
STATUTORY INSTRUMENTS

2004 No. 2045

**The Criminal Defence Service
(Funding) (Amendment) Order 2004**

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Criminal Defence Service (Funding) (Amendment) Order 2004 and shall come into force on 2nd August 2004.

(2) In this Order reference to an article or Schedule by number alone means the article or Schedule so numbered in the Criminal Defence Service (Funding) Order 2001⁽¹⁾.

Transitional provisions

2. This Order applies for the purposes of—

- (a) articles 3, 7, 8, 9 and 10 of this Order only in respect of proceedings in which a representation order is made on or after 2nd August 2004;
- (b) articles 4, 5 and 11 of this Order only in respect of work done under a representation order on or after 2nd August 2004,

and in all other circumstances, the Criminal Defence Service (Funding) Order 2001 shall have effect as if this Order had not been made.

Amendments to the Criminal Defence Service (Funding) Order 2001

3. In article 2, for the definition of “a Very High Cost Case” substitute—

““a Very High Cost Case” is a case where if the case proceeds to trial, that trial would be likely to last for 41 days or longer, and any question as to whether the case fulfils this criterion shall be determined by the Commission.”.

4. In article 9 for “Where” substitute “Subject to article 9A, where”.

5. After article 9 insert—

“9A.—(1) This article applies to Very High Cost Cases in respect of which a representation order has been made on or before 1st July 2004.

(2) Where this article applies, the Commission may elect to apply the provisions for remuneration in:

- (a) Schedule 4, to the whole or any part of an advocate’s claim for costs,
- (b) Schedule 2, to the whole or any part of a solicitor’s claim for costs so far as they are not met by (a),

which would otherwise be subject to remuneration in accordance with article 9.”.

6. In paragraph 1(5) in Part 2 of Schedule 2—

⁽¹⁾ S.I. 2001/855; relevant amending instruments are S.I. 2001/1256 and S.I. 2001/3341.

- (a) for “paragraph 12(6)” substitute “paragraph 12(8)”; and
 - (b) for “paragraph 12(5) to 12(7)” substitute “paragraph 12(7) to (10)”.
7. In Part 1 of Schedule 4—
- (a) in paragraph 2, for sub-paragraph (2) substitute—
 - “(2) This Schedule does not apply to a case which goes to trial where the trial exceeds 40 days, unless:
 - (a) it was accepted by the court at the pleas and directions hearing that the trial would not exceed 40 days but it did; or
 - (b) the Commission was notified and accepted that the trial would not exceed 40 days but it did; or
 - (c) the Commission has made an election under article 9A to apply this Schedule to the whole or any part of a Very High Cost Case.”; and
 - (b) in paragraph 4, for sub-paragraph (b) substitute—
 - “(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 40 days, unless:
 - (i) it was accepted by the court at the pleas and directions hearing that the trial would not exceed 40 days but it did; or
 - (ii) the Commission was notified and accepted that the trial would not exceed 40 days but it did; or
 - (iii) the Commission has made an election under article 9A to apply this Schedule to the whole or any part of a Very High Cost Case.”.
8. In Part 2 of Schedule 4—
- (a) in paragraph 7(1)—
 - (i) in sub-paragraph (a), after “10 days” insert “and trials lasting 26 to 40 days”; and
 - (ii) in sub-paragraph (b), for “exceeding 10 days” insert “lasting 11 to 25 days”;
 - (b) in paragraph 7(2), in the definition of “e”, after “first 50” insert “up to a maximum of 10,000;”; and
 - (c) in paragraph 8—
 - (i) for tables (c) and (d) substitute the tables as set out in Schedule 1 to this Order; and
 - (ii) after table (d) insert the tables as set out in Schedule 2 to this Order.
9. In Part 4 of Schedule 4—
- (a) after paragraph 17 insert—
 - “**17A.**—(1) Where this paragraph applies, a special preparation fee may be claimed in addition to the graduated fee payable under this Schedule.
 - (2) This paragraph applies where, in any case on indictment in the Crown Court in respect of which a graduated fee is payable under this Schedule, the pages of prosecution evidence as defined in paragraph 1(2) in Part 1 of this Schedule exceeds 10,000 and the appropriate officer considers it reasonable to make a payment in excess of the graduated fee payable under this Schedule.
 - (3) The amount of the special preparation fee shall be calculated from the number of hours' preparation in excess of the amount normally done for cases of the same type, 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 the trial.

- (4) A trial advocate claiming a special preparation fee shall supply such information and documents as may be required by the appropriate officer in support of his claim.”;
- (b) in paragraph 19(1A)—
- (i) at the end of sub-paragraph (c) omit “and”; and
- (ii) after sub-paragraph (d) insert—
- “;
- (e) for trials lasting not less than 26 days and not more than 35 days, 5 conferences each not exceeding 2 hours;
- (f) for trials lasting not less than 36 days and not more than 40 days, 6 conferences each not exceeding 2 hours;
- (g) for trials lasting not less than 26 days and not more than 35 days, where the Commission has made an election under article 9A to apply this Schedule, 5 conferences each not exceeding 2 hours; and
- (h) for trials lasting not less than 36 days, where the Commission has made an election under article 9A to apply this Schedule, 6 conferences each not exceeding 2 hours.”; and
- (c) in the table following paragraph 22, after “Trials lasting 11–25 days”, wherever those words appear, insert “and trials lasting 26–40 days”.
- 10.** In paragraph 26 in Part 5 of Schedule 4—
- (a) omit from “but does not exceed 30 days” to “would not exceed 25 days,”; and
- (b) for sub-paragraph (b) substitute—
- “(b) the refresher specified in paragraph 8 as appropriate to the offence increased by:
- (i) forty per cent for each of the days by which the trial exceeds 25 days but does not exceed 50 days; and
- (ii) fifty per cent for each of the days by which the trial exceeds 50 days.”.
- 11.** In Schedule 5, for tables 1, 3 and 4 substitute the tables as set out in Schedule 3 to this Order.

Signed

Date 29th July 2004

Falconer of Thoroton, C
Secretary of State for Constitutional Affairs