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STATUTORY INSTRUMENTS

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**1988 No. 423**

**The Legal Aid in Criminal Proceedings (Costs) Regulations 1988**

**Citation, commencement, revocations and transitional provisions**

1.—(1) These Regulations may be cited as the Legal Aid in Criminal Proceedings (Costs) Regulations 1988 and shall come into force on 1st April 1988.

(2) Subject to paragraph (3), the Legal Aid in Criminal Proceedings (Costs) Regulations 1982(1), as amended(2), shall be revoked.

(3) Subject to paragraph (4), these Regulations shall apply for the determination of costs which are payable in respect of work done on or after 1st April 1988 and costs payable in respect of work done before that date shall be determined as if these Regulations had not been made.

(4) The provisions of these Regulations relating to standard fees for solicitors shall only apply for the determination of costs which are payable in respect of proceedings in which—

- (a) a defendant is committed for trial or sentence, or
- (b) a notice of appeal is lodged, on or after 1st April 1988.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires,—

“the Act” means the Legal Aid Act 1974;

“appropriate authority” has the meaning assigned to it by regulation 3;

“collecting court” has the meaning assigned to it by section 32(5) of the Act;

“costs” means, in the case of a solicitor, the fees and disbursements payable under section 37(3) of the Act and, in the case of counsel, the fees payable under that section;

“counsel” means counsel assigned under section 30 or 31(4) of the Act;

“Court of Appeal” means the criminal division of the Court of Appeal or the Courts-Martial Appeal Court as the case may be;

“determining officer” means an officer appointed under regulation 3(3);

“disbursements” means travelling and witness expenses and other out of pocket expenses incurred by a fee-earner in giving legal aid;

“fee-earner” means a solicitor, a legal executive or any clerk who regularly does work for which it is appropriate to make a direct charge to a client;

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(1) S.I.1982/1197

(2) The amending instruments are: S.I. 1983/235, 1049, 1984/112, 264, 1985/333, 1986/273, 444, 1515, 1835 and 1987/369

(3) Section 37 was amended by the Legal Aid Act 1982 (c. 44), section 11(1).

(4) Section 30 was amended by the Bail Act 1976 (c. 63), section 11(8)(9), by the Administration of Justice Act 1977 (c. 38), Schedule 1, paragraph 3, by the Magistrates' Courts Act 1980 (c. 43), section 154, Schedule 7, paragraph 127, (as from a day to be appointed) by the Contempt of Court Act 1981 (c. 49), sections 13, 21(2), Schedule 2, Part I, paragraph 2, by the Legal Aid Act 1982 (c. 44), section 4, by the Criminal Justice Act 1982 (c. 48), sections 29(3), 60(4), and by the Administration of Justice Act 1985 (c. 61), section 46 and section 31 was amended by the Legal Aid Act 1982 (c. 44), Schedule.

“legal aid” means legal aid given under a legal aid order;

“legal aid order” means a legal aid order made under section 28(5) of the Act;

“legal executive” means a fellow of the Institute of Legal Executives;

“proceedings in a magistrates' court” includes, for the purposes of these Regulations, proceedings in connection with an application for bail to the Crown Court after the issuing of a certificate under section 5(6A) of the Bail Act 1976(6);

“registrar” means the registrar of criminal appeals or the registrar of the Courts-Martial Appeal Court as the case may be;

“the 1968 Regulations” means the Legal Aid in Criminal Proceedings (General) Regulations 1968(7);

“solicitor” means a solicitor assigned under section 30 or 31 of the Act;

“trial judge” means the judge who presided at the hearing at which the defendant was substantively dealt with and in respect of which the costs are payable;

“taxing master” means a taxing master of the Supreme Court.

(2) Unless the context otherwise requires, any reference in these Regulations to a Schedule by number means the Schedule so numbered to these Regulations and any reference to a paragraph of a Schedule by number means the paragraph so numbered in that Schedule.

### **The appropriate authority**

3.—(1) Subject to paragraphs (2) and (3), the appropriate authority shall be—

- (a) the registrar in the case of proceedings in the Court of Appeal;
- (b) an officer appointed by the Lord Chancellor in the case of proceedings in the Crown Court;
- (c) the Law Society in the case of proceedings in a magistrates' court.

(2) For costs claimed in respect of advice or assistance given under section 30(5), (6) or (7) of the Act the appropriate authority shall be—

- (a) the registrar where the proceedings in respect of which an appeal was considered were conducted in the Crown Court and, on the advice of the counsel or solicitor assigned, notice of appeal or application for leave to appeal to the Court of Appeal is given (whether or not such appeal is later abandoned);
- (b) the officer appointed by the Lord Chancellor under paragraph (1)(b) in all other cases where the proceedings were conducted in the Crown Court;
- (c) the Law Society in cases where the proceedings were conducted in a magistrates' court.

(3) The appropriate authority may appoint or authorise the appointment of determining officers to act on, its behalf under these Regulations in accordance with directions given by it or on its behalf.

### **General**

4.—(1) Costs in respect of work done under a legal aid order shall be determined by the appropriate authority in accordance with these Regulations.

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(5) Section 28 was amended by the Children Act 1975 (c. 72), section 65, by the Bail Act 1976 (c. 63), section 11(2)(3), (as from a day to be appointed) by the Contempt of Court Act 1981 (c. 49), sections 13, 21(2). Schedule 2, Part I, paragraph 1, by the Legal Aid Act 1982 (c. 44), section 3, by the Criminal Justice Act 1982 (c. 48), section 25(2)(a) and (as from a day to be appointed) by the Criminal Justice Act 1987 (c. 38), section 16, Schedule 2, paragraphs 7, 8.

(6) 1976 c. 63; section 5(6A) was added by the Criminal Justice Act 1982 (c. 48), section 60(3).

(7) S.I. 1968/1231

(2) Representation or advice given before the making of a legal aid order under section 28(2), (3) or (4) of the Act shall be deemed to be work done under that order for the purposes of these Regulations, if the appropriate authority is satisfied that—

- (a) the interests of justice required that the representation or advice be provided as a matter of urgency;
- (b) there was no undue delay in making the application for a legal aid order; and
- (c) the representation or advice was given by the solicitor who was subsequently assigned under the legal aid order.

(3) In determining costs the appropriate authority shall, subject to these Regulations,—

- (a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved, and
- (b) allow fair remuneration for work actually and reasonably done.

### **Claims for costs by solicitors**

**5.—**(1) Subject to regulation 15, no claim by a solicitor for costs in respect of work done under a legal aid order shall be entertained unless the solicitor submits it within three months of the conclusion of the proceedings to which the legal aid order relates.

(2) Subject to paragraph (3), a claim for costs shall be submitted to the appropriate authority in such form and manner as it may direct and shall be accompanied by the legal aid order and any receipts or other documents in support of any disbursements claimed.

(3) A claim shall—

- (a) summarise the items of work done by a fee-earner in respect of which fees are claimed according to the classes specified in regulation 6(1) or in paragraph 4(2) of Schedule 1 Part II;
- (b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person;
- (c) in the case of proceedings in the Crown Court or Court of Appeal, specify, where appropriate, the fee-earner who undertook each of the items of work claimed;
- (d) give particulars of any work done in relation to more than one indictment or a retrial;
- (e) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(4) Where the solicitor claims that—

- (a) representation or advice given before the making of the legal aid order should be deemed to be work done under that order, or
- (b) paragraph 3 of Schedule 1 Part I should be applied in relation to an item of work, he shall give full particulars in support of his claim.

(5) Where there are any special circumstances which should be drawn to the attention of the appropriate authority, the solicitor shall specify them.

(6) The solicitor shall supply such further particulars, information and documents as the appropriate authority may require.

### **Determination of solicitors' fees**

**6.—**(1) Subject to paragraph (5), the appropriate authority may allow work done by fee-earners in the following classes—

- (a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing counsel and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal or case stated;
- (b) advocacy, including applications for bail and other applications to the court;
- (c) attendance at court where counsel is assigned, including conferences with counsel at court;
- (d) travelling and waiting;
- (e) dealing with routine letters written and routine telephone calls.

(2) The appropriate authority shall consider the claim, any further particulars, information or documents submitted by the solicitor under regulation 5 and any other relevant information and shall allow—

- (a) such work as appears to it to have been actually and reasonably done under the legal aid order (including any representation or advice which is deemed to be work done under that order) by a fee-earner, classifying such work according to the classes specified in paragraph (1) as it considers appropriate; and
- (b) such time in respect of each class of work allowed by it (other than dealing with routine letters written and routine telephone calls) as it considers reasonable

and, in any proceedings which are specified in paragraph 1(2) of Schedule 1 Part II, the appropriate authority shall proceed in accordance with the provisions of paragraph 3 of that Part of that Schedule.

(3) Subject to paragraphs (2) and (4), the appropriate authority shall allow fees for work allowed by it under this regulation in accordance with Schedule 1 Part I; provided that, where any work allowed was done after 30th June 1989, it may allow such fees as appear to it to be fair remuneration for such work having regard to the rates specified in that Part of Schedule 1.

(4) In the case of proceedings in the Crown Court and the Court of Appeal, the fees allowed in accordance with Part I of Schedule 1 shall be those appropriate to such of the following grades of fee-earner as the appropriate authority considers reasonable—

- (a) senior solicitor,
- (b) solicitor, legal executive or fee-earner of equivalent experience,
- (c) articled clerk or fee-earner of equivalent experience.

(5) This regulation applies to work in respect of which standard fees are payable under Part II of Schedule 1 only to the extent that that Part specifically so provides.

#### **Determination of solicitors' disbursements**

7.—(1) Subject to the provisions of this regulation, the appropriate authority shall allow such disbursements claimed under regulation 5 as appear to it to have been actually and reasonably incurred; provided that:

- (a) if they are abnormally large by reason of the distance of the court or the assisted person's residence or both from the solicitor's place of business, reimbursement of the expenses may be limited to what would otherwise, having regard to all the circumstances, be a reasonable amount; and
- (b) in the case of an appeal to the Court of Appeal, the cost of a transcript, or any part thereof, of the proceedings in the court from which the appeal lies obtained otherwise than through the registrar shall not be allowed except where the appropriate authority considers that it is reasonable in all the circumstances for such disbursement to be allowed.

(2) Subject to paragraph (3), a solicitor may claim a disbursement in respect of fees of counsel instructed by him in proceedings in a magistrates' court where counsel has not been assigned under section 30 or 31 of the Act.

(3) The appropriate authority shall determine the amount of any disbursement payable under paragraph (2) by estimating the sum which it would have allowed the solicitor under these Regulations by way of costs had he undertaken the case without counsel and shall allow counsel and the solicitor such reasonable costs as do not together exceed that sum.

(4) No question as to the propriety of any step or act in relation to which prior authority has been obtained under regulation 14D of the 1868 Regulations<sup>(8)</sup> shall be raised on any determination of costs, unless the solicitor knew or ought reasonably to have known that the purpose for which the authority was given had failed or become irrelevant or unnecessary before the costs were incurred.

(5) Where costs are actually and reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under regulation 14D of the 1968 Regulations, no question shall be raised on any determination of costs as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.

(6) Where costs are incurred in taking any step or doing any act for which authority may be given under regulation 14D of the 1968 Regulations, without authority to do so having been given or in excess of any fee authorised under regulation 14D of the 1968 Regulations, payment in respect of those costs may nevertheless be allowed on a determination of costs.

### **Claims for fees by counsel**

**8.—**(1) Subject to regulation 15, no claim by counsel for fees for work done under a legal aid order shall be entertained unless counsel submits it within three months of the conclusion of the proceedings to which the legal aid order relates.

(2) Subject to paragraph (3), a claim for fees shall be submitted to the appropriate authority in such form and manner as it may direct.

(3) A claim shall—

- (a) summarise the items of work in respect of which fees are claimed according to the classes specified in regulation 9(4);
- (b) state the dates on which the items of work were done, the time taken where appropriate, the sums claimed and whether the work was done for more than one assisted person;
- (c) give particulars of any work done in relation to more than one indictment or a retrial.

(4) Where counsel claims that—

- (a) it would be inappropriate to allow a standard fee under regulation 9(2); or
- (b) regulation 9(5)(b) should be applied in relation to an item of work, he shall give full particulars in support of his claim.

(5) Where there are any special circumstances which should be drawn to the attention of the appropriate authority, counsel shall specify them.

(6) Counsel shall supply such further particulars, information and documents as the appropriate authority may require.

### **Determination of counsel's fees**

**9.—**(1) The appropriate authority shall consider the claim, any further particulars, information or documents submitted by counsel under regulation 8 and any other relevant information and shall allow such work as appears to it to have been actually and reasonably done.

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(8) Regulation 14D was inserted by S.I. [1983/1863](#)

(2) Where the work allowed has been done by junior counsel in the Crown Court, the appropriate authority shall, subject to paragraph (3), allow such of the standard fees specified in Part I of Schedule 2 as may be applicable to that work, unless it appears to the appropriate authority that the standard fee would be inappropriate taking into account all the relevant circumstances of the case, in which case it shall allow fees in accordance with paragraphs (4) and (5).

(3) The appropriate authority may not allow a standard fee in respect of—

- (a) committals for trial in which the indictment includes counts in respect of an offence which is classified as a class 1 or 2 offence in accordance with directions given by the Lord Chief Justice under section 75 of the Supreme Court Act 1981<sup>(9)</sup>;
- (b) proceedings in any other case—
  - (i) which lasted more than three days or which at the time of listing were reasonably expected to last more than three days;
  - (ii) in which the indictment is disposed of by a plea of guilty but which if contested would reasonably have been expected to last more than three days, unless counsel requests that a standard fee be allowed.

(4) The appropriate authority may, except where standard fees are allowed under paragraph (2), allow any of the following classes of fee to counsel in respect of work allowed by it under this regulation—

- (a) a basic fee for preparation including preparation for a pre-trial review and, where appropriate, the first day's hearing including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views and any other preparation;
- (b) a refresher fee for any day or part of a day during which a hearing continued, including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views and any other preparation;
- (c) subsidiary fees for—
  - (i) attendance at conferences, consultations and views not covered by sub-paragraph (a) or (b);
  - (ii) written advice on evidence, plea, appeal, case stated or other written work;
  - (iii) attendance at pre-trial reviews, applications and appearances (including bail applications and adjournments for sentence) not covered by sub-paragraph (a) or (b).

(5) In the case of proceedings in the Crown Court or a magistrates' court, the appropriate authority shall, except where standard fees are allowed under paragraph (2), allow such fees in respect of such work as it considers reasonable in such amounts as it may determine in accordance with Part II of Schedule 2; provided that:

- (a) where any work allowed was done after 30th June 1989, the appropriate authority may allow such fees in such amounts as appear to it to be fair remuneration for such work having regard to the amounts specified in Part II of Schedule 2; or
- (b) where it appears to the appropriate authority, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with Part II of Schedule 2 would not provide fair remuneration for some or all of the work it has allowed, it may allow such amount as appears to it to be fair remuneration for the relevant work.

(6) In the case of proceedings in the Court of Appeal, the appropriate authority shall allow such fees in respect of such work as it considers reasonable in such amounts as appear to it to be fair remuneration for such work.

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(9) 1981 c. 54

### **Payment of costs**

**10.**—(1) Having determined the costs payable to a solicitor or counsel in accordance with these Regulations, the appropriate authority shall notify the solicitor or counsel of the costs payable and authorise payment accordingly.

(2) Where the costs payable under paragraph (1) are varied as a result of any review, redetermination or appeal made or brought pursuant to these Regulations, then—

- (a) where the costs are increased, the appropriate authority shall authorise payment of the increase;
- (b) where the costs are decreased, the solicitor or counsel shall repay the amount of such decrease; and
- (c) where the payment of any costs of the solicitor or counsel is ordered under regulation 13(14) or 14(8) or under paragraph 8(4) of Schedule 1 Part II, the appropriate authority shall authorise such payment.

(3) Any payment in respect of counsel which is determined under regulation 7(3) shall be paid to counsel direct.

### **Notification of collecting court**

**11.** Having determined the costs payable to a solicitor or counsel in accordance with these Regulations, the appropriate authority shall notify the collecting court of the amount determined in each case in which a legal aid contribution order under section 7 of the Legal Aid Act 1982(10) has been made.

### **Redetermination of costs by appropriate authority**

**12.**—(1) Where—

- (a) a solicitor or counsel is dissatisfied with the costs (other than standard fees allowed under Schedule 1 Part II or under regulation 9(2)) determined under these Regulations by an appropriate authority for proceedings other than proceedings before a magistrates' court; or
- (b) counsel is dissatisfied with the decision to allow standard fees,

he may apply to the appropriate authority to redetermine those costs or to review that decision as the case may be.

(2) Subject to regulation 15, the application shall be made, within 21 days of the receipt of notification of the costs payable under regulation 10(1), by giving notice in writing to the appropriate authority specifying the matters in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the appropriate authority may direct.

(3) The notice of application shall be accompanied by—

- (a) in the case of a solicitor, the particulars, information and documents supplied under regulation 5; and
- (b) in the case of counsel, the particulars, information and documents supplied under regulation 8.

(4) The notice of application shall state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the appropriate authority shall notify the applicant of the time at which it is prepared to hear him or his representative.

(5) The solicitor or counsel shall supply such further particulars, information and documents as the appropriate authority may require.

(6) The appropriate authority shall—

- (a) redetermine the costs, whether by way of increase, decrease or in the amounts previously determined; or
- (b) review the decision to allow standard fees under regulation 9(2) and confirm it or allow fees in accordance with regulation 9(4) and (5),

in the light of the objections made by the applicant or on his behalf and shall notify the applicant of its decision.

(7) The applicant may request the appropriate authority to give reasons in writing for its decision and, if so requested, the appropriate authority shall comply with the request.

(8) Subject to regulation 15, any request under paragraph (7) shall be made within 21 days of receiving notification of the decision.

### **Appeals to a taxing master**

**13.—**(1) Where the appropriate authority has given its reasons for its decision under regulation 12, a solicitor or counsel who is dissatisfied with that decision may appeal to a taxing master.

(2) Subject to regulation 15, an appeal shall be instituted, within 21 days of the receipt of the appropriate authority's reasons, by giving notice in writing to the Chief Taxing Master.

(3) The appellant shall send a copy of any notice given under paragraph (2) to the appropriate authority.

(4) The notice of appeal shall be accompanied by—

- (a) a copy of the written representations given under regulation 12(2);
- (b) the appropriate authority's reasons for its decision given under regulation 12(7); and
- (c) the particulars, information and documents supplied to the appropriate authority under regulation 12.

(5) The notice of appeal shall—

- (a) be in such form as the Chief Taxing Master may direct,
- (b) specify separately each item appealed against, showing (where appropriate) the amount claimed for the item, the amount determined and the grounds of objection to the determination, and
- (c) state whether the appellant wishes to appear or to be represented or whether he will accept a decision given in his absence.

(6) The Chief Taxing Master may, and if so directed by the Lord Chancellor either generally or in a particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.

(7) With a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written or oral representations to be made on his behalf and, if he intends to do so, he shall inform the Chief Taxing Master and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under paragraph (7) shall be sent to the Chief Taxing Master and to the appellant and, in the case of oral representations, the Chief Taxing Master and the appellant shall be informed of the grounds on which such representations will be made.

(9) The appellant shall be permitted a reasonable opportunity to make representations in reply.



(10) The taxing master shall inform the appellant (or his representative) and the Lord Chancellor, where representations have been or are to be made on his behalf, of the date of any hearing and, subject to the provisions of this regulation, may give directions as to the conduct of the appeal.

(11) The taxing master may consult the trial judge, the appropriate authority or the determining officer and may require the appellant to provide any further information which he requires for the purpose of the appeal and, unless the taxing master otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised under regulation 12.

(12) The taxing master shall have the same powers as the appropriate authority under these Regulations and, in the exercise of such powers, may—

- (a) alter the redetermination of the appropriate authority in respect of any sum allowed, whether by increase or decrease as he thinks fit;
- (b) confirm the decision to allow standard fees under regulation 9(2) or allow fees in accordance with regulation 9(4) and (5).

(13) The taxing master shall communicate his decision and the reasons for it in writing to the appellant, the Lord Chancellor and the appropriate authority.

(14) Save where he confirms or decreases the sums redetermined under regulation 12 or confirms a decision to allow standard fees, the taxing master may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by him in connection with the appeal.

### **Appeals to the High Court**

**14.—**(1) A solicitor or counsel who is dissatisfied with the decision of a taxing master on an appeal under regulation 13 may apply to a taxing master to certify a point of principle of general importance.

(2) Subject to regulation 15, an application under paragraph (1) shall be made within 21 days of notification of a taxing master's decision under regulation 13(13).

(3) Where a taxing master certifies a point of principle of general importance, the solicitor or counsel may appeal to the High Court against the decision of a taxing master on an appeal under regulation 13, and the Lord Chancellor shall be a respondent to such an appeal.

(4) Subject to regulation 15, an appeal under paragraph (3) shall be instituted within 21 days of receiving a taxing master's certificate under paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of a taxing master on an appeal under regulation 13, he may, if no appeal has been made by the solicitor or counsel under paragraph (3), appeal to the High Court against that decision, and the solicitor or counsel shall be a respondent to the appeal.

(6) Subject to regulation 15, an appeal under paragraph (5) shall be instituted within 21 days of receiving notification of the taxing master's decision under regulation 13(13).

(7) An appeal under paragraphs (3) and (5) shall be instituted by originating summons in the Queen's Bench Division and shall be heard and determined by a single judge whose decision shall be final.

(8) The judge shall have the same powers as the appropriate authority and a taxing master under these Regulations and may reverse, affirm or amend the decision appealed against or make such other order as he thinks fit.

### **Time limits**

**15.**—(1) Subject to paragraph (2), the period of time within which any act is required or authorised to be done under these Regulations by a solicitor or counsel may, for good reason, be extended by the appropriate authority; provided that where any such act is required or authorised to be done under regulation 13 or 14, the period of time thereby allowed may be extended, for good reason, only by a taxing master or the High Court as the case may be.

(2) Where a solicitor or counsel without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate authority, the Chief Taxing Master or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that costs shall not be reduced unless the solicitor or counsel has been allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

(3) A solicitor or counsel may appeal to the Chief Taxing Master against a decision made under this regulation by an appropriate authority in respect of proceedings other than proceedings before a magistrates' court and such an appeal shall be instituted within 21 days of the decision being given by giving notice in writing to the Chief Taxing Master specifying the grounds of appeal.

### **House of Lords**

**16.**—(1) In the case of proceedings in the House of Lords, the costs payable to a solicitor or counsel under section 37 of the Act shall be determined by such officer as may be prescribed by order of the House of Lords.

(2) Subject to paragraph (1), these Regulations shall not apply to proceedings in the House of Lords.

Dated 4th March 1988.

*Mackay of Clashfern, C*