

1988 No. 1863

CRIMINAL LAW, ENGLAND AND WALES

**The Serious Fraud Office (Witnesses' etc. Allowances)
Regulations 1988**

<i>Made</i> - - - -	<i>24th October 1988</i>
<i>Laid before Parliament</i>	<i>27th October 1988</i>
<i>Coming into force</i> -	<i>21st November 1988</i>

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The Attorney General, in exercise of the powers conferred upon him by section 1(15) of, and paragraph 8(1)(b), (2), (3), (4) and (5) of Schedule 1 to, the Criminal Justice Act 1987^(a), and with the approval of the Treasury, hereby makes the following Regulations:-

Citation and commencement

1. These Regulations may be cited as the Serious Fraud Office (Witnesses' etc. Allowances) Regulations 1988 and shall come into force on 21st November 1988.

Interpretation

2. In these Regulations, unless the context requires otherwise-

^(a) 1987 c.38. Paragraph 8 of Schedule 1 was amended by section 166 of the Criminal Justice Act 1988 (c.33).

“appropriate officer” means any member of the Serious Fraud Office as may be designated by the Director for any of the purposes of these Regulations;

“interpreter” shall be construed in accordance with the qualification imposed by regulation 3(1)(b) below;

“professional witness” means a witness practising as a member of the legal or medical profession or as an accountant, dentist or veterinary surgeon; and

“relevant amount” shall be construed in accordance with regulation 4 below.

Scope of the Regulations and general provisions

3.—(1) Without prejudice to the power of the Director to allow more than the entitlements under these Regulations where he sees fit to do so, these Regulations provide for the entitlements to costs and expenses of—

- (a) a witness who attends court or elsewhere to give evidence at the instance of the Serious Fraud Office, whether he gives evidence or not; and
- (b) any other person who, in the opinion of the appropriate officer, necessarily attends court or elsewhere for the purpose of the prosecution case otherwise than to give evidence (including an interpreter, but only if he is required because of the lack of English of a person attending to give evidence at the instance of the Serious Fraud Office),

in any proceedings conducted by the Director in the discharge of his functions under Part I of the Criminal Justice Act 1987; but nothing in these Regulations gives an entitlement to a person who when called refuses to give evidence.

(2) Such entitlements shall be the same for a person whether his attendance on any occasion is for the purpose of one case or more than one case.

(3) Where a person claims an entitlement under these Regulations it shall be for the appropriate officer to satisfy himself of the person’s entitlement before authorising the claim to be met.

Determination of scales and rates of allowances

4. The scales or rates of the costs and expenses for which entitlements are provided under these Regulations shall be determined by the Attorney General with the consent of the Treasury; and in these Regulations a reference to an allowance of or not exceeding the relevant amount is a reference to an allowance of or not exceeding an amount calculated in accordance with the scales or rates so determined.

Allowances to professional witnesses for attendance

5.—(1) A professional witness shall be entitled for attending to give professional evidence on any day to receive a professional witness allowance, which may be either—

- (a) where the witness has necessarily incurred expenditure in providing a substitute professional person to take care of his practice during that day, a locum allowance of an amount equal to actual expenditure incurred not exceeding the relevant amount; or
- (b) where no claim is made under sub-paragraph (a) above, a compensatory allowance of the relevant amount.

(2) This regulation does not apply to an expert witness attending to give expert evidence.

Overnight subsistence allowances to professional or expert witnesses and to interpreters

6.—(1) Any of the persons mentioned in paragraph (2) below whose attendance causes him to be necessarily absent from his place of residence overnight shall be entitled to receive an overnight subsistence allowance of the relevant amount in respect of each such night of absence.

(2) The persons referred to in paragraph (1) above are—

- (a) a witness who receives an allowance under regulation 5 above;
- (b) an expert witness who attends to give expert evidence; and
- (c) an interpreter.

Allowances to witnesses, other than professional or expert, and to others for attendance

7.—(1) Any of the persons mentioned in paragraph (2) below whose attendance causes him—

- (a) to incur any expenditure (other than on travelling, lodging or subsistence) to which he would not otherwise be subject; or
- (b) to suffer any loss of earnings, or of benefit under the enactments relating to National Insurance, which he would otherwise have received,

shall be entitled to receive a financial loss allowance of an amount equal to the actual expenditure incurred or loss suffered not exceeding any relevant amount in respect of that expense or loss.

(2) The persons referred to in paragraph (1) above are—

- (a) a witness who attends to give evidence (other than professional or expert evidence); and
- (b) any other person who, in the opinion of the appropriate officer, necessarily attends for the purpose of the prosecution case otherwise than to give evidence (excluding an interpreter).

Subsistence allowances to witnesses, other than professional or expert, and to others

8.—(1) Any of the persons mentioned in paragraph (3) below who attends court or elsewhere shall be entitled to a day subsistence allowance of the relevant amount or, if his attendance makes it necessary for him to stay overnight away from home, to an overnight subsistence allowance of the relevant amount for each night of absence.

(2) An overnight subsistence allowance under paragraph (1) above shall be in respect of a period of 24 hours and a witness who receives such an allowance shall be entitled to a further allowance in respect of any period in excess of 24 hours which is not covered by such an allowance at the rate appropriate to a day subsistence allowance under that paragraph.

(3) The persons referred to under paragraph (1) above are—

- (a) a witness who attends to give evidence (other than professional or expert evidence); and
- (b) any other person who, in the opinion of the appropriate officer, necessarily attends for the purpose of the prosecution case otherwise than to give evidence (excluding an interpreter).

Reimbursement of travelling expenses incurred by witnesses and others

9.—(1) Where a person who is entitled to an allowance under any of regulations 5 to 8 above travels to or from the place of his attendance by public transport (including by air) he shall, subject to paragraphs (2) and (3) below, be entitled to be reimbursed the fare actually paid.

(2) Unless the appropriate officer for special reason authorises otherwise, only the standard fare shall be reimbursed under paragraph (1) above for travel by railway.

(3) Where such person travels to or from such place by air his entitlement under paragraph (1) above to be reimbursed the fare actually paid arises only if, in the opinion of the appropriate officer—

- (a) there was no reasonable alternative to travel by air and the class of fare paid was reasonable in all the circumstances; or
- (b) travel by air was more economical in the circumstances (taking into account any savings of time resulting from the adoption of such mode of travel and its consequent effect in reducing the amount of allowances payable under other provisions of these Regulations).

(4) Where such person travels to or from such place by a hired vehicle, he shall be entitled to be reimbursed in respect thereof—

- (a) in a case of urgency or where no public service is reasonably available, the amount of the fare and any reasonable gratuity paid; and

(b) in any other case, the amount of the fare for travel by the appropriate public service.

(5) Where such person travels to or from such place by a private motor vehicle, other than one in respect of which reimbursement under this paragraph is claimed by another person in respect of the same journey, he shall be entitled to be reimbursed in respect thereof—

- (a) in a case to which paragraph (6) below applies by payment of mileage at the 'standard rate' determined under regulation 4 above and of any parking fee actually and reasonably incurred; and
- (b) in any other case, by payment of mileage at the 'public transport rate' so determined.

(6) This paragraph applies where a journey to or from such place is necessarily undertaken by private motor vehicle or where the use of the vehicle is more economical in the circumstances (taking into account the factors mentioned in parenthesis in paragraph (3)(b) above) or is otherwise reasonable.

Certain persons not to be entitled to allowances or travelling expenses

10. Notwithstanding anything contained in these Regulations, in the case of—

- (a) a member of, or special constable appointed or person employed for the purposes of, a police force, attending in his capacity as such;
- (b) a whole-time officer of an institution to which the Prison Act 1952(a) applies attending in his capacity as such;
- (c) an inmate of such an institution in respect of any occasion on which he is conveyed to attend at any place in custody,

there shall be no entitlement to any allowance or reimbursement of travelling expenses provided for by these Regulations.

5th October 1988

P. B. B. Mayhew
Her Majesty's Attorney General

We approve.

D. Lightbown
T. Durant
Two of the Lords Commissioners
of Her Majesty's Treasury

24th October 1988

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the entitlement to costs and expenses of witnesses, interpreters and other persons who attend court or elsewhere at the instance of the Serious Fraud Office in proceedings conducted by the Director of the Serious Fraud Office under Part I of the Criminal Justice Act 1987.

Regulation 4 provides that the scales or rates of costs and expenses are to be determined by the Attorney General with the consent of the Treasury.

Regulation 5 entitles a witness practising as a member of the legal or medical

(a) 1952 c.52.

profession or as an accountant, dentist or veterinary surgeon to a professional witness allowance. Regulation 6 introduces an overnight subsistence allowance for professional and expert witnesses and for interpreters.

Regulation 7 entitles witnesses (other than professional or expert) and certain other persons who necessarily attend court or elsewhere, who incur certain expenditure or certain losses, to a financial loss allowance; and regulation 8 introduces day and night subsistence allowances for such witnesses and others.

Regulation 9 introduces entitlements to reimbursement of travelling expenses incurred by witnesses and others. Regulation 10 sets out three categories of persons who are not entitled to allowances under the Regulations.