
STATUTORY INSTRUMENTS

2009 No. 1843

**LEGAL SERVICES COMMISSION,
ENGLAND AND WALES**

**The Criminal Defence Service
(Funding) (Amendment) Order 2009**

<i>Made</i>	- - - -	<i>9th July 2009</i>
<i>Laid before Parliament</i>		<i>13th July 2009</i>
<i>Coming into force</i>	- -	<i>3rd August 2009</i>

The Lord Chancellor makes this Order in exercise of the powers conferred by section 14(3) of the Access to Justice Act 1999⁽¹⁾.

He has had regard to the matters specified in section 25(3) of that Act and has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act.

Citation, commencement, cessation, interpretation and application

1.—(1) This Order may be cited as the Criminal Defence Service (Funding) (Amendment) Order 2009 and comes into force on 3rd August 2009.

(2) Articles 3 (in so far as it relates to the definition of “provisional representation order”) and 6 of this Order cease to have effect on 31st December 2011.

(3) In this Order “the 2007 Order” means the Criminal Defence Service (Funding) Order 2007⁽²⁾.

(4) In this article—

(a) “representation order” has the same meaning as in the 2007 Order;

(b) “provisional representation order” means a document provisionally granting a right to representation under regulations made under paragraph 1A of Schedule 3 to the Access to Justice Act 1999⁽⁸⁾.

(5) This Order applies to proceedings in which a representation order or a provisional representation order is granted on or after 3rd August 2009.

(1) 1999 c.22. The powers were conferred on the Lord Chancellor, transferred to the Secretary of State by S.I. 2003/1887 and transferred back to the Lord Chancellor by S.I. 2005/3429.

(2) S.I. 2007/1174, amended by S.I. 2007/3552, 2008/957 and 2008/2930.

(8) Paragraph 1A of Schedule 3 was inserted by section 56(1) and (6) of the Criminal Justice and Immigration Act 2008 (c.4).

(6) In respect of proceedings in which a representation order is granted before 3rd August 2009 the 2007 Order continues to apply as if this Order had not been made.

Amendments to the Criminal Defence Service (Funding) Order 2007

2. The 2007 Order is amended as follows.
3. In article 2—
 - (a) after the definition of “litigator” insert—

““provisional representation order” means a document provisionally granting a right to representation under regulations made under paragraph 1A of Schedule 3 to the Act;”;
 - (b) after the definition of “Very High Cost Case” insert—

““Very High Cost Case contract” means the contract for panel members made between the Commission and panel members and dated 14th January 2008, as amended on 13th November 2008, 15th December 2008 and 5th May 2009(3);”.
4. In article 6—
 - (a) in paragraph (5), for “22” substitute “21”;
 - (b) in paragraph (6), for “25” substitute “24”.
5. In article 10—
 - (a) for the heading to the article substitute “The Unified Contract (Crime)”;
 - (b) in paragraph (1), for “Part E of the Specification to the General Criminal Contract, published by the Commission in February 2001, as amended” substitute “Annexes 1 and 3 to the Specification in the Unified Contract (Crime), published by the Commission in July 2008(4)”.
6. After article 10 insert—

“Provisional representation orders

10A.—(1) Where the Commission enters into an individual contract for the provision of funded services under a provisional representation order, it must pay the litigator in respect of preparation and standard rate work at rates no higher than the rates set out in the table following this article.

(2) The Commission must allow—

- (a) such disbursements,
- (b) such fees in respect of—
 - (i) travelling and waiting, at the rate of £25 per hour, and
 - (ii) mileage, at the rate of £0.45 per mile, and
- (c) such fees in respect of accommodation and subsistence,

claimed by the litigator in accordance with the contract as appear to the Commission to have been reasonably incurred.

(3) Where the order also provides for representation by an advocate—

(3) The contract is available from the Legal Services Commission, 4 Abbey Orchard Street, London SW1P 2BS, and at www.legalservices.gov.uk.

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- (a) the litigator may claim from the Commission in accordance with the contract, in respect of work undertaken by the advocate, and
 - (b) the Commission must pay the litigator at rates no higher than the rates set out in the table following this article.
- (4) In the table following this article references to—
- (a) standard rate work,
 - (b) a level A, B or C solicitor, and
 - (c) a level A or B solicitor-advocate
- are references to those phrases as defined in the Very High Cost Case contract.

	<i>Preparation – hourly rates £</i>	Standard rate work – hourly rates
		£
<i>Solicitor</i>		
Level A	119.00	55.75
Level B	104.50	47.25
Level C	69.00	34.00
<i>Counsel</i>		
QC	119.00	
Junior alone	85.50	
Led junior	76.00	
<i>Solicitor-advocate</i>		
Level A alone	115.00	
Level B alone	99.50	
Led level A	104.50	
Led level B	90.50	

7. In each of paragraphs (6A) and (7) of article 14, after “any person,” insert “may notify”.

8. In article 29(1)(c)(i), after “Schedule 2” insert “(except for paragraph 10(5)(a) of that Schedule)”.

9. In paragraph 8 of Schedule 1, after “paragraph 5” insert “or that following paragraph 7”.

10. In paragraph 9(1) of Schedule 1, after “paragraph 5” insert “or 7”.

11. In paragraph 20 of Schedule 1—

(a) after sub-paragraph (7) insert—

“(7A) Where—

(a) a case ceases to be a Very High Cost Case, and

(b) none of sub-paragraphs (1) to (7) applies,

the instructed advocate must notify the Court in writing of his appointment within 7 days of the case ceasing to be a Very High Cost Case.”;

(b) in sub-paragraph (8)(a), for “or sub-paragraph (6)” substitute “, (6) or (7A)”.

12. After paragraph 24 of Schedule 1 insert—

“Case ceasing to be Very High Cost Case

24A.—(1) Where a case ceases to be a Very High Cost Case, the trial advocate must be paid in accordance with Part 2 or Part 3 but, where applicable, must repay to the Commission any sum payable to the advocate for work done during the period when the case was a Very High Cost Case (except for any fee payable under sub-paragraph (2)).

(2) Where—

- (a) a case ceases to be a Very High Cost Case, and
- (b) the case manager was an advocate,

the Commission must pay to the case manager an administration fee in respect of work done to comply with the administrative requirements of the Very High Cost Case contract.

(3) The fee referred to in sub-paragraph (2) is to be calculated as a fee for three hours’ work for every stage (except for stage 0) or part of a stage up to the date on which the case ceased to be a Very High Cost Case.

(4) In this paragraph, “stage” and “case manager” have the same meanings as in the Very High Cost Case contract.”.

13. Omit paragraph 2(1)(c) of Schedule 2.

14. For paragraph 2(7) of Schedule 2 substitute—

“(7) For the purposes of this Schedule, where the number of pages of prosecution evidence in a case which is not a Very High Cost Case exceeds—

- (a) the PPE Cut-off figure specified in the table following paragraph 4(2) as appropriate to the offence for which the assisted person is to be tried and the length of trial, and
- (b) 10,000,

the case must be treated as though it had 10,000 pages of prosecution evidence.”.

15. In the table of final fees in cracked trials following paragraph 7 of Schedule 2—

- (a) in the second column (PPE Range), for “9998” in each place in which it appears substitute “9999”;
- (b) in the second column, for “9999-99999” in each place where it appears substitute “10000”;
- (c) in the fourth column (Incremental fee) of the entries amended by article 15(b), for each of the following entries substitute “0”—
 - (i) “5.7143”;
 - (ii) “2.9971”;
 - (iii) “2.0899”;
 - (iv) “4.3243”;
 - (v) “0.8919”;
 - (vi) “1.0182”;
 - (vii) “5.2020”;
 - (viii) “1.0168”;
 - (ix) “1.3114”;

- (x) “4.5514”;
- (xi) “5.4756”.

16. In the table of final fees in guilty pleas following paragraph 7 of Schedule 2—

- (a) in the second column (PPE Range), for “9998” in each place in which it appears substitute “9999”;
- (b) in the second column, for “9999-99999” in each place where it appears substitute “10000”;
- (c) in the fourth column (Incremental fee) of the entries amended by article 16(b), for each of the following entries substitute “0”—
 - (i) “3.8001”;
 - (ii) “1.1661”;
 - (iii) “0.8668”;
 - (iv) “1.1647”;
 - (v) “0.5057”;
 - (vi) “0.3488”;
 - (vii) “2.1643”;
 - (viii) “0.3465”;
 - (ix) “0.5581”;
 - (x) “1.2255”;
 - (xi) “2.2779”.

17. In the table of final fees in trials following paragraph 8 of Schedule 2—

- (a) in the second column (PPE Range), for “9998” in each place in which it appears substitute “9999”;
- (b) in the second column, for “9999-99999” in each place where it appears substitute “10000”;
- (c) in the fourth column (Incremental fee) of the entries amended by article 17(b), for each of the following entries substitute “0”—
 - (i) “11.6330”;
 - (ii) “7.7722”;
 - (iii) “5.1762”;
 - (iv) “8.7658”;
 - (v) “2.6174”;
 - (vi) “2.3624”;
 - (vii) “9.2029”;
 - (viii) “2.4910”;
 - (ix) “3.3365”;
 - (x) “9.2272”;
 - (xi) “9.6872”.

18. After paragraph 10(2) of Schedule 2 insert—

- “(2A) In sub-paragraph (2) “transfer” includes the grant of a representation order to an individual who immediately before the grant of the order—
- (a) had represented himself; or

- (b) had been represented (otherwise than under a representation order) by the litigator named in the order,

and for the purposes of that sub-paragraph the litigator shall be treated as a new litigator.

(2B) For the purposes of sub-paragraph (2), a case is not transferred to a new litigator where—

- (a) a firm of solicitors is named as litigator in the representation order and the solicitor or other appropriately qualified person with responsibility for the case moves to another firm;
- (b) a firm of solicitors is named as litigator in the representation order and the firm changes (whether by merger or acquisition or in some other way), but so that the new firm remains closely related to the firm named in the order; or
- (c) a solicitor or other appropriately qualified person is named as litigator in the representation order and responsibility for the case is transferred to another solicitor or appropriately qualified person in the same firm or a closely related firm.

(2C) For the purposes of sub-paragraph (2), where a case which has been transferred to a new litigator is transferred again, that new litigator—

- (a) shall be treated as an original litigator, where the transfer takes place at any time before the trial or any retrial;
- (b) shall be treated as a new litigator, where the transfer takes place during the trial or any retrial; and
- (c) shall not receive any fee, where the transfer takes place after the trial or any retrial but before the sentencing hearing.”.

19. In paragraph 10(5)(a) of Schedule 2, for “in accordance with the table following this paragraph” substitute “at the same rates as those set out in Annex 7 to the Very High Cost Case contract”.

20. In paragraph 10(5)(b) of Schedule 2, for “the individual contract which applies to the case” substitute “that contract”.

21. After paragraph 10(6) of Schedule 2 insert—

“(7) An original litigator under sub-paragraph (5)(a) may appeal against the audit of work carried out under stage 0 in accordance with Annex 14 to the Very High Cost Case contract.

(8) Where a case ceases to be a Very High Cost Case, the litigator must be paid in accordance with Part 2 but, where applicable, must repay to the Commission any sum payable to the litigator for work done during the period when the case was a Very High Cost Case (except for any fee payable under sub-paragraph (9)).

(9) Where—

- (a) a case ceases to be a Very High Cost Case, and
- (b) the case manager was the litigator or a fee-earner of the litigator,

the Commission must pay to the case manager an administration fee in respect of work done to comply with the administrative requirements of the Very High Cost Case contract.

(10) The fee referred to in sub-paragraph (9) is to be calculated as a fee for three hours’ work for every stage (except for stage 0) or part of a stage up to the date on which the case ceased to be a Very High Cost Case, at the rate applicable to the level of the case manager.

(11) In sub-paragraphs (7), (9) and (10) “stage”, “case manager” and “level” have the same meanings as in the Very High Cost Case contract.

(12) A litigator may not be treated both as an original litigator and as a new litigator in a case.”.

22. In the table following paragraph 10 of Schedule 2—

(a) for the entry “During trial transfer – retrial (new litigator)” substitute—

“Transfer after 100% trial and before sentencing hearing (original litigator)	Trial	Claim for the full trial length, excluding the length of the sentencing hearing
Transfer after 10% trial and before sentencing hearing (new litigator)	Trial	Claim for one day, or for the length of the sentencing hearing if longer than one day”

(b) in the first column, in each of the entries “Transfer during or after retrial” omit “or after”;

(c) after the amended entry “Transfer during retrial (new litigator)” insert—

“Transfer after 25% retrial and before sentencing hearing (original litigator)	Trial	Claim for the full retrial length, excluding the length of the sentencing hearing
Transfer after retrial 10% and before sentencing hearing (new litigator)	Trial	Claim for one day, or for the length of the sentencing hearing if longer than one day”.

23. After paragraph 12 of Schedule 2 insert—

“Fees for hearing subsequent to sentence

12A. The fee payable to a litigator instructed in relation to a hearing under an enactment listed in sub-paragraph (2) is that set out in the table following paragraph 14.

(2) The enactments are—

- (a) section 1CA of the Crime and Disorder Act 1998⁽⁵⁾ (variation and discharge of orders under section 1C);
- (b) section 155 of the Powers of Criminal Courts (Sentencing) Act 2000⁽⁶⁾ (alteration of Crown Court sentence);
- (c) section 74 of the Serious Organised Crime and Police Act 2005⁽⁷⁾ (assistance by defendant: review of sentence).”.

24. Omit paragraph 14(2) of Schedule 2.

25. In paragraph 14(3) of Schedule 2 omit the words from “Where the litigator” to “order was made,”.

⁽⁵⁾ 1998 c.37. Section 1CA was inserted by section 140(1) and (4) of the Serious Organised Crime and Police Act 2005 (c.27).

⁽⁶⁾ 2000 c.6.

⁽⁷⁾ 2005 c.27.

26. In the third column of the table following paragraph 14 of Schedule 2 (Fee payable), for “127.66”, “340.43” and “212.77” substitute “170.21”, “382.98” and “255.32” respectively.

27. In the table following paragraph 14 of Schedule 2, after the entry “Committal for sentence” insert—

“Hearing subsequent to 12A sentence	170.21”
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28. In paragraph 15 of Schedule 2—

(a) for sub-paragraph (1) substitute—

“(1) This paragraph applies in any case on indictment in the Crown Court—

(a) in respect of which a fee is payable under Part 2, where any or all of the prosecution evidence, as defined in paragraph 1(2), is served in electronic form only; or

(b) in respect of which a fee is payable under Part 2 (other than paragraph 6), where the number of pages of prosecution evidence, as so defined, exceeds 10,000,

and the appropriate officer considers it reasonable to make a payment in excess of the fee payable under Part 2.”;

(b) for sub-paragraph (3) substitute—

“(3) The amount of the special preparation fee must be calculated from the number of hours which the appropriate officer considers reasonable—

(a) where sub-paragraph (1)(a) applies, to view the prosecution evidence; and

(b) where sub-paragraph (1)(b) applies, to read the excess pages,

and in each case using the rates specified in the table following paragraph 22.”.

29. In paragraph 25 of Schedule 2—

(a) in each of sub-paragraphs (1), (2), (5)(a) and (5)(b), for “the contract” substitute “the Very High Cost Case contract”;

(b) omit sub-paragraph (4).

Signed by authority of the Lord Chancellor

9th July 2009

Bach
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Criminal Defence Service (Funding) Order 2007, which makes provision for the funding and remuneration of services provided as part of the Criminal Defence Service. The Order—

provides for the fees to be payable for work done under provisional representation orders (articles 3 and 6);

clarifies the situations in which a case (including a Very High Cost Case) is or is not transferred and makes other provisions relating to cases which cease to be Very High Cost Cases (articles 3, 8, 11, 12, 18 to 21 and 29);

introduces a cap on the number of pages of prosecution evidence, where the number of pages is used to determine certain fees, but provides for a special preparation fee where the cap is exceeded (articles 14 to 17 and 28);

provides for the fees to be payable where a case is transferred before sentence (article 22);

introduces a new fixed fee for certain hearings subsequent to sentence (articles 23 and 27);

extends the fee for proceedings relating to breaches of Crown Court orders to all litigators, whether or not they represented the defendant in the earlier proceedings (articles 24 and 25);

increases the fixed fees relating to appeals against sentence, appeals against conviction and committals for sentence (article 26);

makes minor amendments (articles 4, 5, 7, 9, 10 and 13).

An impact assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies.