

2012 No. 750

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Criminal Defence Service (Funding) (Amendment) Order
2012**

Made - - - -	<i>7th March 2012</i>
Laid before Parliament	<i>9th March 2012</i>
Coming into force - -	<i>1st April 2012</i>

The Lord Chancellor makes this Order in exercise of the powers conferred by sections 14(3) and 25(8A) of the Access to Justice Act 1999(a).

The Lord Chancellor has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act and has had regard to the matters specified in section 25(3) of that Act.

Citation, commencement, application and interpretation

1.—(1) This Order may be cited as the Criminal Defence Service (Funding) (Amendment) Order 2012 and comes into force on 1st April 2012.

(2) In this Order—

- (a) “the 2007 Order” means the Criminal Defence Service (Funding) Order 2007(b).
- (b) unless the context requires otherwise, a reference to an article or schedule by number alone is a reference to the article or schedule so numbered in the 2007 Order.

(3) This Order applies to proceedings in which a representation order is granted on or after 1st April 2012.

Amendments to the 2007 Order

2. The 2007 Order is amended as follows.

3. In article 3—

- (a) in paragraph (2), for “12 and 12A and 15A” substitute “6(2), 12, 12A, 14(1) and 15A”; and
- (b) in paragraph (3), for “6, 14 to 24” substitute “6(1) and (3) to (8), 14(2) to (8), 15 to 24”.

(a) 1999 c.22. The reference in section 6 to the Lord Chancellor was changed to the Secretary of State by S.I.2003/1887 and changed back to the Lord Chancellor by S.I. 2005/3429. Section 25(8A) was inserted by section 153 of the Coroners and Justice Act 2009 (c.25).

(b) S.I. 2007/1174, amended by S.I. 2007/3552, 2008/957 and 2930, 2009/1843 and 2086, 2010/679 and 1181 and 2011/2065. S.I. 2010/1181 was amended by S.I.2010/1358.

4. In article 6(2) and article 14(1), after “Crown Court” insert “or in proceedings in a magistrates’ court which are subsequently committed to the Crown Court”.

5. In paragraph 1(1) of Schedule 1, in the definition of “standard appearance”—

- (a) after sub-paragraphs (f) and (g) delete “or”;
- (b) in sub-paragraph (h), for “or paragraph 12(1)” substitute “, paragraph 12(1) or paragraph 29”; and
- (c) after sub-paragraph (h) insert—
 - “(i) a preliminary hearing; or
 - (j) a hearing, whether contested or not, relating to breach of bail, failure to surrender to bail or execution of a bench warrant.”.

6. For paragraphs 1(2) and (2A) of Schedule 1 substitute—

“(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court shall be determined in accordance with paragraphs (2A) to (2C).

(2A) The number of pages of prosecution evidence includes all—

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interviews with the assisted person; and
- (d) records of interviews with other defendants,

which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.

(2B) Subject to paragraph (2C), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

(2C) A documentary or pictorial exhibit which—

- (a) has been served by the prosecution in electronic form; and
- (b) has never existed in paper form,

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking into account the nature of the document and any other relevant circumstances.”.

7. In paragraph 2 of Schedule 1, omit the sub-paragraph (5) immediately following sub-paragraph (5A).

8. In paragraph 14 of Schedule 1, for sub-paragraph (1)(c) substitute—

“(c) a documentary or pictorial exhibit is served by the prosecution in electronic form where—

- (i) the exhibit has never existed in paper form; and
- (ii) the appropriate officer—
 - (aa) does not consider it appropriate to include the exhibit in the pages of prosecution evidence; and
 - (bb) considers it reasonable to make a payment in respect of the exhibit in excess of the graduated fee.”.

9. In the table following paragraph 19 of Schedule 1—

- (a) omit the entry for “Cracked Trial or Guilty plea (at the election of the defendant)” in the table substituted by article 30 and Part 4 of Schedule 3 to the Criminal Defence (Funding) (Amendment) Order 2011; and
- (b) at the end of the table insert—
 - (i) in the first column “Hearing for mitigation of sentence”;

- (ii) in the second column “29”;
- (iii) in the third column “260 per day”;
- (iv) in the fourth column “173 per day”; and
- (v) in the fifth column “108 per day”.

10. In the table following paragraph 25 of Schedule 1, as substituted by article 30 of and Part 5 of Schedule 3 to the Criminal Defence (Funding) (Amendment) Order 2011, in row G of the section headed “Junior Acting Alone” for—

- (a) “266” substitute “225”;
- (b) “285” substitute “241”.

11. In paragraph 29(1) of Schedule 1, for “payable under paragraph 12” substitute “specified in the Table following paragraph 19”.

12. For paragraphs 1(2) and (2A) of Schedule 2 substitute—

“(2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court shall be determined in accordance with paragraphs (2A) to (2C).

(2A) The number of pages of prosecution evidence includes all—

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interviews with the assisted person; and
- (d) records of interviews with other defendants,

which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.

(2B) Subject to paragraph (2C), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

(2C) A documentary or pictorial exhibit which—

- (a) has been served by the prosecution in electronic form; and
- (b) has never existed in paper form,

is not included within the number of pages of prosecution evidence unless the appropriate officer decides that it would be appropriate to include it in the pages of prosecution evidence taking into account the nature of the document and any other relevant circumstances.”.

13. In the table following paragraph 10 of Schedule 2,

- (a) in the entry for “Transfer after trial and before sentencing hearing (original litigator)”—
 - (i) for the words in the first column substitute “Transfer after trial or guilty plea and before sentencing hearing (original litigator)”; and
 - (ii) in the third column, for “Trial” substitute “Trial, Cracked trial or Guilty plea as appropriate”;
- (b) in the entry for “Transfer after trial and before sentencing hearing (new litigator)”, for the words in the first column substitute “Transfer after trial or guilty plea and before sentencing hearing (new litigator)”; and
- (c) in the entry for “Transfer after retrial and before sentencing hearing (original litigator)”—
 - (i) for the words in the first column substitute “Transfer after retrial or cracked retrial and before sentencing hearing (original litigator)”; and
 - (ii) in the third column, for “Trial” substitute “Trial or cracked trial as appropriate”; and
- (d) in the entry for “Transfer after retrial and before sentencing hearing (new litigator)”, for the words in the first column substitute “Transfer after retrial or cracked retrial and before sentencing hearing (new litigator)”.

14. In paragraph 15 of Schedule 2, for sub-paragraph (1)(a) substitute—

- “(a) a documentary or pictorial exhibit is served by the prosecution in electronic form where—
- (i) the exhibit has never existed in paper form; and
 - (ii) the appropriate officer does not consider it appropriate to include the exhibit in the pages of prosecution evidence;”.

15. In Schedule 5, after paragraph 1(2), insert—

- “(3) The reference to “Category 1A” cases is a reference to the following proceedings—
- (a) either way guilty pleas;
 - (b) indictable only cases heard in the Youth Court;
 - (c) proceedings (other than committal proceedings) relating to either way offences which are discontinued or withdrawn or where the prosecution offer no evidence; and
 - (d) proceedings (other than committal proceedings) relating to either way offences which result in a bind over.
- (4) The reference to “Category 1B” cases is a reference to the following proceedings—
- (a) summary only guilty pleas;
 - (b) uncontested proceedings arising out of a breach of an order of a magistrates’ courts (including proceedings in a magistrates’ court relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence);
 - (c) proceedings (other than committal proceedings) relating to summary offences which are discontinued or withdrawn or where the prosecution offer no evidence;
 - (d) proceedings (other than committal proceedings) relating to summary offences which result in a bind over;
 - (e) proceedings arising out of a deferment of sentence (including any subsequent sentence hearing) under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000(a);
 - (f) proceedings prescribed under Regulation 3(2) of the Criminal Defence Service (General) (No.2) Regulations 2001(b), except where the case was listed and fully prepared for a contested hearing to decide whether an order should be made; and
 - (g) proceedings relating to either way offences which must be tried in a magistrates’ court in accordance with section 22 of the Magistrates’ Courts Act 1980(c).
- (5) The reference to “Category 2” cases is a reference to—
- (a) contested trials;
 - (b) proceedings which were listed and fully prepared for trial in a magistrates’ court but are disposed of by a guilty plea on the day of trial before the opening of the prosecution case;
 - (c) proceedings which were listed and fully prepared for trial in a magistrates’ court but are discontinued or withdrawn or where the prosecution offers no evidence or which result in a bind over on the day of trial before the opening of the prosecution case;

(a) 2000 c.6. Section 1 was amended by the Criminal Justice Act 2003 (c.44), section 278 and Schedule 23, paragraph 1 and by S.I. 2008/912.

(b) 2001/1437; the relevant amending instruments are S.I.2002/912; 2004/1196; 2005/2784; 2008/725; 2009/2167 and 2777; 2010/22 and 2011/1453.

(c) 1980 c.43. Section 22 was amended by the Criminal Justice Act 1988 (c.33) sections 38 and 170 and Schedule 16; by the Criminal Justice Act 1991 (c.53) section 68, Schedule 8, paragraph 6; by the Criminal Justice and Public Order Act 1994 (c.33) sections 46 and 168 and Schedule 11 and by the Aggravated Vehicle-Taking Act 1992 (c.11), section 2.

- (d) contested proceedings relating to a breach of an order of a magistrates' court (including proceedings relating to a breach of a Crown Court community rehabilitation order, community punishment order or suspended sentence);
- (e) proceedings where mixed pleas are entered; and
- (f) proceedings prescribed under Regulation 3(2) of the Criminal Defence Service (General) (No.2) Regulations 2001 where the case was listed and fully prepared for a contested hearing to decide whether an order should be made.

(6) The reference to "Category 3" cases is a reference to committal proceedings which are discontinued or withdrawn."

16. In the Higher and Lower Standard Fees table in Schedule 5—

- (a) for "Category 1 (either way)", in both places where it appears, substitute "Category 1A"; and
- (b) for "Category 1 (summary only)", in both places where it appear, substitute "Category 1B".

Signed by authority of the Lord Chancellor

7th March 2012

J Djanogly
Parliamentary Under Secretary of State
Department

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Criminal Defence Service (Funding) Order 2007. It clarifies the fact that disbursements incurred by litigators in a magistrates' court in a case subsequently committed or sent to the Crown Court are payable in accordance with the terms of the Order. It includes a preliminary hearing and a hearing relating to breach of bail, failure to surrender to bail or execution of a bench warrant within the definition of standard appearance.

The Order clarifies the proportion of the graduated fee that is payable to a litigator in retrials and on transfer to or from another litigator in certain circumstances. It also sets out in detail the cases included in the various categories referred to in the Higher and Lower Fees Table in Schedule 5 (Magistrates' Courts Rates).

The Order provides that evidence served by the prosecution in electronic form forms part of the pages of prosecution evidence except as specified in the Order.

The Order provides for the payment of a fixed fee to an advocate following the grant of representation after conviction for the purposes of mitigation only.

The Order corrects minor errors in paragraph 2 of Schedule 1 and the table following paragraph 25 of Schedule 1.

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STATUTORY INSTRUMENTS

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