regulations 1986 (S.I. No. 425 of 1986);
- (b) the Courts-Martial (Legal Aid) Regulations 1987 (S.I. No. 46 of 1987);
- (c) the Courts-Martial (Legal Aid) Regulations 1988 (S.I. No. 125 of 1988);
- (d) the Courts-Martial (Legal Aid) Regulations 1989 (S.I. No. 25 of 1989);
- (e) the Courts-Martial (Legal Aid) Regulations 1990 (S.I. No. 68 of 1990);
- (f) the Courts-Martial (Legal Aid) Regulations 1991 (S.I. No. 210 of 1991);
- (g) the Courts-Martial (Legal Aid) Regulations 1993 (S.I. No. 309 of 1993).

Form A

**LEGAL AID (PRELIMINARY PROCEEDINGS) CERTIFICATE**

Summary Court-Martial

sitting at .....

Application having been made to the Summary Court-Martial by or on behalf of

No.....Rank .....

Name .....

Unit....., who is charged pursuant to the Defence Act 1954 with .....

for a Legal Aid (Preliminary Proceedings) Certificate, and it appearing to the Summary Court-Martial that his or her means are insufficient to enable him or her to obtain legal aid and that by reason of

*Tick one as appropriate*

- the gravity of the charge,
- exceptional circumstances,
- the gravity of the charge and exceptional circumstances,

it is essential in the interests of justice that he or she should have legal aid at the investigation of the charge or the taking down of the evidence, or at both, the Summary Court-Martial hereby grants in respect of him or her this legal aid certificate, and assigns to him or her as solicitor

(a) The Summary Court-Martial directs in addition the assignment of counsel.

Dated this        day of        20        .

Military Judge,  
the Summary Court-Martial

*Notes:*

*(a) Delete unless the Summary Court-Martial thinks fit that counsel should be assigned.*

Form B

**LEGAL AID (COURT-MARTIAL) CERTIFICATE**

Summary Court-Martial

sitting at .....

Application having been made to the Summary Court-Martial by or on behalf of

No.....Rank .....

Name .....

Unit....., who has appealed to the Summary Court-Martial pursuant to section 178E of the Defence Act 1954, or has been ordered to be tried by court-martial upon a charge (charges) of

.....

for a Legal Aid (Court-Martial) Certificate, and it appearing to the Summary Court-Martial that his or her means are insufficient to enable him or her to obtain legal aid and

*Tick one as appropriate*

- the trial is on a charge of an offence for which he or she would be required on conviction to be sentenced to imprisonment for life,
- having regard to all the circumstances of the case (including the nature of such defence, if any, as may have been set up or appeal, as the case may be), it is essential in the interests of justice that he or she should have legal aid in the preparation and conduct of his or her defence at the trial or of his or her appeal, as the case may be,

the Summary Court-Martial hereby grants in respect of him or her this legal aid certificate, and assigns to him or her as solicitor

(a) The Summary Court-Martial directs in addition the assignment of (b) counsel.

Dated this        day of        20

Military Judge,  
the Summary Court-Martial

*Notes:*

*(a) Delete unless the Summary Court-Martial thinks fit that counsel should be assigned.*

*(b) Where the Summary Court-Martial thinks fit that counsel should be assigned, insert one or two, as appropriate.*

Form C(1)

**LEGAL AID (CASE STATED) CERTIFICATE  
(GRANTED BY THE SUMMARY COURT-MARTIAL)**

Summary Court-Martial

sitting at .....

Application having been made to the Summary Court-Martial by or on behalf of

No.....Rank .....

Name .....

Unit.....,

for a Legal Aid (Case Stated) Certificate, and it appearing to the Summary Court-Martial that his or her means are insufficient to enable him or her to obtain legal aid and that, by reason of-

*Tick one as appropriate*

(a) the serious nature of the offence with which the person is charged, or

(b) exceptional circumstances,

it is essential in the interests of justice that a legal aid (case stated) certificate should be granted in respect of the person, the Summary Court-Martial hereby grants this legal aid certificate and assigns to the person as solicitor

.....  
The Summary Court-Martial directs in addition the assignment of (a) counsel.

Dated this        day of        20        .

Military Judge,  
the Summary Court-Martial

*Notes:*

(a) *Insert one or two, as appropriate.*

Form C(2)

**LEGAL AID (CASE STATED) CERTIFICATE  
(GRANTED BY THE COURTS-MARTIAL APPEAL COURT)**

Courts-Martial Appeal Court

Application having been made to this Court by or on behalf of

No.....Rank .....

Name .....

Unit.....,

for a Legal Aid (Case Stated) Certificate and the Summary Court-Martial having refused such certificate, and it appearing to the Court that his or her means are insufficient to enable the person to obtain legal aid and that, by reason of—

*Tick one as appropriate*

(a) the serious nature of the offence with which the person is charged, or

(b) exceptional circumstances,

it is essential in the interests of justice that a legal aid (case stated) certificate should be granted in respect of the person, the Court hereby grants this legal aid certificate and assigns to the person as solicitor .....

.....

The Court directs in addition the assignment of (a)                      counsel.

Dated this            day of            20            .

Registrar

*Notes:*

(a) *Insert one or two, as appropriate.*

Form D(1)

**LEGAL AID (COURTS-MARTIAL APPEAL COURT) CERTIFICATE  
(GRANTED BY THE SUMMARY COURT-MARTIAL)**  
Summary Court-Martial

sitting at .....

Application having been made to the Summary Court-Martial by or on behalf of

No.....Rank .....

Name .....

Unit....., who

*Tick one as appropriate*

has been convicted by court-martial of .....  
.....

who has appealed against the finding and/or the decision of the court-martial,  
pursuant to section 202 or 203 of the Defence Act 1954, of (a) .....  
.....

for a Legal Aid (Courts-Martial Appeal Court) Certificate, and it appearing  
to the Summary Court-Martial that his or her means are insufficient to  
enable him or her to obtain legal aid and

*Tick one as appropriate*

the conviction is of an offence for which he or she would be required on  
conviction to be sentenced to imprisonment for life,

that, by reason of the serious nature of the offence or of exceptional circum-  
stances, it is essential in the interests of justice that he or she should have  
legal aid in the preparation and conduct of an appeal,

the Summary Court-Martial hereby grants in respect of him or her this legal  
aid certificate and assigns to him or her as solicitor

The Summary Court-Martial directs in addition the assignment of (b)  
counsel.

Dated this            day of            20

Military Judge,  
the Summary Court-Martial

Notes:

(a) *State whether the reason is—*

(1) *found unfit to take his or her trial pursuant to section 202 of the Defence Act 1954, or*

(2) *found not guilty by reason of insanity pursuant to section 203 of the Defence Act 1954, or*

(3) *the decision of the court-martial to make or not to make an order of committal under section 202 or 203 of the Defence Act 1954.*

(b) *Insert one or two, as appropriate.*



Form D(2)

**LEGAL AID (COURTS-MARTIAL APPEAL COURT) CERTIFICATE  
(GRANTED BY THE COURTS-MARTIAL APPEAL COURT)**

Courts-Martial Appeal Court

Application having been made to this Court by or on behalf of

No.....Rank .....

Name .....

Unit....., who

*Tick one as appropriate*

has been convicted by court-martial of .....

who has appealed against the finding and/or the decision of the court-martial, pursuant to section 202 or 203 of the Defence Act 1954, of (a) .....

for a Legal Aid (Courts-Martial Appeal Court) Certificate and the Summary Court-Martial having refused such certificate, and it appearing to the Court that his or her means are insufficient to enable him or her to obtain legal aid and

*Tick one as appropriate*

the conviction is of an offence for which he or she would be required on conviction to be sentenced to imprisonment for life,

that, by reason of the serious nature of the offence or of exceptional circumstances, it is essential in the interests of justice that he or she should have legal aid in the preparation and conduct of an appeal,

the Court hereby grants in respect of him or her this legal aid certificate and assigns to him or her as solicitor

The Court directs in addition the assignment of (b)                      counsel.

Dated this                      day of                      20.

Registrar

Notes:

(a) *State whether the reason is—*

(1) *found unfit to take his or her trial pursuant to section 202 of the Defence Act 1954, or*

(2) *found not guilty by reason of insanity pursuant to section 203 of the Defence Act 1954, or*

(3) *the decision of the court-martial to make or not to make an order of committal under section 202 or 203 of the Defence Act 1954.*

(b) *Insert one or two, as appropriate.*

Form E(1)

**LEGAL AID (SUPREME COURT) CERTIFICATE  
(GRANTED BY THE COURTS-MARTIAL APPEAL COURT)**

Courts-Martial Appeal Court

Application having been made to this Court by or on behalf of

No.....Rank .....

Name .....

Unit....., who has appealed from—

*Tick one as appropriate*

a determination of this Court in relation to the offence of .....  
.....,

or

the punishment imposed in respect thereof,

for a Legal Aid (Supreme Court) Certificate, and it appearing to the Court that his or her means are insufficient to enable him or her to obtain legal aid, the Court hereby grants in respect of him or her this legal aid certificate, and assigns to him or her as solicitor

The Court directs in addition the assignment of (a)                      counsel.

Dated this                      day of                      20                      .

Registrar

*Notes:*

*(a) Insert one or two, as appropriate.*

**LEGAL AID (SUPREME COURT) CERTIFICATE  
(GRANTED BY THE SUPREME COURT)**

Supreme Court

Application having been made to this Court by or on behalf of

No.....Rank .....

Name .....

Unit....., who has appealed from—

*Tick one as appropriate*

a determination of the Courts-Martial Appeal Court in relation to the offence of..... , or

the punishment imposed in respect thereof,

for a Legal Aid (Supreme Court) Certificate, and the Courts-Martial Appeal Court having refused to grant such certificate and it appearing to this Court that his or her means are insufficient to enable him or her to obtain legal aid, this Court hereby grants in respect of him or her this legal aid certificate, and assigns to him or her as solicitor

The Court directs in addition the assignment of (a)                      counsel.

Dated this            day of            20            .

Registrar

*(a) Insert one or two, as appropriate.*

SCHEDULE 2

Regulation 10.

**STATEMENT OF MEANS OF AN APPLICANT FOR FREE LEGAL AID**

As an applicant for free legal aid, you are hereby required pursuant to section 32 of the Courts-Martial Appeals Act 1983 to furnish on this form particulars relevant for determining whether your means are insufficient to enable you to obtain legal aid.

You must enter true and correct particulars against each numbered heading. If the answer is "None" or "No" that must be written in.

The declaration at the end must be signed and the form must be returned to

1. Name of applicant (in block letters)

2. Number: .....

3. Rank: .....

4. Unit: .....

5. Home Address: .....

6. State whether single, married, widow or widower: .....

7. Weekly income from all sources € .....

8. If you pay rent or your pay is subject to deduction for accommodation please state the weekly amount € .....

9. If you own your own house, please state amount (if any) of

(a) ground rent (annual)

(b) monthly mortgage repayments.

10. What persons do you support—

State ages of any school going children .....

11. What money have you, or is likely to be available to you, that could be used for obtaining legal aid at your own expense?

12. What other assets have you that could be used for obtaining legal aid at your own expense?

13. If you are under 21 years of age, are your parents or guardian able and willing to provide legal aid for you or to assist you in providing yourself with legal aid?

DECLARATION\*

I declare that to the best of my knowledge and belief the above particulars are true.

\*WARNING— If any person in furnishing this statement of means knowingly makes any false statement or false representation he or she is liable, on summary conviction, to a fine not exceeding €2000 or to imprisonment for a term not exceeding 6 months or to both.

DATE:..... SIGNATURE.....

## SCHEDULE 3

SOLICITORS' FEES IN COURT-MARTIAL CASES (OTHER THAN  
CASES TO WHICH REGULATION 11(2)(a) APPLIES) AND CASES IN  
THE COURTS-MARTIAL APPEAL COURT AND THE SUPREME  
COURT

Type of hearing (1)	One-day hearing (2)	Each additional day (3)
Court-martial hearing in relation to—		
(1) a charge not being a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life	The same as junior counsel's fee	73% of junior counsel's refresher
(2) a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life in which —		
(a) 1 counsel only is assigned	The same as junior counsel's fee	74% of junior counsel's refresher
(b) 2 counsel are assigned	The same as senior counsel's fee	48% of senior counsel's refresher
Courts-Martial Appeal Court hearing in relation to—		
(1) a charge not being a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life	119% of junior counsel's fee	73% of junior counsel's refresher
(2) a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life in which —		

<b>Type of hearing (1)</b>	<b>One-day hearing (2)</b>	<b>Each additional day (3)</b>
(a) 1 counsel only is assigned	The same as junior counsel's fee	58% of junior counsel's refresher
(b) 2 counsel are assigned	The same as senior counsel's fee	38% of senior counsel's refresher
Supreme Court hearing of appeal from the Courts-Martial Appeal Court in relation to—		
(1) a charge not being a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life	119% of junior counsel's fee	73% of junior counsel's refresher
(2) a charge of an offence for which a person would be required on conviction to be sentenced to imprisonment for life in which —		
(a) 1 counsel only is assigned	80% of junior counsel's fee	58% of junior counsel's refresher
(b) 2 counsel are assigned	83% of senior counsel's fee	38% of senior counsel's refresher



## SCHEDULE 4

*Regulation 11.*

## SOLICITORS' FEES

## Part 1

FEE IN RESPECT OF ACCUSED PERSON WHERE ONLY ONE ACCUSED PERSON REPRESENTED AND IN RESPECT OF FIRST ACCUSED PERSON WHERE SOLICITOR ASSIGNED IN RESPECT OF MORE THAN ONE ACCUSED PERSON

Item (1)	First day of hearing (2)	Each subsequent day (3)
1. From the date these Regulations are made to 31 August 2008	€529.04	€132.30
2. From 1 September 2008	€542.26	€135.60

## Part 2

*Regulation 14.*

FEE IN RESPECT OF EACH ESSENTIAL VISIT TO PERSON IN CUSTODY

Item (1)	Fee (2)
1. From the date these Regulations are made to 31 August 2008	€127.62
2. From 1 September 2008	€130.81

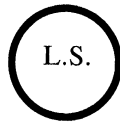
## Part 3

*Regulation 11.*

FEES PAYABLE FOR EXCEPTIONAL CASES

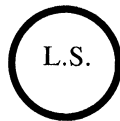
Item (1)	Fee (2)
1. From the date these Regulations are made to 31 August 2008	€794
2. From 1 September 2008	€814

The Minister for Finance consents to the making of the foregoing Regulations in so far as they are in relation to rates or scales of payment of fees, costs or expenses.



GIVEN under the Official Seal of the Minister for Finance  
2 July 2008

BRIAN LENIHAN,  
Minister for Finance.



GIVEN under my Official Seal,  
2 July 2008

WILLIE O'DEA,  
Minister for Defence.

EXPLANATORY NOTE

*(This is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations prescribe the procedure for the grant in certain cases of free legal aid to persons charged with, or convicted of, offences against military law. They also prescribe the scale of fees and expenses payable in such cases.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,  
CONTAE MHAIGH EO,  
(Teil: 01 - 6476834/37 nó 1890 213434; Fax: 01 - 6476843 nó 094 - 9378964)  
nó trí aon díoltóir leabhar.

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