

2001 No. 3341

**LEGAL SERVICES COMMISSION,
ENGLAND AND WALES**

**The Criminal Defence Service (Funding)
(Amendment No. 3) Order 2001**

Made - - - - - 5th October 2001

Laid before Parliament 5th October 2001

Coming into force - - 29th October 2001

The Lord Chancellor, in exercise of the powers conferred on him by sections 14(3) and 105 of, and paragraph 9 of Schedule 14 to, the Access to Justice Act 1999(a), having had regard to the matters specified in section 25(3) and having consulted the General Council of the Bar and the Law Society, makes the following Order:

Citation and commencement

1. This Order may be cited as the Criminal Defence Service (Funding) (Amendment No. 3) Order 2001 and shall come into force on 29th October 2001.

Interpretation

2. In this Order, a reference to an article or a Schedule by number alone is a reference to the article or Schedule so numbered in the Criminal Defence Service (Funding) Order 2001(b).

Transitional provisions

3.—(1) This Order shall apply only in respect of proceedings in which a representation order is made on or after 29th October 2001.

(2) In respect of all other proceedings the Criminal Defence Service (Funding) Order 2001 shall take effect as if this Order had not been made.

Amendments to the Criminal Defence Service (Funding) Order 2001

4. After article 4 insert—

“4A. The fees referred to in article 4 for work carried out in the magistrates’ court shall be assessed and paid at the rate set out in the Contract as appropriate to that category of work.”.

5. In paragraph 7 of Schedule 1:

(a) at the beginning of sub-paragraph (1) insert—

“Subject to sub-paragraph (1A),”;

(a) 1999 c. 22.

(b) S.I. 2001/855, as amended by S.I. 2001/1143 and 2001/1256.

(b) after sub-paragraph (1) insert—

“(1A) No claim may be submitted for an interim payment in respect of work for which a graduated fee calculated in accordance with Schedule 4 Part 2 is payable and, if a claim is so submitted, no interim payment shall be allowed in respect of that work.”;

(c) in sub-paragraph (2) insert “relevant” before “qualifying” wherever that word appears; and

(d) for sub-paragraph (3) substitute—

“(3) The qualifying period for the purposes of this paragraph shall be:

(a) 20 days for an interim payment allowed under sub-paragraph (2)(a); and

(b) 26 days for an interim payment allowed under sub-paragraph (2)(b) where a case does not qualify for a graduated fee under paragraph 2(2) of Schedule 4,

and a day shall qualify as part of the relevant qualifying period, whether or not the days within the qualifying period are continuous, if the hearing begins at any time on that day.”.

6. In paragraph 12 of Schedule 1:

(a) in sub-paragraph (7) for “sub-paragraph (6)” substitute “sub-paragraph (8)”;

(b) in sub-paragraph (7)(f) for “pursuant to CDS Regulations” substitute “in accordance with sub-paragraphs (10A) and (10B)”;

(c) after sub-paragraph (10) insert—

“(10A) A judge of the Crown Court shall have power to certify that attendance on the advocate instructed in the proceedings is required for the whole or any part of a hearing and, in deciding whether a case should be so certified, the judge shall have regard to the following factors, in addition to any other factors which he considers to be relevant:

(a) on which days (if any) the attendance of a significant number of defence witnesses is likely to be required;

(b) where the hearing is a trial, the amount of documentary evidence likely to be adduced on behalf of the defence;

(c) the likelihood of the legally assisted person disrupting the proceedings if the advocate were to appear alone;

(d) whether the advocate represents more than one legally assisted person;

(e) on which days (if any) the advocate is likely to require notes of the proceedings to be taken for the proper conduct of the defence.

(10B) An application for a certificate under sub-paragraph (10A) may be made at or at any time after the pleas and directions hearing or, if there is to be no pleas and directions hearing, at or at any time after the listing of the first hearing of the case; and in either case the application may be made orally or in writing.”; and

(d) delete sub-paragraphs (12) and (13).

7. In paragraph 14 of Schedule 1:

(a) in sub-paragraph (1) after “Subject to” insert—

“sub-paragraph (1A) and”;

(b) after sub-paragraph (1) insert—

“(1A) Where a confiscation hearing under section 2 of the Drug Trafficking Act 1994(a) or section 71 of the Criminal Justice Act 1988(b) is to be held more than 28 days after:

(a) the conclusion of the trial to which the representation order relates; or

(b) the entering of a guilty plea

a claim by an advocate for a graduated fee calculated in accordance with Schedule 4 shall be entertained as soon as the trial has concluded or the guilty plea has been entered.”

8. In paragraph 20(1) of Schedule 1:

(a) for paragraph (c)(iii) substitute—

“(iii) an hourly fee under sub-paragraph (a) or (b) of paragraph 19(1) of Schedule 4, paragraph 29 of Schedule 4 or paragraph 30 of Schedule 4”;

(a) 1994 c. 37.

(b) 1988 c. 33; section 71 was amended by section 1 of the Proceeds of Crime Act 1995 (c. 11).

- (b) at the end of paragraph (c) before “he may apply” insert—
 - “; or
 - (d) an advocate in proceedings in the Crown Court is dissatisfied with the classification, under paragraph 5 of Schedule 4, of an offence not specifically listed in the Table of Offences at the end of Schedule 4 Part 5 but deemed to fall within Class H”; and
- (c) after “he may apply to the appropriate officer” insert “to reclassify the offence,”.

9. In paragraph 1 of Schedule 4:

- (a) in sub-paragraph (1) in the definition of “preparation”, delete “(b) the first conference with the assisted person;” and “(g) conferences with the assisted person, after the first such conference;”;
- (b) in sub-paragraph (2) after “committal” insert “or served prosecution”; and
- (c) for sub-paragraph (4) substitute—
 - “(4) A reference to the Table of Offences in this Schedule refers to the Table of Offences at the end of Part 5 and a reference to a Class of Offence in this Schedule refers to the Class in which that offence is listed in the Table of Offences.”.

10. In paragraph 2 of Schedule 4:

- (a) in sub-paragraph (1) delete all of the words after “on indictment”;
- (b) for sub-paragraph (2) substitute—
 - “(2) This Schedule does not apply to a case which goes to trial where the trial exceeds 25 days, unless it was accepted by the court at the pleas and directions hearing that the trial would not exceed 25 days and the trial did not in fact exceed 30 days.”; and
- (c) for sub-paragraph (5) substitute—
 - “(5) Where following a trial an order was made for a new trial and the same trial advocate appeared for an assisted person at both trials then, in respect of the new trial, the trial advocate shall receive a graduated fee calculated in accordance with paragraph 7 except that each of the elements of the formula set out in paragraph 7 shall be reduced by:
 - (a) forty per cent, where the new trial started within one calendar month of the conclusion of the first trial; and
 - (b) twenty five per cent, where the new trial did not start within one calendar month of the conclusion of the first trial;

except for the refresher element which shall not be so reduced.

(5A) Where following a trial an order was made for a new trial and a different trial advocate appeared for the assisted person at each trial then, in respect of each trial, the trial advocate shall receive a graduated fee calculated in accordance with paragraph 7.”.

11. For paragraph 4 of Schedule 4 substitute—

- “4. This Schedule does not apply to any case where:
 - (a) the representation order provides for the services of more than two trial advocates; or
 - (b) the length of the main hearing, or the combined length of the main hearing and of any hearing to which paragraph 2(6), 13 or 14 applies exceeds 25 days, unless it was accepted by the court at the pleas and directions hearing that the trial would not exceed 25 days and the trial did not in fact exceed 30 days.”.

12. In paragraph 5 of Schedule 4:

- (a) delete sub-paragraph (1);
- (b) for sub-paragraph (2)(a) substitute—
 - “(a) every indictable offence falls within the Class under which it is listed in the Table of Offences and, subject to sub-paragraph (3) below, indictable offences not specifically so listed shall be deemed to fall within Class H;”;
- (c) for sub-paragraph (2)(b) substitute—
 - “(b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977(a), incitement to commit an indictable offence and attempts to

(a) 1977 c. 45.

commit an indictable offence contrary to section 1 of the Criminal Attempts Act 1981(a), fall within the same Class as the substantive offence to which they relate;”;

(d) after sub-paragraph (2)(e) insert—

“(f) where in a case on indictment there is a hearing to determine the question of whether an assisted person is unfit to plead or unfit to stand trial, that hearing falls within the same Class as the indictable offence to which it relates or within Class D, whichever the trial advocate shall elect; and

(g) where in a case on indictment a restriction order is made under section 41 of the Mental Health Act 1983(b), the offence falls within Class A, regardless of the Class under which the offence would be listed in the Table of Offences but for this paragraph.”; and

(e) after sub-paragraph (2) insert—

“(3) If an advocate in proceedings in the Crown Court is dissatisfied with the classification within Class H of an indictable offence not listed in the Table of Offences, he may apply to the appropriate officer to reclassify the offence.”.

13. For paragraph 7(1) of Schedule 4 substitute—

“(1) The amount of the graduated fee for a single trial advocate representing one assisted person being tried on one indictment in the Crown Court shall be calculated according to the following formulae:

(a) for trials not exceeding 10 days—

$$G = B + (d \times D) + (e \times E) + (w \times W) + (d \times R); \text{ and}$$

(b) for trials exceeding 10 days—

$$G = B + (d \times D) + (e \times E) + (w \times W) + (d \times R) + d \times (D \times (d-9) \times g).”.$$

14. In paragraph 7(2) of Schedule 4:

(a) in the first line for “formula” substitute “formulae”; and

(b) after the definition of “R” insert—

“g is the length of trial gradient specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed.”.

15. In paragraph 8 of Schedule 4:

(a) after “refresher,” insert “length of trial gradient,”; and

(b) after “paragraph 5” insert “, the length of trial”.

16. For the Table of Fees and Uplifts following paragraph 8 of Schedule 4, substitute—

TABLE OF FEES AND UPLIFTS

(a) Trials (1-10 days) – Queen’s Counsel					
Offence falling within	Basic fee	Refresher	Length of trial uplift: per day	Evidence uplift: per page	Witnesses uplift: per witness
Class A	£1,850.00	£518.00	£783.00	£1.66	£7.04
Class B	£975.00	£365.00	£550.00	£2.48	£16.42
Class C	£975.00	£365.00	£550.00	£2.48	£16.42
Class D	£975.00	£365.00	£550.00	£2.48	£16.42
Class E	£975.00	£365.00	£550.00	£2.48	£16.42
Class F	£975.00	£365.00	£550.00	£2.48	£16.42
Class G	£975.00	£365.00	£550.00	£2.48	£16.42
Class H	£975.00	£365.00	£550.00	£2.48	£16.42
Class I	£975.00	£365.00	£550.00	£2.48	£16.42

(a) 1981 c. 47.

(b) 1983 c. 20.

(b) Trials (1-10 days) – other trial advocates					
Offence falling within	Basic fee	Refresher	Length of trial uplift: per day	Evidence uplift: per page	Witnesses uplift: per witness
Class A	£740.00	£207.00	£313.00	£0.66	£2.82
Class B	£250.00	£136.00	£143.00	£1.48	£12.22
Class C	£250.00	£136.00	£143.00	£1.48	£12.22
Class D	£390.00	£146.00	£220.00	£0.99	£6.57
Class E	£210.00	£124.00	£109.00	£1.21	£5.10
Class F	£210.00	£124.00	£109.00	£1.21	£5.10
Class G	£370.00	£146.00	£210.00	£2.02	£16.64
Class H	£250.00	£136.00	£143.00	£1.48	£12.22
Class I	£250.00	£136.00	£143.00	£1.48	£12.22

(c) Trials (11-25 days) – Queen’s Counsel						
Offence falling within	Basic fee	Refresher	Length of trial uplift: per day	Evidence uplift: per page	Witnesses uplift: per witness	Length of trial gradient
Class A	£1,850.00	£518.00	£783.00	£1.66	£7.04	1%
Class B	£975.00	£365.00	£550.00	£2.48	£16.42	3%
Class C	£975.00	£365.00	£550.00	£2.48	£16.42	3%
Class D	£975.00	£365.00	£550.00	£2.48	£16.42	3%
Class E	£975.00	£365.00	£550.00	£2.48	£16.42	3%
Class F	£975.00	£365.00	£550.00	£2.48	£16.42	3%
Class G	£975.00	£365.00	£550.00	£2.48	£16.42	3%
Class H	£975.00	£365.00	£550.00	£2.48	£16.42	3%
Class I	£975.00	£365.00	£550.00	£2.48	£16.42	3%

(d) Trials (11-25 days) – other trial advocates						
Offence falling within	Basic fee	Refresher	Length of trial uplift: per day	Evidence uplift: per page	Witnesses uplift: per witness	Length of trial gradient
Class A	£740.00	£207.00	£313.00	£0.66	£2.82	5%
Class B	£250.00	£136.00	£143.00	£1.48	£12.22	15%
Class C	£250.00	£136.00	£143.00	£1.48	£12.22	15%
Class D	£390.00	£146.00	£220.00	£0.99	£6.57	10%
Class E	£210.00	£124.00	£109.00	£1.21	£5.10	15%
Class F	£210.00	£124.00	£109.00	£1.21	£5.10	15%
Class G	£370.00	£146.00	£210.00	£2.02	£16.64	10%
Class H	£250.00	£136.00	£143.00	£1.48	£12.22	15%
Class I	£250.00	£136.00	£143.00	£1.48	£12.22	15%

17. In paragraph 11(1) after “appearing at” insert “a hearing that was listed as”.

18. In paragraph 13 of Schedule 4:

(a) after sub-paragraph (1)(c) insert—

“(d) any hearing relating to the question of the admissibility as evidence of any material.”; and

(b) at the end of sub-paragraphs (3)(a) and (b) insert “and length of the trial”.

19. In paragraph 14(2) of Schedule 4 in paragraph 3(a) and (b) after “category of trial advocate” insert “and length of the trial”.

20. In paragraph 16 of Schedule 4:

(a) in paragraph (c) after “bail” insert—

“, custody time limit applications”; and

(b) in paragraph (d) after “only” insert—
 “, including applications relating to the date of the trial.”.

21. After paragraph 16 of Schedule 4 insert—

“16A. The fixed fee set out in the Table following paragraph 22 as appropriate to the category of trial advocate shall be payable in respect of each occasion on which the case was listed for trial but did not proceed on the day for which it was listed by reason of an application for postponement by the prosecution or the defence.”.

22. At the end of paragraph 17(3) of Schedule 4 insert “and length of the trial”.

23. In paragraph 18(3) of Schedule 4 after “following paragraph 22” insert “as appropriate to the category of trial advocate and length of the trial”.

24. In paragraph 19 of Schedule 4:

(a) in sub-paragraph (1) after “appropriate to the category of trial advocate” insert “and length of the trial”;

(b) after sub-paragraph (1)(b) insert—

“or

(c) attendance by the trial advocate at pre-trial conferences with the assisted person not held at court, provided that such conferences do not exceed the number and length set out in sub-paragraph (1A);”;

(c) after sub-paragraph (1) insert—

“(1A) The number and length of conferences for which the hourly fee set out in sub-paragraph (1) above shall be payable is as follows:

(a) for trials that do not exceed 10 days, cracked trials where it was accepted by the court at the pleas and directions hearing that the trial would not exceed 10 days and any guilty pleas, one conference not exceeding 2 hours;

(b) for trials lasting not less than 11 and not more than 15 days, two conferences each not exceeding 2 hours;

(c) for trials lasting not less than 16 and not more than 20 days, 3 conferences each not exceeding 2 hours; and

(d) for trials lasting not less than 21 and not more than 25 days, 4 conferences each not exceeding 2 hours.”

25. For the Table following paragraph 22 substitute the following Table—

TABLE

<i>Type of work</i>	<i>Paragraph providing for fee</i>	<i>Fee for Queen's Counsel</i>	<i>Fee for leading advocate (other than Queen's Counsel)</i>	<i>Fee for Junior or sole advocate (other than Queen's Counsel)</i>
		£	£	£
Paper Pleas and directions basic fee		30.00	30.00	30.00
Pleas and directions hearing or pre-trial review – basic fee	11(1)	188.00	127.00	100.00
Attendance where bench warrant issued	12(1)	250.00	170.00	100.00
Appearing at listed trial that did not proceed – basic fee	12(2)	275.00	187.00	110.00

<i>Type of work</i>	<i>Paragraph providing for fee</i>	<i>Fee for Queen's Counsel</i>	<i>Fee for leading advocate (other than Queen's Counsel)</i>	<i>Fee for Junior or sole advocate (other than Queen's Counsel)</i>
		£	£	£
Work for which daily or half daily fee is payable	13 and 14	Guilty pleas, cracked trials and trials lasting 1-10 days: 330.00 per day 185.00 per half day Trials lasting 11-25 days: 495.00 per day 277.50 per half day	Guilty pleas, cracked trials and trials lasting 1-10 days: 250.00 per day 140.00 per half day Trials lasting 11-25 days: 375.00 per day 210.00 per half day	Guilty pleas, cracked trials and trials lasting 1-10 days: 178.25 per day 99.50 per half day Trials lasting 11-25 days: 267.45 per day 149.25 per half day
Appearing at deferred sentencing hearing	15(2)(a)	300.00	204.00	120.00
Appearing at other sentencing hearing	15(2)(b)	150.00	102.00	60.00
Other appearances	16	116.00	79.00	46.50
Appearing at listed trial that did not proceed because of adjournment application	16A	116.00	79.00	55.00
Work for which hourly fee is payable	17, 18, 19(1) and (2), 29 and 30	Guilty pleas, cracked trials and trials lasting 1-10 days: 62.50 per hour Trials lasting 11-25 days: 75.00 per hour	Guilty pleas, cracked trials and trials lasting 1-10 days: 47.00 per hour Trials lasting 11-25 days: 56.40 per hour	Guilty pleas, cracked trials and trials lasting 1-10 days: 33.50 per hour Trials lasting 11-25 days: 40.20 per hour
Listening to or viewing tapes etc	19(3)	27.15 per 10 minutes	18.50 per 10 minutes	10.90 per 10 minutes
Additional fee for unattended advocate, case within paragraph 2	20	38.50 per day	38.50 per day	38.50 per day
Appearing in appeal against conviction	21(1)	292.25	199.00	117.00
Appearing at a committal for sentence hearing	21(1)	184.50	125.00	85.00
Appearing within other cases within paragraph 3	21(1)	184.50	125.00	73.50

<i>Type of work</i>	<i>Paragraph providing for fee</i>	<i>Fee for Queen's Counsel</i>	<i>Fee for leading advocate (other than Queen's Counsel)</i>	<i>Fee for Junior or sole advocate (other than Queen's Counsel)</i>
		£	£	£
Additional fee for unattended advocate	21(2)	19.25	19.25	19.25
Noting brief	22	—	—	100.00 per day

26. After paragraph 25 of Schedule 4 insert—

“**26.** Where a trial exceeds 25 days but does not exceed 30 days and it was accepted by the court at the pleas and directions hearing that the trial would not exceed 25 days, the trial advocate shall receive:

- (a) a graduated fee calculated in accordance with the formula in paragraph 7(1)(b) as if the trial had lasted 25 days; and
- (b) the refresher specified in paragraph 8 as appropriate to the offence, increased by forty per cent, for each of the days by which the trial exceeds 25 days.

27. Where in any case a hearing is held to determine the question of whether the assisted person is unfit to plead or to stand trial or where there is a subsequent trial of the issue once the assisted person has been found unfit (a “fitness hearing”):

- (a) if a trial on indictment is held at any time thereafter, the length of the fitness hearing shall be included in determining the length of the trial for the calculation of the graduated fee in accordance with Part 2 of this Schedule;
- (b) if a trial on indictment is not held thereafter by reason of the assisted person being found unfit to plead or to stand trial, the trial advocate shall receive either a graduated fee calculated in accordance with Part 2 of this Schedule as appropriate to the length of the fitness hearing or a graduated fee calculated in accordance with Part 3 of this Schedule as appropriate for representing an assisted person in a cracked trial, whichever the trial advocate shall elect; and
- (c) if at any time the assisted person pleads guilty to the indictable offence, the trial advocate shall be paid either a graduated fee calculated in accordance with Part 2 of this Schedule as appropriate to the length of the fitness hearing or a graduated fee calculated in accordance with Part 3 of this Schedule as appropriate for representing an assisted person in a guilty plea, whichever the trial advocate shall elect.

28.—(1) Where in any case on indictment an advocate is retained solely for the purpose of cross-examining a vulnerable witness under sections 34 and 35 of the Youth Justice and Criminal Evidence Act 1999(a), he shall receive a graduated fee calculated in accordance with Part 2 of this Schedule.

(2) For the purposes of this paragraph the length of trial uplift and refresher shall be as set out in the Table following paragraph 8 as appropriate to the number of days of attendance at court by the advocate.

29.—(1) Where in any case on indictment a person is instructed solely for the purpose of providing written or oral advice, he shall be paid in respect of that advice a fee calculated from the reasonable number of hours of preparation for that advice using the rates of hourly fees set out in the table following paragraph 22 as appropriate to the category of trial advocate and length of trial.

(2) A person claiming a fee for advice under this paragraph may apply to the appropriate officer to redetermine the fee under paragraph 20(1)(c) of Schedule 1 and he shall supply such information and documents as may be required by the appropriate officer as proof of the number of hours of preparation.

(a) 1999 c. 23.

30.—(1) Where in any case on indictment a person is instructed to appear at a sentencing hearing solely for the purpose of applying to the court to mitigate the assisted person’s sentence, he shall be paid in respect of that appearance the fee payable under paragraph 15 as appropriate to the nature of the sentencing hearing together with a fee calculated from the reasonable number of hours of preparation for that appearance using the rates of hourly fees set out in the table following paragraph 22 as appropriate to the category of trial advocate and length of trial.

(2) A person claiming an hourly preparation fee under this paragraph may apply to the appropriate officer to redetermine such hourly fee under paragraph 20(1)(c) of Schedule 1 and he shall supply such information and documents as may be required by the appropriate officer as proof of the number of hours of preparation.”.

27. The Table of Offences at the end of Part 5 of Schedule 4 shall be amended as follows:

- (a) under the heading “Class B: Offences involving serious violence or damage, and serious drugs offences” insert the following entries—

Endangering the safety of an aircraft	Aviation Security Act 1982 s. 2(1)(b)	1982 c. 36
Racially-aggravated arson (not endangering life)	Crime and Disorder Act 1998 s. 30(1)	1998 c. 37

- (b) under the heading “Class C: Lesser offences involving violence or damage, and less serious drugs offences” insert the following entries—

Racially-aggravated assault	Crime and Disorder Act 1998 s. 29(1)	1998 c. 37
Racially-aggravated criminal damage	Crime and Disorder Act 1998 s. 30(1)	1998 c. 37

- (c) under the heading “Classes F and G: Other offences of dishonesty” insert:

- (i) the following entry after the heading “The following offences are always in Class G”—

Undischarged bankrupt being concerned in a company	Insolvency Act 1986 s. 360	1986 c. 45
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; and

- (ii) the following entries after the heading “The following offences are in Class G if the value exceeds £30,000 and in Class F otherwise”—

VAT offences	Value Added Tax Act 1994 s. 72(1-8)	1994 c. 23
Fraudulent evasion of duty	Customs and Excise Management Act 1979 s. 170(1)(b)	1979 c. 2

(d) under the heading “Class H: Miscellaneous lesser offences” insert—

Breach of anti-social behaviour order	Crime and Disorder Act 1998 s. 1(10)	1998 c. 37
Breach of sex offender order	Crime and Disorder Act 1998 s. 2(8)	1998 c. 37
Racially-aggravated public order offence	Crime and Disorder Act 1998 s. 31(1)	1998 c. 37
Racially-aggravated harassment/putting another in fear of violence	Crime and Disorder Act 1998 s. 32(1)	1998 c. 37
Having an article with a blade or point in a public place	Criminal Justice Act 1988 s. 139	1988 c. 33
Breach of harassment injunction	Protection from Harassment Act 1997 s. 3(6)	1997 c. 40
Putting people in fear of violence	Protection from Harassment Act 1997 s. 4(1)	1997 c. 40
Breach of restraining order	Protection from Harassment Act 1997 s. 5(5)	1997 c. 40
Being drunk on an aircraft	Civil Aviation Act 1982 s. 60 and 61	1982 c. 16

; and

(e) under the heading “Class I: Offences against public justice and similar offences” insert—

Conspiring to commit offences outside the United Kingdom	Criminal Justice (Terrorism and Conspiracy) Act 1998 s. 5	1998
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Dated 5th October 2001

Lord Irvine of Lairg, C.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Criminal Defence Service (Funding) Order 2001 which made provision for the funding and remuneration of the Criminal Defence Service under Part 1 of the Access to Justice Act 1999. The effects of the amendments are as follows:

- To set out the rate of fees for work carried out in the magistrates' court where a case is sent for trial to the Crown Court under section 51 of the Crime and Disorder Act 1998 (c. 37).
- To prohibit interim payments in respect of work for which a graduated fee is payable and to increase the qualifying period for the payment of interim payments to advocates.
- To set out the power of judges of the Crown Court to certify that attendance by a solicitor on an advocate is required.
- To allow claims by advocates for graduated fees to be made before the conclusion of the proceedings where a confiscation hearing is to be held more than 28 days after the conclusion of the trial or after the entering of a guilty plea.
- To make separate provision for the payment of hourly fees for attendance by trial advocates at conferences with the assisted person. Conferences with an assisted person not held at court are restricted in number and capped in length.
- To extend the payment provisions in Schedule 4, for advocacy on behalf of assisted persons in the Crown Court, to trials lasting up to 30 days and to all indictable offences, regardless of the length of the prosecution evidence or the number of witnesses.
- To provide for the payment of an adjusted graduated fee to advocates where, following a trial, an order was made for a new trial and the same trial advocate appeared for an assisted person at both trials.
- To introduce a new graduated fee formula for trials lasting 11-25 days and to set out the adjusted graduated fee payable for hearings lasting not less than 25 and not more than 30 days, where it was accepted by the court at the pleas and directions hearing that the trial would not exceed 25 days.
- To revise, in Schedule 4, the Table of Fees and Uplifts in Part 2, the Table following paragraph 22 and the Table of Offences at the end of Part 5.
- To establish the circumstances in which attendance by trial advocates at hearings relating to the admissibility of evidence will be included in the length of the main hearing for the purpose of calculating remuneration and the circumstances in which a fixed fee will be payable in respect of such hearings.
- To introduce a fixed fee for attendance by the trial advocate at court where the trial did not proceed because of an application for postponement.
- To allow the payment of a graduated fee calculated in accordance with Part 2 or Part 3 of Schedule 4, as appropriate, for attendance by advocates at hearings held to determine the question of whether the assisted person is unfit to plead or unfit to be tried.
- To include attendance by the trial advocate at court solely for the purpose of cross-examining a vulnerable witness within the graduated fee provisions of Schedule 4.
- To introduce payment, on an hourly fee basis, for the provision by a trial advocate of written or oral advice.
- To provide for the payment of a fixed fee and special preparation fee for appearance by a trial advocate at a sentencing hearing solely to mitigate the assisted person's sentence.

This Order makes other minor and consequential amendments.

2001 No. 3341

**LEGAL SERVICES COMMISSION,
ENGLAND AND WALES**

**The Criminal Defence Service (Funding)
(Amendment No. 3) Order 2001**

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