

Garda Station Legal Advice Revised Scheme Guidance Document

1. Commencement

With a view to facilitating the new arrangements under which a solicitor is entitled to attend interviews between Gardaí and detainees in Garda Stations, the existing Garda Station Legal Advice Scheme is being expanded. While the Garda Station Legal Advice Revised Scheme commences on the 15th August 2014, the rates payable as set out in the Fee Rates Table in Section 5 are operable from the 7th May 2014.

This document provides a guide to the new provisions being introduced and the Scheme as it will now be implemented by the Legal Aid Board. It is envisaged that the Scheme's implementation will be subject to ongoing monitoring and review as required and deemed appropriate. This Guidance Document will be revised by the Legal Aid Board in line with any further revision of the Scheme that may occur.

2. The Revised Scheme

The Garda Station Legal Advice Revised Scheme combines two elements:

- The existing Garda Station Legal Advice Scheme with a continuation of the existing arrangements pertaining to the rates payable for solicitor / detainee telephone and Garda Station consultations and with the current limits on the number of consultations that will attract a fee being retained. The existing arrangements for the payment of a fee for an Extension Hearing will still apply.
- New payment rates to apply for a solicitor's attendance at a Garda Station for the purpose of (a) attending a formal interview between the Gardaí and the detainee and / or, (b) attending a formal Identification Parade in which the detainee is involved.

3. Scope of the Scheme

Fees are paid to solicitors for telephone and in-station consultations with persons detained in Garda Stations, the attendance of the solicitor at a formal interview between the Gardaí and the detainee and / or where a solicitor is required to attend an Identity Parade in circumstances where a person is detained under the provisions of:

- (a) Section 30 of the Offences against the State Act 1939 (as amended), or
- (b) Section 4 of the Criminal Justice Act 1984, (as amended), or
- (c) Section 2 of the Criminal Justice (Drug Trafficking) Act 1996, (as amended), or
- (d) Section 50 of the Criminal Justice Act 2007, (as amended),

and,

- (e) the person has a legal entitlement to consult with a solicitor and the person's means are insufficient to enable him / her to pay for their own legal advice at the Garda Station.

It should also be noted that the provisions of Section 42 of the Criminal Justice Act 1999 and Sections 16 & 17 of the Criminal Procedure Act 2010 provide that detentions under both these pieces of legislation will be dealt with as though the detainee had been detained under Section 4 of the Criminal Justice Act 1984. Accordingly, detainees under the aforementioned pieces of legislation will, for the purposes of the Garda Station Legal Advice Revised Scheme, be considered and dealt with as though they had been detained under Section 4 of the Criminal Justice Act 1984 and access to the Scheme may be applied for in the usual manner under the Scheme's provisions.

The Garda Station Legal Advice Revised Scheme also provides for payments to solicitors in respect of Extension Hearings held in the District Court where the Gardaí wish to extend the time limit for holding suspects under the Offences Against the State Acts, the Criminal Justice (Drug Trafficking) Act 1996 or under the Criminal Justice Act 2007.

4. Scheme eligibility

Persons who are detained under the above mentioned legislation and who are in receipt of Social Welfare payments **or** persons in employment whose earnings are less than €20,316 per annum (gross) are eligible to receive assistance under the Scheme. Accordingly, a detainee who is in employment and with annual gross earnings in excess of €20,316 is **not** eligible to receive free legal advice under the Garda Station Legal Advice Revised Scheme. Such a detainee who wishes to receive legal advice from a solicitor while detained in a Garda Station will be personally liable for the costs associated with the delivery of that legal service. Accordingly, in seeking access to free legal advice under the Scheme, the detainee should satisfy him / herself as to their eligibility under that Scheme.

It should be noted that the financial assessment to determine if a detainee would qualify for legal advice under the Scheme is entirely separate from the assessment carried out in the Court setting to determine if a Defendant qualifies for legal aid under the main Criminal Legal Aid Scheme. Both processes operate under totally different rules and are not in any manner associated. Under the Garda Station Legal Advice Revised Scheme eligibility for a detainee is as set out above, while legal aid under the main Criminal Legal Aid Scheme is granted by the Court as provided for by the Criminal Justice (Legal Aid) Act, 1962. A person's eligibility under one Scheme does not confer or imply eligibility under the other.

There is no obligation on a person requiring him or her to make an application for access to the Garda Station Legal Advice Revised Scheme and a person may elect to fund the provision of his or her legal advice privately and from personal funds. However, a person who elects to apply for assistance under the Scheme will, if successful with their application, only be provided with legal advice within the provisions of the Scheme.

In addition, legal practitioners who elect to provide representation to the Scheme's applicants will only be reimbursed in accordance with the Scheme's provisions as set out in this document. It is recommended that legal practitioners should at the earliest possible opportunity satisfy themselves that both their client and the litigation involved are encompassed by the provisions of the Scheme.

5. Fees payable

Three separate types of fees are payable under the Scheme. The first is a set fee payable to a solicitor in respect of each eligible person detained in a Garda Station and advised by way of a telephone consultation or by way of an in-station consultation between the solicitor and the detainee. The second is a fee payable for the actual time spent by the solicitor at the Garda Station for the specific purpose of either (a) attending a formal interview between the Gardaí and the detainee, and / or (b) attending a formal Identification Parade in which the detainee is involved. The third type of fee pertains to Extension Hearings attended by the solicitor in the District Court where the Gardaí wish to extend the time limit for holding suspects under the Offences Against the State Acts, the Criminal Justice (Drug Trafficking) Act 1996 or under the Criminal Justice Act 2007.

Where a solicitor is required to travel more than 15 kilometres from the solicitor firm's base address to a Garda Station to provide advice to a detainee under the Scheme and where the solicitor uses his / her own motor car, travel expenses will be payable at the travel rates operative at that date. Alternatively, where a solicitor is required to travel more than 15 kilometres from the firm's base address to the Garda Station and it is necessary to utilise public transport, vouched reasonable expenses in respect of the public transport will be payable. One set of travelling expenses only is paid for each visit to a Garda Station irrespective of the number of persons advised.

In calculating the fees payable to a solicitor in any given case, it should be noted that the day / night rate times have been adjusted to 8am - 8pm / 8pm - 8am. The weekend and Bank Holiday rates remain payable at the night time (unsociable) hourly rates.

The relevant rates payable, which are updated as approved by the Minister for Justice and Equality, are included in the Fee Rates Table below and are operable from the 7th May 2014.

Solicitor Fee Rates:

Details of solicitors consultations and or / attendance at Garda Station	Rates payable
1 Solicitor / detainee Telephone Consultation.	€39.59 plus VAT
2 Solicitor / detainee Garda Station Consultation rate for 8am to 8pm on Monday to Friday.	€97.22 plus VAT
Solicitor / detainee Garda Station Consultation rate for 8pm to 8am on Monday to Friday, all Saturday and Sunday and all Bank Holidays.	€132.19 plus VAT

4	Solicitor attendance at a Garda Station hourly rate for 8am to 8pm on Monday to Friday.	€72 per hour plus VAT (Half hourly rate applies after first full hour)
	Solicitor attendance at a Garda Station hourly rate for 8pm to 8am on Monday to Friday, all Saturday and Sunday and all Bank Holidays.	€93 per hour plus VAT (Half hourly rate applies after first full hour)
6	Extension Hearings.	€201.50 plus VAT
7	Travel rate per kilometre (for distances greater than 15kms each way only).	€0.24 per km.

6. Number of consultations payable under the Scheme

As with the previous Garda Station Scheme, there are limits placed on the number of solicitor consultations per detention that will attract a payment under the Garda Station Legal Advice Revised Scheme. The maximum number of solicitor consultations (including telephone consultations) payable under the different qualifying legislation is as follows:

(a) *Section 4, Criminal Justice Act, 1984, as amended*

3 solicitor consultations over the total period of detention where a person is detained pursuant to the provisions of Section 4.

(b) *Section 30, Offences against the State Act 1939, as amended*

7 solicitor consultations over the total period of detention subject to a maximum of 3 paid consultations in a calendar day.

(c) *Section 2, Criminal Justice (Drug Trafficking) Act, 1996, as amended*

11 solicitor consultations over the total period of detention subject to a maximum of 3 paid consultations in a calendar day.

(d) *Section 50 of the Criminal Justice Act 2007, as amended*

11 solicitor consultations over the total period of detention subject to a maximum of 3 paid consultations in a calendar day.

An Extension Hearing appearance by a solicitor is not included in the above consultation criteria for the payment of fees. Should the detention be extended as a result of an Extension

Hearing, the provisions pertaining to Consultation Fees will be considered as if a new detention had been commenced.

7. The calculation of a solicitor's fees

Where a solicitor provides representation to a detainee by way of a telephone consultation or by an in-station consultation at the Garda Station the fees payable will, subject to Section 6, be as set out in boxes 1, 2 and 3 in the Fee Rates Table in Section 5. When a solicitor is required to attend either a Garda / detainee interview or an Identity Parade, the fees set out in boxes 4 and 5 in the Fee Rates Table will apply.

Should a solicitor be required to wait at the Garda Station prior to a Garda / detainee interview commencing, or, while in attendance at the station, where a short interval occurs and where it was practical and appropriate that the solicitor remained at the station for the purpose of further attendances at interviews, the certified waiting time will be reckonable at the hourly / half hourly attendance rate.

It should be noted that where a solicitor provides advice to a detainee by way of a solicitor / detainee consultation only (i.e. there is no solicitor attendance at an interview or Identity Parade), any solicitor waiting time arising prior to, or after, the consultation will not attract a fee.

The limits pertaining to consultations that will attract a fee will be as set out in Section 6. However, in circumstances where a solicitor is specifically required to attend a Garda Station to attend a Garda / detainee interview and where the solicitor has already carried out the maximum number of consultations that will attract a fee, the time spent by the solicitor at any further solicitor / detainee consultations in excess of the stated limits may be included for payment at the relevant hourly rates.

With reference to the various time bands set out in Boxes 2 to 5 in the Fee Rates Table, the Consultation or Attendance Fee payable will be reckonable with reference to the start time of the solicitor / detainee consultation or Garda Station attendance. For example, should a solicitor attend a Garda Station for two hours for the purposes of attending a Garda / detainee interview with that attendance starting at 7.45am, the fee payable will be as follows:

Example 1

07:45 to 08:45 - night time (unsociable) rate of 93 Euro per hour

08:45 to 09:45 - standard day rate of 72 Euro per hour

In all detentions where attendances are required by a solicitor, the hourly attendance rate will be subject to a minimum full one hour rate with all further attendances beyond that first hour subject to rounding up to the next half hour. The minimum payment of one hour relates to the total time spent at the Garda Station and does not apply to each individual attendance that may occur. For example, should a solicitor attend at a Garda / detainee interview for two hours and twenty five minutes starting at 7.45 am, the fees will be payable as follows:

Example 2

07:45 to 08:45 - night time (unsociable) rate of 93 Euro per hour

08:45 to 09:45 - standard day rate of 72 Euro per hour

09:45 to 10.10 - standard day rate at 36 Euro per half hour

A potential extension to this example would be where the solicitor is required to again attend the Garda Station later that day for the purposes of completing a solicitor / detainee consultation from 3.30pm to 4.00pm and then attending a further Garda / detainee interview from 4pm to 6.10pm. This would result in the fees being calculated as follows:

Example 3

07:45 to 08:45 - night time (unsociable) rate of 93 Euro per hour

08:45 to 09:45 - standard day rate of 72 Euro per hour

09:45 to 10.10 - standard day rate at 36 Euro per half hour

15:30 to 16:00 - Consultation Fee at set day rate of 97.22 Euro per hour

16:00 to 18:10 - 2 hours and 10 minutes payable at day rate

Total payable:

1 hour attendance payable at night rate (unsociable) of 93 Euro.

3 hours and 35 minutes attendance rounded up to 4 hours at day rate of 72 Euro per hour.

Consultation Fee at set day rate of 97.22 Euro.

A further example would be where a solicitor arrived at the Garda Station at 9.00am, consulted with the detainee from 9.15am to 9.30am, and (without leaving the station) attended Garda / detainee interviews from 9.45am to 10.30am and from 11.00am to 11.30am. The fees would be payable as follows:

Example 4

09:15 to 09:30 - Consultation Fee at set day rate of 97.22 Euro

09:00 to 09:15 and 09:30 to 11:30 - two and a half times the standard day rate of 72 Euro per hour

A fee is payable to a solicitor in respect of each person who is detained in a Garda Station under the legislation set out in Section 3 and with whom a solicitor holds a consultation or attends at a formal Garda / detainee interview or Identity Parade. Where a solicitor attends a Garda Station and provides advice to more than one detainee during the same visit, the hourly attendance rates may not be duplicated for the purposes of payment.

8. The application for legal advice and the fee claims system

8.1 GLAS2 Form

Applications by detainees for free legal advice under the Garda Station Legal Advice Revised Scheme in conjunction with the subsequent claim by solicitors for the payment of their fees are made on the GLAS 2 Form. This GLAS 2 Form was introduced on the 15th August 2014 to cater for the new circumstances under which solicitors are being facilitated to attend Garda / detainee interviews. All sections of this form must be completed to enable consideration of the detainee's application for free legal advice and the solicitor's subsequent claim for fees to be processed.

Gardaí, solicitors and members of the public can source GLAS 2 Forms from the website of the Legal Aid Board. Please print the GLAS 2 Form on both sides of the same page.

8.2 Application for legal advice under the Scheme

GLAS 2 Form / Section 1 (Personal Details, Statement of Means and Declaration of Applicant)

All detainees in a Garda Station who wish to apply for legal advice under the Scheme will be required to formally request access to same by way of completion of Section 1 of the GLAS 2 Form. Eligibility under the Scheme is not automatic. The GLAS 2 Forms will be available to detainees from their solicitor and from the website of the Legal Aid Board.

The completion of the Statement of Means Section of the claim form is entirely the responsibility of the detained person who is applying to avail of the Scheme. However, it should be noted that unless the Statement of Means Section is fully completed, it will not be possible to consider or process the application for free legal advice or a solicitor's subsequent claim for fees.

It should also be noted by all parties that unless the detainee is detained under the qualifying legislation as set out in Section 3 and also satisfies the eligibility criteria outlined in Section 4 above, they will be personally liable to cover any costs associated with the legal advice they requested and received.

An applicant for assistance under this Scheme must provide their Personal Public Service Number (PPSN) and indicate whether they are (i) in employment or, (ii) in receipt of Social Welfare payments. Applicants in employment must state their total gross annual income from all employment. The applicant may be requested to confirm such details (e.g. by the submission of a Social Welfare receipt or a payslip). In situations where an applicant does not know their PPSN at the time of detention, every effort must be made to obtain the PPSN as soon after the detention as possible. In that context it may be noted that the PPSN of all Social Welfare recipients is readily available on the card issued to them for the receipt of such benefits. In addition, the PPSN is printed on the receipt issued to recipients each time they collect their Social Welfare benefit.

The applicant will also consent to the Legal Aid Board seeking any report it considers necessary from the Department of Social Protection, the Revenue Commissioners or any other public body which is likely to be in a position to provide assistance in verifying the accuracy of the information provided as to their means.

It is the policy of the Legal Aid Board to seek reimbursement of the cost of legal advice provided to a person who makes a false declaration as to their means.

8.3 The claim for fees

GLAS 2 Form / Section 2 (Detention, Consultations, Hearings and Garda Certification)

In the first instance, Gardaí and solicitors must ensure that all details pertaining to the solicitor's consultations and attendances at the Garda Station are fully recorded by the Custody Officer in the Garda Station. This must include:

- (a) the date and time of all telephone consultations between the solicitor and the detainee,
- (b) the time of the solicitor's arrival at, and departure from, the Garda Station,
- (c) the start and finish times of the solicitor's in-station consultations with the detainee,
- (d) the start and finish times of the solicitor's attendances at Garda / detainee formal interviews,
- (e) details of the start and finish times of the solicitor's attendances at any Identification Parades, and
- (f) confirmation of any Extension Hearings.

Accurate documentation of the above information will be necessary to facilitate the Garda certification of the solicitor's GLAS 2 Form and claim for fees in relation to the case.

Section 2 of the GLAS 2 Form sets out the name of the individual solicitor providing the advice, the number of solicitor / detainee telephone and in-station consultations and also details of the solicitor's attendances at the station. Care should be taken to ensure that, if only telephone and / or in-station consultations take place (as against solicitor attendances at interviews or Identity Parades), only the "Consultation Boxes" in Section 2 should be completed. Section 2 should be completed by the solicitor following each detention and, subject to examination in conjunction with the Custody Record, verified and stamped by a member of An Garda Síochána on duty in the relevant Garda Station.

In certifying the GLAS 2 Form, it should be noted by Gardaí and solicitors that only consultations and attendances which are recorded in the Custody Record and which are made by a solicitor, as distinct from a clerk / apprentice, will apply.

In respect of telephone consultations (or where the GLAS 2 Form is not presented to a member of the Gardaí at the conclusion of a consultation or attendance at the station), it is the responsibility of the solicitor to forward the completed claim form to the relevant Garda Station for verification and stamping as appropriate. In all instances, every effort should be made to have all consultations / attendances verified by the earliest possible date.

While Section 2A should record the name of the solicitor who provided the legal advice to the detainee, the declaration in Section 2 B should be completed in full and signed by the head of the solicitor's firm. Fees payable under the Garda Station Legal Advice Revised Scheme are

paid to solicitor firms / sole practitioners rather than to the individual solicitors in firms. It should be noted that claims received from individual employee solicitors will be returned to the relevant solicitor firm for proper completion and subsequent re-submission for payment.

A GLAS 2 Form should be completed by a detainee and his / her solicitor and subsequently certified by a Garda in respect of each detention. In instances where more than three consultations or more than five attendances are being claimed, a second GLAS 2 Form may be used and this should be submitted together with the first GLAS 2 Form as a complete claim. Fully completed and certified forms should be forwarded by the earliest possible date after the detention (and after certification by the Gardaí) to the Legal Aid Board for consideration and processing.

In cases where a solicitor attends a Garda Station and provides representation to more than one detainee during the same visit, GLAS 2 Forms should not be submitted with duplicate times for Garda Station Attendance Fees being claimed for each detainee. As set out in Section 7, where a solicitor attends a Garda Station and provides advice to more than one detainee during the same visit, the hourly attendance rates may not be duplicated for the purposes of payment. Nor can an attendance rate for one detainee be paid where a solicitor is in consultation with another detainee.

8.4 Recording and validation of the solicitor's engagement

No fees will be payable to a solicitor firm under the Garda Station Legal Advice Revised Scheme unless the attending solicitor's activity has been fully recorded by the Custody Officer in the Garda Station and subsequently certified by a Garda in the Station on the GLAS 2 Form. In that regard, solicitors and Gardaí must note and ensure the following:

- All telephone consultations between the solicitor and the detainee must be noted in the official Custody Record. It should be noted that telephone conversations between the solicitor and a Garda do not constitute a solicitor / detainee consultation and do not attract a Telephone Consultation Fee.
- When a solicitor is called to a station to represent a detainee, the attending solicitor's exact time of arrival at the station and the solicitor's time of departure must be documented in the official Custody Record.
- While in attendance at the Garda Station, the Custody Record must include details of the start and finish times of the solicitor's consultations with the detainee, the start and finish times of the solicitor's attendances at Garda / detainee formal interviews, start and finish times of the solicitor's attendances at any Identification Parades and a record of any Extension Hearings that may arise.

When questioning is ended or where there is an interval (or intervals) between questioning periods and when the solicitor leaves the station, all departure times must be recorded by the Custody Officer. When a solicitor returns to the station for resumption of consultations and / or attendance at an interview following an interval, this must be documented in the Custody Record by the Custody Officer. Such details should also be recorded on the GLAS 2 Form.

9. The submission of a GLAS2 Form

All claims for fees under the Scheme must be submitted by the earliest possible date but, at the latest, within twelve months of the date of detention. It should be noted that claims submitted after this deadline will not be considered or processed for payment by the Legal Aid Board.

Fully completed and certified claim forms should be forwarded to the Legal Aid Board for consideration and processing at the following contact details:

Legal Aid Board

Garda Station Legal Advice Revised Scheme

Criminal Legal Aid Section

48/49 North Brunswick Street

George's Lane

Smithfield

Dublin 7

Telephone: 01- 6469644

Email: cla@legalaidboard.ie

Garda Station Legal Advice Revised Scheme Provisions and Guidance Document.