

**2004 No. 2045**

**LEGAL SERVICES COMMISSION, ENGLAND AND  
WALES**

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

<i>Made</i> - - - -	<i>29th July 2004</i>
<i>Laid before Parliament</i>	<i>30th July 2004</i>
<i>Coming into force</i> - -	<i>2nd August 2004</i>

The Secretary of State, in exercise of the powers conferred by section 14(3) of the Access to Justice Act 1999(a) and now vested in him(b), 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, 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(c).

**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.”.

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(a) 1999 c.22.

(b) By virtue of the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), articles 4(1) and 9, Schedule 1 and Schedule 2 paragraph 11(1)(a).

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

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—

- (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

*Falconer of Thoroton, C*  
Secretary of State for Constitutional Affairs

Date 29th July 2004

## SCHEDULE 1

Article 8(c)(i)

### (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	£518	£979	£2.08	£8.80	1%
Class B	£975	£365	£688	£3.10	£20.53	3%
Class C	£975	£365	£688	£3.10	£20.53	3%
Class D	£975	£365	£688	£3.10	£20.53	3%
Class E	£975	£365	£688	£3.10	£20.53	3%
Class F	£975	£365	£688	£3.10	£20.53	3%
Class G	£975	£365	£688	£3.10	£20.53	3%
Class H	£975	£365	£688	£3.10	£20.53	3%
Class I	£975	£365	£688	£3.10	£20.53	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	£311	£376	£0.79	£3.38	5%
Class B	£250	£204	£172	£1.78	£14.66	15%
Class C	£250	£204	£172	£1.78	£14.66	15%
Class D	£390	£219	£264	£1.19	£7.88	10%
Class E	£210	£186	£131	£1.45	£6.12	15%
Class F	£210	£186	£131	£1.45	£6.12	15%
Class G	£370	£219	£252	£2.42	£19.97	10%
Class H	£250	£204	£172	£1.78	£14.66	15%
Class I	£250	£204	£172	£1.78	£14.66	15%

## SCHEDULE 2

Article 8(c)(ii)

### (e) Trials (26-40 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	£518	£1,126	£2.08	£8.80
Class B	£975	£365	£996	£3.10	£20.53
Class C	£975	£365	£996	£3.10	£20.53
Class D	£975	£365	£996	£3.10	£20.53
Class E	£975	£365	£996	£3.10	£20.53
Class F	£975	£365	£996	£3.10	£20.53
Class G	£975	£365	£996	£3.10	£20.53
Class H	£975	£365	£996	£3.10	£20.53
Class I	£975	£365	£996	£3.10	£20.53

### (f) Trials (26-40 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	£311	£657	£0.79	£3.38
Class B	£250	£204	£558	£1.78	£14.66
Class C	£250	£204	£558	£1.78	£14.66
Class D	£390	£219	£660	£1.19	£7.88
Class E	£210	£186	£425	£1.45	£6.12
Class F	£210	£186	£425	£1.45	£6.12
Class G	£370	£219	£630	£2.42	£19.97
Class H	£250	£204	£558	£1.78	£14.66
Class I	£250	£204	£558	£1.78	£14.66

SCHEDULE 3

Article 11

**Table 1 Hourly rates for preparation**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<b>Solicitor, employed barrister, legal executive or other fee earner</b>	<b>Category 1 cases (fraud and terrorism only)</b>	<b>Category 2 cases</b>	<b>Category 3 cases</b>	<b>Category 4 cases (non-fraud only)</b>	<b>Standard rates</b>
	<b>£ per hour</b>	<b>£ per hour</b>	<b>£ per hour</b>	<b>£ per hour</b>	<b>£ per hour</b>
Level A	180	140	110	110	55.75
Level B	140	110	90	90	47.25
Level C	100	80	70	70	34.00
Pupil/junior	50	40	35	35	
<b>Counsel</b>					
Queen’s Counsel	180	140	110	110	
Leading junior advocate	140	110	90	90	
Led junior advocate	100	80	70	70	
Junior advocate alone	110	90	80	80	
Second led junior advocate	70	55	50	-	
<b>Solicitor Advocate</b>					
Leading level A	180	140	110	110	
Led level A	140	110	90	90	
Leading level B	140	110	90	90	
Led level B	115	95	75	75	
Level A alone	145	120	100	100	
Level B alone	125	105	85	85	
Second advocate	70	55	50	50	

**Table 3 Daily rates for advocacy**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
	<b>Category 1 cases (fraud and terrorism only)</b>	<b>Category 2 cases</b>	<b>Category 3 cases</b>	<b>Category 4 cases (non-fraud only)</b>
	<b>£ per day</b>	<b>£ per day</b>	<b>£ per day</b>	<b>£ per day</b>
Queen’s Counsel	600	600	600	600
Leading junior	450	450	450	450
Led junior	300	300	300	300
Junior alone	330	330	330	330
Second led junior	150	150	150	-
Noter	125	125	125	125

**Table 4 Preliminary hearings**

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	<b>Amount payable for hearing</b>
	<b>£</b>
Queen's Counsel	140
Leading junior	100
Led junior	70
Junior alone	80
Second led junior	40
Noter	35

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## EXPLANATORY NOTE

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

This Order gives the Legal Services Commission a discretion to apply the graduated fees applicable to Crown Court cases as set out in Schedule 4 to the Criminal Defence Service (Funding) Order 2001 (“the 2001 Order”) to Very High Cost Cases.

It also amends the definition of a Very High Cost Case as provided for in the 2001 Order to a case where if it proceeds to trial, that trial would be likely to last for 41 days or longer.

The main amendments to the 2001 Order are as follows:

- article 6 makes an amendment to correct a drafting error in Schedule 2 to the 2001 Order
- article 8(c)(i) substitutes current tables in paragraph 8 in Part 2 of Schedule 4 with revised tables and article 8(c)(ii) provides for new tables in paragraph 8
- article 9(a) provides for a new special preparation fee where the pages of prosecution evidence exceed 10,000
- article 11 substitutes current tables in Schedule 5 with revised tables.

This Order also makes a number of amendments which are consequential on the above.

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