

1999 No. 345

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Legal Aid in Criminal and Care Proceedings (Costs)
(Amendment) Regulations 1999**

Made - - - - 10th February 1999

Laid before Parliament 15th February 1999

Coming into force 1st April 1999

The Lord Chancellor, in exercise of the powers conferred on him by sections 34 and 43 of the Legal Aid Act 1988(a), having had regard to the matters specified in section 34(9) and having consulted the General Council of the Bar and the Law Society and with the consent of the Treasury, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) Regulations 1999 and shall come into force on 1st April 1999.

Interpretation

2. In these Regulations a reference to any regulation or Schedule by number alone means the regulation or Schedule so numbered in the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989(b).

Transitional provisions

3. These Regulations apply to all proceedings in the Crown Court initiated by committal or otherwise on or after 1st April 1999, and the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989 shall apply to all other proceedings as if these Regulations had not come into force.

Amendments to the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989

4. In regulation 6 the following paragraphs shall be inserted after paragraph (4):—

“(5) In relation to hearings specified in paragraph (5A), work of the class specified in paragraph (1)(c) shall only be allowed in the following circumstances:—

- (a) if the legally assisted person is charged with an offence included in Class 1 or Class 2 as determined pursuant to section 75(2) of the Supreme Court Act 1981(c);
- (b) if the proceedings have been instituted or taken over by the Serious Fraud Office, or are before the Crown Court by reason of a notice of transfer given under section 4 of the Criminal Justice Act 1987(d);

(a) 1988 c. 34; sections 34 and 43 were amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraphs 60, 62 and 63. Section 43 is cited because of the meaning given to “regulations”.
(b) S.I. 1989/343, as amended by S.I. 1990/488, 1991/529 and 2037, 1992/592, 1993/934, 1994/2218, 1996/644 and 2655, 1997/1010 and 1998/1191.
(c) 1981 c. 54.
(d) 1987 c. 38; there are no relevant amendments.

- (c) if the legally assisted person was a child or a young person within the meaning of section 107 of the Children and Young Persons Act 1933(a) at the time when the Crown Court acquired jurisdiction in the case (by committal, notice of transfer or otherwise);
- (d) if the legally assisted person was unable to understand the proceedings or give adequate instructions to his advocate because of his inadequate knowledge of English, mental illness or other mental or physical disability;
- (e) if the legally assisted person was likely if convicted to receive a custodial sentence, or
- (f) if the case has been certified as requiring attendance for the whole or any part of the hearing pursuant to regulation 54B of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989(b).

(5A) The following hearings in the Crown Court are specified for the purposes of paragraph (5): trials, hearings of cases listed for pleas of guilty following a pleas and directions hearing, sentencing hearings following committals for sentence and the hearing of appeals against conviction or sentence.

(5B) The circumstance referred to in paragraph (5)(e) shall only justify the allowing of attendance on

- (a) a day of a trial on which it was reasonably expected that the legally assisted person would be sentenced if convicted, and
- (b) if different, the day on which the legally assisted person was in fact sentenced;

and where a doubt arises whether attendance should be allowed by reason of that circumstance, the doubt shall be resolved in the assisted person's favour.

(5C) The circumstance referred to in paragraph (5)(f) shall only justify the allowing of attendance to the extent specified in the certificate.”.

5. The following sub-paragraph shall be inserted after paragraph 1A of Part I of Schedule 1:–

“(1B) In relation to any hearing specified in regulation 6(5A), the fee specified in paragraph 1(1)(b) for attendance at court where counsel assigned shall only be payable in the circumstances and to the extent provided by regulation 6(5) to (5C).”.

6. The following sub-paragraph shall be inserted after paragraph 4(4) of Part II of Schedule 1:–

“(4A) In relation to any hearing specified in regulation 6(5A), the fee specified in the Table for attendance at court where counsel assigned shall only be payable in the circumstances and to the extent provided by regulation 6(5) to (5C).”.

7. In paragraph 4(10) of Part II of Schedule 1, the following shall be substituted for the words from “£30.00” to the end:–

- (a) £60.00 in a case which is prepared for trial, whether or not a trial takes place (£64.00 for a solicitor whose office is situated within legal aid area 1);
- (b) £30.00 in every other case (£32.00 for a solicitor whose office is situated within legal aid area 1).”.

8. The following paragraph shall be inserted after paragraph 19 of Schedule 3:–

“19A. The additional fee set out in the Table following paragraph 21 shall be payable in respect of each day of the main hearing in any case mentioned in paragraph 2 on which the advocate appears unattended by an authorised litigator or representative.”.

(a) 1933 c. 12 as amended by the Criminal Justice Act 1991 (c. 53) section 68 and Schedule 8 paragraph 1(3).

(b) S.I. 1989/344; relevant amendments are S.I. 1991/1925, 1997/1485 and 1999/346.

9. The Table following paragraph 21 of Schedule 3 shall be amended as follows:–

(a) the following entry shall be inserted immediately after the entry for “Listening to or viewing tapes etc.”:–

“Additional fee for unattended advocate, case within paragraph 2	19A	38.50 per day	38.50 per day	38.50 per day”
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(b) in the existing entry for “Additional fee for unattended advocate”, after “advocate” there shall be inserted “, case within paragraph 3”.

Signed by authority of the Lord Chancellor

Dated 4th February 1999

G.W. Hoon
Minister of State,
Lord Chancellor’s Department

We consent

Dated 10th February 1999

Bob Ainsworth
Jane Kennedy
Two of the Lords Commissioners
of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 by restricting remuneration for attendance on authorised advocates in Crown Court hearings to cases falling within one or more of six specified circumstances. The first four circumstances relate to the seriousness of the offence or the disability of the legally assisted person, and justify attendance throughout the trial or other hearing; the fifth relates to the sentence which may be imposed and justifies attendance on the last day of any trial or (if different) the sentencing hearing; the sixth follows from the power to certify a case as requiring attendance which is conferred by the Legal Aid in Criminal and Care Proceedings (General) (Amendment) Regulations 1999 which come into effect at the same time as these Regulations. Additional remuneration is provided for advocates who appear unattended, and for authorised litigators who prepare a case in which the advocate is to appear unattended.

£1.50

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