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STATUTORY INSTRUMENTS

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**2008 No. 40**

**LEGAL SERVICES COMMISSION,  
ENGLAND AND WALES**

**The Criminal Defence Service (Very  
High Cost Cases) Regulations 2008**

*Made - - - - 11th January 2008*

*Coming into force in accordance with regulation 1*

The Lord Chancellor makes these Regulations in exercise of the powers conferred by section 15(5) of the Access to Justice Act 1999(1).

In accordance with section 25(9) of that Act, a draft of these Regulations has been laid before Parliament and approved by resolution of each House of Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Criminal Defence Service (Very High Cost Cases) Regulations 2008 and come into force on the day after the day on which they are made.

**Interpretation**

2. In these Regulations—

“the Act” means the Access to Justice Act 1999;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“representation order” means a document granting a right to representation;

“Very High Cost Case” means a case in which a representation order has been granted and which the Commission classifies as a very high cost case on the grounds that—

- (a) if the case were to proceed to trial, the trial would in the opinion of the Commission be likely to last for more than 40 days, and the Commission considers that there are no exceptional circumstances which make it unsuitable to be dealt with under its contractual arrangements for Very High Cost Cases; or

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(1) 1999 c.22. “Regulations” is defined in section 26 of the Act as regulations made by the Lord Chancellor. The reference to the Lord Chancellor was changed to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887) and was changed back to the Lord Chancellor by the Transfer of Functions (Lord Chancellor and Secretary of State) Order 2005 (S.I. 2005/3429).

- (b) if the case were to proceed to trial, the trial would in the opinion of the Commission be likely to last no fewer than 25 and no more than 40 days, and the Commission considers that there are circumstances which make it suitable to be dealt with under its contractual arrangements for Very High Cost Cases;

“Very High Cost Case (Crime) Panel” means a panel set up by the Commission from which representatives may be chosen to provide representation in Very High Cost Cases.

### **Application**

3. These Regulations apply to proceedings which the Commission classifies as Very High Cost Cases on or after the date on which the Regulations come into force.

### **Change of representative in Very High Cost Case**

4.—(1) This regulation applies where the representative at the date of the classification of a case as a Very High Cost Case is not a member of a Very High Cost Case (Crime) Panel.

(2) Where this regulation applies—

- (a) the Commission is no longer required to fund representation by the representative referred to in paragraph (1); and
- (b) the individual in whose favour the representation order was granted may select a different representative, from a Very High Cost Case (Crime) Panel, in accordance with the Criminal Defence Service (General) (No. 2) Regulations 2001(2).

### **Revocation**

5. The Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001(3) are revoked.

Signed by authority of the Lord Chancellor

11th January 2008

*Hunt*  
Parliamentary Under Secretary of State  
Ministry of Justice

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(2) S.I. 2001/1437; relevant amendments are in S.I. 2002/712 and 2004/2046.

(3) S.I. 2001/1169, amended by S.I. 2004/598 and 2004/3345.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Individuals who receive publicly funded legal representation in criminal cases may usually choose their representative. An exception is very high cost cases, for which the representative must be a member of a panel set up by the Legal Services Commission. These Regulations provide that where an individual has chosen a representative who is not a member of such a panel and the case then becomes a very high cost case, the Commission need not continue to fund representation by that representative and the individual may choose a new representative, from the panel. They replace the Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001 (S.I. 2001/1169). A regulatory impact assessment of the effects of the reform of the very high cost case regime is available from the Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX ([www.legalservices.gov.uk](http://www.legalservices.gov.uk)).