

2010 No. 679

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Criminal Defence Service (Funding) (Amendment) Order
2010**

<i>Made</i> - - - -	<i>9th March 2010</i>
<i>Laid before Parliament</i>	<i>10th March 2010</i>
<i>Coming into force</i> - -	<i>6th April 2010</i>

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 14(3) of the Access to Justice Act 1999(a). The Lord Chancellor has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act and has had regard to the matters specified in section 25(3) of that Act.

Citation, commencement, application and interpretation

1. This Order may be cited as the Criminal Defence Service (Funding) (Amendment) Order 2010 and comes into force on 6th April 2010.
2. This Order applies only to proceedings in which a representation order is granted on or after 6th April 2010.
3. In article 2 “representation order” means a document granting a right to representation.

Amendments to the Criminal Defence Service (Funding) Order 2007

4. The Criminal Defence Service (Funding) Order 2007(b) is amended as follows.
5. In article 2, after the definition of “the Commission” insert—

““committal proceedings” means proceedings in a magistrates’ court up to and including a hearing at which an assisted person is committed to the Crown Court for trial under section 6(1) or (2) of the Magistrates’ Courts Act 1980(c);”.
6. In article 3—
 - (a) omit paragraph (1);

(a) 1999 c. 22. The powers were transferred to the Secretary of State by S.I. 2003/1887 and transferred back to the Lord Chancellor by S.I. 2005/3429.
(b) S.I. 2007/1174. Relevant amending instruments are S.I. 2007/3552, 2009/1843 and 2009/2468.
(c) 1980 c. 43.

- (b) in paragraph (2), for “Article 12 of this Order applies” substitute “Articles 12 and 12A of this Order and paragraph 12B of Schedule 2 to this Order and the related entry in the table following paragraph 14 of that Schedule apply”.

7. Omit article 10.

8. After article 12 insert—

“Either way offences

12A.—(1) The Commission may remunerate a litigator for work done in relation to committal proceedings only in accordance with this article.

(2) Where a litigator represents an assisted person in the Crown Court who was committed for trial, the fee payable to that litigator for work done in relation to the committal proceedings, including attending any hearing in the magistrates’ court, is included within the fixed fee payable for such proceedings under Part 3 of Schedule 2.

(3) The Commission may remunerate a litigator for work done in relation to committal proceedings only where—

- (a) that litigator acted for the assisted person in relation to those proceedings; and
- (b) a representation order provides for that litigator to represent the assisted person in the Crown Court.

(4) Where—

- (a) a litigator represents more than one assisted person in relation to related proceedings; and
- (b) any or all of those assisted persons are committed for trial at the same hearing,

the Commission may pay only a single fixed fee in remuneration for representing all those assisted persons in the committal proceedings.”.

9. Schedule 2 is amended as follows—

(a) after paragraph 10(2C) insert—

“(2D) Where a case is transferred to a new litigator after committal for trial and before the assisted person appears in the Crown Court for the first time, the original litigator may claim only the fee referred to in paragraph 12B.”;

(b) after paragraph 12A insert—

“Fees for committal proceedings

12B. The fee payable to a litigator for work done in relation to committal proceedings, including any hearing in the magistrates’ court, is that set out in the table following paragraph 14.”;

(c) in the table following paragraph 14, after the entry “Hearing subsequent to sentence” insert—

“Committal proceedings	12B	£318”.
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Signed by the authority of the Lord Chancellor

9th March 2010

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 (“the 2007 Order”) which makes provision for the funding and remuneration of services provided as part of the Criminal Defence Service. The main purpose of the Order is to provide that the Legal Services Commission may only pay litigators for work done in relation to the committal of an assisted person for trial to the Crown Court in accordance with the Order.

New article 12A(3) of the 2007 Order provides that a litigator can only be paid for such work if the litigator both represented the assisted person in the committal proceedings in the magistrates’ court and holds a representation order to represent that assisted person in the Crown Court following the committal proceedings.

New article 12A(4) of the 2007 Order provides that if several assisted persons are represented by the same litigator in related proceedings and are committed to the Crown Court at the same time, the litigator may only claim a single fixed fee in relation to all such assisted persons.

Article 9 provides for the new fixed fee for committal proceedings to be inserted into the Litigators Graduated Fee Scheme in Schedule 2 to the 2007 Order.

An impact assessment relating to the fee changes introduced by this instrument has been published by the Ministry of Justice as part of “Legal Aid: Funding Reforms – Response to Consultation” and is available from the Ministry of Justice, 102 Petty France, London SW1H 9AJ or at www.justice.gov.uk.

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STATUTORY INSTRUMENTS

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£4.00