

Focus on CDS

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THE REGULATORY FRAMEWORK

This special edition of Focus on CDS contains the full text of all the statutory instruments which underpin the Criminal Defence Service. Also included for ease of reference are extracts of the Access to Justice Act 1999 relevant to the CDS and an overview of the regulations, together with offence code guidance

At the time of printing certain regulations (those shown without SI numbers) have not yet been made or laid before Parliament and are therefore in draft form. Also the Criminal Defence Service (Advice and Assistance) Bill has not yet completed its parliamentary passage but the amendments which that Bill is expected to make to section 13 of the Access to Justice Act 1999 are shown in the extracts of that Act. As soon as remaining statutory materials are finalised they will be posted on our website at www.legalservices.gov.uk.

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OFFENCE CODE GUIDANCE

This document consists of three parts:

1. Guidance
2. A table of codes and offence headings
3. A description of the relevant offences by heading

1.0 Guidance

There are a total of 12 offence codes. These are numbered 1 through to 12. Each number has been assigned an offence heading. This heading is what is reported on the CDS6, by using the appropriate number.

Offence codes will only be recorded for the Criminal Investigations Class of Work and those Matters and Cases in the Criminal Proceedings Class of Work where a Representation Order was issued or Advocacy Assistance was provided at an early hearing.

You should not record an offence code when making a consolidated standby, court duty solicitor or file review claim or for any claim made in relation to the Appeals and Reviews, Prison Law or Associated CLS Classes of Work.

Recording Offence Codes For Criminal Investigations

Where your client has been charged or warned, you should determine which heading the principal offence or charge that your client faces is listed under. Cross-reference the heading with the offence code table and enter the appropriate number in the Claim Code field on the CDS6.

Where you cannot locate the appropriate charge, you should select the code **12**.

Where your client has been released without charge, you must record the heading that covers the offence that he or she was interviewed in relation to.

Where you have given free-standing Advice and Assistance only, you must record the heading that covers the offence that advice was given in relation to.

Where you have only given police station telephone advice, you must record the heading that covers the offence that advice was given in relation to. If you do not know what the nature of the matter was, you must record the code **12**.

If you advise a witness or any other person who is not subject to an investigation or proceedings the record the code **12**.

Recording Offence Codes For Criminal Proceedings

Where your client has been charged or summonsed, you must record the final charge that your client faced. For example, where your client faces a contested hearing, the heading of the principal charge that your client was convicted on or was found not guilty on must be recorded on the CDS6.

You must not record the original charge laid by the police / CPS unless this has not altered during the course of the proceedings.

Where your client is facing multiple charges, you should identify the most serious charge.

2.0 Offence Codes Table

1	Offences against the person
2	Homicide and related grave offences
3	Sexual offences and offences against children
4	Robbery
5	Burglary
6	Criminal damage
7	Theft
8	Fraud and forgery and other offences of dishonesty
9	Public order offences and offences against public justice
10	Offences in relation to supply, production and possession of drugs
11	Driving offences
12	Other offences

3.0 Offence Code Descriptions

1 Offences against the person

- Assault (common) (Criminal Justice Act 1988 s.39)
- Battery (common) (Criminal Justice Act 1988 s.39)
- Assault occasioning actual bodily harm (Offences against the Person Act 1861 s.47)
- Wounding or inflicting grievous bodily harm (Offences against the Person Act 1861 s.20)

- Wounding or causing grievous bodily harm with intent (Offences against the Person Act 1861 s.18)
- Making threats to kill (Offences against the Person Act 1861 s.16)
- Racially aggravated assaults (Crime and Disorder Act 1998 s.29 (1))
- Assault on constable in execution of duty (Police Act 1996 s.89)
- Resisting or wilfully obstructing constable (Police Act 1996 s.89)
- Assault with intention to resist arrest (Offences against the Person Act 1861 s.38)
- Attempting to choke, suffocate, strangle, etc (Offences against the Person Act 1861 s.21)
- Endangering the safety of railway passengers (Offences against the Person Act 1861 s.32, 33, 34)
- Causing bodily injury by explosives (Offences against the Person Act 1861 s.28)
- Using gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to grievous bodily harm (Offences against the Person Act 1861 s.29)
- Placing explosives etc., with intent to do bodily injury to any person (Offences against the Person Act 1861 s.30)
- Making or having gunpowder etc., with intent to commit or enable any person to commit a felony (Offences against the Person Act 1861 s.64)
- Causing miscarriage by poison, instrument (Offences against the Person Act 1861 s.58)
- Supplying instrument etc. to cause miscarriage (Offences against the Person Act 1861 s.59)
- Concealment of birth (Offences against the Person Act 1861 s.60)
- Administering chloroform, laudanum etc. (Offences against the Person Act 1861 s.22)
- Administering poison etc. so as to endanger life (Offences against the Person 1861 s.23)
- Administering poison with intent to injure etc. (Offences against the Person Act 1961 s.24)
- Circumcision of females (Prohibition of Female Circumcision Act 1985 s.1)

2 Homicide and related grave offences

- Murder (common law)
- Manslaughter (common law)
- Causing death by dangerous driving (Road Traffic Act 1991 s.1)
- Causing death by careless driving while under the influence of drink or drugs (Road Traffic Act 1988 s.3A)
- Aggravated vehicle taking resulting in death (Theft Act 1968 s.12A)
- Killing in pursuance of suicide pact (Homicide Act 1957 s.4)
- Complicity to suicide (Suicide Act 1961 s.2)
- Soliciting to murder (Offences against the Person Act 1861 s.4)
- Child destruction (Infant Life (Preservation) Act 1929 s.1 (1))
- Infanticide (Infanticide Act 1938 s.1 (1))

- Abortion (Offences against the Person Act 1861 s.58)
- Supplying or procuring means for abortion (Offences against the Person Act 1861 s.59)
- Concealment of birth (Offences against the Person Act 1861 s.60)
- Causing explosion likely to endanger life or property (Explosive Substances Act 1883 s.2)
- Attempt to cause explosion, making or keeping explosive etc. (Explosive Substances Act 1883 s.3)
- Making or possession of explosive under suspicious circumstances (Explosive Substances Act 1883 s.4)
- Bomb Hoaxes (Criminal Law Act 1977 s.51)
- Kidnapping (common law)
- Hostage taking (Taking of Hostages Act 1982 s.1)
- False imprisonment (common law)
- Torture (Criminal Justice Act 1988 s.134)
- Contamination of goods with intent (Public Order Act 1986 s.38)
- Placing wood etc. on railway (Malicious Damage Act 1861 s.35)
- Exhibiting false signals etc. (Malicious Damage Act 1861 s.47)
- Offender armed or disguised (Customs and Excise Management Act 1979 s.86)
- Assisting illegal entry or harbouring persons (Immigration Act 1971 s.25)
- Acquiring, possessing etc. the proceeds of criminal conduct (Criminal Justice Act 1988 s.93)

Firearms Offences

- Possession of firearm without certificate (Firearms Act 1968 s.1)
- Possession or acquisition of shotgun without certificate (Firearms Act 1968 s.2)
- Dealing in firearms (Firearms Act 1968 s.3)
- Shortening of shotgun or possession of shortened shotgun (Firearms Act 1968 s.4)
- Possession or acquisition of certain prohibited weapons etc. (Firearms Act 1968 s.5)
- Possession of firearm with intent to injure/endanger life (Firearms Act 1968 s.16)
- Possession of firearm or imitation firearm with intent to cause fear of violence (Firearms Act 1968 s.16A)
- Use of firearm to resist arrest (Firearms Act 1968 s.17)
- Possession of firearm with criminal intent (Firearms Act 1968 s.18)
- Carrying loaded firearm in public place (Firearms Act 1968 s.19)
- Possession of firearm without certificate (Firearms Act 1968 s.19)
- Trespassing with a firearm (Firearms Act 1968 s.20)
- Possession of firearms by person convicted of crime (Firearms Act 1968 s.21 (4))
- Acquisition by or supply of firearms to person denied them (Firearms Act 1968 s.21 (5))

- Failure to comply with certificate when transferring firearm (Firearms Act 1968 s.42)
- Shortening of smooth bore gun (Firearms Amendment Act 1988 s.6 (1))

Prison Offences

- Permitting an escape (common law)
- Rescue (common law)
- Escape (common law)
- Escaping from lawful custody without force (common law)
- Breach of prison (common law)
- Prison mutiny (Prison Security Act 1992 s.1)
- Assaulting prison officer whilst possessing firearm etc. (Criminal Justice Act 1991 s.90)
- Harbours escaped prisoners (Criminal Justice Act 1961 s.22)
- Assisting prisoners to escape (Prison Act 1952 s.39)

Terrorist Offences

- Offences under the Prevention of Terrorism (Temporary Provisions) Act 1989.
- Offences against international protection of nuclear material (Nuclear Material (Offences) Act 1983 s.2)
- Offences under the Northern Ireland (Emergency Provisions) Act 1991)

3 Sexual offences and offences against children

- Rape (Sexual Offences Act 1956 s.1 (1))
- Acts outraging public decency (common law)
- Buggery of male of 16 or over without consent (Sexual Offences Act 1956 s.2)
- Buggery of male under 16, woman or animal (Sexual Offences Act 1956 s.12)
- Buggery of males of 21 or over otherwise than in private (Sexual Offences Act 1956 s.12)
- Buggery by male of 21 or over of consenting male of 16-18 (Sexual Offences Act 1956 s.12)
- Assault with intent to commit buggery (Sexual Offences Act 1956 s.16)
- Indecent assault on a woman (Sexual Offences Act 1956 s.14)
- Indecent assault on a man (Sexual Offences Act 1956 s.15)
- Incest (Sexual Offences Act 1956 s.10)
- Incitement to commit incest (Criminal Law Act 1977 s.54)
- Sexual intercourse with girl under 13 (Sexual Offences Act 1956 s.5)
- Sexual intercourse with girl under 16 (Sexual Offences Act 1956 s.6)

- Allowing or procuring child under 16 to go abroad to perform (Children and Young Person Act 1933 ss.25, 26)
- Permitting girl under 13 to use premises for sexual intercourse (Sexual Offences Act 1956 s.25)
- Permitting girl under 16 to use premises for intercourse (Sexual Offences Act 1956 s.26)
- Sexual intercourse with defective (Sexual Offences Act 1956 s.7)
- Procurement of a defective (Sexual Offences Act 1956 s.9)
- Taking out of possession (Sexual Offences Act 1956 ss.17, 19, 20, and 21)
- Permitting defective to use premises for intercourse (Sexual Offences Act 1956 s.27)
- Abduction of woman by force (Sexual Offences Act 1956 s.17)
- Abduction of unmarried girl under 18 from parent (Sexual Offences Act 1956 s.19)
- Abduction of unmarried girl under 16 from parent (Sexual Offences Act 1956 s.20)
- Abduction of defective from parent (Sexual Offences Act 1956 s.21)
- Child abduction by connected person (Child Abduction Act 1984 s.1)
- Child abduction by other person (Child Abduction Act 1984 s.2)
- Man living on earnings of prostitution (Sexual Offences Act 1956 s.30)
- Woman exercising control over prostitute (Sexual Offences Act 1956 s.31)
- Living on earnings of male prostitution (Sexual Offences Act 1956 s.5)
- Causing or encouraging prostitution of girl under 16 (Sexual Offences Act 1956 s.28)
- Causing or encouraging prostitution of defective (Sexual Offences Act 1956 s.29)
- Keeping brothel and related offences (Sexual Offences Act ss. 33, 34, 35, and 36)
- Keeping a disorderly house (common law: Disorderly Houses Act 1751 s.8)
- Causing prostitution of women (Sexual Offences Act 1956 s.22)
- Detention of woman in brothel or other premises (Sexual Offences Act 1956 s.24)
- Procurement of girl under 21 (Sexual Offences Act 1956 s.23)
- Soliciting (Street Offences Act 1959 s.1)
- Solicitation for immoral purposes (Sexual Offences Act 1956 s.32)
- Procurement of intercourse by threats etc. (Sexual Offences Act 1956 s.2)
- Procurement of a woman by false pretences (Sexual Offences Act 1956 s.3)
- Procuring others to commit homosexual acts (Sexual Offences Act 1967 s.4)
- Indecency with children under 14 (Indecency with Children Act 1960 s.1 (1))
- Gross indecency between male of 18 or over and male under 18 (Sexual Offences Act 1956 s.13)

- Taking, having etc. indecent photographs of children (Protection of Children Act 1978 s.1)
- Administering drugs to obtain intercourse (Sexual Offences Act 1956 s.4)
- Sexual intercourse with patients (Mental Health Act 1959 s.128)
- Ill treatment of persons of unsound mind (Mental Health Act 1983 s.127)
- Bigamy (Offences against the Person Act 1861 s.57)
- Abuse of position of trust (Sexual Offences (Amendment) Act 2000 s.3)
- Abandonment of children under two (Offences against the Person Act 1861 s.27)
- Cruelty to persons under 16 (Children and Young Persons Act 1933 s.1)

4 Robbery

- Robbery (Theft Act 1968 s.8 (1))
- Armed robbery (Theft Act 1968 s.8 (1))
- Assault with weapon with intent to rob (Theft Act 1968 s.8 (2))

5 Burglary

- Burglary (domestic) (Theft Act 1968 S.9 (3)(a))
- Going equipped to steal (Theft Act 1968 s.25)
- Burglary (non-domestic) (Theft Act 1968 s.9 (3)(b))
- Aggravated burglary (Theft Act 1968 s.10)

6 Criminal Damage and Arson

- Criminal Damage (Criminal Damage Act 1971 s.1 (1))
- Destroying or damaging property with the intention or recklessness as to endanger life (Criminal Damage Act 1971 s.1 (2))
- Aggravated criminal damage (Criminal Damage Act 1971 s.1 (2))
- Threats to destroy or damage property (Criminal Damage Act 1971 s.2)
- Racially aggravated criminal damage (Crime and Disorder Act 1998 s.30)
- Possessing anything with intent to destroy or damage property (Criminal Damage Act 1971 s.3)
- Possessing bladed article/instrument (Criminal Justice Act 1988 s.139)
- Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse (Prevention of Crime Act 1953 s.1)
- Arson (Criminal Damage Act 1971 s.1 (3))
- Aggravated arson (Criminal Damage Act 1971) s.1 (2), (3))
- Racially aggravated arson (Crime and Disorder Act 1998 s.30)

7 Theft

- Theft (Theft Act 1968 s.1)
- Taking conveyance without authority (Theft Act 1968 s.12)
- Taking or riding a pedal cycle without authority (Theft Act 1968 s.12 (5) and s.12 (6))

- Aggravated vehicle taking (Theft Act 1968 s.12A)
- Handling stolen goods (Theft Act 1968 s.22)
- Obtaining property by deception (Theft Act 1968 s.15)
- Obtaining a money transfer by deception (Theft Act 1968 s.15A)
- Obtaining pecuniary advantage by deception (Theft Act 1968 s.16)
- Receiving property by another's mistake (Theft Act 1968 s.5 (4))
- Removal of articles from places open to the public (Theft Act 1968 s.11)
- Abstraction of electricity (Theft Act 1968 s.13)
- Making off without payment (Theft Act 1978 s.3)

8 Fraud, Forgery and other Offences of Dishonesty

- Fraud (common law)
- Deception (Theft Act 1968 s.15)
- Forgery (Forgery and Counterfeiting Act 1981 s.1)
- Copying a false instrument (Forgery and Counterfeiting Act 1981 s.2)
- Using a false statement (Forgery and Counterfeiting Act 1981 s.3)
- Using a copy of a false instrument (Forgery and Counterfeiting Act 1981 s.4)
- Custody or control of false instruments etc. (Forgery and Counterfeiting Act 1981 s.5)
- Offences relating to money orders, share certificates, passports etc, etc. (Forgery and Counterfeiting Act 1981 s.5)
- Counterfeiting notes and coins (Forgery and Counterfeiting Act 1981 s.14)
- Passing, etc...counterfeiting notes and coins (Forgery and Counterfeiting Act 1981 s.15)
- Offences involving the custody/control of counterfeit notes and coins (Forgery and Counterfeiting Act 1981 s.16)
- Making, custody or control of counterfeiting materials etc. (Forgery and Counterfeiting Act 1981 s.17)
- Illegal importation: Counterfeit notes or coins (Customs and Excise Management Act 1979 s.50)
- Offences involving the making/custody/control of counterfeiting materials and implements (Forgery and Counterfeiting Act 1981 s.17)
- Reproducing British currency (Forgery and Counterfeiting Act 1981 s.18)
- Offences in making, etc., imitation of British coins (Forgery and Counterfeiting Act 1981 s.19)
- Prohibition of importation of counterfeit note and coins (Forgery and Counterfeiting Act 1981 s.20)
- Prohibition of exportation of counterfeit notes and coins (Forgery and Counterfeiting Act 1981 s.21)
- Destruction of registers of births etc. (Forgery Act 1861 s.36)
- Making false entries in copies of registers sent to register (Forgery Act 1861 s.37)
- Fraudulent evasion: counterfeit notes or coins (Customs and Excise Management Act 1979 s.170 (2)(b), (c))
- Obtaining services by deception (Theft Act 1978 s.1)

- Evasion of liability by deception (Theft Act 1978 s.2)
- False accounting (Theft Act 1968 s.17)
- Liability of company officers for offences of deception committed by the company (Theft Act 1968 s.18)
- False statements by company directors (Theft Act 1968 s.19)
- Suppression, etc...of documents (Theft Act 1968 s.20)
- Procuring execution of a valuable security by deception (Theft Act 1968 s.20)
- Advertising rewards for return of goods stolen or lost (Theft Act 1968 s.23)
- Dishonestly retaining a wrongful credit (Theft Act 1968 s.24A)
- Fraudulent use of telecommunication system (Telecommunications Act 1984 s.42)
- Possession or supply of anything for fraudulent purpose in connection with use of telecommunication system (Telecommunications Act 1984 s.42A)
- Offences under the Companies Act 1985
- Insider dealing (Criminal Justice Act 1993 s.52)
- False declarations of insolvency in voluntary liquidations (Insolvency Act 1986 s.89)
- Concealment of property and failure to account for losses (Insolvency Act 1986 s.354)
- Concealment or falsification of books and papers (Insolvency Act 1986 s.355)
- False statements (Insolvency Act 1986 s.356)
- Fraudulent disposal of property (Insolvency Act 1986 s.357)
- Absconding with property (Insolvency Act 1986 s.358)
- Fraudulent dealing with property obtained on credit (Insolvency Act 1986 s.359)
- Undischarged bankrupt concerned in a company (Insolvency Act 1986 s.360)
- Failure to keep proper business accounts (Insolvency Act 1986 s.361)
- Misleading statements and practises (Financial Services Act 1986 s.47)
- Fraudulent inducement to make a deposit (Banking Act 1987 s.35 (1))
- Counterfeiting customs documents (Customs and Excise Management Act 1979 s.168)
- Offences in relation to dies or stamps (Stamp Duties Management Act 1891 s.13)
- Counterfeiting of dies or marks (Hallmarking Act 1973 s.6)
- Fraudulent application of trademark (Trade Marks Act 1938 s.58A)
- False application or use of trademarks (Trade Marks Act 1994 s.92)
- Forgery of driving documents (Road Traffic Act 1960 s.233)
- Forgery and misuse of driving documents (Public Passenger Vehicles Act 1981 s.65)
- Forgery etc. of licenses and other documents (Road Traffic Act 1988 s.173)
- Mishandling or falsifying parking documents (Road Traffic Regulations Act 1984 s.115)

- Forgery, Alteration etc. of documents etc. (Goods Vehicles (Licensing of Operators) Act 1995 s.38)
- False records or entries relating to driver's hours (Transport Act 1968 s.99)
- Forgery, alteration, fraud of licences etc (Vehicle (Excise) Act 1971 s.26)
- Forgery, alteration etc. of licenses, marks, trade plates etc (Vehicle Excise and Registration Act 1994 s.44 and 45)
- Forgery of documents etc.: Motor vehicles (EC Type approval) Regulations 1992, reg. 11(1) and motor cycles etc. (EC Type approval) Regulations 1999, reg. 20(1)
- Fraudulent evasion of agricultural levy (Customs and Excise Management Act 1979 s.68A (1) and (2))
- Evasion of duty (Customs and Excise Management Act 1979 s.170)
- Trade description offences (9 offences) (Trade Descriptions Act 1968 ss.1, 8,9,12,13,14,18)
- VAT offences (VAT Act 1994)

9 Public order offences and offences against public justice

- Perjuries (7 offences) (Perjury Act 1911 s.1-7 (2))
- Offences akin to perjury: False testimony of unsworn child witnesses in criminal proceedings (Children and Young Persons Act 1933 s. 38)
- Perverting the course of public justice (common law)
- Public nuisance (common law)
- Contempt of court (common law)
- Blackmail (Theft Act 1968 s.21)
- Corrupt transactions with agents (Prevention of Corruption Act 1906 s.1)
- Corruption (common law)
- Corruption in public office (Public Bodies Corrupt Practices Act 1889 s.1)
- Embracery (common law)
- Fabrication of evidence with intent to mislead a tribunal (common law)
- Personation of jurors (common law)
- Concealing an arrestable offence (Criminal Law Act 1967 s.5)
- Assisting offenders (Criminal Law Act 1967 s.4 (1))
- False evidence before European Court (European Communities Act 1972 s.11)
- Intimidating a witness, juror etc. (Criminal Justice and Public Order Act 1994 s.51 (1))
- Harming, threatening to harm a witness, juror etc. (Criminal Justice and Public Order Act 1994 s.51 (2))
- Ticket touts (Criminal Justice and Public Order Act 1994 s.166)
- Prejudicing a drug trafficking investigation (Drug Trafficking Act 1994 s.58 (1))
- Giving false statements to procure cremation (Cremation Act 1902 s.8 (2))
- False statement tendered under section 9 of the Criminal Justice Act 1967 (Criminal Justice Act 1967 s.89)

- False statement tendered under section 102 of the Magistrates' Courts Act 1980 (Magistrates' Courts Act 1980 s.106)
- Making a false statement to obtain or resist interim possession order (Criminal Justice and Public Order Act 1994 s.75)
- Making false statement to authorised officer (Trade Descriptions Act 1968 s.29 (2))
- Riot (Public Order Act 1986 s.1)
- Violent disorder (Public Order Act 1986 s.2)
- Affray (Public Order Act 1986 s.3)
- Fear or provocation of violence (Public Order Act 1986 s.4)
- Intentional harassment, alarm, or distress (Public Order Act 1986 s.4A)
- Harassment, alarm or distress (Public Order Act 1986 s.5)
- Harassment of debtors (Administration of Justice Act 1970 s.40)
- Offence of harassment (Protection from Harassment Act 1997 s.1 and 2)
- Putting people in fear of violence (Protection from Harassment Act 1997 s.4)

- Breach of restraining order/injunction (Protection from Harassment Act 1997 s.3 and 5)
- Racially aggravated public order offences (Crime and Disorder Act 1998 s.31)
- Racially aggravated harassment etc. (Crime and Disorder Act 1998 s.32)
- Using words or behaviour or displaying written material stirring up racial hatred (Public Order Act 1986 s.18)
- Publishing or distributing written material stirring up racial hatred (Public Order Act 1986 s.19)
- Public performance of play stirring up racial hatred (Public Order Act 1986 s.20)
- Distributing, showing or playing a recording stirring up racial hatred (Public Order Act 1986 s.21)
- Broadcasting programme stirring up racial hatred (Public Order Act 1986 s.22)
- Possession of written material or recording stirring up racial hatred (Public Order Act 1986 s.23)
- Possession of offensive weapon (Prevention of Crime Act 1953 s.1)
- Possession of bladed article (Criminal Justice Act 1988 s.139)
- Criminal libel (common law)
- Blasphemy and blasphemous libel (common law)
- Sedition
- Indecent display (Indecent Displays (Control) Act 1981 s.1)
- Presentation of obscene performance (Theatres Act 1968 s.2)
- Obstructing railway or carriage on railway (Malicious Damage Act 1861 s.36)
- Obscene articles intended for publication for gain (Obscene Publications Act 1964 s.1)
- Offences of publication of obscene matter (Obscene Publications Act 1959 s.2)
- Agreeing to indemnify sureties (Bail Act 1976 s.9 (1))

- Absconding by person released on bail (Bail Act 1976 s.6 (1), (2))
- Personating for purposes of bail etc. (Forgery Act 1861 s.34)
- Sending prohibited articles by post (Post Office Act 1953 s.11)
- Impersonating Customs officer (Customs and Excise Management Act 1979 s.3)
- Obstructing Customs officer (Customs and Excise Management Act 1979 s.16)
- Penalty on keepers of refreshment houses permitting drunkenness, disorderly conduct, or gaming, etc., therein (Metropolitan Police Act 1839 s.44)
- Penalty on persons found drunk (Licensing Act 1872 s.12)
- Drunkenness in a public place (Criminal Justice Act 1967 s.91)
- Drunk in a late night refreshment house (Late Night Refreshment Houses Act 1969 s.9 (4))
- Drunk while in charge of a child (Licensing Act 1902 s.2 (1))
- Drunk on an aircraft (Air Navigation Order 2000 and Civil Aviation Act (SI 2000 No.1562), art.65 (1))
- Intimidation or annoyance by violence or otherwise (Trade Union and Labour Relations (Consolidation) Act 1992 s.241)

Offences affecting security

- Offences under the Official Secrets Act 1911, 1920 and 1989.
- Unlawful interception of communications by public and private systems (Regulation of Investigatory Powers Act 2000 s.1)
- Disclosure of telecommunication messages (Telecommunications Act 1984 s.45)
- Incitement to disaffection (Incitement to Disaffection Act 1934 s.1 and 2)

10 Offences in relation to supply, production and possession of drugs

- Restriction of importation and exportation of controlled drugs (Misuse of Drugs Act s.3)
- Producing or supplying a Class A, B or C drug (Misuse of Drugs Act 1971 s.4)
- Possession of controlled drugs (Misuse of Drugs Act 1971 s.5 (2))
- Possession of a Class A, B or C drug with intent to supply (Misuse of Drugs Act 1971 s.5 (3))
- Cultivation of cannabis plant (Misuse of Drugs Act 1971 s.6)
- Occupier knowingly permitting drugs offences etc. (Misuse of Drugs Act 1971 s.8)
- Activities relating to opium (Misuse of Drugs Act 1971 s.9)
- Prohibition of supply etc., of articles for administering or preparing controlled drugs (Misuse of Drugs Act 1971 s.9A)
- Offences relating to the safe custody of controlled drugs (Misuse of Drugs Act 1971 s.11)
- Practitioner contravening drug supply regulations (Misuse of Drugs Act 1971 ss.12 and 13)

- Incitement (Misuse of Drugs Act 1971 s.19)
- Assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law (Misuse of Drugs Act 1971 s.20)
- Powers of entry, search and seizure (Misuse of Drugs Act 1971 s.23)
- Illegal importation of Class A, B or C drugs (Customs and Excise Management Act 1979 s.50)
- Fraudulent evasion of controls on Class A, B or C drugs (Customs and Excise Management Act 1979 s.170 (2)(b)(c))
- Failure to disclose knowledge or suspicion of money laundering (Drug Trafficking Offences Act 1986 s.26B)
- Tipping-off in relation to money laundering investigations (Drug Trafficking Offences Act 1986 s.26C)
- Offences in relation to proceeds of drug trafficking (Drug Trafficking Act 1994 ss.49, 50 and 51)
- Offences in relation to money laundering investigations (Drug Trafficking Act 1994 ss.52 and 53)
- Manufacture and supply of scheduled substances (Criminal Justice (International Co-operation) Act 1990 s.12)
- Drug Trafficking offences at sea (Criminal Justice (International Co-operation) Act 1990 s.18)
- Ships used for illicit traffic (Criminal Justice (International Cooperation) Act 1990 s.19)
- Making and preserving records of production and supply of certain scheduled substances (Controlled Drugs (Substances Useful for Manufacture) Regulations 1991)
- Supply of intoxicating substance (Intoxicating Substances (Supply) Act 1985 s.1)

11 Driving Offences

- Dangerous driving (Road Traffic Act 1988 s.2)
- Careless, and inconsiderate driving (Road Traffic Act 1988 s.3)
- Driving, or being in charge, when under the influence of drink or drugs (Road Traffic Act 1988 s.4)
- Driving or being in charge of a motor vehicle with excess alcohol (Road Traffic Act 1988 s.5)
- Breath tests (Road Traffic Act s.6)
- Provision of specimens for analysis (Road Traffic Act s.7)
- Motor racing on highways (Road Traffic Act 1988 s.12)
- Leaving vehicle in dangerous position (Road Traffic Act 1988 s.22)
- Causing danger to road users (Road Traffic Act 1988 s.22A)
- Restriction of carriage of persons on motor cycles (Road Traffic Act 1988 s.23)
- Failing to stop at school gate (Road Traffic Act 1988 s.28)
- Failure to comply with indication given by traffic sign (Road Traffic Act 1988 s.36)
- Directions to pedestrians (Road Traffic Act 1988 s.37)
- Using vehicles in dangerous condition (Road Traffic Act 1988 s.40A)

- Contravention of construction and use regulations (Road Traffic Act 1988 s.41A)
- Using etc. motor vehicle without test certificate (Road Traffic Act 1988 s.47)
- Driving otherwise than in accordance with a licence (Road Traffic Act 1988 s.87)
- Driving after refusal or revocation of licence (Road Traffic Act 1988 s.94A)
- False declaration as to physical fitness (Road Traffic Act 1988 s.92)
- Failure to notify disability (Road Traffic Act 1988 s.94)
- Driving with uncorrected defective eyesight (Road Traffic Act 1988 s.96)
- Driving while disqualified (Road Traffic Act 1988 s.103)
- Using etc. motor vehicle without insurance (Road Traffic Act 1988 s.143)
- Failure to produce driving licence, insurance etc (Road Traffic Offenders Act 1988 s.27)
- Failure to give, or giving false, name and address in case of dangerous or careless or inconsiderate driving or cycling (Road Traffic Act 1988 s.168)
- Pedestrian contravening constable's direction to stop to give name and address (Road Traffic Act 1988 s.169)
- Failing to stop and failing to report accident (Road Traffic Act 1988 s.170)
- Duty of owner of motor vehicle to give information for verifying compliance with requirement of compulsory insurance or security (Road Traffic Act 1988 s.171)
- Duty to give information as to identity of driver etc., in certain circumstances (Road Traffic Act 1988 s.172)
- Pedestrian crossing regulations (Road Traffic Regulation Act 1984 s.25)
- Street playgrounds (Road Traffic Regulation Act 1984 s.29)
- Speeding (Road Traffic Regulation Act 1984 s.89)
- Wanton or furious driving (Offences against the Person Act 1861 s.35)
- Interference with vehicles (Criminal Attempts Act 1981 s.9)
- Other road traffic offences (including policing etc.)

12 Other

- Failing to keep dogs under proper control resulting in injury and other dog offences (Dangerous Dogs Act 1991 s.3)
- Hijacking of aircraft (Aviation Security Act 1982 s.1)
- Destroying, damaging or endangering safety of aircraft (Aviation Security Act 1982 s.2)
- Other acts endangering or likely to endanger safety of aircraft (Aviation Security Act 1982 s.3)
- Offences in relation to certain dangerous articles (Aviation Security Act 1982 s.4)
- Endangering safety at aerodromes (Aviation and Maritime Security Act 1990 s.1)
- Hijacking of ships (Aviation and Maritime Security Act 1990 s.9)

- Other offences under the Aviation and Maritime Security Act 1990 (Aviation and Maritime Security Act 1990 s.10, 11, 12, and 13)
- Piracy (Piracy Act 1837 s.2)
- Offences under the Football Spectators Act 1989
- Throwing of missiles (Football (Offences) Act 1991 s.2)
- Indecent or racist chanting (Football (Offences) Act 1991 s.3)
- Going onto the playing area (Football (Offences) Act 1991 s.4)
- Offences in connection with alcohol on coaches and trains (Sporting Events (Control of Alcohol etc.) Act 1985 s.1)
- Offences in connection with alcohol, containers etc., at sports grounds (Sporting Events (Control of Alcohol etc.) Act 1985 s.2)
- Offences of cruelty (Protection of Animals Act 1911 s.1)
- Penalties for abandonment of animals (Abandonment of Animals Act 1960 s.1)
- Offences (Wild Mammals (Protection) Act 1996 s.1)
- Raves (Criminal Justice and Public Order Act 1994 s. 63)

Offences affecting enjoyment of premises

- Unlawful eviction and harassment of occupier (Protection of Eviction Act 1977 s.1)
- Use or threat of violence for purpose of securing entry to premises (Criminal Law Act 1977 s.6 (1))
- Adverse occupation of residential premises (Criminal Law Act 1977 s.7)
- Trespassing during the currency of an interim possession order (Criminal Justice and Public Order Act 1994 s.76)
- Interim possession orders: false or misleading statements (Criminal Justice and Public Order Act 1994 s.75)
- Aggravated trespass (Criminal Justice and Public Order Act 1994 s.68)
- Failure to leave or re-entry to land after police direction to leave (Criminal Justice and Public Order Act 1994 s.61)
- Unauthorised campers (Criminal Justice and Public Order Act 1994 s.77)

CDS Regulations – An Overview

It is central to the Criminal Defence Service that advice, assistance and representation are funded primarily by contract. Therefore the Commission's contracts, in particular the General Criminal Contract, are the key documents governing services funded by the Commission as part of the CDS. However the contracts do not operate in a vacuum but depend upon a detailed statutory framework and a number of statutory instruments. The regulations cover a range of issues including the scope of the CDS, court procedures for granting representation orders and remuneration, particularly for Crown Court work which is outside the scope of the General Criminal Contract.

Each of the statutory instruments is described below and related to relevant provisions of the Act and the General Criminal Contract. References to the "General Regulations" below mean the CDS (General) Regulations 2001.

The Access to Justice Act 1999 (Commencement No. 7, Transitional Provisions and Savings) Order 2001

This order brings into force certain provisions of the Act – the parts of the order directly relevant to the establishment of CDS are Article 3 and Schedule 2.

Article 3 will bring into force on 2 April 2001 the provisions of the Act governing the Criminal Defence Service, namely sections 12 – 18 and Schedule 3, together with consequential amendments. These provisions are contained in Volume 1 of the Commission's Manual and are set out in full in this publication.

Article 3(b) repeals the remaining parts of the Legal Aid Act 1988, subject to the transitional provisions and savings in Schedule 2 of the Order.

Paragraph 2 of Schedule 2 provides for the Legal Aid Act 1988 to continue to apply for cases started before 2 April 2001. Separate rules are specified for Advice and Assistance, ABWOR and Representation under criminal legal aid orders under Part V of the 1988 Act. Paragraph 2(b) allows for contracts to affect payment for work done under a legal aid order issued prior to 2 April 2001: see the transitional provisions in section 1.5 of Part B of the General Criminal Contract Specification. The detailed rules for cases which straddle 2 April 2001 are described in the article at pages 6 – 9 of Focus on CDS issue 3.

Paragraph 3 of Schedule 2 provides that applications for judicial review or habeas corpus relating to criminal investigations or proceedings will from 2 April 2001 be funded as part of the Community Legal Service, not the Criminal Defence Service. Such cases are "Associated CLS Work" which is authorised either under the General Criminal Contract or, for firms with a public law franchise, the General Civil Contract. These cases are subject to the relevant criteria in the Funding Code and the financial eligibility rules for CLS work.

Paragraph 4 of Schedule 2 imposes a long stop on applying to the Commission for payment for work carried out under the 1988 Act. This must be submitted to the Commission no later than 5 months after the completion of the work. Note that this provision will chiefly affect Advice and Assistance under Part III of the 1988 Act. Work done under a legal aid order under Part V of the 1988 Act is already governed by a three month time limit by virtue of Regulation 5 of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

Note that this order does not deal with the transitional arrangements under which the Lord Chancellor remains directly responsible for remuneration in most cases in the higher criminal courts. This is instead covered by Article 3 of the CDS (Funding Order) 2001 (see below).

The Legal Aid Board (Abolition) Order 2001

The Legal Aid Board was effectively replaced by the Legal Services Commission on 1 April 2000 under the Access to Justice Act (Commencement No. 3, Transitional Provisions and Savings) Order 2000. However under paragraph 6 of Schedule 14 of the Act the Board continued in existence in order to finalise its affairs and prepare its final reports. That work now having been completed this order under paragraph 7 of Schedule 14 abolishes the Legal Aid Board finally on 2 April 2001.

Criminal Defence Service (General) Regulations 2001

These are the key regulations which govern scope, eligibility, choice of representative and procedures for applying for representation orders under the 1999 Act (equivalent to legal aid orders under the 1988 Act).

SCOPE (Part II of the General Regulations)

Regulation 3 defines a range of proceedings which, whilst they would normally be classified as civil proceedings under domestic law, are prescribed as criminal proceedings for the purposes of the Criminal Defence Service. Regulation 3 must be read alongside section 12(2) of the Act. Section 12(2) and Regulation 3(2) together comprise the complete list of proceedings which are criminal for this purpose. Prescribing proceedings as criminal has a number of important consequences:

- (i) clients have a right to representation provided the interests of justice test is satisfied in accordance with Schedule 3 of the Act;
- (ii) the rules concerning a client's right to choose a representative in accordance with section 15 of the Act apply where a representation order is granted;
- (iii) representation in the proceedings cannot be funded as part of the Community Legal Service (section 4(3) of the Act).

Note that although a representation order may be granted in any of the proceedings specified in Regulation 3(2), in practice it will be rare for such an order to be granted. This is because the General Criminal Contract allows practitioners to grant Advocacy Assistance in the magistrates' court or Crown Court for all such proceedings: see section 3.2(b) and (d) of Part A of the General Criminal Contract Specification. Advocacy Assistance is a form of Advice and Assistance and is granted under section 13 of the Act. Given the availability of Advocacy Assistance it will generally not be in the interests of justice for a representation order to be granted in such cases.

Regulation 3(3) provides that certain criminal cases in the High Court are to be regarded as incidental to the main criminal proceedings from which they arise. This means no separate application for representation is required, rather a representation order for either the Magistrate court or Crown Court proceedings will cover these cases.

The following is a summary of High Court proceedings within the criminal franchise category:

High Court Proceedings	Summary
Bail proceedings	Paragraph 2.2 of Schedule 3 provides that a grant of representation automatically covers representation for the purposes of any related bail proceedings. Therefore representation in High Court bail proceedings is covered by the original grant of a representation order in the magistrates' court. The General Civil Contract provides that costs in the bail proceedings will be assessed by the Commission rather than the High Court and will be treated as part of the costs of representation under the magistrates' court representation order.
Representations against a voluntary bill of indictment	These are mainstream criminal proceedings within section 12(2)(a) of the Act. However Regulation 9(2) of the General Regulations provides that application for the representation order is made to the Crown Court. Bills will be assessed by the High Court.
Confiscation and Forfeiture proceedings (RSC Order 115)	Under Regulation 3(3) of the General Regulations these are prescribed as incidental to the criminal proceedings from which they arise. By virtue of paragraph 2(2) of Schedule 3 the substantive order granted for the criminal proceedings therefore automatically covers representation in the High Court in the confiscation and forfeiture proceedings. Costs of such work will be assessed by the High Court.
Proceedings to quash an acquittal	Tainted acquittal proceedings under the Criminal Procedure and Investigations Act 1996 are prescribed as incidental to the criminal proceedings from which they arise and are therefore dealt with in the same way as confiscation and forfeiture proceedings described above.
Judicial review and habeas corpus arising out of criminal investigations or proceedings	These are not criminal proceedings – see Regulation 3(4) of the General Regulations and paragraph 3 of Schedule 2 of the Commencement Order described above. Legal Representation is therefore applied for in accordance with the Funding Code Procedures.

Regulation 4 describes the scope of Advice and Assistance. This regulation must be read alongside section 13 of the Act which places an obligation on the Commission to fund such Advice and Assistance as it considers appropriate for individuals who are arrested and held in custody at a police station or other premises and in other prescribed circumstances. The scope of section 13 of the Act is to be expanded by the Criminal Defence Service (Advice and Assistance) Bill which is expected to receive Royal Assent by 2 April 2001. The proposed amended text of section 13 is shown in the extracts of the 1999 Act in this publication. The scope of Advice and Assistance under section 13 of the Act and Regulation 4 is very wide. It covers Advice and Assistance both before and during criminal proceedings and for people who have been the subject of criminal proceedings, including prison cases. Help in the form of Advocacy Assistance is also covered.

The Act does not create an entitlement to Advice and Assistance in the same way that there is an entitlement to funding under a representation order. The Commission's obligation under section 13 is to fund such Advice and Assistance as it considers appropriate. The Advice and Assistance which is available to clients is governed by the services described in the General Criminal Contract. Advice and Assistance is available for each class of work covered by the contract as set out in Part A of the General Criminal Contract Specification.

Regulation 5 deals with financial eligibility for Advice and Assistance. Under the Act there is no means test for representation under a representation order or for Advice and Assistance for a person arrested and held in custody at a police station. Regulation 5 extends this to all Advocacy Assistance before a magistrates' court or the Crown Court, all Advice and Assistance provided by a court duty solicitor acting as such and Advice and Assistance to a volunteer at a police station or a person interviewed in connection with a serious service offence. Apart from abolishing the means test for Advocacy Assistance before a magistrates' court or the Crown Court these rules largely replicate the position previously governed by the Legal Advice and Assistance Regulations 1989.

The detailed rules and figures on eligibility are set out at page 11 of issue 3 of Focus on CDS. The rules on assessing resources are contained in the Schedule to the General Regulations. The approach to assessment is in substance the same as assessing means for the purpose of eligibility for Legal Help under the Community Legal Service. Guidance on assessing eligibility will be included in Volume 4 of the Commission's Manual.

APPLICATIONS FOR REPRESENTATION ORDERS (Part III of the General Regulations)

Regulations 6 to 10 specify how applications for representation orders are made. Note that these procedures only concern representation orders. All procedures relating to Advice and Assistance and Advocacy Assistance are instead set out in the Contract.

Under paragraph 2(1) of Schedule 3 of the Act the general rule is that the court before which any criminal proceedings take place has power to grant a right to representation. The exception is that for the proceedings prescribed in Regulation 3 of the General Regulations only the Commission, and not the court, has power to grant the representation order. As explained above in the guidance on Regulation 3, these are proceedings for which Advocacy Assistance is available so that a representation order is in practice unlikely to be granted by the Commission.

Regulation 6(1) provides that application for the grant of a representation order shall be made on such form as is specified from time to time by the Lord Chancellor. The relevant form is Form A which will be available at courts by 2 April 2001. The same form can be used both for applying to court and for applying to the Commission in cases where the Commission has power to grant. Note that application forms are specified from time to time and are not part of the Regulations themselves (as was the case under the 1989 Regulations). The rules on the persons who have authority to grant representation on behalf of the court are set out in Regulations 6 to 10. These are similar to equivalent provisions in Part II of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989. Note that under Regulation 9(1)(c) a magistrates' court has power to grant a representation order covering Crown Court proceedings. As previously mentioned Regulation 9(2) provides that an application for a representation order in relation to a voluntary bill of indictment should be made to the Crown Court, not the High Court.

SELECTION OF REPRESENTATIVES (Part IV of the General Regulations)

Regulations 11 to 16 concern a client's right to choose their legal representative. These regulations qualify the general right contained in section 15 of the Act. Further rules on choice are contained in the Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001 which are described below. Those regulations are a separate statutory instrument because they are made under section 15(5) of the Act and therefore require parliamentary approval before coming into force.

Note that this part of the Regulations covers only client choice in relation to representation orders. There is no statutory right to choose a representative in relation to Advice and Assistance or Advocacy Assistance. In practice clients may select any representative acting under a general criminal contract with the Commission (Article 7 of the Criminal Defence Service (Funding) Order 2001: see below).

Regulation 11 is central to the Criminal Defence Service. It provides that a client may only choose representation from among those legal representatives who are authorised to provide such representation under a General Criminal Contract, or are public defenders employed to provide such representation. The General Criminal Contract comes within the wording of Regulation 11(1) since it is a crime franchise contract which commences on or after 2 April 2001 and specifies the rate of remuneration payable for the work covered by it. Regulation 11 extends to all representation orders which are within scope of the General Criminal Contract Specification. This concerns primarily representation orders in the magistrates' court, but also appeals by way of case stated from the magistrates' court and other Crown Court proceedings specified in Regulation 3(2) of the General Regulations.

The only exception to Regulation 11 is proceedings for contempt in the face of the court under section 12(2)(f) of the Act. A client facing proceedings for contempt in the face of the court may choose any legal representative to represent him or her. Such representation is outside the scope of the General Criminal Contract and is governed by Articles 10 and 11 of the Criminal Defence (Funding) Order 2001: see below

Regulation 12 governs the use of counsel (and solicitors with high court advocacy rights) in the magistrates' court. A representation order for proceedings in the magistrates' court may only cover representation by counsel for indictable offences or for proceedings under the Extradition Act 1989 where in the opinion of the court representation by both solicitor and counsel would be desirable because of circumstances which make the proceedings "unusually grave or difficult". This is the same test as was previously contained in Regulation 44 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989. Note that this regulation only governs the use of assigned counsel. Solicitors are free to use unassigned counsel for any proceedings in the magistrates' court but in such cases remuneration of counsel is governed by whatever is agreed between counsel and the solicitor, subject to the maximum fee principle- see section 5.9 of Part B of the General Criminal Contract Specification.

Regulation 13 covers client choice of representative in the higher criminal courts. For these courts a client has a somewhat wider choice of representative than under Regulation 11. Representation can be authorised either under a General Criminal Contract or under a full or provisional crime franchise. The form of authority confirming that firms are authorised to provide higher court representation is set out at page 3 of Focus on CDS issue 3.

An additional important restriction applies in the case of very high cost serious fraud cases (see definitions in Regulations 2 and 13(3) of the General Regulations). In such cases if the Commission determines that representation should be by a firm which is a member of the Serious Fraud Panel, the client must choose a representative who is at the time being a member of that panel. A list of firms on the Serious Fraud Panel may be obtained from the Commission's Criminal High Cost Cases Unit.

Regulation 14 covers the use of counsel in the higher criminal courts. A representation order in these courts may cover a number of different combinations of leading and junior counsel. The regulation sets out strict rules governing when counsel can be instructed. These rules replicate those contained in Regulation 48 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989.

Regulation 15 provides that a representation order may provide for representation by counsel only in cases of contempt in the face of the court and certain appeals and Crown Court proceedings.

Regulation 16 gives the court power to approve a change of representative under a representation order. A change of representative may be approved where the court is satisfied that the representative is under a duty to withdraw in accordance with his or her professional rules of conduct, where there is a breakdown in the relationship between the assisted person and the representative, where the representative is no longer able to represent the client through circumstances beyond his or her control, or some other compelling reason exists.

WITHDRAWAL OF REPRESENTATION (Part 5 of the General Regulations)

Regulation 17 requires that a court (or the Commission in cases where the Commission has power to grant) must consider withdrawing a representation order in certain circumstances, in particular where a charge is varied, where the individual declines to accept a representation order in the terms offered, at the individual's request or where the representative declines to continue to represent the client.

MISCELLANEOUS (Part 6 of the General Regulations)

Regulation 18 provides for documents to be transferred from a lower court to a higher court when a case is committed or sent for trial or for the purpose of any appeal.

Regulations 19 – 21 cover the procedure for obtaining a prior authority for expenditure in relation to Crown Court work. These regulations mirror Regulations 54, 54A and 55 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989. Applications for a prior authority under Regulation 19 are made to the Costs Committee of the Commission. Applications may be granted (but not refused) by Regional Office staff authorised to do so. Regulation 21 sets out the effect of obtaining a prior authority, namely that the representative will be guaranteed a payment of the amount authorised unless the representative knew or reasonably should have known that the purpose for which the authority was given had become unnecessary.

Note that these provisions only cover representation in the Crown Court. Prior authorities for representation in the magistrates' court are governed by the Contract (see section 5 of Part B of the General Criminal Contract Specification).

Regulation 22 contains the restriction on “topping up” i.e. preventing a legal representative from claiming fees directly from the client where representation is provided under the Criminal Defence Service. The exception is where a prior authority has been applied for but refused by the Costs Committee. This replicates the rule previously contained in Regulation 55 of the Legal Aid in Criminal Care Proceedings (General) Regulations 1989.

Regulation 23 obliges a solicitor who has conduct of a very high cost case to notify the Commission of the case as soon as practicable. This is to enable the Commission to decide whether to enter into an individual high cost case contract for that case. In these circumstances the Criminal Defence Service (Choice in Very High Cost Cases) Regulations allow the Commission to cease to fund representation by the original representatives so that representation may proceed if necessary with new representatives under contract. Where the solicitor fails to notify the Commission without good reason the solicitor's costs may be reduced if there is a loss to public funds. This ensures that the liability of the Commission is no greater than it would have been had the case been reported and a very high cost case contract entered into. Note that the obligation to notify very high cost cases was previously contained in the Legal Aid (Notification of Very High Cost Cases) Regulations 2000 which came into force on 1 August 2000.

For the purpose of these regulations a very high cost case is one which, if it proceeded to trial, that trial would be likely to last 25 days or longer, or for which the defence costs in relation to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to exceed £150,000.

Regulation 24 obliges a client's representatives to notify the Commission if the client has intentionally failed to comply with any provision of the regulations concerning information to be furnished by him or her, or has knowingly made a false statement when furnishing information. An example would be where the client has provided false or inadequate information on means where such information was required for the purposes of a possible order under the Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001. This regulation replicates Regulation 56 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989.

Criminal Defence Services (Representation Order Appeals) Regulations 2001

Regulations 6 – 10 of the General Regulations 2001 set out the courts and persons who may grant representation orders. The Criminal Defence Service (Representation Order Appeals) Regulations 2001 deal with rights of appeal

and review against refusal to grant or withdrawal of representation orders. These regulations are contained in a separate statutory instrument since by virtue of paragraph 4 of Schedule 3 and section 25(9) of the Act the regulations are subject to the affirmative procedure for parliamentary approval.

Regulation 3 provides for persons to make a renewed application for a representation order to the body which refused the application. In the magistrates' court a justices' clerk may then grant the application or refer it to the court, a district judge (magistrates' court) or a single justice. Similarly the Court Manager of a Crown Court or Registrar of Criminal Appeals in the case of the Court of Appeal may grant the renewed application or refer it to a judge.

A person refused a representation order by the Commission (this will be for proceedings specified in Regulation 3 of the General Regulations) may make a renewed application to the Funding Review Committee. The procedure is therefore the same as for the refusal of Advocacy Assistance for which the contract provides for a right of review to the Funding Review Committee.

The Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001

Section 15 of the Act gives clients the general right to choose their legal representatives to act in cases where a representation order is granted. This is subject to important restrictions in Regulations 11 and 13 of the General Regulations. Once the client has chosen representatives in accordance with the Act and the General Regulations the Commission is normally under an obligation to fund those representatives for the remainder of the case or until the representation order is withdrawn. However in very high cost cases the Commission may require representation to be provided under a very high cost case contract and may cease to fund representation by the client's existing representatives if they or the Commission are not prepared to enter into such a contract (e.g. because they cannot agree terms). Regulation 3(2) of the Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001 provides that the Commission is no longer required to fund representation by the current representatives in those circumstances. The client may then select a different representative and the Commission may amend the representation order accordingly. In practice the client will need to choose new representatives who are prepared to enter into a very high cost case contract. The Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001 are contained in a separate statutory instrument since they are made under section 15(5) of the Act and require the affirmative procedure for parliamentary approval.

Legal Services Commission (Disclosure of Information) (Amendment) Regulations 2001

Section 20 of the Act prohibits the Commission from disclosing information which is furnished in connection with the case of an individual seeking or receiving services funded by the Commission. A number of exceptions to this rule are set out in section 20(2) of the Act including disclosing information for the purpose of the investigation or prosecution of any offence (section 20(2)(d)). The Legal Services Commission (Disclosure of Information) Regulations 2000 waive the normal rules on privilege and confidentiality when the Commission requests information from a supplier of services for that purpose of carrying out its function. The Legal Services Commission (Disclosure of Information) (Amendment) Regulations 2001 contain an additional safeguard for clients in criminal proceedings by prohibiting the Commission from disclosing to the prosecuting authority information which is in connection with the defence of the individual concerned and which may be used for the purpose of the prosecution of that case. Clients may therefore disclose such information to their representatives or the Commission without fear of the information being used for the purposes of the prosecution.

Criminal Defence Service (Recovery of Defence Cost Orders) Regulations 2001

Representation orders under the Act are granted without reference to the means of the defendant and the Defendants are not obliged to make any contribution to the costs under a representation order unless a court makes an order that they do so under section 17(2) of the Act, known as a recovery of defence costs order (RDCO). The Criminal Defence Service (Recovery of Defence Cost Orders) Regulations 2001 set out the procedures for doing so. See further the article on RDCOs at pages 5 – 6 of issue 3 of Focus on CDS.

Section 17(2) provides that an RDCO may not be made by a magistrates' court. **Regulation 4** goes on to provide that an RDCO may also not be made in proceedings concerning committal for sentence to the Crown Court or appeal against sentence to the Crown Court. Further, an RDCO may not be made against a defendant who has been acquitted, other than in exceptional circumstances.

Regulation 5 provides that an RDCO may be made up to the maximum amount of the full costs of the representation incurred in any court under the representation order. Therefore an RDCO made in the Crown Court may include costs incurred under that representation order in the magistrates' court. An RDCO may be ordered to be paid forthwith or in specified instalments.

Regulations 6 and 7 deal with investigation of the defendant's means for the purpose of assisting the court in deciding whether to make an RDCO. The court and the Commission have power to require the defendant to provide financial information in any case which might ultimately result in an RDCO. This information must be provided on Form B which is given to defendants when they apply for a representation order to cover proceedings in the Crown Court. In cases where the defendant's means are complicated the court may refer the case to the Special Investigations Unit of the Commission who will investigate the defendant's financial resources in detail and prepare a report for the court. If a defendant fails to provide proper information to the court or the Commission the court will, save in exceptional circumstances, make an RDCO for the full costs incurred under the representation order (Regulation 13).

Regulations 8 and 9 specify for the assets which may be taken into account when an RDCO is made. Regulation 9(2) provides that the first £3,000 of the defendant's capital should be disregarded together with the first £100,000 of equity in the defendant's principal residence. Further, RDCOs will normally be based upon capital rather than income. Income of the defendant may only be taken into account where the defendant's gross annual income exceeds £24,000. In considering the defendant's financial resources the resources of the defendant's partner are taken into account (Regulation 9(1)). Also, if it appears to the court or Commission that the defendant has directly or indirectly transferred resources to another person, a person has been maintaining the defendant or making resources available to the defendant, the court or the Commission may assess or estimate the value of the resources of that other person and may treat any or all of those resources as those of the defendant (Regulation 8). This provision is similar to Regulations under the Legal Aid Act 1988 – see for example Regulation 2A of Schedule 3 of the Legal Aid in Criminal and Care Proceedings (General) Regulations 1989.

Regulations 10 – 14 describe the procedure for making an RDCO. Regulation 11 gives the judge a wide discretion to make such an order if it is reasonable to do so taking into account all the circumstances of the case, including the means of the defendant and any other financial order or penalty imposed upon him or her. An RDCO will usually be made at the conclusion of the proceedings when the defendant is sentenced, at which time it is unlikely that the costs under the representation order will have been determined. Therefore the solicitor for the defendant must provide an estimate of costs to the judge when so requested (Regulation 10) but if the amount paid by the defendant under the RDCO turns out to be greater than the final costs assessed under the representation order, the excess must be repaid (Regulation 14). The court has power to adjourn the making of an RDCO to obtain further information, or to order an RDCO for the full amount of the costs under the representation order if the defendant has failed to provide information when requested to do so (Regulations 12 and 13).

Regulation 15 gives the judge power to make an order prohibiting an individual from dealing with property. Such an order is in the nature of a “Mareva” injunction. An order will usually be made where the judge considers that there is a real risk that relevant property will be disposed of, but it can be made in any case where the defendant has failed to provide information or where the costs under the representation order or financial resources of the defendant have not yet been determined..

Payments made under an RDCO are made to the Commission which may enforce the RDCO in any manner which is applicable to a civil debt between parties (Regulations 16 and 17). Enforcement will be dealt with by the Commission’s Debt Recovery Unit.

Criminal Defence Service (Funding) Order 2001

The Funding Order governs remuneration under the Criminal Defence Service. In the case of services funded by means of a contract with the Commission, the contract determines remuneration but the Funding Order requires the Commission to pay no more than the amounts set out in the Contract (as issued in February 2001). For services which are not covered by contracts, in particular most representation in the criminal higher courts, the Funding Order lays down all the detailed remuneration rules.

Article 3 contains a very important transitional provision which ensures that the Lord Chancellor remains responsible for remuneration in most case in the higher criminal courts. Although the 1999 Act makes the Commission responsible for the Criminal Defence Service as a whole, paragraph 9 of Schedule 14 of the Act allows the Lord Chancellor to retain responsibility for funding representation in some or all cases until a date specified by order. The date specified in Article 3 is 4 April 2005.

The Lord Chancellor retains responsibility until that time for remuneration in the Crown Court, Court of Appeal and House of Lords subject to three important exceptions:

- (i) Crown Court proceedings prescribed under section 12(2)(g) of the Act remain the responsibility of the Commission. These are the proceedings set out in Regulation 3(2) of the General Regulations for which Advocacy Assistant is available, including certain applications and appeals under the Crime and Disorder Act 1998;
- (ii) proceedings governed by an individual very high cost case contract (whether for serious fraud or any other very high cost case);
- (iii) representation by public defenders employed by the Commission.

Cases sent to trial under section 51 of the Crime and Disorder Act 1998 are treated for this purpose as a Crown Court case. The sending hearing is paid by the Lord Chancellor as part of the Crown Court case, not as a magistrates' court case paid for by the Commission (Article 4).

The detailed remuneration procedures and rates payable by the Lord Chancellor for cases for which he is responsible are set out extensively in Schedules 1 – 4 of the Funding Order.

Schedule 1 sets out the detailed procedures for such remuneration, including the various rights to payment on account in Crown Court work and the process for extending payment and rights of appeal for solicitor and counsel.

Schedule 2 deals with solicitors' fees, including solicitors' standard fees in the Crown Court.

Schedule 3 covers counsel's fees which are not covered by the graduated fee scheme in the Crown Court.

Schedule 4 sets out the detailed rules for graduated fees for counsel in the Crown Court.

The approach to remuneration in all the schedules closely follows the rules previously contained in the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989.

Remuneration in very high cost cases is dealt with in Articles 6, 9 and 14 and Schedule 5 of the order. The definition of a very high cost case is the same as that which appears elsewhere in the CDS Regulations, namely a case which if it proceeds to trial, that trial would be likely to last 25 days or longer or where the defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater. Schedule 5 sets out a range of hourly and daily payment rates according to the level of fee-earner and the category of case. Very high cost cases are assigned to one of four categories by the Commission or the appropriate officer according to the case's complexity, importance and subject matter (Article 14). The Commission has produced guidelines which set out objective tests for which category a case should be considered under. These are available from the Commission's High Cost Cases Unit.

Where representation in a very high cost case is provided under an individual contract entered into with the Commission (see the CDS (Choice in High Cost Cases) Regulations 2001) Article 9 of the Funding Order requires that remuneration should be at rates no higher than those provided for in Schedule 5 of the order. However initially not all very high cost cases will be subject to an individual contract. Responsibility for remuneration in such cases which do not proceed under contract will remain with the Lord Chancellor but nevertheless payment will be at rates no higher than those provided for in Schedule 5 (Article 6).

Articles 7 and 8 deal with the funding of services by the Commission. Sections 13 and 14 of the Act set out a range of ways in which the Commission can fund services. By far the most important of these is to enter into contracts with persons for the provision of Advice and Assistance and Representation under section 13(2)(a) and 14(2)(a) respectively. Paying for Advice, Assistance and Representation by means of direct payments without a contract takes place under sections 13(2)(b) and 14(2)(b) of the Act. Article 7 of the Funding Order prohibits the Commission from paying for cases in this way other than in the case of proceedings for contempt in the face of the court (see below). This Article does not of course prevent the Commission from making direct payment outside the contract in transitional cases started before 2 April 2001 which are covered by the Access to Justice Act 1999 (Commencement No. 7, Transitional Provisions and Savings) Order 2001.

Remuneration under contract other than a very high cost case contract is governed by Part E of the Specification to the Contract as published in February 2001. Article 8 prohibits the Commission from paying at rates which are higher than this.

Articles 10, 11 and 12 deal with remuneration for proceedings for contempt in the face of the court. This is the only type of proceeding which is paid for by the Commission as part of the Criminal Defence Service other than under outside of the provisions of any contract or by a public defender. This allows the court to grant representation to any legal representative to assist the client without delay or formality

Payment for representation for contempt in the face of the court is generally covered by a standard fee but the legal representative can apply for non-standard payments if there are exceptional circumstances. The remuneration rules set out in Articles 10 – 12 mirror those previously contained in section 29 of the Legal Aid Act 1988 and the Legal Aid in Contempt Proceedings (Remuneration) Regulations 1995. The current standard fee is £72.75 per day, which can be split between advocate and another representative so that they receive £46.50 and £26.25 respectively. Further guidance on representation in contempt proceedings is contained in section 7 of Part D of Volume 1 of the Commission's Manual.

Criminal Defence Service

Criminal Defence Service.

12. - (1) The Commission shall establish, maintain and develop a service known as the Criminal Defence Service for the purpose of securing that individuals involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require.

(2) In this Part "criminal proceedings" means-

(a) proceedings before any court for dealing with an individual accused of an offence,

(b) proceedings before any court for dealing with an individual convicted of an offence (including proceedings in respect of a sentence or order),

(c) proceedings for dealing with an individual under section 9 of, or paragraph 6 of Schedule 1 to, the Extradition Act 1989,

(d) proceedings for binding an individual over to keep the peace or to be of good behaviour under section 115 of the Magistrates' Courts Act 1980 and for dealing with an individual who fails to comply with an order under that section,

(e) proceedings on an appeal brought by an individual under section 44A of the Criminal Appeal Act 1968,

(f) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and

(g) such other proceedings concerning an individual, before any such court or other body, as may be prescribed.

(3) The Commission shall fund services as part of the Criminal Defence Service in accordance with sections 13 to 15.

(4) The Commission may accredit, or authorise others to accredit, persons or bodies providing services which may be funded by the Commission as part of the Criminal Defence Service; and any system of accreditation shall include provision for the monitoring of the services provided by accredited persons and bodies and for the withdrawal of

accreditation from any providing services of unsatisfactory quality.

(5) The Commission may charge-

(a) for accreditation,

(b) for monitoring the services provided by accredited persons and bodies, and

(c) for authorising accreditation by others;

and persons or bodies authorised to accredit may charge for accreditation, and for such monitoring, in accordance with the terms of their authorisation.

(6) The Lord Chancellor may by order require the Commission to discharge the functions in subsections (4) and (5) in accordance with the order.

Advice and assistance.

13. - (1) The Commission shall fund such advice and assistance as it considers appropriate-

(a) for individuals who are arrested and held in custody at a police station or other premises, and

(b) in prescribed circumstances, for individuals who-

(i) are not within paragraph (a) but are involved in investigations which may lead to criminal proceedings,

(ii) are before a court or other body in such proceedings, or

(iii) have been the subject of such proceedings;

*and the assistance which the Commission may consider appropriate includes assistance in the form of advocacy.*¹

(2) The Commission may comply with the duty imposed by subsection (1) by-

¹ Note, section 13(1) is shown as it is due to be amended by the Criminal Defence Service (Advice and Assistance) Bill. The Bill is expected to complete its Parliamentary passage by 2 April 2001. The Bill also provides that Regulations under section 13 may include provision treating them as having come into force at the same time as that subsection.

- (a) entering into contracts with persons or bodies for the provision of advice or assistance by them,
- (b) making payments to persons or bodies in respect of the provision of advice or assistance by them,
- (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, advice or assistance,
- (d) establishing and maintaining bodies to provide, or facilitate the provision of, advice or assistance,
- (e) making grants to individuals to enable them to obtain advice or assistance,
- (f) employing persons to provide advice or assistance, or
- (g) doing anything else which it considers appropriate for funding advice and assistance.

(3) The Lord Chancellor may by order require the Commission to discharge the function in subsection (2) in accordance with the order.

(4) The Commission may fund advice and assistance by different means-

- (a) in different areas in England and Wales, and
- (b) in relation to different descriptions of cases.

Representation.

14. - (1) Schedule 3 (which makes provision about the grant of a right to representation in criminal proceedings) has effect; and the Commission shall fund representation to which an individual has been granted a right in accordance with that Schedule.

(2) Subject to the following provisions, the Commission may comply with the duty imposed by subsection (1) by-

- (a) entering into contracts with persons or bodies for the provision of representation by them,
- (b) making payments to persons or bodies in respect of the provision of representation by them,

(c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, representation,

(d) establishing and maintaining bodies to provide, or facilitate the provision of, representation,

(e) making grants to individuals to enable them to obtain representation,

(f) employing persons to provide representation, or

(g) doing anything else which it considers appropriate for funding representation.

(3) The Lord Chancellor-

(a) shall by order make provision about the payments which may be made by the Commission in respect of any representation provided by non-contracted private practitioners, and

(b) may by order make any other provision requiring the Commission to discharge the function in subsection (2) in accordance with the order.

(4) For the purposes of subsection (3)(a) representation is provided by a non-contracted private practitioner if it is provided, otherwise than pursuant to a contract entered into by the Commission, by a person or body which is neither-

(a) a person or body in receipt of grants or loans made by the Commission as part of the Criminal Defence Service, nor

(b) the Commission itself or a body established or maintained by the Commission.

(5) The provision which the Lord Chancellor is required to make by order under subsection (3)(a) includes provision for reviews of, or appeals against, determinations required for the purposes of the order.

(6) The Commission may fund representation by different means-

(a) in different areas in England and Wales, and

Selection of representative.

(b) in relation to different descriptions of cases.

15. - (1) An individual who has been granted a right to representation in accordance with Schedule 3 may select any representative or representatives willing to act for him; and, where he does so, the Commission is to comply with the duty imposed by section 14(1) by funding representation by the selected representative or representatives.

(2) Regulations may provide that in prescribed circumstances-

(a) the right conferred by subsection (1) is not to apply in cases of prescribed descriptions,

(b) an individual who has been provided with advice or assistance funded by the Commission under section 13 by a person whom he chose to provide it for him is to be taken to have selected that person as his representative pursuant to that right,

(c) that right is not to include a right to select a representative of a prescribed description,

(d) that right is to select only a representative of a prescribed description,

(e) that right is to select not more than a prescribed number of representatives to act at any one time, and

(f) that right is not to include a right to select a representative in place of a representative previously selected.

(3) Regulations under subsection (2)(b) may prescribe circumstances in which an individual is to be taken to have chosen a person to provide advice or assistance for him.

(4) Regulations under subsection (2) may not provide that only a person employed by the Commission, or by a body established and maintained by the Commission, may be selected.

(5) Regulations may provide that in prescribed circumstances the Commission is not required to fund, or to continue to fund, representation for an individual by a particular representative (but such provision shall not prejudice any right of the individual

to select another representative).

(6) The circumstances which may be prescribed by regulations under subsection (2) or (5) include that a determination has been made by a prescribed body or person.

Code of conduct.

16. - (1) The Commission shall prepare a code of conduct to be observed by employees of the Commission, and employees of any body established and maintained by the Commission, in the provision of services as part of the Criminal Defence Service.

(2) The code shall include-

- (a) duties to avoid discrimination,
- (b) duties to protect the interests of the individuals for whom services are provided,
- (c) duties to the court,
- (d) duties to avoid conflicts of interest, and
- (e) duties of confidentiality,

and duties on employees who are members of a professional body to comply with the rules of the body.

(3) The Commission may from time to time prepare a revised version of the code.

(4) Before preparing or revising the code the Commission shall consult the Law Society and the General Council of the Bar and such other bodies or persons as it considers appropriate.

(5) After preparing the code or a revised version of the code the Commission shall send a copy to the Lord Chancellor.

(6) If he approves it he shall lay it before each House of Parliament.

(7) The Commission shall publish-

- (a) the code as first approved by the Lord

Chancellor, and

(b) where he approves a revised version, either the revisions or the revised code as appropriate.

(8) The code, and any revised version of the code, shall not come into force until it has been approved by a resolution of each House of Parliament.

Terms of provision of funded services.

17. - (1) An individual for whom services are funded by the Commission as part of the Criminal Defence Service shall not be required to make any payment in respect of the services except where subsection (2) applies.

(2) Where representation for an individual in respect of criminal proceedings in any court other than a magistrates' court is funded by the Commission as part of the Criminal Defence Service, the court may, subject to regulations under subsection (3), make an order requiring him to pay some or all of the cost of any representation so funded for him (in proceedings in that or any other court).

(3) Regulations may make provision about-

(a) the descriptions of individuals against whom an order under subsection (2) may be made,

(b) the circumstances in which such an order may be made and the principles to be applied in deciding whether to make such an order and the amount to be paid,

(c) the determination of the cost of representation for the purposes of the making of such an order,

(d) the furnishing of information and evidence to the court or the Commission for the purpose of enabling the court to decide whether to make such an order and (if so) the amount to be paid,

(e) prohibiting individuals who are required to furnish information or evidence from dealing with property until they have furnished the information or evidence or until a decision whether to make an order, or the amount to be paid, has been made,

(f) the person or body to which, and manner in which, payments required by such an order must be made and what that person or body is to do with them, and

(g) the enforcement of such an order (including provision for the imposition of charges in respect of unpaid amounts).

Funding.

18. - (1) The Lord Chancellor shall pay to the Commission such sums as are required to meet the costs of any advice, assistance and representation funded by the Commission as part of the Criminal Defence Service.

(2) The Lord Chancellor may-

(a) determine the manner in which and times at which the sums referred to in subsection (1) shall be paid to the Commission, and

(b) impose conditions on the payment of the sums.

(3) In funding services as part of the Criminal Defence Service the Commission shall aim to obtain the best possible value for money.

SCHEDULE 3

CRIMINAL DEFENCE SERVICE: RIGHT TO REPRESENTATION

Individuals to whom right may be granted

1. - (1) A right to representation for the purposes of any kind of criminal proceedings before a court may be granted to an individual such as is mentioned in relation to that kind of proceedings in section 12(2).

(2) A right to representation for the purposes of criminal proceedings may also be granted to an individual to enable him to resist an appeal to the Crown Court otherwise than in an official capacity.

(3) In this Schedule "court" includes any body before which criminal proceedings take place.

Grant of right by court

2. - (1) A court before which any criminal proceedings take place, or are to take place, has power to grant a right to representation in respect of those proceedings except in such circumstances as may be prescribed.

(2) Where a right to representation is granted for the purposes of criminal proceedings it includes the right to representation for the purposes of any related bail proceedings and any preliminary or incidental proceedings; and regulations may make provision specifying whether any proceedings are or are not to be regarded as preliminary or incidental.

(3) A court also has power to grant a right to representation for the purposes of criminal proceedings before another court in such circumstances as may be prescribed.

(4) The form of the application for a grant of a right to representation under this paragraph, and the form of the grant of such a right, shall be such as may be prescribed.

(5) A right to representation in respect of proceedings may be withdrawn by any court before which the proceedings take place; and a court must consider whether to withdraw a right to representation in such circumstances as may be prescribed.

(6) The powers of a magistrates' court for any area under this

paragraph may be exercised by a single justice of the peace for the area.

(7) Any rules under section 144 of the Magistrates' Courts Act 1980 which provide for the functions of a single justice under sub-paragraph (6) to be exercised by a justices' clerk may make different provision for different areas.

Grant of right by commission

3. - (1) Regulations may provide that the Commission shall have power to grant rights to representation in respect of any one or more of the descriptions of proceedings prescribed under section 12(2)(g), and to withdraw any rights to representation granted by it.

(2) The form of any application for a grant of a right to representation under this paragraph, and the form of the grant of such a right, shall be such as may be prescribed.

(3) Regulations under sub-paragraph (1) may make such transitional provisions as the Lord Chancellor may consider appropriate.

Appeals

4. Except where regulations otherwise provide, an appeal shall lie to such court or other person or body as may be prescribed against a decision to refuse to grant a right to representation or to withdraw a right to representation.

Criteria for grant of right

5. - (1) Any question as to whether a right to representation should be granted shall be determined according to the interests of justice.

(2) In deciding what the interests of justice consist of in relation to any individual, the following factors must be taken into account-

- (a) whether the individual would, if any matter arising in the proceedings is decided against him, be likely to lose his liberty or livelihood or suffer serious damage to his reputation,
- (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law,
- (c) whether the individual may be unable to understand the proceedings or to state his own case,

(d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual, and

(e) whether it is in the interests of another person that the individual be represented.

(3) The Lord Chancellor may by order amend sub-paragraph (2) by adding new factors or varying any factor.

(4) A right to representation shall always be granted in such circumstances as may be prescribed.

STATUTORY INSTRUMENTS

2001 No.916(C.)

**JUSTICES OF THE PEACE, ENGLAND AND WALES
JUSTICES OF THE PEACE, NORTHERN IRELAND
LEGAL SERVICES, ENGLAND AND WALES
MAGISTRATES' COURTS, ENGLAND AND WALES
PENSIONS, ENGLAND AND WALES
SUPREME COURT OF ENGLAND AND WALES
SUPREME COURT OF NORTHERN IRELAND**

**GENERAL COMMISSIONERS OF INCOME TAX, ENGLAND AND WALES
GENERAL COMMISSIONERS OF INCOME TAX, NORTHERN IRELAND**

The Access to Justice Act 1999 (Commencement No. 7, Transitional Provisions and Savings) Order 2001

Made

2001

The Lord Chancellor, in exercise of the powers conferred on him by section 108(1) of, and paragraphs 1(1) and 8 of Schedule 14 to, the Access to Justice Act 1999⁽²⁾, makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Access to Justice Act 1999 (Commencement No. 7, Transitional Provisions and Savings) Order 2001.

(2) In this Order “the Act” means the Access to Justice Act 1999, and references to a section, Part, Schedule or paragraph by number alone mean the section, Part, Schedule or paragraph so numbered in the Act.

⁽²⁾ 1999 c. 22.

Commencement of provisions of Access to Justice Act 1999

2. The following provisions of the Act come into force on 1st April 2001:

(a) in Part V:

(i) to the extent that they are not already in force, section 83 and Schedule 12 (Greater London Magistrates' Courts Authority);

(ii) section 90 and Schedule 13 (transfer of clerks' functions to chief executives); and

(iii) section 91 (accounting etc. functions of chief executives); and

(b) in Part VI:

(i) sections 98 (justices and clerks: immunity from costs), 99 (justices and clerks: indemnity), and 100 (assistant justices' clerks: immunity from action); and

(ii) so far as they extend to England and Wales and Northern Ireland only, sections 101 (General Commissioners: immunity from action), 102 (General Commissioners: immunity from costs and expenses), and 103 (General Commissioners and clerks: indemnity); and

(c) in Part VII :

(i) so far as they have not already been effected, the repeals in Part V(6) of Schedule 15;

(ii) the repeals in Part V(7) of Schedule 15;

(iii) the repeal in Part VI of Schedule 15; and

(iii) so far as it relates to those repeals, section 106.

3. The following provisions of the Act come into force on 2nd April 2001:

(a) in Part I:

(i) sections 12 to 18 and Schedule 3 (Criminal Defence Service); and

(ii) to the extent that they are not already in force, section 24 and Schedule 4 (amendments consequential on Part I); and

(b) in Part VII, so far as they have not already been effected, the repeals and revocations in Part I of Schedule 15 and, so far as it relates to those repeals and revocations, section 106.

Transitional provisions and savings

4. The transitional provisions and savings in Schedules 1 and 2 to this Order have effect.

Dated

,C.

SCHEDULE 1

Article 4

Justices of the Peace Act 1997 etc.: transitional provisions and savings

- 1.** In this Schedule “the 1997 Act” means the Justices of the Peace Act 1997⁽³⁾.
- 2.** Section 53A of the 1997 Act^(b) shall not apply to proceedings commenced before 1st April 2001 in respect of any act or omission of a justice of the peace or justices’ clerk in the execution (or purported execution) of his duty—
 - (a) as such a justice, or
 - (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice.
- 3.—**(1) Notwithstanding the commencement of paragraphs 15 to 17 of Schedule 12 to the Act, and the repeal of part of section 55 of the 1997 Act by Part V(6) of Schedule 15 to the Act, section 57 of the 1997 Act^(c) shall continue to have effect as if—
 - (a) the outer London boroughs and the Common Council of the City of London were responsible authorities for the purposes of payment to them of grants towards the sums specified in sub-paragraph (2); and
 - (b) the sums specified in sub-paragraph (2) were payable for the purposes of functions under Part VI of the 1997 Act.(2) The sums referred to in sub-paragraph (1) are sums payable by the outer London boroughs and the Common Council of the City of London in relation to loan debt contracted to support capital expenditure incurred before 1st April 1990 for the purposes of functions under Part VI of the 1997 Act.
- 4.** The repeal of section 15(1)(a)(ii) of the Superannuation (Miscellaneous Provisions) Act 1967^(d) (“the 1967 Act”) by Part V(6) of Schedule 15 to the Act shall not affect the application of section 15 of the 1967 Act in relation to any person who ceased to be a member of the metropolitan civil staffs for the purposes of section 15 of the 1967 Act before the repeal of section 15(1)(a)(ii) of that Act.

(a) 1997 c. 25.

(b) Section 53A is inserted by section 98(1) of the Access to Justice Act 1999.

(c) Section 57 was amended by section 10 of the Local Government (Contracts) Act 1997 (c. 65).

(d) 1967 c.28. Section 15 has been amended by the Superannuation Act 1972 (c.11), section 14; the Police and Magistrates’ Courts Act 1994 (c.29), Schedule 8, Part II, paragraph 25; the Greater London Authority Act 1999 (c.29), Schedule 27, paragraph 20; and by S.I. 1974/520.

(e) S.I. 1973/579, as amended by S.I. 1992/709.

(f) 1970 c. 9. Section 2A is inserted by section 102 of the Access to Justice Act 1999.

(g) S.I. 1981/1675 (N.I. 26). Article 6A is inserted by section 98(2) of the Access to Justice Act 1999.

5. Notwithstanding the repeal of section 60(4) of the 1997 Act by Part V(7) of Schedule 15 to the Act, the Justices' Clerks (Accounts) Regulations 1973(e) shall continue to have effect in respect of all sums received or paid by, or owed to, a justices' clerk.
6. Section 2A of the Taxes Management Act 1970(f) shall not apply to proceedings commenced in England and Wales or in Northern Ireland before 1st April 2001 in respect of any act or omission of a General Commissioner of income tax in the execution (or purported execution) of his duty.
7. Article 6A of the Magistrates' Courts (Northern Ireland) Order 1981(g) shall not apply to proceedings commenced before 1st April 2001 in respect of any act or omission of a resident magistrate, justice of the peace or clerk of petty sessions in the execution (or purported execution) of his duty—
- (a) as such a magistrate or justice, or
 - (b) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a magistrates' court.

SCHEDULE 2

Article 4

Criminal Defence Service: transitional provisions and savings

1. In this Schedule:

“the 1988 Act” means the Legal Aid Act 1988⁽⁴⁾;

“authorised” means authorised under regulation 15 of the Legal Advice and Assistance Regulations 1989**(b)** (clients resident abroad);

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“funded services” means services funded by the Commission under sections 4 to 11 of the Act as part of the Community Legal Service;

“solicitor” includes a firm of solicitors.

2. Nothing in the provisions commenced by this Order or in the transitional provisions of this Order shall have effect:

(a) for the purposes of the application to funded services, by virtue of the Community Legal Service (Funding) Order 2000**(c)**, of the following regulations made under the 1988 Act:

(i) the Civil Legal Aid (General) Regulations 1989**(d)**;

(ii) the Legal Advice and Assistance Regulations 1989;

(iii) the Legal Aid in Family Proceedings (Remuneration) Regulations 1991**(e)**; or

(iv) the Legal Aid in Civil Proceedings (Remuneration) Regulations 1994**(f)**;

(b) subject to paragraph 4 of this Schedule, and to the provisions of any contract, in relation to any work carried out under a legal aid order or legal aid certificate dated prior to 2nd April 2001;

(c) in relation to assistance by way of representation under Part III of the 1988 Act:

⁽⁴⁾ 1988 c. 34. This Act is repealed by Part I of Schedule 15 to the Access to Justice Act 1999, subject to immaterial exceptions, and to transitional provisions and savings contained in S.I. 2000/774 and in this Order.

(b) S.I. 1989/340. These Regulations were amended by S.I. 2001/ . Together with S.I. 1989/339, 1991/2038 and 1994/228, they are revoked by virtue of the repeal of the enabling provisions in the Legal Aid Act 1988.

(c) S.I. 2000/627, as amended by S.I. 2000/1541 and 2001/ .

(d) S.I. 1989/339. These Regulations were most recently amended by S.I. 2000/451 and 2001/ .

(e) S.I. 1991/2038, as amended by S.I. 2001/ .

(f) S.I. 1994/228.

(i) where the application is signed prior to 2nd April 2001 and received by the Commission prior to 10th April 2001; or

(ii) which is granted by a solicitor prior to 2nd April 2001 and notified to the Commission prior to 10th April 2001;

(d) in relation to advice and assistance under Part III of the 1988 Act (other than assistance by way of representation) where the application is signed or is authorised prior to 2nd April 2001;

(e) for the purposes of assessment for payment, where both a legal aid order under the 1988 Act and a representation order under the Act exist, in proceedings which form part of a single case in that they relate to one or more charges or informations which are preferred or laid at the same time, or which are founded on the same facts, or which form or are part of a series of offences;

(f) in relation to any work carried out before 2nd April 2001 and paid for by the Lord Chancellor other than under the terms of any contract; or

(g) for the application of paragraphs 10(3)(b), 33, 34 and 36 of Schedule 4 to the Act to work carried out under the provisions of the 1988 Act.

3. Notwithstanding the provisions of article 1(2)(a) of the Access to Justice Act 1999 (Commencement No. 3, Transitional Provisions and Savings) Order 2000⁽⁵⁾, the Commission shall fund applications for judicial review or habeas corpus relating to criminal investigations or proceedings as part of the Community Legal Service.

4. (1) Subject to the provisions of any contract, any claim for payment for work carried out under the provisions of the 1988 Act shall be submitted so as to be received by the Commission no later than five months after the completion of the work for which payment is claimed.

(2) Subject to sub-paragraph (3), the Commission may refuse any claim for payment mentioned in sub-paragraph (1) which is received late without good reason.

(3) No claim for payment shall be refused unless the solicitor has been given a reasonable opportunity to show why it should not be refused.

5. Where an application for a legal aid order under the 1988 Act is considered on or after 2nd April 2001, it shall be treated as an application for a representation order under section 14 of the Act.

⁽⁵⁾ S.I. 2000/774.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 1st and 2nd April 2001 a number of provisions of the Access to Justice Act 1999.

Provisions brought into force on 1st April 2001

The Greater London Magistrates' Courts Authority becomes the magistrates' courts committee for Greater London and its functions are specified (section 83 and Schedule 12).

The administrative functions of justices' clerks are transferred to justices' chief executives (section 90 and Schedule 13), and provision is made for the accounting functions of justices' chief executives (section 91).

New provision is made for the immunity from costs of justices and justices' clerks (section 98) and of General Commissioners of income tax (section 102); for indemnity for justices and justices' clerks (section 99) and for General Commissioners and their clerks (section 103); and for immunity from action for assistant justices' clerks (section 100) and General Commissioners (section 101).

The Order contains transitional provisions and savings, and consequential repeals.

Provisions brought into force on 2nd April 2001

The Criminal Defence Service is established to provide advice, assistance and representation to individuals involved in criminal investigations or criminal proceedings (sections 12 to 18 and Schedule 3). The remaining consequential amendments in Schedule 4 are brought into force.

The Order makes transitional arrangements and savings relating to the replacement of the criminal legal aid scheme under the Legal Aid Act 1988 by the Criminal Defence Service and, in particular, relating to existing cases. There are also consequential repeals.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

Provision	Date of commencement	S.I. No.
Sections 36, 40, 42, 46 and 49 1999/2657	27.9.1999	
Section 43 and Schedule 6 (partially) Section 48 and Schedule 7 Section 66 and Schedule 9 Section 67(2) (in certain areas only) Section 83(1) (partially) Section 83(3) and Schedule 12 (partially) Sections 88 and 89 Section 105 Section 106 and Schedule 15 (partially)		
Section 53 Section 106 and Schedule 15 (partially)	1.11.1999	
Section 79 Section 106 and Schedule 15 (partially)	12.11.1999	
Section 35 1999/3344 Section 41 and Schedule 5 Section 43 and Schedule 6 (partially) Section 71 Section 85 Section 106 and Schedule 15 (partially)	1.1.2000	
Section 83(1) (partially) Section 83(3) and Schedule 12 (partially)	1.3.2000	
Section 1 and Schedule 1 Sections 2 to 5 Section 6 and Schedule 2 Sections 7 to 11 and 19 to 23 Section 24 and Schedule 4 (partially) Sections 25 and 26 Sections 27, 29 and 30 Section 106 and Schedule 15 (partially)	1.4.2000	2000/774
Sections 37, 38 and 39 2000/1920 Section 44	31.7.2000	

Section 106 and Schedule 15 (partially)		
Section 78 and Schedule 11	31.8.2000	
Section 83(2) (partially)		
Section 106 and Schedule 15 (partially)		
Section 67(2) (partially)	8.1.2001	
2000/3280		
Sections 92 to 95		
Section 106 and Schedule 15 (partially)		
Sections 96 and 97	19.2.2001	2001/168
Section 106 and Schedule 15 (partially)		

STATUTORY INSTRUMENTS

2001 No.779

LEGAL SERVICES, ENGLAND AND WALES

The Legal Aid Board (Abolition) Order 2001

Made - - - -

2001

Coming into force

2nd April 2001

The Lord Chancellor, in exercise of the powers conferred on him by paragraph 7 of Schedule 14 to the Access to Justice Act 1999⁽⁶⁾, being satisfied that the duties of the Legal Aid Board under paragraph 6 of that Schedule have been discharged, makes the following Order:

Citation and commencement

1. This Order may be cited as the Legal Aid Board (Abolition) Order 2001 and shall come into force on 2nd April 2001.

Abolition of the Legal Aid Board

2. The Legal Aid Board established under section 3 of the Legal Aid Act 1988⁽⁷⁾ shall cease to exist.

Signed by the authority of the Lord Chancellor

Secretary,
Dated

Parliamentary
Lord Chancellor's Department

⁽⁶⁾ 1999 c.22.
⁽⁷⁾ 1988 c.34.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the abolition of the Legal Aid Board, which was established under the Legal Aid Act 1988.

STATUTORY INSTRUMENTS

2001 No.

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (General) Regulations 2001

<i>Made - - - -</i>	2001
<i>Laid before Parliament</i>	2001
<i>Coming into force</i>	2nd April 2001

The Lord Chancellor, in exercise of the powers conferred on him by sections 12, 13, 15 and 20 of, and Schedule 3 to, the Access to Justice Act 1999⁽⁸⁾, makes the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (General) Regulations 2001 and shall come into force on 2nd April 2001.

Interpretation

2. In these Regulations:

“the Act” means the Access to Justice Act 1999;

“advocacy assistance” means assistance in the form of advocacy;

“advocate” means:

a barrister; or

⁽⁸⁾ 1999 c. 22.[nb amend]

a solicitor who has obtained a higher courts advocacy qualification in accordance with regulations and rules of conduct of the Law Society;

“assisted person” means a person in receipt of funded services;

“appropriate officer” means:

in the case of the Crown Court, the court manager;

in the case of a magistrates’ court, the justices’ clerk; and

in the case of the Court of Appeal, the Courts-Martial Appeal Court or the House of Lords, the registrar of criminal appeals

and, in any case, includes an officer designated by him to act on his behalf in that regard;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“the Costs Committee” means a committee appointed under arrangements made by the Commission to deal with, inter alia, applications for appeal against, or review of, assessments of costs;

“funded services” means services which are provided directly for an individual and funded for that individual as part of the Criminal Defence Service established under sections 12 to 18 of the Act;

“judge of the court” means, in relation to a magistrates’ court, a single justice;

“representation order” means a document granting a right to representation under section 14 of the Act;

“very high cost case” means a case with regard to which:

(a) if the case proceeds to trial, that trial would be likely to last for 25 days or longer;
or

(b) the defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor’s fees and disbursements, advocate’s fees, and VAT); and

“volunteer” means a person who, for the purpose of assisting with an investigation, attends voluntarily at a police station or a customs office, or at any other place where a constable or customs officer is present, or accompanies a constable or customs officer to a police station or a customs office or any other such place, without having been arrested.

PART II

SCOPE

Criminal proceedings

3. (1) For the purposes of this regulation, “the 1998 Act” means the Crime and Disorder Act 1998⁽⁹⁾.

(2) The following proceedings are criminal proceedings for the purposes of section 12(2)(g) of the Act:

(a) civil proceedings in a magistrates’ court arising from failure to pay a sum due or to obey an order of that court where such failure carries the risk of imprisonment;

(b) proceedings under sections 1, 2 and 4 of the 1998 Act relating to anti-social behaviour orders or sex offender orders;

(c) proceedings under section 8(1)(b) of the 1998 Act relating to parenting orders made where an anti-social behaviour order or a sex offender order is made in respect of a child;

(d) proceedings under section 8(1)(c) of the 1998 Act relating to parenting orders made on the conviction of a child;

(e) proceedings under section 9(5) of the 1998 Act to discharge or vary a parenting order made as mentioned in sub-paragraph (c) or (d);

(f) proceedings under section 10 of the 1998 Act to appeal against a parenting order made as mentioned in sub-paragraph (c) or (d); and

(g) proceedings under sections 14B, 14D, 14G, 14H, 21B and 21D of the Football Spectators Act 1989⁽¹⁰⁾ (banning orders and references to a court).

(3) Proceedings:

(a) in the Crown Court, following committal for sentence by a magistrates court;

(b) to quash an acquittal under the Criminal Procedure and Investigations Act 1996⁽¹¹⁾; and

(c) for confiscation and forfeiture in connection with criminal proceedings under RSC Order 115 in Schedule 1 to the Civil Procedure Rules 1998⁽¹²⁾

are to be regarded as incidental to the criminal proceedings from which they arise.

⁽⁹⁾ 1998 c. 37.

⁽¹⁰⁾ 1989 c. 37. Sections 14B, 14D, 14G and 14H were inserted by paragraph 2, and sections 21B and 21D by paragraph 4, of Schedule 1 to the Football (Disorder) Act 2000 (c. 25).

⁽¹¹⁾ 1996 c. 25.

⁽¹²⁾ S.I. 1998/3132. Order 115 was amended by S.I. 1999/1008.

(4) Applications for judicial review or habeas corpus relating to any criminal investigations or proceedings are not to be regarded as incidental to such criminal investigations or proceedings.

Advice and assistance - scope

4. The Commission shall fund such advice and assistance, including advocacy assistance, as it considers appropriate in relation to any individual who:

- (a) is the subject of an investigation which may lead to criminal proceedings;
- (b) is the subject of criminal proceedings;
- (c) requires advice and assistance regarding his appeal or potential appeal against the outcome of any criminal proceedings or an application to vary a sentence ;
- (d) requires advice and assistance regarding his sentence;
- (e) requires advice and assistance regarding his application or potential application to the Criminal Cases Review Commission;
- (f) requires advice and assistance regarding his treatment or discipline in prison (other than in respect of actual or contemplated proceedings regarding personal injury, death or damage to property);
- (g) is the subject of proceedings before the Parole Board;
- (h) requires advice and assistance regarding representations to the Home Office in relation to a mandatory life sentence or other parole review;
- (i) is a witness in criminal proceedings and requires advice regarding self-incrimination; or
- (j) is a volunteer.

Advice and assistance - financial eligibility

5. (1) The following advice and assistance may be granted without reference to the financial resources of the individual:

- (a) all advice and assistance provided to an individual who is arrested and held in custody at a police station or other premises;
- (b) all advocacy assistance before a magistrates' court or the Crown Court;
- (c) all advice and assistance provided by a court duty solicitor in accordance with his contract with the Commission;

(d) all advice and assistance provided to a volunteer during his period of voluntary attendance; and

(e) all advice and assistance provided to an individual being interviewed in connection with a serious service offence.

(2) For the purposes of paragraph (1), a serious service offence is an offence under the Army Act 1955⁽¹³⁾, the Air Force Act 1955⁽¹⁴⁾ or the Naval Discipline Act 1957⁽¹⁵⁾ which cannot be dealt with summarily.

(3) Advocacy assistance may be granted to an individual regarding his treatment or discipline in prison (other than in respect of actual or contemplated proceedings regarding personal injury, death or damage to property), or where he is the subject of proceedings before the Parole Board, if his weekly disposable income does not exceed £186 and his disposable capital does not exceed £3,000.

(4) Except where paragraph (1) applies, the Commission, or a person acting on behalf of the Commission where such function has been delegated in accordance with section 3(4) of the Act, shall determine the financial eligibility of the individual in accordance with the following paragraphs.

(5) Except where paragraph (1) or (3) applies, an individual is eligible for advice and assistance if his weekly disposable income does not exceed £87 and his disposable capital does not exceed £1,000.

(6) The Commission shall assess the disposable income and disposable capital of the individual and, where appropriate, of any person whose financial resources may be treated as those of the individual, in accordance with the Schedule to these Regulations.

(7) Where the Commission is satisfied that any person whose disposable income is to be assessed under paragraph (6) is directly or indirectly in receipt of any qualifying benefit, it shall take that person's disposable income as not exceeding the sum for the time being specified in paragraph (3) or (5), as appropriate.

(8) The following are qualifying benefits for the purposes of paragraph (7):

(a) income support;

(b) income-based jobseeker's allowance;

(c) working families' tax credit, provided that the amount (if any) to be deducted under section 128(2)(b) of the Social Security Contributions and Benefits Act 1992⁽¹⁶⁾ has been determined at not more than £70 per week; and

⁽¹³⁾ 1955 c. 18. This Act, together with the Air Force Act 1955 and the Naval Discipline Act 1957, was amended by the Armed Forces Discipline Act 2000 (c. 4).

⁽¹⁴⁾ 1955 c. 19.

⁽¹⁵⁾ 1957 c. 53.

⁽¹⁶⁾ 1992 c. 4; Sections 128 and 129 were amended, respectively, by the Tax Credits Act 1999 (c. 10), section 1(2), Schedule 1, paragraphs 1 and 2(g); and sections 1(2) and 14(1) to (5) and (9), Schedule 1, paragraphs 1 and 2(h).

(d) disabled person's tax credit, provided that the amount (if any) to be deducted under section 129(5)(b) of the Social Security Contributions and Benefits Act 1992 has been determined at not more than £70 per week.

(9) Where the Commission is satisfied that any person whose disposable capital is to be assessed in accordance with paragraph (3) is directly or indirectly in receipt of income support or income-based jobseeker's allowance, he shall take that person's disposable capital as not exceeding the capital sum for the time being specified in paragraph (3).

PART III

APPLICATIONS FOR REPRESENTATION ORDERS

Representation order

6. (1) Any application for the grant of a representation order shall be made on such form as is specified from time to time by the Lord Chancellor.

(2) Any application for the grant of a representation order in respect of the proceedings mentioned in section 12(2)(a) to (f) of the Act shall be made in accordance with regulations 8, 9 and 10.

(3) Any application for the grant of a representation order in respect of the proceedings mentioned in regulation 3(2)(criminal proceedings for the purposes of section 12(2)(g) of the Act):

(a) shall be made to the Commission; and

(b) may be granted only by the Commission or a person acting on behalf of the Commission where such function has been delegated in accordance with section 3(4) of the Act.

(4) Where an application under paragraph (3) is refused, the Commission shall provide to the applicant:

(a) written reasons for the refusal; and

(b) details of the appeal process.

(5) The appropriate officer of each court shall keep a record of every application to that court for a representation order, and of its outcome.

(6) The appropriate officer shall send to the Lord Chancellor such information from the record mentioned in paragraph (5) as the Lord Chancellor may request.

General power to grant representation

7. The court, a judge of the court, or the registrar of criminal appeals may grant a representation order at any stage of the proceedings in the circumstances set out in these Regulations whether or not an application has been made for such an order.

Proceedings in a magistrates' court

8. (1) Other than where regulation 6(3) applies, an application for a representation order in respect of proceedings in a magistrates' court may be made:

- (a) orally or in writing to the court; or
- (b) in writing to the appropriate officer.

(2) Where an application is made to the court, it may refer it to the appropriate officer for determination.

(3) Where an application is refused, the appropriate officer shall provide to the applicant:

- (a) written reasons for the refusal; and
- (b) details of the appeal process.

Proceedings in the Crown Court

9. (1) Other than where regulation 6(3) applies, an application for a representation order in respect of proceedings in the Crown Court may be made:

- (a) orally or in writing to the Crown Court;
- (b) in writing to the appropriate officer of that court;
- (c) orally or in writing to a magistrates' court at the conclusion of any proceedings in that magistrates' court;
- (d) orally or in writing to a magistrates' court inquiring into the offence as examining justices or sending for trial under section 51 of the Crime and Disorder Act 1998⁽¹⁷⁾;
- (e) where a magistrates' court has been given a notice of transfer under section 4 of the Criminal Justice Act 1987^(a) (serious fraud cases), in writing to the appropriate officer of that magistrates' court;
- (f) in the case of an appeal to the Crown Court from a magistrates' court, in writing to the appropriate officer of that magistrates' court;

⁽¹⁷⁾ 1998 c. 37.

^(a) 1987 c. 38, as amended by the Criminal Justice Act 1988 (c. 33), the Legal Aid Act 1988 (c. 34) and the Crime and Disorder Act 1998 (c. 37).

(g) where the applicant was granted a representation order for proceedings in a magistrates' court and was committed for trial in the Crown Court under section 6(2) of the Magistrates' Courts Act 1980⁽¹⁸⁾, in writing to the appropriate officer of the magistrates' court ordering the committal; and

(h) in the case of a retrial ordered under section 7 of the Criminal Appeal Act 1968⁽¹⁹⁾, orally or in writing to the court ordering the retrial.

(2) An application for a representation order in respect of representations to the High Court against a voluntary bill of indictment may be made:

(a) in writing to the appropriate officer of the Crown Court; or

(b) orally to the judge considering the voluntary bill

and where any such order is granted it shall also apply to any proceedings to which the applicant is indicted.

(3) Where an application is made to the court, it may refer it to the appropriate officer for determination.

(4) Where an application is refused, the appropriate officer shall provide to the applicant:

(a) written reasons for the refusal; and

(b) details of the appeal process.

Proceedings in the Court of Appeal (Criminal Division) and the House of Lords

10. (1) An application for a representation order in respect of proceedings in the Court of Appeal or the House of Lords may be made:

(a) orally to the Court of Appeal, or a judge of the court; or

(b) in writing to the Court of Appeal, a judge of the court, or the registrar of criminal appeals ("the registrar").

(2) Where an application is made to the court, it may refer it to a judge for determination.

(3) Where an application is made to a judge, he may refer it to the registrar for determination.

(4) The registrar may:

(a) grant the application; or

(b) refer it to the court or a judge of the court.

⁽¹⁸⁾ 1980 c. 43.
⁽¹⁹⁾ 1968 c.19.

(5) A representation order shall not be granted until notice of leave to appeal has been given in respect of the proceedings which are the subject of the application.

(6) Where a representation order is granted in respect of proceedings in the Court of Appeal, a judge or the registrar may specify the stage of the proceedings at which the representation order shall take effect.

(7) The House of Lords may not grant a representation order in respect of any proceedings.

PART IV

SELECTION OF REPRESENTATIVE

Representation in magistrates' courts and some Crown Court proceedings

11. (1) The right conferred by section 15(1) of the Act, as regards representation in respect of any proceedings to which this regulation applies, shall be exercisable only in relation to those representatives who are:

(a) employed by the Commission to provide such representation; or

(b) authorised to provide such representation under a crime franchise contract with the Commission which commences on or after 2nd April 2001 and specifies the rate of remuneration for such representation.

(2) This regulation applies to:

(a) any criminal proceedings in a magistrates' court;

(b) any proceedings in the Crown Court mentioned in regulation 3(2);

(c) any appeal by way of case stated from the magistrates' court; and

(d) any proceedings which are preliminary or incidental to proceedings mentioned in sub-paragraphs (a) to (c).

(3) This regulation does not apply to proceedings referred to in section 12(2)(f) of the Act (proceedings for contempt in the face of a court).

Advocates in magistrates' courts

12. (1) A representation order for the purposes of proceedings before a magistrates' court may only include representation by an advocate in the case of:

(a) any indictable offence, including an offence which is triable either way; or

(b) proceedings under section 9 of, or paragraph 6 of Schedule 1 to, the Extradition Act 1989⁽²⁰⁾

where the court is of the opinion that, because of circumstances which make the proceedings unusually grave or difficult, representation by both a solicitor and an advocate would be desirable.

(2) A representation order for the purposes of proceedings before a magistrates' court may not include representation by an advocate other than as provided in paragraph (1).

Representation in the Crown Court, Court of Appeal (Criminal Division) and House of Lords

13. (1) Subject to regulation 11 and paragraph (2), the right conferred by section 15(1) of the Act, as regards representation in respect of any proceedings in the Crown Court (other than proceedings mentioned in regulation 3(2)), Court of Appeal or House of Lords, shall be exercisable only in relation to those representatives who are:

(a) employed by the Commission to provide such representation; or

(b) authorised to provide such representation under a crime franchise contract with the Commission.

(2) Where the Commission has determined that representation in a very high cost serious fraud case shall be provided by a members of the Serious Fraud Panel, such right shall be limited to representatives who are for the time being members of that Panel.

(3) For the purposes of this regulation:

(a) a very high cost serious fraud case is a very high cost case with regard to which the offence with which the defendant is charged is primarily or substantially founded on allegations of fraud or other serious financial impropriety, or involves complex financial transactions; and

(b) the Serious Fraud Panel is a panel of solicitors appointed under arrangements made by the Commission to deal with such cases.

(4) This regulation does not apply to proceedings referred to in section 12(2)(f) of the Act.

Advocates in the Crown Court, Court of Appeal (Criminal Division) and House of Lords

14. (1) A representation order may provide for the services of a Queen's Counsel or of more than one advocate in respect of the whole or any specified part of any proceedings only in the cases specified and in the manner provided for by the following paragraphs of this regulation; and in this regulation "junior counsel" means any advocate other than a Queen's Counsel.

(2) Subject to paragraphs (3) to (9), a representation order may provide for the services of a Queen's Counsel or of more than one advocate in any of the following terms:

⁽²⁰⁾ 1989 c. 33.

- (a) a Queen's Counsel alone;
- (b) where two advocates are required:
 - (i) a Queen's Counsel with a junior counsel;
 - (ii) a Queen's Counsel with a noting junior counsel;
 - (iii) two junior counsel; or
 - (iv) a junior counsel with a noting junior counsel;
- (c) where three advocates are required:
 - (i) in any of the terms provided for in sub-paragraph (b) plus an extra junior counsel; or
 - (ii) in any of the terms provided for in sub-paragraph (b) plus an extra noting junior counsel.

(3) A representation order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(a) if and only if:

- (a) in the opinion of the court the case for the assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel; and
- (b) either:
 - (i) a Queen's Counsel or senior Treasury counsel has been instructed on behalf of the prosecution; or
 - (ii) the case for the assisted person is exceptional compared with the generality of cases involving similar offences.

(4) A representation order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(b)(iii) or (iv) if and only if:

- (a) in the opinion of the court the case for the assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented by a single advocate; and
- (b) either:
 - (i) two or more advocates have been instructed on behalf of the prosecution;
 - (ii) the case for the assisted person is exceptional compared with the generality of cases involving similar offences;
 - (iii) the number of prosecution witnesses exceeds 80; or
 - (iv) the number of pages of prosecution evidence exceeds 1,000

and for this purpose the number of pages of prosecution evidence shall include all witness statements, documentary and pictorial exhibits and records of interview with the assisted person and with other defendants forming part of the committal documents or included in any notice of additional evidence.

(5) A representation order relating to proceedings in the Crown Court may be made in the terms of paragraph (2)(b)(i) or (ii) if and only if:

- (a) in the opinion of the court the case for the assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel assisted by junior counsel; and
- (b) either:

- (i) the case for the assisted person is exceptional compared with the generality of cases involving similar offences; or
- (ii) a Queen's Counsel or senior Treasury counsel has been instructed on behalf of the prosecution and one of the conditions in paragraph (4)(b)(i), (iii) or (iv) is satisfied.

(6) A representation order may be made in the terms of paragraph (2)(c) if and only if:

- (a) the proceedings arise from a prosecution brought by the Serious Fraud Office;
- (b) the court making the order considers that three advocates are required; and
- (c) in the case of proceedings in the Crown Court, the conditions in paragraph (4) or (5) are satisfied.

(7) The fact that a Queen's Counsel has been or is proposed to be assigned under this regulation shall not by itself be a reason for making an order in any of the terms provided for by paragraph (2)(b) or (c).

(8) Where a Queen's Counsel has been or is proposed to be assigned under this regulation, no order in any of the terms provided for by paragraph (2)(b) or (c) shall be made where the case relates to an appeal to the Court of Appeal or to the House of Lords and it appears to the court at the time of making the order that representation can properly be undertaken by a Queen's Counsel alone.

(9) No order shall be made or amended so as to provide for representation:

- (a) in the terms of paragraph (2)(b) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(a);
- (b) in the terms of paragraph (2)(b)(i) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(ii), (iii) or (iv);
- (c) in the terms of paragraph (2)(b)(ii) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(iii) or (iv);
- (d) in the terms of paragraph (2)(b)(iii) unless the court making the order is of the opinion that the assisted person could not be adequately represented under an order in the terms of paragraph (2)(b)(iv);
- (e) in any of the terms provided for by paragraph (2)(c)(i) unless the court making the order is of the opinion that the assisted person could not be adequately represented under the corresponding order under paragraph (2)(c)(ii).

(10) Every application for a representation order in any of the terms provided for by paragraph (2), or for an amendment under paragraph (15), shall be in writing specifying:

- (a) the terms of the order sought and the grounds of the application; and
- (b) which of the conditions in paragraphs (3), (4), (5), (6) and (9) is relied upon in support of the order sought, and on what grounds it is contended that each such condition is fulfilled.

(11) A court may, before making a representation order in the terms provided for by paragraph (2) or amending the order under paragraph (15), require written advice from any advocate already assigned to the applicant on the question of what representation is needed in the proceedings.

(12) A court making a decision whether to make an order under paragraph (2) or to amend an order under paragraph (15) shall make annotations to the written application under paragraph (10), stating whether each of the conditions relied upon in support of the order made or sought is fulfilled.

(13) Subject to paragraph (14), a decision to make or amend a representation order so as to provide for the services of a Queen's Counsel or of more than one advocate may only be made:

(a) in the course of a trial or of a preliminary hearing, pre-trial review or pleas and directions hearing, by the judge presiding at that trial or hearing;

(b) where the proceedings are in the Crown Court, by a High Court judge, the resident judge of the Crown Court or (in the absence of the resident judge) a judge nominated for that purpose by the presiding judge of the circuit; or

(c) where the proceedings are in the Court of Appeal, by the registrar, a High Court judge or a judge of the Court of Appeal.

(14) A magistrates' court which may grant a representation order as respects any proceedings in the Crown Court by virtue of these Regulations may make:

(a) a representation order providing for the services of a Queen's Counsel without a junior counsel where the proceedings are a trial for murder and the order is made upon committal, transfer or sending for trial; or

(b) a representation order providing for the services of a Queen's Counsel with one junior counsel where the prosecution is brought by the Serious Fraud Office and the order is made upon receiving a notice of transfer under section 4 of the Criminal Justice Act 1987

but shall have no other power to make an order under this regulation.

(15) In proceedings to which paragraph (3), (4), (5) or (6) applies, a representation order may be amended:

(a) in any terms provided for by paragraph (2) in accordance with the provisions of this regulation; or

(b) to provide for representation by one junior counsel only.

(16) In every case in which a representation order is made under this regulation for the provision of funded services in terms provided for by paragraph (2)(b) or (c), it shall be the duty of:

(a) each representative:

(i) to keep under review the need for more than one advocate to be present in court or otherwise providing services; and

(ii) to consider whether the representation order should be amended as provided for in paragraph (15);

(b) Queen's Counsel, where the services of a Queen's Counsel are provided, to keep under review the question whether he could act alone.

(17) It shall be the duty of each representative, if of the opinion that the representation order should be amended as provided for in paragraph (15), to notify that opinion in writing:

(a) to the other representatives for the assisted person; and

(b) to the court

and the court shall, after considering the opinion and any representations made by any other representatives for the assisted person determine whether and in what manner the representation order should be amended.

- 15.** The court may grant a representation order for representation by an advocate alone:
- (a) in any proceedings referred to in section 12(2)(f) of the Act;
 - (b) in respect of an appeal to the Court of Appeal or the Courts-Martial Appeal Court;
- or
- (c) in cases of urgency where it appears to the court that there is no time to instruct a solicitor:
 - (i) in respect of an appeal to the Crown Court; or
 - (ii) in proceedings in which a person is committed to or appears before the Crown Court for trial or sentence, or appears or is brought before that court to be dealt with.

Change of representative

16. (1) Where a representation order has been granted an application may be made to the court before which the proceedings are heard to select a representative in place of a representative previously selected, and any such application shall state the grounds on which it is made.

(2) The court may:

(a) grant the application where:

- (i) the representative considers himself to be under a duty to withdraw from the case in accordance with his professional rules of conduct and, in such a case, the representative shall provide details of the nature of such duty;
- (ii) there is a breakdown in the relationship between the assisted person and the representative such that effective representation can no longer be provided and, in such a case, the representative shall provide details of the nature of such breakdown;
- (iii) through circumstances beyond his control, the representative is no longer able to represent the assisted person; or
- (iv) some other substantial compelling reason exists; or

(b) refuse the application.

PART V

WITHDRAWAL OF REPRESENTATION

17. (1) The court before which the proceedings are heard, or, in respect of the proceedings mentioned in regulation 3(2), the Commission, must consider whether to withdraw the representation order in any of the following circumstances:

(a) where any charge or proceedings against the individual are varied, the court or the Commission, as appropriate, must consider whether the interests of justice continue to require that he be represented in respect of the varied charge or proceedings;

(b) where the individual declines to accept a representation order in the terms which are offered;

(c) at the request of the individual; or

(d) where the representative named on the representation order declines to continue to represent the individual.

(2) Where representation is withdrawn, the appropriate officer or the Commission, as appropriate, shall provide written notification to the individual and to the solicitor (or, where there was no solicitor assigned, to the advocate), who shall inform any assigned advocate (or, where notification is given to the advocate, any other assigned advocate).

(3) On any subsequent application by the individual for a representation order in respect of the same proceedings, he shall declare the previous withdrawal of representation and the reason for it.

PART VI

MISCELLANEOUS

Transfer of documents

18. Where an individual is committed or sent for trial by a lower court to a higher court, or appeals or applies for leave to appeal from a lower court to a higher court, the appropriate officer of the lower court shall send to the appropriate officer of the higher court the following documents:

(a) a copy of any representation order previously made in respect of the same proceedings; and

(b) a copy of any application for a representation order which has been refused.

Authorisation of expenditure

19. (1) Where it appears to the solicitor necessary for the proper conduct of proceedings in the Crown Court for costs to be incurred under the representation order by taking any of the following steps:

- (a) obtaining a written report or opinion of one or more experts;
- (b) employing a person to provide a written report or opinion (otherwise than as an expert);
- (c) obtaining any transcripts or recordings; or
- (d) performing an act which is either unusual in its nature or involves unusually large expenditure

he may apply to the Costs Committee for prior authority to do so.

(2) The Commission may authorise a person acting on behalf of the Costs Committee to grant prior authority in respect of any application made under paragraph (1).

(3) Where the Costs Committee or a person acting on its behalf authorises the taking of any step specified in paragraph (1), it shall also authorise the maximum to be paid in respect of that step.

20. A representative assigned to an individual in any proceedings in the Crown Court may apply to the court for prior authority for the incurring of travelling and accommodation expenses in order to attend at the trial or other main hearing in those proceedings.

21. (1) No question as to the propriety of any step, or as to the amount of the payment within the maximum authorised, with regard to which prior authority has been given under regulation 19 or 20 or under any contract, shall be raised on any determination of costs unless the representative knew or should reasonably have known that the purpose for which it was given had become unnecessary.

(2) Payment may be allowed on a determination of costs in respect of any step with regard to which prior authority may be given, notwithstanding that no such authority was given or that the maximum authorised was exceeded.

Restriction on payment

22. Where a representation order has been made, the assisted person's solicitor or advocate shall not receive or be a party to the making of any payment for work done in connection with the proceedings in respect of which the representation order was made except such payments as may be made:

(a) by the Lord Chancellor or the Commission; or

(b) in respect of any expenses or fees incurred in:

(i) preparing, obtaining or considering any report, opinion or further evidence, whether provided by an expert witness or otherwise; or

(ii) obtaining any transcripts or recordings

where an application for an authority to incur such fees or expenses has been refused by the Costs Committee.

Notification of very high cost cases

23. (1) This regulation applies to very high cost cases where funded services are provided.

(2) Any solicitor who has conduct of a case which is a very high cost case shall notify the Commission in writing accordingly as soon as is practicable.

(3) Where a solicitor fails to comply with the provisions of this regulation without good reason, and as a result there is a loss to public funds, the court or Costs Committee, as appropriate, may refuse payment of his costs up to the extent of such loss.

(4) No payment under paragraph (3) shall be refused unless the solicitor has been given a reasonable opportunity to show why it should not be refused.

Duty to report abuse

24. Notwithstanding the relationship between or rights of a representative and client or any privilege arising out of such relationship, where the representative for an applicant or assisted person knows or suspects that that person:

(a) has intentionally failed to comply with any provision of regulations made under the Act concerning the information to be furnished by him; or

(b) in furnishing such information has knowingly made a false statement or false representation

the representative shall immediately report the circumstances to the Commission.

Date

,C.

SCHEDULE

ASSESSMENT OF RESOURCES

1. In this Schedule, unless the context otherwise requires:

“capital” means the amount or value of every resource of a capital nature;

“income” means the total income from all sources which the person concerned has received or may reasonably expect to receive in respect of the seven days up to and including the date of his application;

“partner” means a person with whom the person concerned lives as a couple, and includes a person with whom the person concerned is not currently living but from whom he is not living separate and apart;

“the person concerned” means the person whose disposable capital and disposable income are to be assessed;

“supplier” means the solicitor or firm of solicitors being requested to provide or providing funded services to the individual.

2. Any question arising under this Schedule shall be decided by the supplier to whom the individual has applied and that supplier, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Commission as to the application of this Schedule.

3. The disposable capital and disposable income of the person concerned shall be the capital and income as assessed by the supplier after deducting any sums which are to be left out of account or for which allowance is to be made under the provisions of this Schedule.

4. Where the person concerned is a child, the resources of a parent, guardian or any other person who is responsible for maintaining him, or who usually contributes substantially to his maintenance, shall be treated as his resources, unless, having regard to all the circumstances including the age and resources of the child and any conflict of interest, it appears inequitable to do so.

5. If it appears to the supplier that the person concerned has, with intent to reduce the amount of his disposable capital or disposable income, whether for the purpose of making himself eligible for advice and assistance or otherwise:

(a) directly or indirectly deprived himself of any resources; or

(b) converted any part of his resources into resources which are to be left out of account wholly or partly

the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted as the case may be.

6. (1) In calculating the capital and income of the person concerned, the resources of his partner shall be treated as his resources unless:

(a) the partner has a contrary interest in the matter in respect of which he is seeking advice and assistance; or

(b) in all the circumstances of the case it would be inequitable or impractical to do so.

(2) In calculating the capital and income of the person concerned, there shall be left out of account so much of any back to work bonus received under section 26 of the Jobseekers Act 1995⁽²¹⁾ as is by virtue of that section to be treated as payable by way of a jobseeker's allowance.

7. In calculating the capital of the person concerned:

(a) there shall be left out of account the value of his household furniture and effects, of his clothes and of tools and implements of his trade;

(b) the value of any interest in land shall be taken to be the amount for which that interest could be sold less the amount of any mortgage debt or hereditament security, subject to the following:

(i) in calculating the value of his interests, the total amount to be deducted in respect of all mortgage debts or hereditament securities shall not exceed £100,000;

(ii) in making the deductions in sub-paragraph (i), any mortgage debt or hereditament security in respect of the main or only dwelling shall be deducted last; and

(iii) the first £100,000 of the value of his interest (if any) in the main or only dwelling in which he resides, after the application of sub-paragraphs (i) and (ii), shall be disregarded;

(c) where the person concerned resides in more than one dwelling, the supplier shall decide which is the main dwelling; and

(d) where the person concerned has living with him one or more of the following persons, namely, a partner whose resources are required to be aggregated with his, a dependent child or a dependent relative wholly or substantially maintained by him, a deduction shall be made of £335 in respect of the first person, £200 in respect of the second and £100 in respect of each further person.

8. (1) In calculating the disposable income of the person concerned, there shall be left out of account:

(a) any income tax paid or payable on income treated under the provisions of this Schedule as his income;

(b) any contributions estimated to have been paid under Part I of the Social Security Contributions and Benefits Act 1992 during or in respect of the seven days up to and including the date of the application for advice and assistance;

(c) the following payments made under the Social Security Contributions and Benefits Act 1992:

(i) disability living allowance;

⁽²¹⁾ 1995 c.18.

(ii) attendance allowance paid under section 64⁽²²⁾ or Schedule 8 paragraphs 4 or 7(2);

(iii) constant attendance allowance paid under section 104 as an increase to a disablement pension; and

(iv) any payment made out of the social fund; and

(d) any payment made under the Community Care (Direct Payments) Act 1996⁽²³⁾.

(2) Subject to sub-paragraph (3), in calculating the disposable income of the person concerned there shall be a deduction at or equivalent to the following rates (as they applied at the beginning of the period of calculation):

(a) in respect of the maintenance of his partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of paragraph 1(3)(c) of Schedule 2 to the Income Support (General) Regulations 1987⁽²⁴⁾), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of that Schedule); and

(b) in respect of the maintenance of any dependant child or dependant relative of his, where such persons are members of his household:

(i) in the case of a dependant child or a dependant relative aged 15 or under at the beginning of the period of calculation, the amount specified at (a) in column 2 in paragraph 2(1) of the Schedule referred to in sub-paragraph (a); and

(ii) in the case of a dependant child or a dependant relative aged 16 or over at the beginning of the period of calculation, the amount specified at (b) in column 2 in paragraph 2(1) of that Schedule.

(3) The supplier may reduce any rate provided by virtue of paragraph (2) by taking into account the income and other resources of the dependant child or dependant relative to such extent as appears to him to be equitable.

(4) In ascertaining whether a child is a dependant child or whether a person is a dependant relative for the purposes of this paragraph, regard shall be had to their income and other resources.

9. If the person concerned is making bona fide payments for the maintenance of a former partner, a child or a relative who is not (in any such case) a member of his household, there shall be a deduction of such payment as was or will be made in respect of the seven days up to and including the date of the application for advice and assistance.

⁽²²⁾ Section 64 (4) was inserted by the section 66(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽²³⁾ 1996 c. 30.

⁽²⁴⁾ S.I. 1987/1967; the relevant amending instruments are S.I. 1996/2545; 1999/264 and 2555; and 2000/440 and 1993.

10. Where it appears to the supplier that there has been some error or mistake in the assessment of the disposable income or disposable capital of the person concerned, he may reassess the disposable income or disposable capital or, as the case may be, amend the assessment and in the latter case the amended assessment shall for all purposes be substituted for the original assessment.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the provision of advice and assistance and representation by the Criminal Defence Service under Part I of the Access to Justice Act.

They provide for, inter alia,

- (a) the proceedings which are prescribed as criminal proceedings for the purposes of section 12(2)(g) of the Act;
- (b) the circumstances in which an individual may receive advice and assistance, including with regard to his financial eligibility;
- (c) the manner in which applications for the grant of a representation order are to be made;
- (d) the representatives who may provide legal services; and
- (e) the withdrawal of representation. Draft Regulations laid before Parliament under section 15(5) of the Access to Justice Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001

Made - - - -

2001

Coming into force

2nd April 2001

The Lord Chancellor, in exercise of the powers conferred on him by section 15(5) of the Access to Justice Act 1999⁽²⁵⁾, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (Choice in Very High Cost Cases) Regulations 2001 and shall come into force on 2nd April 2001.

Interpretation

2. In these Regulations:

“the Commission” means the Legal Services Commission established under section 1 of the Access to Justice Act 1999;

“current representatives” means the representatives named on the representation order and any advocate currently instructed in the case;

“funded services” means services which are provided directly for a client and funded for that client as part of the Criminal Defence Service under sections 12 to 18 of the Access to Justice Act 1999;

“representation order” means a document granting a right to representation; and

“a Very High Cost Case” is a case with regard to which:

⁽²⁵⁾ 1999 c.22.

or (a) if the case proceeds to trial, that trial would be likely to last for 25 days or longer;

(b) the defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor's fees and disbursements, counsel's fees, and VAT).

Choice of representative in Very High Cost Cases

3. (1) Paragraph (2) applies where:

(a) a representation order has been granted in relation to a Very High Cost Case; and

(b) the Commission proposes to enter into an individual contract for the provision of funded services in relation to that case; and either

(c) the Commission serves notice that it does not propose to enter into such a contract with any, or all, of the current representatives; or

(d) any or all of the current representatives serves notice that they do not propose to enter into such a contract.

(2) Where this paragraph applies:

(a) the Commission is no longer required to fund representation by the relevant current representative referred to in paragraph (1)(c) or (d);

(b) the person in whose favour the representation order was granted may select a different representative chosen in accordance with The Criminal Defence Service (General) Regulations⁽²⁶⁾; and

(b) the Commission may amend the representation order accordingly.

Signed by the authority of the Lord Chancellor

Dated

Parliamentary Secretary,
Lord Chancellor's Department

⁽²⁶⁾ S.I. 2001/ .

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the selection of new representatives where a right to representation has been granted in a Very High Cost Case and the Commission or the current representatives do not propose to contract with one another. A Very High Cost Case is a case where the trial is likely to last for 25 days or more, or specified costs are likely to amount to £150,000 or more.

Draft Regulations laid before Parliament under section 14 of, and paragraph 4 of Schedule 3 to, the Access to Justice Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Representation Order Appeals) Regulations 2001

Made - - - -

2001

Coming into force

2nd April 2001

The Lord Chancellor, in exercise of the powers conferred on him by section 14 of, and paragraph 4 of Schedule 3 to, the Access to Justice Act 1999⁽²⁷⁾, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (Representation Order Appeals) Regulations 2001 and shall come into force on 2nd April 2001.

Interpretation

2. In these Regulations:

“appropriate officer” means, in the case of the Crown Court, the court manager, and in the case of a magistrates’ court, the justices’ clerk, and, in either case, includes an officer designated by him to act on his behalf in that regard;

“the Commission” means the Legal Services Commission established under section 1 of the Access to Justice Act 1999, and includes any person exercising delegated functions on its behalf;

⁽²⁷⁾ 1999 c.22.

“the Funding Review Committee” means a committee appointed by the Commission for the purpose of considering appeals under these Regulations; and

“representation order” means a document granting a right to representation.

Appeals against refusals of representation order

3. (1) A person whose application for the grant of a representation order has been refused may appeal against such refusal by way of a renewed application to the body which refused the application.

(2) Any appeal in writing shall be made on such form as is from time to time specified by the Lord Chancellor.

Crown Court and magistrates’ court

4. (1) A person whose application for the grant of a representation order has been refused by the Crown Court or a magistrates’ court may make a renewed application, either orally or in writing to the same court, or in writing to the appropriate officer of that court.

(2) Where a renewed application is made to the appropriate officer, he may:

(a) grant the order; or

(b) refer the renewed application:

(i) in the Crown Court, to a judge of the court; or

(ii) in a magistrates’ court, to the court, a District Judge (magistrates’ court) or a single justice

who may grant the order or refuse the application.

(3) The judge hearing the application shall give reasons for the refusal of any application.

(4) Where the application was made in writing, the reasons for any refusal shall be given in writing.

Court of Appeal (Criminal Division) and Registrar of Criminal Appeals

5. (1) A person whose application for the grant of a representation order has been refused by the Court of Appeal or the registrar of criminal appeals may make a renewed application, either orally or in writing to the court, or in writing to the registrar.

(2) Where a renewed application is made to the registrar, he may:

(a) grant the order; or

(b) refer the renewed application to:

(i) a judge of the court, who may grant the order; or

(ii) the court, which may grant the order or refuse the application.

(3) The court shall give reasons for the refusal of any application.

(4) Where the application was made in writing, the reasons for any refusal shall be given in writing.

Legal Services Commission

6. (1) A person whose application for the grant of a representation order has been refused by the Commission may make a renewed application in writing to the Funding Review Committee, which may grant the order or refuse the application.

(2) The Commission shall give written reasons for the refusal of any application.

Appeals against withdrawals of representation order

7. (1) A person whose representation order has been withdrawn may appeal against such withdrawal on one occasion to the body which withdrew the order.

(2) Equivalent provisions to those set out in regulations 4 to 6 shall apply in respect of such appeals.

(3) Any appeal in writing shall be made on such form as is from time to time specified by the Lord Chancellor.

Signed by the authority of the Lord Chancellor

Dated

Parliamentary Secretary,
Lord Chancellor's Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for appeals against all refusals of applications for, and withdrawals of, representation orders. Such appeals are to be made to the body which refused the application or withdrew the order, and are to be made by way of a renewed application.

STATUTORY INSTRUMENTS

2001 No.857

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Legal Services Commission (Disclosure of Information) (Amendment) Regulations 2001

<i>Made - - - -</i>	2001
<i>Laid before Parliament</i>	2001
<i>Coming into force</i>	2nd April 2001

The Lord Chancellor, in exercise of the powers conferred on him by sections 20(2) and 25 of the Access to Justice Act 1999⁽²⁸⁾, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Legal Services Commission (Disclosure of Information) (Amendment) Regulations 2001 and shall come into force on 2nd April 2001.

Amendments to the Legal Services Commission (Disclosure of Information) Regulations 2000⁽²⁹⁾

2. After regulation 5 of the Legal Services Commission (Disclosure of Information) Regulations 2000 the following shall be inserted:

“6. The Commission shall not disclose to the prosecuting authority any information which:

- (a) is in connection with the defence of the individual concerned; and
- (b) may be used for the purposes of the prosecution of that case.”

⁽²⁸⁾ 1999 c.22.

⁽²⁹⁾ S.I. 2000/442.

Signed by the authority of the Lord Chancellor

Dated
Secretary,

Parliamentary
Lord Chancellor's Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Services Commission (Disclosure of Information) Regulations 2000 so as to prohibit the Commission from disclosing to the prosecution any information in connection with the defence which may be used for the prosecution of the case.

STATUTORY INSTRUMENTS

2001 No.856

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001

<i>Made - - - -</i>	2001
<i>Laid before Parliament</i>	2001
<i>Coming into force</i>	2nd April 2001

The Lord Chancellor, in exercise of the powers conferred on him by section 17 of the Access to Justice Act 1999⁽³⁰⁾, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Criminal Defence Service (Recovery of Defence Costs Orders) Regulations 2001 and shall come into force on 2nd April 2001.

Interpretation

2. In these Regulations:

“the Act” means the Access to Justice Act 1999;

“appropriate officer” means:

in the case of the Crown Court, the court manager; and

in the case of the Court of Appeal or the House of Lords, the registrar of criminal appeals

and, in either case, includes an officer designated by him to act on his behalf in that regard;

⁽³⁰⁾ 1999 c. 22.

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“the Criminal Defence Service” means the Criminal Defence Service established under section 12 of the Act;

“funded defendant” means an individual who has received representation in respect of criminal proceedings before any court which is funded by the Commission or the Lord Chancellor as part of the Criminal Defence Service; and

“representation order” means a document granting a right to representation, and includes any other representation order under which representation has been provided for the funded defendant in the same proceedings.

3. (1) Where an individual receives representation in respect of criminal proceedings which is funded by the Commission or the Lord Chancellor as part of the Criminal Defence Service, the court before which the proceedings are heard, other than a magistrates’ court, may make an order requiring him to pay some or all of the cost of any representation so funded for him in the circumstances set out in these Regulations.

(2) An order of the type mentioned in paragraph (1) shall be known as a Recovery of Defence Costs Order (an “RDCO”).

4. (1) The judge hearing the case may make an RDCO against a funded defendant except as provided in paragraph (2).

(2) An RDCO may not be made against a funded defendant who:

- (a) has appeared in the magistrates’ court only;
- (b) is committed for sentence to the Crown Court;
- (c) is appealing against sentence to the Crown Court; or
- (d) has been acquitted, other than in exceptional circumstances.

5. (1) An RDCO may be made up to a maximum amount of the full cost of the representation incurred in any court under the representation order.

(2) An RDCO may provide for payment to be made forthwith, or in specified instalments.

6. Except in the circumstances mentioned in regulation 4(2)(a), (b) or (c), such information and evidence as is required by the court or the Commission with regard to the financial resources of a funded defendant shall be provided.

7. (1) Where a representation order has been made or is being considered, the court or the appropriate officer may refer the financial resources of the funded defendant to the Commission for a report, and the Commission shall produce such a report.

(2) In compiling a report under this regulation, the Commission may investigate the financial resources of the funded defendant and may subsequently require him to provide further information or evidence, and details of any change in his financial circumstances.

8. (1) Without prejudice to regulation 9(1)(a), where it appears to the judge, the appropriate officer or the Commission that:

(a) the funded defendant has directly or indirectly transferred any resources to another person;

(b) another person is or has been maintaining him in any proceedings; or

(c) any of the resources of another person are or have been made available to him

the judge, the appropriate officer or the Commission (as the case may be) may assess or estimate the value of the resources of that other person and may treat all or any of such resources as those of the funded defendant.

(2) In this regulation, “person” includes a company, partnership, body of trustees and any body of persons whether corporate or not corporate.

9. (1) Except as provided in paragraph (2), for the purpose of calculating the financial resources of the funded defendant:

(a) the amount or value of every source of income and every resource of a capital nature available to him may be taken into account; and

(b) the financial resources of the funded defendant’s partner shall be treated as the financial resources of the funded defendant.

(2) Other than in exceptional circumstances, the following assets of the funded defendant shall not be taken into account:

(a) the first £3,000 of capital available to him;

(b) the first £100,000 of equity in his principal residence; and

(c) his income, where the court or the Commission are satisfied that his gross annual income does not exceed £24,000.

(3) In this regulation, “funded defendant’s partner” means a person with whom the funded defendant lives as a couple, and includes a person with whom the funded defendant is not currently living but from whom he is not living separate and apart.

10. Where he is requested to do so by the judge, the solicitor for the funded defendant shall provide an estimate of the total costs which are likely to be incurred under the representation order.

11. At the conclusion of the relevant proceedings, the judge shall consider whether it is reasonable to make an RDCO in all the circumstances of the case, including any other financial order or penalty.

12. Where the judge considers that it is, or may be, reasonable to make an RDCO, he may:

(a) make the order; or

(b) if further information is required in order to decide whether to make the order:

(i) adjourn the making of the order; and

(ii) order that any further information which is required should be provided.

13. Where information is required under regulation 6, 7(2) or 12(b)(ii) and such information fails to be provided, an RDCO shall, other than in exceptional circumstances, be made for the full cost of the representation incurred under the representation order.

14. (1) The solicitor for the funded defendant shall inform the Commission if it subsequently transpires that the costs incurred under the representation order were lower than the amount ordered to be paid under an RDCO.

(2) In the circumstances mentioned in paragraph (1), where the funded defendant has paid the amount ordered to be paid under the RDCO, the balance shall be repaid to him.

15. The judge may make an order prohibiting an individual who is required to furnish information or evidence from dealing with property where:

(a) information has failed to be provided in accordance with these Regulations;

(b) he considers that there is a real risk that relevant property will be disposed of; or

(c) at the conclusion of the case, the assessment of the costs incurred under the representation order or of the financial resources of the funded defendant has not yet been completed.

16. Any payment required to be made under an RDCO shall be made to the Commission in accordance with the order.

17. The Commission may enforce an RDCO in any manner which would be applicable to a civil debt between parties.

Dated

,C.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for Recovery of Defence Costs Orders to be made against, primarily, funded defendants who have been convicted other than in the magistrates' court. The purpose of the Order is to recover such part of the costs of representation provided as part of the Criminal Defence Service as is reasonable in all the circumstances of the case, including the financial resources of the defendant. The Regulations provide for the provision of information so that the judge may make the Order, and for the freezing of assets where such information is required.

STATUTORY INSTRUMENTS

2001 No.855

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Criminal Defence Service (Funding) Order 2001

<i>Made - - - -</i>	2001
<i>Laid before Parliament</i>	2001
<i>Coming into force</i>	2nd April 2001

The Lord Chancellor, in exercise of the powers conferred on him by sections 13(3), 14(3), and 105 of, and paragraph 9 of Schedule 14 to, the Access to Justice Act 1999⁽³¹⁾, 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) Order 2001 and shall come into force on 2nd April 2001.

Interpretation

2. In this Order:

“the Act” means the Access to Justice Act 1999;

“advocate” means a barrister, or a solicitor who has obtained a higher courts advocacy qualification in accordance with regulations and rules of conduct of the Law Society;

“appropriate category”, in relation to a Very High Cost Case, means the category to which the case is assigned in accordance with article 14;

“appropriate officer” means:

⁽³¹⁾ 1999 c. 22.

in the case of proceedings in the criminal division of the Court of Appeal, the registrar of criminal appeals (“the registrar”);

in the case of proceedings in the High Court, a Costs Judge;

in the case of proceedings in the Crown Court, an officer appointed by the Lord Chancellor;

in respect of advice or assistance as to an appeal from the Crown Court to the Court of Appeal, (except in the case of an appeal under section 9(11) of the Criminal Justice Act 1987⁽³²⁾) where, on the advice of any representative assigned, notice of appeal is given, or application for leave to appeal is made, whether or not such appeal is later abandoned, the registrar;

in respect of advice or assistance as to an appeal to the Courts-Martial Appeal Court, the registrar;

in respect of advice or assistance as to an appeal from the Court of Appeal to the House of Lords, where the appeal is not lodged with the House of Lords, the registrar; and

in any other case, the Commission

and, in any case, includes an officer designated by the appropriate officer to act on his behalf in that regard;

“CDS Regulations” means regulations made under Part I of the Act relating to the Criminal Defence Service;

“the Commission” means the Legal Services Commission established under section 1 of the Act;

“the Contract” means the General Criminal Contract, published by the Commission in February 2001;

“Costs Committee” means a committee appointed under arrangements made by the Commission to deal with, inter alia, applications for appeal against, or review of, assessments of costs;

“funded services” means services which are provided directly for a client and funded for that client as part of the Criminal Defence Service under sections 12 to 18 of the Act;

“a representation order” means a document granting a right to representation;

“ a representative” means a solicitor or a barrister;

“VAT” means Value Added Tax; and

⁽³²⁾ 1987 c. 38.

“a Very High Cost Case” is a case with regard to which:

- (a) if the case proceeds to trial, that trial would be likely to last for 25 days or longer;
- or
- (b) the defence costs with regard to any one defendant (or group of defendants represented by the same firm of solicitors) are likely to amount to £150,000 or greater (such sum to include the solicitor’s fees and disbursements, counsel’s fees, and VAT)

and any question as to whether a case fulfills the criteria in (a) or (b) above shall be decided by an officer appointed by the Lord Chancellor in a case which falls within article 6, and by the Commission in a case which falls within article 9.

Funding of services - Lord Chancellor

3. (1) Except as provided in paragraph (2), the duty of the Commission under section 14(1) of the Act shall, until 4th April 2005, have effect as a duty of the Lord Chancellor in relation to representation in:

- (a) criminal proceedings in the House of Lords;
- (b) proceedings in the criminal division of the Court of Appeal; and
- (c) proceedings in the Crown Court.

(2) Paragraph (1) does not apply to:

- (a) any proceedings in the Crown Court which are prescribed under section 12(2)(g) of the Act;
- (b) any Very High Cost Case which is the subject of an individual contract for the provision of funded services; or
- (c) any proceedings in which representation is provided by a person employed by the Commission for that purpose.

4. Other than where the case is remitted back to the magistrates’ court, where a case is sent for trial to the Crown Court under section 51 of the Crime and Disorder Act 1998⁽³³⁾, any fees in relation to work carried out in the magistrates’ court shall be assessed and paid together with the Crown Court fees for that case.

5. Remuneration in respect of the proceedings mentioned in article 3(1) shall be in accordance with the provisions of Schedules 1 to 4.

6. Where representation is funded by the Lord Chancellor in a Very High Cost Case, remuneration shall be at rates no higher than those set out for the appropriate category and the appropriate level of fee earner in Schedule 5.

⁽³³⁾ 1998 c. 37.

Funding of services – Legal Services Commission

7. The Commission may only fund services as part of the Criminal Defence Service under section 13(2)(b) or 14(2)(b) of the Act where representation is provided in proceedings referred to in section 12(2)(f) of the Act (proceedings for contempt in the face of a court).

8. Except as provided in article 9, where the Commission funds services as part of the Criminal Defence Service under section 13(2)(a) or 14(2)(a) of the Act, remuneration shall be at rates no higher than those set out in Part E of the Specification to the Contract.

9. Where services are provided in a Very High Cost Case which is the subject of an individual contract for the provision of funded services, remuneration for that case shall be at rates no higher than those set out for the appropriate category.

Proceedings for contempt

10. (1) Subject to article 11, remuneration in proceedings referred to in section 12(2)(f) of the Act shall be at the rate of £72.75 per day.

(2) Where representation in such proceedings is provided by two legal representatives, remuneration shall be at the rate of £46.50 per day for the representative appearing as an advocate, and £26.25 per day for the other representative.

11. (1) A representative may, when he claims remuneration for work done in respect of proceedings referred to in section 12(2)(f) of the Act, claim that there are exceptional circumstances which justify remuneration greater than the standard fee specified in article 10.

(2) If the appropriate officer decides that there are such exceptional circumstances, he may allow the representative such fee as appears to him to be reasonable (having regard to the standard fee) for such work as appears to him to have been reasonably done.

(3) If the appropriate officer decides that there are no such exceptional circumstances, the standard fee shall apply.

(4) The fee allowed to a representative (other than an advocate) under this article shall not exceed the rates set out in Schedule 2 as appropriate to the type of work, the court in which the proceedings took place, the grade and the situation of the office of the fee-earner who did the work.

(5) In the application of paragraph (4), the rates appropriate to the Crown Court shall apply to proceedings in all courts other than the magistrates' courts.

(6) Where a court grants representation to a person for the purposes of proceedings for contempt, it may assign to him, for the purposes of those proceedings, any representative who is within the precincts of the court.

(7) Where the fee-earner who did the work was not assigned by the court under subparagraph (6), the fee allowed for his work shall not exceed the rate set out in Schedule 2 as appropriate to the lowest grade of fee-earner which the appropriate officer considers would have been competent to do the work.

(8) The total of the fees allowed to an advocate under this article in respect of proceedings covered by any one representation order shall not exceed the amounts set out in Schedule 3 as appropriate to a single junior counsel instructed in an appeal to the Crown Court against conviction.

12. The provisions of Schedule 1 shall apply with the necessary modifications to the remuneration payable to any representative under articles 10 and 11.

13. Where a representation order has been made in respect of any proceedings, the representative shall not receive or be a party to the making of any payment for work done in connection with those proceedings except such payments as may be made:

(a) by the Lord Chancellor or the Commission; or

(b) in respect of any expenses or fees incurred in:

(i) preparing, obtaining or considering any report, opinion or further evidence, whether provided by an expert witness or otherwise; or

(ii) obtaining any transcripts or recordings

where an application under CDS Regulations for an authority to incur such fees or expenses has been refused by the Costs Committee.

Very High Cost Cases – assignment of cases to categories and solicitors to levels

14. (1) The Commission or, as the case may be, the appropriate officer shall assign each case which is a Very High Cost Case to one of the four categories referred to in Schedule 5, according to its complexity, importance and subject matter.

(2) The Commission or, as the case may be, the appropriate officer shall assign each solicitor or other fee earner (other than a barrister acting as an advocate) providing funded services in relation to a case which is a Very High Cost Case to one of the three levels referred to in Schedule 5.

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SCHEDULE 1

General

1. (1) Costs in respect of work done under a representation order to which this Schedule applies shall be determined by the appropriate officer in accordance with this Schedule.

(2) In determining costs, the appropriate officer shall, subject to the provisions of this Schedule:

(a) take into account all the relevant circumstances of the case including the nature, importance, complexity or difficulty of the work and the time involved; and

(b) allow a reasonable amount in respect of all work actually and reasonably done.

Interim payment of disbursements

2. (1) A solicitor may submit a claim to the appropriate officer for payment of a disbursement for which he has incurred liability in criminal proceedings in the Crown Court in accordance with the provisions of this paragraph.

(2) A claim for payment may be made where:

(a) a solicitor has obtained prior authority to incur expenditure of £100 or more under CDS Regulations; and

(b) he has incurred such a liability.

(3) Without prejudice to paragraph 13(4), a claim under sub-paragraph (1) shall not exceed the maximum fee authorised under the prior authority.

(4) A claim for payment under sub-paragraph (1) may be made at any time before the solicitor submits a claim for costs under paragraph 11(2).

(5) A claim under sub-paragraph (1) shall be submitted to the appropriate officer in such form and manner as he may direct and shall be accompanied by the authority to incur expenditure and any invoices or other documents in support of the claim.

(6) The appropriate officer shall allow the disbursement subject to the limit in sub-paragraph (3) above if it appears to have been reasonably incurred in accordance with the prior authority.

(7) Where the appropriate officer allows the disbursement, he shall notify the solicitor and, where the disbursement includes the fees or charges of any person, that person, of the amount payable, and shall authorise payment to the solicitor accordingly.

(8) Paragraphs 20 to 22 (redetermination etc.) shall not apply to a payment under this paragraph.

Interim disbursements and final determination of costs

3. (1) On a final determination of costs, paragraphs 11(2) and (3)(e) and 13 shall apply notwithstanding that a payment has been made under paragraph 2.

(2) Where the amount found to be due under paragraph 13 in respect of a disbursement is less than the amount paid under paragraph 2 ("the interim disbursement"), the appropriate officer shall deduct the difference from the sum otherwise payable to the solicitor on the determination of costs, and where the amount due under paragraph 13 exceeds the interim disbursement, the appropriate officer shall add the difference to the amount otherwise payable to the solicitor.

Interim payments in cases awaiting determination

4. (1) The appropriate officer shall make an interim payment in respect of a claim for costs in criminal proceedings in the Crown Court in accordance with the following provisions of this paragraph.

(2) Entitlement to a payment arises in respect of a claim for costs:

(a) in the case of a solicitor, where the total claim for costs is £4,000 or more (exclusive of VAT);

(b) in the case of an advocate, where the basic fee claimed is £4,000 or more (exclusive of VAT); and

(c) where the claim for costs is for less than the amounts mentioned in (a) or (b) but is related to any claim falling under (a) or (b).

(3) Entitlement to a payment under sub-paragraph (1) shall not arise until three months have elapsed from the earlier of:

(a) the date on which the bill is ready to tax; or

(b) three months after the conclusion of the last of any related proceedings.

(4) A bill shall be regarded as being ready to tax on the date on which it is received by the appropriate officer for determination except that where there are related claims for costs all the bills relating thereto shall be regarded as ready to tax on the date the last bill is received.

(5) A representative may submit a claim for an interim payment under this paragraph if no payment has been made under sub-paragraph (1) and six months have elapsed from the conclusion of the proceedings against the defendant whom he represented under the representation order.

(6) For the purposes of this paragraph, proceedings are related to each other in the circumstances set out in sub-paragraph (7) and claims for costs are related to each other in the circumstances set out in sub-paragraph (8).

(7) Proceedings are related to each other:

(a) where different proceedings involving the same defendant are prepared, heard or dealt with together; or

(b) where proceedings involving more than one defendant arose out of the same incident, so that the defendants are charged, tried or disposed of together.

(8) The following claims for costs are related to each other:

(a) the claims of representatives acting in the same proceedings for a defendant;

(b) the claims of any representative acting in any proceedings mentioned in sub-paragraph (7)(a); and

(c) the claims of all the representatives acting for the defendants in the circumstances mentioned in sub-paragraph (7)(b).

(9) No payment shall be made under this paragraph unless (subject to paragraph 23) the representative has submitted a claim in accordance with the provisions of paragraphs 11(1) and 14(1).

Amount of interim payments in cases awaiting determination

5. (1) Where entitlement to a payment arises under paragraph 4, the amount payable shall be 40 per cent of the total claim for costs, less any sum already paid.

(2) Paragraphs 20 to 22 (redetermination etc.) shall not apply to a payment under this paragraph.

Staged payments in long Crown Court cases

6. (1) A representative may submit a claim to the appropriate officer for a staged payment of his fees in relation to criminal proceedings in the Crown Court.

(2) Where a claim is submitted in accordance with the provisions of this paragraph, a staged payment shall be allowed where the appropriate officer is satisfied:

(a) that the claim relates to fees for a period of preparation of 100 hours or more, for which the representative will, subject to final determination of the costs payable, be entitled to be paid in accordance with this Schedule; and

(b) that the period from committal or transfer for trial (or from the date of the representation order, if later) to the conclusion of the Crown Court proceedings will be likely to exceed 12 months, having regard, amongst other matters, to the number of defendants, the anticipated pleas and the weight and complexity of the case.

(3) In this paragraph "preparation" means:

(a) all work falling within the definition of "preparation" in paragraph 1(1) of Schedule 4;

(b) attendance at pre-trial reviews and other hearings (other than a pleas and directions hearing) prior to the main hearing;

(c) preparation of applications, statements or notices for the purposes of section 6 or 9(5) of the Criminal Justice Act 1987⁽³⁴⁾; and

(d) all preparation within the meaning of paragraph 12(1)(a) not falling within the preceding sub-paragraphs,

and is limited to preparation done before the trial, except in proceedings in which a preparatory hearing has been ordered under section 8 of the Criminal Justice Act 1987, in which case it is limited to preparation done before the date on which the jury is sworn (or on which it became certain, by reason of pleas of guilty or otherwise, that the matter would not proceed to trial).

(4) The amount to be allowed for preparation falling within sub-paragraph (3)(a), (b) or (c) shall be computed by reference to the number of hours of preparation which it appears to the appropriate officer, without prejudice to the final determination of the costs payable, has been reasonably done, multiplied by the relevant hourly rate, namely:

(a) in the case of an advocate who is a Queen's Counsel, the hourly rate for subsidiary fees for Queen's Counsel in the Crown Court prescribed in Table 2 in Schedule 3;

(b) in the case of an advocate instructed as leading junior counsel pursuant to an order made under CDS Regulations, 75 per cent of the hourly rate for subsidiary fees for Queen's Counsel in the Crown Court prescribed in Table 2 in Schedule 3;

(c) in the case of any other advocate, the hourly rate for subsidiary fees for junior counsel in the Crown Court prescribed in Table 1 in Schedule 3.

(5) The amount to be allowed for preparation falling within sub-paragraph (3)(d) shall be computed by reference to the number of hours of preparation which it appears to the appropriate officer, without prejudice to the final determination of the costs payable, has been reasonably done, multiplied by the relevant hourly rate prescribed in Schedule 2 Part 1, applicable to the class of work and the grade and office location of the fee-earner.

(6) A claim shall be submitted in such form and manner as the appropriate officer may direct, including such case plan as he may require for the purposes of sub-paragraph (2)(a).

(7) A representative may claim further staged payments in accordance with this paragraph in respect of further periods of preparation exceeding 100 hours which were not included in an earlier claim.

(8) Paragraphs 20 to 22 (redetermination etc.) shall not apply to a payment under this paragraph.

⁽³⁴⁾ 1987 c. 38.

Interim payments for attendance at trial and refreshers

7. (1) A representative may submit a claim to the appropriate officer for an interim payment in respect of attendance at court or refreshers where a Crown Court trial lasts for a qualifying period.

(2) Where a claim is submitted in accordance with the provisions of this paragraph, an interim payment shall, without prejudice to the final determination of the costs payable, be allowed:

(a) to a solicitor where he or a fee-earner representing him has attended at court on each day of the qualifying period;

(b) to an advocate where he has done work falling within paragraph 6(2)(b) or (c) of Schedule 4 on each day of the qualifying period.

(3) The qualifying period for the purposes of this paragraph shall be 20 days (which need not be continuous), and a day shall qualify as part of that period if the hearing begins at any time on that day.

(4) The amount payable in respect of each day which qualifies as part of the qualifying period shall be:

(a) in the case of a solicitor:

(i) where the hearing begins before and ends after the luncheon adjournment, five times the hourly rate for a trainee or fee-earner of equivalent experience attending court where more than one representative is assigned as prescribed in Schedule 2 Part 1;

(ii) where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, two and a half times the hourly rate referred to in (i) above;

(b) in the case of an advocate who is a Queen's Counsel, the maximum amount of the full day refresher fee for Queen's Counsel in the Crown Court prescribed in Table 2 in Schedule 3;

(c) in the case of an advocate instructed as leading junior counsel pursuant to an order made under CDS Regulations, 75 per cent of the maximum amount of the full day refresher fee for Queen's Counsel in the Crown Court prescribed in Table 2 in Schedule 3;

(d) in the case of an advocate retained solely for the purpose of making a note of any hearing, one-half of the maximum amount of the full day refresher fee for junior counsel in the Crown Court prescribed in Table 1 in Schedule 3;

(e) in the case of any other advocate, the maximum amount of the full day refresher fee for junior counsel in the Crown Court prescribed in Table 1 in Schedule 3.

(5) A claim for an interim payment may be made in respect of a qualifying period and shall be submitted in such form and manner as the appropriate officer may direct.

(6) Further interim payments under this paragraph may be claimed if the trial lasts for further qualifying periods.

(7) A representative who has obtained prior approval under CDS Regulations for the incurring of travelling or accommodation expenses may, at the same time as he submits a claim for an interim payment under this paragraph, submit a claim for an interim payment of all such expenses incurred to date (less any expenses previously recovered by him by way of interim payment under this paragraph).

(8) A claim under sub-paragraph 7 shall be submitted in such form and manner as the appropriate officer may direct, and shall be supported by such evidence of the expense claimed as he may require.

(9) Paragraphs 20 to 22 (redetermination etc.) shall not apply to a payment under this paragraph.

Advance payments for early preparation in Crown Court cases

8. (1) An advance payment under this paragraph shall be payable in respect of every case in the Crown Court in which:

(a) a pleas and directions hearing is held;

(b) on or before the date of the pleas and directions hearing, a representation order has been made providing for an advocate to represent the assisted person at the trial and a person ("the trial advocate") has been instructed for that purpose; and

(c) the trial advocate satisfies the appropriate officer that, in his capacity as the trial advocate, and at least 5 days before the date of the pleas and directions hearing, he has done work of all the types listed in paragraphs (a) to (d) of the definition of "preparation" in paragraph 1(1) of Schedule 4 (whether or not he also does work of those types afterwards), unless at the pleas and directions hearing the assisted person pleads guilty to all counts or the prosecution declares an intention not to proceed to trial.

(2) Subject to sub-paragraph (3), the amount of the advance payment under this sub-paragraph in respect of any such case shall be:

(a) £250 where the trial advocate is a Queen's Counsel;

(b) £170 where the trial advocate is not a Queen's Counsel but appears as a leader to another trial advocate;

(c) £100 for any other trial advocate.

(3) Where the same trial advocate is instructed in two or more cases which are to be heard concurrently the advance payment shall be the amount specified in sub-paragraph (2) in respect of the first case and twenty per cent of the amount in respect of each of the other cases.

(4) In this paragraph, a "case" means proceedings against any one assisted person on one or more counts of a single indictment.

Hardship payments

9. (1) The appropriate officer may allow a hardship payment to a representative in the circumstances set out in sub-paragraph (2), subject to the other provisions of this paragraph.

(2) Those circumstances are that the representative:

(a) represents the assisted person in proceedings in the Crown Court;

(b) applies for such payment, in such form and manner as the appropriate officer may direct, not less than six months after he was first instructed in those proceedings (or in any related proceedings, if he was instructed in those proceedings earlier than in the proceedings to which the application relates);

(c) is not, at the date of the application, entitled to any payment under paragraph 4 (interim payments in cases awaiting determination), 6 (staged payments) or 7 (interim payments);

(d) is unlikely to receive final payment in respect of the proceedings, as determined under paragraph 12 or 15, within the three months following the application for the hardship payment; and

(e) satisfies the appropriate officer that, by reason of the circumstance in paragraph (d), he is likely to suffer financial hardship.

(3) Every application for a hardship payment shall be accompanied by such information and documents as the appropriate officer may require as evidence of:

(a) the work done by the representative in relation to the proceedings up to the date of the application; and

(b) the likelihood of financial hardship.

(4) The amount of any hardship payment shall be in the discretion of the appropriate officer, but shall not exceed such sum as would be reasonable remuneration for the work done by the representative in the proceedings up to the date of the application.

(5) No hardship payment shall be made if it appears to the appropriate officer that the sum which would be reasonable remuneration for the representative, or the sum required to relieve his financial hardship, is less than £5,000 (excluding any VAT).

(6) Any hardship payment shall be set off against the remuneration finally payable to the representative under paragraph 12 or 15.

(7) The question of whether proceedings are related to each other for the purposes of this paragraph shall be determined in accordance with paragraph 4(7).

Computation of final claim

10. (1) At the conclusion of a case in which one or more payments have been made to a representative under paragraph 6, 7, 8 or 9, he shall submit a claim under paragraph 11 or 14 for the determination of his overall remuneration, whether or not such a claim will result in any payment additional to those already made.

(2) In the determination of the amount payable to a representative under paragraph 12 or 15, the appropriate officer shall deduct the amount of any advance payment made under paragraph 6, 7, 8 or 9 in respect of the same case from the amount that would otherwise be payable; and, if the amount of the advance payment is greater than the amount that would otherwise be payable, the appropriate officer shall be entitled to recover the amount of the difference, either by way of repayment by the representative or by way of deduction from any other amount that may be due to him.

Claims for costs by solicitors

11. (1) Subject to paragraph 23, no claim by a solicitor for costs in respect of work done under a representation order shall be entertained unless he submits it within three months of the conclusion of the proceedings to which it relates.

(2) Subject to sub-paragraph (3), a claim for costs shall be submitted to the appropriate officer in such form and manner as he may direct and shall be accompanied by the representation order and any receipts or other documents in support of any disbursement claimed.

(3) A claim shall:

(a) summarise the items of work done by a fee-earner in respect of which fees are claimed according to the classes specified in paragraph 12(1);

(b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person;

(c) specify, where appropriate, the fee-earner who undertook each of the items of work claimed;

(d) give particulars of any work done in relation to more than one indictment or a retrial; and

(e) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(4) Where the solicitor claims that paragraph 4 of Schedule 2 Part 1 should be applied in relation to an item of work, he shall give full particulars in support of his claim.

(5) The solicitor shall specify any special circumstances which should be drawn to the attention of the appropriate officer.

(6) The solicitor shall supply such further particulars, information and documents as the appropriate officer may require.

(7) Where a representation order has been made in respect of any proceedings where a defendant has been acquitted and granted a defendant's costs order under section 16 of the Prosecution of Offences Act 1985⁽³⁵⁾, the solicitor shall certify that no claim for costs incurred before the representation order was made has been or will be made from central funds in relation to that work.

Determination of solicitors' fees

12. (1) The appropriate officer may allow work done by fee-earners in the following classes:

- (a) preparation, including taking instructions, interviewing witnesses, ascertaining the prosecution case, advising on plea and mode of trial, preparing and perusing documents, dealing with letters and telephone calls which are not routine, preparing for advocacy, instructing an advocate and expert witnesses, conferences, consultations, views and work done in connection with advice on appeal or case stated;
- (b) advocacy, including applications for bail and other applications to the court;
- (c) attending at court where an advocate is assigned, including conferences with the advocate at court;
- (d) travelling and waiting; and
- (e) dealing with routine letters written and routine telephone calls.

(2) The appropriate officer shall consider the claim, any further particulars, information or documents submitted by the solicitor under paragraph 11 and any other relevant information and shall allow:

- (a) such work as appears to him to have been reasonably done under the representation order (including any representation or advice which is deemed to be work done under that order) by a fee-earner, classifying such work according to the classes specified in sub-paragraph (1) as he considers appropriate; and
- (b) such time in each class of work allowed by him (other than routine letters written and routine telephone calls) as he considers reasonable.

(3) Subject to sub-paragraph 4, in any proceedings which are specified in paragraph 1(2) of Schedule 2 Part 2, the appropriate officer shall proceed in accordance with the provisions of paragraph 3 of that Part of that Schedule.

(4) In any proceedings in the Crown Court:

- (a) in respect of the classes of work specified in paragraph 6(2) of Schedule 4 (whether or not the proceedings are ones to which that Schedule applies), the appropriate officer shall proceed in accordance with the provisions of paragraph 15 as if the fee-earner who did the work had been a barrister;

⁽³⁵⁾ 1985 c. 23.

(b) in respect of all other classes of work, the provisions of this paragraph shall apply.

(5) Subject to sub-paragraph (2), (3), (4) and (6), the appropriate officer shall allow fees for work allowed by it under this paragraph in accordance with Schedule 2 Part 1.

(6) In the case of criminal proceedings in the Crown Court and the Court of Appeal, the fees allowed in accordance with Part 1 of Schedule 2 shall be those appropriate to such of the following grades of fee-earner as the appropriate officer considers reasonable:

(a) senior solicitor;

(b) solicitor, legal executive or fee earner of equivalent experience;

(c) trainee or fee-earner of equivalent experience.

(7) In relation to hearings specified in sub-paragraph (6), work of the class specified in sub-paragraph (1)(c) shall only be allowed in the following circumstances:

(a) if the 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⁽³⁶⁾;

(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⁽³⁷⁾;

(c) if the assisted person was a child or a young person within the meaning of section 107 of the Children and Young Persons Act 1933⁽³⁸⁾ at the time when the Crown Court acquired jurisdiction in the case (by committal, notice of transfer or otherwise);

(d) if the 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 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 CDS Regulations.

(8) The following hearings in the Crown Court are specified for the purpose of sub-paragraph (7): trials, hearings of cases listed for pleas of guilty following a pleas and direction hearing, sentence hearings following committals for sentence and the hearing of appeals against conviction or sentence.

⁽³⁶⁾ 1981 c. 54.

⁽³⁷⁾ 1987 c. 38. Sub-section 4(4) was inserted by the Crime and Disorder Act 1998 (c. 37), section 119, Schedule 8 paragraph 65.

⁽³⁸⁾ 1933 c. 12.

(9) The circumstances referred to in sub-paragraph (7)(e) shall only justify the allowing of attendance on:

(a) a day of a trial on which it was reasonably expected that the assisted person would be sentenced if convicted; and

(b) if different, the day on which the 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.

(10) The circumstances referred to in sub-paragraph (7)(f) shall only justify the allowing of attendance to the extent specified in the representation order.

(11) This paragraph applies to work in respect of which standard fees are payable under Part 2 of Schedule 2, or a graduated or fixed fee is payable under Schedule 4 only to the extent that that Part or that Schedule specifically so provide.

(12) In relation to hearings specified in sub-paragraph (11), work of the class specified in sub-paragraph (1)(c) shall only be allowed in the circumstances mentioned in sub-paragraph (7)(a) to (f).

(13) The following hearings in the Crown Court are specified for the purposes of sub-paragraph (10): trials, hearing 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.

Determination of solicitors' disbursements

13. (1) Subject to the provisions of this paragraph, the appropriate officer shall allow such disbursements claimed under paragraph 11 as appears to him to have been reasonably incurred, provided that:

(a) if they are abnormally large by reason of the distance of the court or the assisted person's residence or both from the solicitors' place of business, reimbursement of the expenses may be limited to what otherwise would, having regard to all the circumstances, be a reasonable amount; and

(b) in the case of an appeal to the Court of Appeal, the cost of a transcript, or any part thereof, of the proceedings in the court from which the appeal lies obtained otherwise than through the registrar shall not be allowed except where the appropriate officer considers that it is reasonable in all the circumstances for such disbursement to be allowed.

(2) No question as to the propriety of any step or act in relation to which prior authority has been obtained under CDS Regulations shall be raised on any determination of costs, unless the solicitor knew or ought reasonably to have known that the purpose for which the authority was given had failed or had become irrelevant or unnecessary before the costs were incurred.

(3) Where costs are reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under CDS Regulations, no question shall be raised on any determination of costs as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.

(4) Where costs are incurred in taking any steps or doing any act for which authority may be given under CDS Regulations, without such authority having been given or in excess of any fee so authorised, payment in respect of those costs may nevertheless be allowed on a determination of costs.

Claims for fees by an advocate

14. (1) Subject to paragraph 23, no claim by an advocate for fees for work done under a representation order shall be entertained unless he submits it within three months of the conclusion of the proceedings to which the representation order relates.

(2) A claim for fees shall be submitted to the appropriate officer in such form and manner as he may direct.

(3) A claim shall:

(a) summarise the items of work in respect of which fees are claimed according to the classes of fee specified in paragraph 15(5);

(b) state the dates on which the items of work were done, the time taken where appropriate, the sums claimed and whether the work was done for more than one assisted person;

(c) give particulars of any work done in relation to more than one indictment or a retrial.

(4) Where an advocate claims that:

(a) it would be inappropriate to allow a standard fee under paragraph 15(2);
or

(b) paragraph 15(6) should be applied in relation to an item of work

he shall give full particulars in support of his claim.

(5) Where there are any special circumstances which should be drawn to the attention of the appropriate officer, the advocate shall specify them.

(6) The advocate shall supply such further particulars, information and documents as the appropriate officer may require.

Determination of advocate's fees

15. (1) The appropriate officer shall consider the claim, any further particulars and information submitted by an advocate under paragraph 14 and any other relevant information and shall allow such work as appears to him to have been reasonably done.

(2) In any proceedings specified in paragraph 2 or 3 of Schedule 4, the appropriate officer shall allow a graduated or fixed fee calculated in accordance with that Schedule in respect of all such work allowed by it as falls into the classes specified in paragraph 6(2) of that Schedule.

(3) Where in any proceedings specified in paragraph 2 of Schedule 4, the trial judge makes adverse observations concerning the advocate's conduct of the case, the appropriate officer may reduce any fee which would otherwise be payable in accordance with that Schedule by such proportion as he shall see fit, having first given the advocate the opportunity to make representations about the extent to which the fee should be reduced.

(4) Where it appears to the appropriate officer that the fixed fee allowed by Schedule 4 in respect of any proceedings specified in paragraph 3 of that Schedule would be inappropriate taking into account all of the relevant circumstances of the case, he may instead allow fees in accordance with sub-paragraphs (5) and (6) below.

(5) The appropriate officer may, except in relation to work for which a graduated or fixed fee is allowed under subparagraph (2), allow any of the following classes of fee to an advocate in respect of work allowed by him under this paragraph:

(a) a basic fee for preparation including preparation for a pre-trial review and, where appropriate, the first day's hearing including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views and any other preparation;

(b) a refresher fee for any day or part of a day during which a hearing continued, including, where they took place on that day, short conferences, consultations, applications and appearances (including bail applications), views and any other preparation;

(c) subsidiary fees for:

- (i) attendance at conferences, consultations and views not covered by (a) or (b);
- (ii) written advice on evidence, plea, appeal, case stated or other written work;
- and
- (iii) attendance at pre-trial reviews, applications and appearances (including bail applications and adjournments for sentence) not covered by (a) or (b).

(6) In the case of proceedings in the Crown Court, the appropriate officer shall, except in relation to work for which a graduated or fixed fee is allowed under sub-paragraph (2), allow such fees in respect of such work as he considers reasonable in such amounts as he may determine in accordance with Schedule 3, provided that where it appears to the appropriate officer, taking into account all the relevant circumstances of the case, that owing to the exceptional circumstances of the case the amount payable by way of fees in accordance with Part 2 of Schedule 3 would not provide reasonable remuneration for some or all of the work he has allowed, he may allow such amounts as appear to him to be reasonable remuneration for the relevant work.

(7) In the case of proceedings in the Court of Appeal, the appropriate officer shall allow such fees in respect of such work as he considers reasonable in such amount as appears to him to be reasonable remuneration for such work.

(8) Where prior authority has been obtained to instruct a Queen's Counsel alone no question as to the propriety of that act shall be raised on any determination of the advocate's fees, unless the solicitor knew or ought reasonably to have known that the purpose for which the authority was given had failed or become irrelevant or unnecessary before the fees were incurred.

(9) Where:

- (a) a representation order provides for representation by a sole advocate other than a Queen's Counsel, and a Queen's Counsel agrees to appear as the sole advocate; or
- (b) a representation order provides for representation by two advocates other than Queen's Counsel, and a Queen's Counsel agrees to appear as a leading junior

that Queen's Counsel shall be treated for all the purposes of this Schedule as having been instructed under that order, and his remuneration shall be determined as if he were not a Queen's Counsel.

16. (1) Subject to sub-paragraph (2), where the court has disallowed the whole or any part of any wasted costs under section 19A of the Prosecution of Offences Act 1985⁽³⁹⁾ the appropriate officer, in determining costs in respect of work done by the representatives against whom the wasted costs order was made, shall deduct the amount of the order from the amount otherwise payable in accordance with this Schedule.

(2) Where the appropriate officer, in accordance with this Schedule, is minded to disallow any amount of a claim for work done to which the wasted costs order relates, he shall disallow that amount or the amount of the wasted costs order, whichever is the greater.

Payment of costs

17. (1) Having determined the costs payable to a representative in accordance with this Schedule, the appropriate officer shall notify the representative of the costs payable and authorise payment accordingly.

(2) Where the costs payable under sub-paragraph (1) are varied as a result of any review, redetermination or appeal made or brought pursuant to this Schedule:

- (a) where the costs are increased, the appropriate officer shall authorise payment of the increase;
- (b) where the costs are decreased, the representative shall repay the amount of such decrease; and

⁽³⁹⁾ 1985 c. 23. Section 19A was inserted by the Courts and Legal Services Act 1990 (c.41), section 111.

(c) where the payment of any costs of the representative is ordered under paragraph 21(14) or 22(8) or Schedule 2 Part 2 paragraph 8(4), the appropriate officer shall authorise payment.

Recovery of overpayments

18. (1) This paragraph applies where a representative is entitled to be paid a certain sum ("the amount due") by virtue of the provisions of this Schedule and, for whatever reason, he is paid an amount greater than that sum.

(2) Where the circumstances in sub-paragraph (1) arise, the appropriate officer may:

(a) require immediate repayment of the amount in excess of the amount due ("the excess amount") and the representative shall on demand repay the excess amount to the appropriate officer; or

(b) deduct the excess amount from any other sum which is or becomes payable to the representative by virtue of the provisions of this Schedule.

(3) The appropriate officer may proceed under sub-paragraph (2)(b) without first proceeding under sub-paragraph (2)(a).

(4) Sub-paragraph (2) shall apply notwithstanding that the representative to whom the excess amount was paid is exercising, or may exercise, a right under paragraphs 20 to 22.

Notification of costs

19. For the purposes of an order which may be made under section 17 of the Act, other than where the proceedings are in the magistrates' court only, having determined the costs payable to a representative in accordance with this Schedule, the appropriate officer shall notify the court before which the proceedings are heard of the amount determined in each case.

Redetermination of costs by appropriate officer

20. (1) Where:

(a) a representative is dissatisfied with the costs (other than the standard fees allowed under Schedule 2 Part 2 or graduated or fixed fees allowed under Schedule 4) determined in accordance with the provisions of this Schedule by the appropriate officer;

(b) an advocate in proceedings in the Crown Court is dissatisfied with the decision that Schedule 4 does or does not apply to those proceedings or with the calculation of the remuneration payable under that Schedule; or

(c) an advocate in proceedings in the Crown Court is dissatisfied with the decision not to allow one of the following fees, or with the number of hours allowed in the calculation of such a fee, namely:

(i) a special preparation fee under paragraph 17 of Schedule 4;

(ii) a wasted preparation fee under paragraph 18 of Schedule 4; or

(iii) an hourly fee under either sub-paragraph of paragraph 19(1) of Schedule 4

he may apply to the appropriate officer to redetermine those costs or to review that decision as the case may be.

(2) Subject to paragraph 23, the application shall be made within 21 days of the receipt of notification of the costs payable under paragraph 17, by giving notice in writing to the appropriate officer specifying the matters in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the appropriate officer may direct.

(3) The notice of application shall be accompanied by the particulars, information and documents supplied under paragraph 11 or 14, as appropriate.

(4) The notice of application shall state whether the applicant wishes to appear or to be represented and, if the applicant so wishes, the appropriate officer shall notify the applicant of the time at which he is prepared to hear him or his representative.

(5) The applicant shall supply such further particulars, information and documents as the appropriate officer may require.

(6) The appropriate officer shall:

(a) redetermine the costs, whether by way of increase or decrease in the amount previously determined; or

(b) review the decision to allow standard fees under paragraph 15(2), and confirm it, or allow fees in accordance with paragraph 15(5) and (6),

in the light of the objections made by the applicant or on his behalf and shall notify the applicant of his decision.

(7) The applicant may request the appropriate officer to give reasons in writing for his decision and the appropriate officer shall comply with any such request.

(8) Subject to paragraph 23, any request under sub-paragraph (7) shall be made within 21 days of receiving notification of the decision.

Appeals to a Costs Judge

21. (1) Where the appropriate officer has given his reasons for his decisions under paragraph 20, a representative who is dissatisfied with that decision may appeal to a Costs Judge.

(2) Subject to paragraph 23, an appeal shall be instituted within 21 days of the receipt of the appropriate officer's reasons, by giving notice in writing to the Senior Costs Judge.

(3) The appellant shall send a copy of any notice given under sub-paragraph (2) to the appropriate officer.

(4) The notice of appeal shall be accompanied by:

- (a) a copy of the written representations given under paragraph 20(2);
- (b) the appropriate officer's reasons for his decision given under paragraph 20(7);
and
- (c) the particulars, information and documents supplied to the appropriate officer under paragraph 20.

(5) The notice of appeal shall:

- (a) be in such form as the Senior Costs Judge may direct:
- (b) specify separately each item appealed against, showing (where appropriate) the amount claimed for the item, the amount determined and the grounds of the objection to the determination; and
- (c) state whether the appellant wishes to appear or to be represented or whether he will accept a decision given in his absence.

(6) The Senior Costs Judge may, and if so directed by the Lord Chancellor either generally or in a particular case shall, send to the Lord Chancellor a copy of the notice of appeal together with copies of such other documents as the Lord Chancellor may require.

(7) With a view to ensuring that the public interest is taken into account, the Lord Chancellor may arrange for written or oral representations to be made on his behalf and, if he intends to do so, he shall inform the Senior Costs Judge and the appellant.

(8) Any written representations made on behalf of the Lord Chancellor under sub-paragraph (7) shall be sent to the Senior Costs Judge and the appellant and, in the case of oral representations, the Senior Costs Judge and the appellant shall be informed of the grounds on which such representations will be made.

(9) The appellant shall be permitted a reasonable opportunity to make representations in reply.

(10) The Costs Judge shall inform the appellant (or his representative) and the Lord Chancellor, where representations have been or are to be made on his behalf, of the date of any hearing and, subject to the provisions of this paragraph, may give directions as to the conduct of the appeal.

(11) The Costs Judge may consult the trial judge or the appropriate officer and may require the appellant to provide any further information which he requires for the purpose of the appeal and, unless the Costs Judge otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised under paragraph 20.

(12) The Costs Judge shall have the same powers as the appropriate officer under this Schedule and, in the exercise of such powers, may:

(a) alter the redetermination of the appropriate officer in respect of any sum allowed, whether by increase or decrease as he thinks fit;

(b) confirm the decision to allow standard fees under paragraph 15(2) or allow fees in accordance with paragraph 15(5) and (6).

(13) The Costs Judge shall communicate his decision and the reasons for it in writing to the appellant, the Lord Chancellor and the appropriate officer.

(14) Except where he confirms or decreases the sums redetermined under paragraph 20 or confirms a decision to allow standard fees, the Costs Judge may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by him in connection with the appeal.

Appeals to the High Court

22. (1) A representative who is dissatisfied with the decision of a Costs Judge on an appeal under paragraph 21 may apply to a Costs Judge to certify a point of principle of general importance.

(2) Subject to paragraph 23, an application under sub-paragraph (1) shall be made within 21 days of notification of a Costs Judge's decision under sub-paragraph 21(13).

(3) Where a Costs Judge certifies a point of principle of general importance, the representative may appeal to the High Court against the decision of a Costs Judge on an appeal under paragraph 21, and the Lord Chancellor shall be a respondent to such an appeal.

(4) Subject to paragraph 23, an appeal under sub-paragraph (3) shall be instituted within 21 days of receiving a Costs Judge's certificate under sub-paragraph (1).

(5) Where the Lord Chancellor is dissatisfied with the decision of a Costs Judge on an appeal under paragraph 21, he may, if no appeal has been made by the representative under sub-paragraph (3), appeal to the High Court against that decision, and the representative shall be a respondent to the appeal.

(6) Subject to paragraph 23, an appeal under sub-paragraph (5) shall be instituted within 21 days of receiving notification of the Costs Judge's decision under paragraph 21(13).

(7) An appeal under sub-paragraph (3) or (5) shall be brought in the Queen's Bench Division, follow the procedure set out in Part 8 of the Civil Procedure Rules 1998⁽⁴⁰⁾, and shall be heard and determined by a single judge whose decision shall be final.

(8) The judge shall have the same powers as the appropriate officer and a Costs Judge under this Schedule and may reverse, affirm or amend the decision appealed against or make such other order as he thinks fit.

⁽⁴⁰⁾ S.I. 1998/3132.

Time limits

23. (1) Subject to sub-paragraph (2), the time limit within which any act is required or authorised to be done may, for good reason, be extended:

(a) in the case of acts required or authorised to be done under paragraph 21 or 22, by a Costs Judge or the High Court as the case may be; and

(b) in the case of acts required or authorised to be done by a representative under any other paragraph, by the appropriate officer.

(2) Where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the appropriate officer, a Costs Judge or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the representative has been allowed a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.

(3) A representative may appeal to a Costs Judge against a decision made under this paragraph by an appropriate officer and such an appeal shall be instituted within 21 days of the decision being given by giving notice in writing to the Senior Costs Judge specifying the grounds of appeal.

House of Lords

24. (1) In the case of proceedings in the House of Lords, the costs payable to a representative under sections 13 or 14 of the Act shall be determined by such officer as may be prescribed by order of the House of Lords.

(2) Subject to paragraph (1), this Schedule shall not apply to proceedings in the House of Lords.

SCHEDULE 2

SOLICITORS' FEES

PART 1

FEES DETERMINED UNDER PARAGRAPH 12 OF SCHEDULE 1

1. Subject to paragraphs 2 and 3, for proceedings in the Crown Court and Court of Appeal the appropriate officer shall allow fees for work allowed by it under paragraph 12 of Schedule 1 at the following prescribed rates:

<i>Class of work</i>	<i>Grade of fee-earner</i>	<i>Rate</i>	
Preparation	Senior solicitor	£53.00 per hour	(£55.75 per hour for a fee-earner whose office is situated within the London region of the Commission) (£47.25 per hour for a fee-earner whose office is situated within the London region of the Commission) (£34.00 per hour for a fee-earner whose office is situated within the London region of the Commission)
		-	
	Solicitor, legal executive or fee-earner of equivalent experience	£45.00 per hour	
	Trainee or fee-earner of equivalent experience	£29.75 per hour	
Advocacy (other than in the Crown Court)	Senior solicitor	£64.00 per hour	
	Solicitor	£56.00 per hour	
Attendance at court where more than one representative assigned.	Senior solicitor	£42.25 per hour	
	Solicitor, legal executive or fee-earner of equivalent experience	£34.00 per hour	

	Trainee or fee-earner of equivalent experience	£20.50 per hour	
Travelling and waiting	Senior solicitor	£24.75 per hour	
	Solicitor, legal executive or fee-earner of equivalent experience	£24.75 per hour	
	Trainee or fee-earner of equivalent experience	£12.50 per hour	
Routine letters written and routine telephone calls		£3.45 per item -	(£3.60 per item for a fee-earner whose office is situated within the London region of the Commission)

2. In relation to any hearing specified in paragraph 12(8) of Schedule 1, the fee specified in paragraph 1 for attendance at court where an advocate is assigned shall only be payable in the circumstances and to the extent provided by paragraphs 12(7) to (10) of that Schedule.

3. In respect of any item of work, the appropriate officer may allow fees at less than the relevant prescribed rate specified in paragraph 1 where it appears to him reasonable to do so having regard to the competence and despatch with which the work was done.

4. (1) Upon a determination the appropriate officer may allow fees at more than the relevant prescribed rate specified in paragraph 1 subject to the provisions of this paragraph where it appears to him, taking into account all the relevant circumstances of the case, that:

(a) the work was done with exceptional competence, skill or expertise;

(b) the work was done with exceptional despatch; or

(c) the case involved exceptional circumstances or complexity.

(2) Where the appropriate officer considers that any item or class of work should be allowed at more than the prescribed rate, he shall apply to that item or class of work a percentage enhancement in accordance with the following provisions of this paragraph.

(3) In determining the percentage by which fees should be enhanced above the prescribed rate the appropriate officer should have regard to:

- (a) the degree of responsibility accepted by the solicitor and his staff;
- (b) the care, speed and economy with which the case was prepared; and
- (c) the novelty, weight and complexity of the case.

(4) Except in proceedings to which sub-paragraph (5) applies, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 100 per cent.

(5) Where the proceedings related to serious or complex fraud, the percentage above the prescribed rate by which fees for work done may be enhanced shall not exceed 200 per cent.

(6) The appropriate officer may have regard to the generality of proceedings to which this Order applies in determining what is exceptional within the meaning of this paragraph.

PART 2

STANDARD FEES IN THE CROWN COURT

Application

1. (1) Subject to sub-paragraphs (3) and (4), this Part of this Schedule applies to the fees for work done by a fee-earner regardless of his grade in relation to the proceedings in the Crown Court specified in sub-paragraph (2).

(2) The following proceedings are specified for the purpose of sub-paragraph (1):

(a) committals for trial in which the indictment consisted of counts in respect of an offence which is classified as a Class 3 or 4 offence in accordance with directions given by the Lord Chief Justice under section 75 of the Supreme Court Act 1981⁽⁴¹⁾ and

- (i) where the trial (including any case prepared for trial in which no jury was sworn) lasted two days or less and at the time of listing was reasonably expected to last two days or less; or
- (ii) where the case was listed and disposed of as a plea of guilty;

(b) appeals against conviction;

(c) appeals against sentence; and

(d) committals for sentence (including proceedings which arose out of a breach of an order of the Crown Court, proceedings in which a sentence was deferred and other similar matters).

⁽⁴¹⁾ 1981 c. 54.

(3) Where in any proceedings specified in sub-paragraph (2), the trial judge:

(a) is dissatisfied with the solicitor's conduct of the case; or

(b) considers that, for exceptional reasons, the fees should be determined under paragraph 12 of Schedule 1

he may direct that the fees should be determined under paragraph 12 and in that event this Part of this Schedule shall not apply.

(4) If a solicitor so elects, he may claim standard fees under this Part of this Schedule in respect of work done by him notwithstanding that the proceedings in relation to which the work was done are not specified in sub-paragraph (2), and the provisions of this Part of this Schedule shall apply to such a claim with the necessary modifications, save that, where a solicitor elects to claim the principal standard fee for preparation in respect of a trial which lasted more than two days, he shall be paid that fee (together with the appropriate standard fee for the other classes of work specified in paragraph (4)(2)) and paragraph 2 shall not apply.

(5) In relation to any hearing specified in paragraph 12(6) of Schedule 1, the fee specified in the Table for attendance at court where an advocate was assigned shall only be payable in the circumstances and to the extent provided by paragraph 12(5) to 12(7) of Schedule 1.

(6) For the purposes of this Part of this Schedule, the standard fees which are payable and the classes of work for which such fees may be paid are specified in paragraph 4 and the "lower fee limit" and the "higher fee limit" have the meanings given by paragraph 4(3).

Allowance of standard fees

2. (1) The appropriate officer shall allow the standard fee for preparation which has been claimed by a solicitor (together with the appropriate standard fees for the other classes of work specified in paragraph 4(2)) unless, where the principal standard fee for preparation has been claimed, such a fee is considered to be excessive, in which case the lower standard fee shall be allowed.

(2) A solicitor who has been allowed the lower standard fee instead of the principal fee claimed may:

(a) accept that lower fee;

(b) request the appropriate officer in writing to review his decision; or

(c) provide the appropriate officer with a detailed claim in the form directed by him requesting that the fees for preparation be determined under paragraph 12 of Schedule 1.

(3) Where the appropriate officer is requested to review his decision under sub-paragraph (2)(b), the officer shall either:

(a) allow the principal fee; or

(b) request the solicitor to provide a detailed claim in the form directed by him.

(4) Where a solicitor fails to make a request under sub-paragraph (2)(b) or to supply a detailed claim for the purposes of sub-paragraph (2)(c) or (3)(b) within six weeks of the decision to allow the lower fee or the request to supply a detailed claim, whichever is the later, the decision to allow the lower standard fee shall be deemed to be confirmed.

3. (1) Where a solicitor:

(a) submits a claim for determination under paragraph 12 of Schedule 1 in a case to which paragraph 1(2) applies; or

(b) disputes the allowance of the lower standard fee and provides a detailed claim under paragraph 2(2)(c) or (3)(b)

the appropriate officer shall first determine fees for preparation work within the meaning of paragraph 4(2)(a) of this Part of this Schedule.

(2) If the fees so determined are:

(a) less than the lower fee limit, the appropriate officer shall allow and pay the lower standard fee together with the standard fees for all other classes of work specified in paragraph 4(2);

(b) not less than the lower fee limit and not more than the upper fee limit, the appropriate officer shall allow and pay the principal standard fee together with the standard fees for all other classes of works specified in paragraph 4(2);

(c) more than the upper fee limit, no standard fees shall be payable and all fees shall be determined in accordance with paragraph 12 of Schedule 1.

Standard fees

4. (1) The classes of work for which standard fees shall be payable are those specified in sub-paragraph (2) and the fees for classes of work which are not so specified shall be determined in accordance with paragraph 12 of Schedule 1.

(2) The classes of work specified for the purposes of sub-paragraph (1) are:

(a) preparation within the meaning of paragraph 12(1)(a) of Schedule 1 but including routine letters written and telephone calls, within the meaning of paragraph 12(1)(e) of that Schedule;

(b) attendance at court (including waiting) where more than one representative is assigned;

(c) travelling, other than to undertake work for which standard fees are not payable. For the purpose of this paragraph, "travelling" shall be deemed to include waiting in connection with preparation work, within the meaning of sub-paragraph (2)(a) above.

(3) The standard fees payable under this Part of this Schedule are the fees specified in the Table below and in this Part of this Schedule the "lower fee limit" and the "upper fee limit" mean the lower and upper fee limits specified in the Table.

TABLE					
PREPARATION					
<i>Type of proceedings fee</i>		<i>Lower</i>	<i>Lower</i>	<i>Principal</i>	<i>Upper</i>
		<i>fee</i>	<i>standard limit</i>	<i>fee</i>	<i>standard limit</i>
Jury trials (including any case prepared for trial in which no jury was sworn)		£129.50	£179	£249.5	£312
	London rate	£139.00	£186	0	£326
Guilty pleas		£81.50	£110	£261.5	£226
	London rate	£87.50	£114	0	£235
Appeals against conviction		£51.00	£68	£175.0	£233
	London rate	£54.50	£70	0	£244
Appeals against sentence		£36.25	£52	£159.0	£131
	London rate	£39.25	£54	0	£135
Committals for sentence		£42.50	£51	£93.00	£141
	London rate	£45.00	£53	£97.75	£145
ATTENDANCE AT COURT (INCLUDING WAITING) WHERE MORE THAN ONE REPRESENTATIVE ASSIGNED TRAVELLING		£21.40	per hour	0	
		£18.50	per hour		

(4) A solicitor shall be entitled to the "London rate" of the standard fees specified in the Table where his office is situated within the London region of the Commission.

(5) The hourly rate specified in the Table for attendance at court shall, subject to subparagraph (6), be paid in respect of the period of time beginning 30 minutes before the case was listed, and ending:

(a) where the client was present at court, 15 minutes after the hearing ended on that day; or

(b) where the client was not present at court, when the hearing ended on that day

and save in exceptional circumstances, shall not be payable during the luncheon adjournment.

(6) Where a fee-earner attends a court centre for the purpose of more than one case, the solicitor may claim the attendance fee in respect of the second or subsequent case only for the time actually spent in attendance in addition to the time for which payment is made under sub-paragraph (5).

(7) The hourly rate specified in the Table shall be paid for time spent travelling (within the meaning of sub-paragraph (2)(c)).

(8) Where a solicitor acts for more than one defendant, the appropriate officer shall allow whichever of the appropriate standard preparation fees is the greater and increase that fee by 20 per cent for each additional defendant, but no percentage increase shall be made to the standard fees for attendance at court and travelling.

(9) Where a solicitor acts for a defendant in respect of more than one:

- (a) indictment;
- (b) appeal against conviction;
- (c) appeal against sentence; or
- (d) committal for sentence

or in respect of any combination of (a) to (d) above, the appropriate officer shall allow whichever of the appropriate standard preparation fees is the greater and increase that fee by 20 per cent for each additional indictment, appeal or committal for sentence as the case may be.

(10) Where a solicitor prepares a case with a view to an advocate appearing at the substantive hearing without the solicitor or his representative attending court, the standard preparation fee payable after any increase required by paragraphs (8) or (9) shall be further increased by:

- (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 the London region of the Commission); and
- (b) £30.00 in every other case (£32.00 for a solicitor whose office is situated within the London region of the Commission).

(11) Where a fee-earner listens to a recording of an interview conducted under a code issued by the Secretary of State under section 60 of the Police and Criminal Evidence Act 1984⁽⁴²⁾, the standard preparation fee payable after application of any increase required by paragraph 8 or 9 shall be further increased by £10.90 for every 10 minutes of the total running time of all recordings or parts thereof listened to and by the same amount for any remaining period.

(12) Where the standard fee payable is increased by virtue of sub-paragraph (8), (9), (10) or (11), then for the purposes of paragraphs 3, 6 and 8:

(a) the upper fee limit shall be increased by the same amount by which the principal standard fee has been increased; and

(b) the lower fee limit shall be increased by the same amount by which the standard fee has been increased.

Disbursements

5. Nothing in this Part of this Schedule applies to disbursements, which shall be determined in accordance with paragraph 13 of Schedule 1.

Re-determinations and appeals

6. (1) A solicitor who is dissatisfied with a decision on a determination under paragraph 3 may apply for the costs to be re-determined and, subject to sub-paragraph (2), the provisions of paragraph 20 (2) to (8) of Schedule 1 shall apply with the necessary modifications to an application under this paragraph as they apply to an application under paragraph 20 of Schedule 1.

(2) On a re-determination under this paragraph, the appropriate officer shall determine the fees for preparation work within the meaning of paragraph 4(2)(a) and if the fees as so determined are:

(a) less than the lower fee limit, the lower standard fee shall be allowed together with the standard fees for all other classes of work specified in paragraph 4(2);

(b) not less than the lower fee limit and not more than the upper fee limit, the principal standard fee shall be allowed together with the standard fees for all other classes of work specified in paragraph 4(2);

(c) more than the upper fee limit, the fees for all classes of work shall be determined in accordance with paragraph 12 of Schedule 1.

7. Irrespective of any dispute under paragraph 2 as to whether the principal standard fee should have been allowed instead of the lower standard fee, where a solicitor is satisfied with a decision to allow a standard fee but contends that:

(a) a standard fee which is not apt for the type of work done has been allowed; or

⁽⁴²⁾ 1984 c. 60.

(b) the provisions of paragraph 4(4) to (12) have been incorrectly applied

he may, within six weeks of receipt of notification of the decision, make a written request setting out his reasons why the decision should be reviewed and, if the appropriate officer confirms his decision, written reasons shall be given.

8. (1) A solicitor may appeal to a Costs Judge where he is dissatisfied with:

(a) a decision on a re-determination under paragraph 6; or

(b) a decision on a review under paragraph 7.

(2) Where a solicitor appeals to a Costs Judge in respect of a decision under paragraph 6, the Costs Judge shall determine the fees for preparation within the meaning of paragraph 4(2)(a) and if the fees so determined are:

(a) less than the lower fee limit, the lower standard fee shall be allowed by the Costs Judge together with the standard fees for all other classes of work specified in paragraph 4(2);

(b) not less than the lower fee limit and not more than the upper fee limit, the principal standard fee shall be allowed by the Costs Judge together with the standard fees for all other classes of work specified in paragraph 4(2);

(c) more than the upper fee limit, the fees for all classes of work shall be determined by the Costs Judge in accordance with paragraph 12 of Schedule 1.

(3) Where a solicitor appeals to a Costs Judge in respect of a decision made on a review under paragraph 7, the Costs Judge shall allow whichever standard fee he considers to be apt for the type of work done or, as the case may be, re-apply the provisions of paragraph 4(4) to (12).

(4) Where a Costs Judge allows an appeal in whole or in part, he may allow the solicitor a sum in respect of part or all of any reasonable costs (including any fee payable in respect of the appeal) incurred by him in connection with the appeal.

(5) This paragraph only applies to appeals in proceedings for which standard fees are payable and the provisions of paragraph 21 of Schedule 1 shall apply to appeals in proceedings for which standard fees are not payable.

(6) Subject to the foregoing provisions of this paragraph, the provisions of paragraphs 21 to 23 of Schedule 1 relating to appeals by solicitors shall apply with the necessary modifications to appeals in proceedings for which standard fees are payable under this Part of this Schedule as they apply to appeals in proceedings for which standard fees are not payable.

SCHEDULE 3

COUNSEL'S FEES

1. The appropriate officer shall allow such fee in respect of an item of work allowed under paragraph 15(6) of Schedule 1, not exceeding the maximum amount specified in respect of that item of work, as appears to it to provide reasonable remuneration.
2. Where an hourly rate is specified in a Table in this part of this Schedule in respect of an item of work allowed under paragraph 15(6) of Schedule 1, the appropriate officer shall determine any fee for such work in accordance with that hourly rate; provided that the fee determined shall not be less than the minimum amount specified.
3. Where a refresher fee is claimed in respect of less than a full day, the appropriate officer shall allow such fee as appears to him reasonable having regard to the fee which would be allowable for a full day.
4. The fees allowed to junior counsel for proceedings in the Crown Court arising out of a breach of an order of the Crown Court or other similar matter shall not exceed the maximum amounts specified for "committals for sentence".
5. Paragraph 24 of Schedule 4 shall apply where an advocate's fees are determined in accordance with this Part of this Schedule as it applies where a graduated or fixed fee is allowed in accordance with Schedule 4.

TABLE 1: JUNIOR COUNSEL

Type of proceedings	Basic fee	Full day refresher	Subsidiary fees		
			Attendance at consultation, conferences & views	Written work	Attendance at pre-trial reviews, applications and other appearances
Jury trials	Maximum amount: £545.50				
Cases prepared for trial in which no jury is sworn	Maximum amount: £317.75				
Guilty pleas	Maximum amount: £192.25		£33.50 per hour Minimum amount: £16.75	Maximum amount: £58.25	Maximum amount: £110.00
Appeals against conviction	Maximum amount: £210.00	Maximum amount: £178.75			
Appeals against sentence	Maximum amount: £107.50				
Committals for sentence	Maximum amount: £107.50				

TABLE 2: QUEEN'S COUNSEL

Type of proceedings	Basic fee	Full day refresher	Subsidiary fees		
			Attendance at consultation, conferences & views	Written work	Attendance at pre-trial reviews, applications and other appearances
All cases	Maximum amount: £5,400.00	Maximum amount: £330.50	£62.50 per hour Minimum amount: £32.00	Maximum amount: £119.50	Maximum amount: £257.50

SCHEDULE 4

FEEES FOR ADVOCACY IN THE CROWN COURT

PART 1

DEFINITION AND SCOPE

1. (1) In this Schedule:

"trial advocate" means a person instructed in accordance with a representation order to represent the assisted person at the main hearing in any case;

"case" means proceedings in the Crown Court against any one assisted person:

- (a) on one or more counts of a single indictment;
- (b) arising out of a single notice of appeal against conviction or sentence, or a single committal for sentence, whether on one or more charges; or
- (c) arising out of a single alleged breach of an order of the Crown Court

and a case falling within paragraph (c) shall be treated as a separate case from the proceedings in which the order was made;

"cracked trial" and "guilty plea" have the meaning given in paragraph 9(3), (4) and (5) of this Schedule;

"main hearing" means:

- (a) in relation to a case which goes to trial, the trial;
- (b) in relation to a guilty plea or cracked trial, the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing;
- (c) in relation to an appeal against conviction or sentence, the hearing of the appeal;
- (d) in relation to proceedings arising out of a committal for sentence, the sentencing hearing; and
- (e) in relation to proceedings arising out of an alleged breach of an order of the Crown Court, the final hearing;

"Newton Hearing" means a hearing at which evidence is heard for the purpose of determining the sentence of a convicted person in accordance with the principles of R v Newton (1982) 77 Cr App R 13;

"preparation" means work of any of the following types when done by a trial advocate:

- (a) reading the papers in the case;

- (b) the first conference with the assisted person;
- (c) contact with prosecution representatives;
- (d) written or oral advice on plea;
- (e) researching the law, preparation for examination of witnesses and preparation of oral submissions for the main hearing;
- (f) viewing exhibits or undisclosed material at police stations;
- (g) conferences with the assisted person, after the first such conference;
- (h) written advice on evidence;
- (i) written and oral advice on appeal (where covered under the same representation order as the main hearing);
- (j) preparation of written submissions, notices or other documents for use at the main hearing; and
- (k) views.

(2) For the purpose of this Schedule, the number of pages of prosecution evidence shall include all witness statements, documentary and pictorial exhibits and records of interview with the assisted person and with other defendants forming part of the committal documents or included in any notice of additional evidence.

(3) In the case of proceedings on indictment in the Crown Court initiated otherwise than by committal for trial, the appropriate officer shall determine the number of pages of prosecution evidence as nearly in accordance with the preceding sub-paragraph as the nature of the case permits.

(4) 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 following paragraph 25.

2. (1) Subject to the following sub-paragraphs of this paragraph and to paragraph 4, this Schedule applies to every case on indictment in which:

(a) every count (apart from any count which is withdrawn before the pleas and directions hearing) is for an offence referred to in paragraph 5 below; or

(b) one or more counts is for an offence referred to in paragraph 5 below, and the trial advocate elects that the remaining counts should be disregarded for the purposes of calculating his remuneration.

(2) This Schedule does not apply to a case which goes to trial where:

(a) the prosecution evidence exceeds 1,000 pages;

(b) the number of prosecution witnesses exceeds 80; or

(c) it was accepted at the pleas and directions hearing that the trial would exceed 10 days (or 5 days where one of the counts is for an offence falling within Class I), and the trial did not exceed that length by reason only that it came to an end without the jury being required to consider their verdict.

(3) This Schedule does not apply to a guilty plea where:

(a) the prosecution evidence exceeds 400 pages; or

(b) the number of prosecution witnesses exceeds 80.

(4) This Schedule does not apply to a cracked trial where:

(a) at the pleas and directions hearing, it was accepted by the court that the trial would exceed 10 days in length (or 5 days where one of the counts is for an offence falling within Class I);

(b) the prosecution evidence exceeds 250 pages; or

(c) the number of prosecution witnesses exceeds 80.

(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, this Schedule shall not apply in relation to the remuneration of that trial advocate for:

(a) the original trial, unless remuneration for that trial has been paid in full prior to the making of the order for a new trial; or

(b) a new trial, in any event.

(6) Where following a case on indictment a Newton hearing takes place:

(a) the case shall for all the purposes of this Schedule be treated as having gone to trial;

(b) the length of trial shall be taken to be the combined length of the main hearing and of the Newton hearing;

(c) the provisions of this Schedule relating to cracked trials and guilty pleas shall not apply; and

(d) no fee shall be payable under paragraph 15 in respect of that hearing.

(7) A case on indictment which is discontinued at the pleas and directions hearing other than by reason of pleas of guilty being entered shall for all purposes of this Schedule be treated as a guilty plea.

3. This Schedule also applies to the following proceedings in the Crown Court, subject to paragraph 4:

- (a) an appeal against conviction or sentence;
- (b) a sentence hearing following a committal for sentence to the Crown Court; and
- (c) proceedings arising out of an alleged breach of an order of the Crown Court (whether or not this Schedule applies to the proceedings in which the order was made).

4. This Schedule does not apply to any case where:

- (a) the representation order provides for the services of more than two trial advocates;
- (b) (without prejudice to anything in CDS Regulations) any of the trial advocate's work in connection with the case is done or remunerated otherwise than under a representation order;
- (c) a hearing is held to determine the question of whether the assisted person is unfit to plead or unfit to be tried;
- (d) one or more registered medical practitioners has given oral evidence for the purposes of section 37(2)(a) of the Mental Health Act 1983⁽⁴³⁾; or
- (e) 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 10 days (or 5 days where one of the counts is for an offence falling within Class I),

5.- (1) The offences to which this paragraph refers are:

- (a) those listed in the Table of Offences following paragraph 25 of this Schedule;
- (b) conspiracy to commit any of the offences in the Table of Offences, contrary to section 1 of the Criminal Law Act 1977⁽⁴⁴⁾;
- (c) incitement to commit any of the offences in the Table of Offences; and
- (d) attempts to commit any of the offences in the Table of Offences, contrary to section 1 of the Criminal Attempts Act 1981⁽⁴⁵⁾.

(2) For the purposes of this Schedule:

- (a) every offence within sub-paragraph (1)(a) falls within the Class under which it is listed in the Table of Offences;
- (b) every offence within sub-paragraph (1)(b), (c) or (d) falls within the same Class as the substantive offence to which it relates;

⁽⁴³⁾ 1983 c. 20.
⁽⁴⁴⁾ 1977 c. 45.
⁽⁴⁵⁾ 1981 c. 47.

(c) where the Table specifies that the Class within which an offence falls depends on whether that value involved exceeds a stated limit, the value shall be presumed not to exceed that limit unless the person claiming remuneration proves otherwise to the satisfaction of the appropriate officer;

(d) where more than one count of the indictment is for an offence in relation to which the Class depends on the value involved, that value shall be taken to be the total value involved in all those offences, so however that where two or more counts relate to the same property the value of that property shall be taken into account once only; and

(e) where an entry in the Table of Offences specifies an offence as being contrary to a statutory provision, then subject to any express limitation in the entry that entry shall include every offence contrary to that statutory provision whether or not the words of description in the entry are apt to cover all such offences.

6. (1) The classes of work for which a graduated or fixed fee calculated in accordance with the following paragraphs of this Schedule shall be allowed in accordance with paragraph 15(2) are those specified in sub-paragraph (2), and the fees for classes of work which are not so specified shall be determined in accordance with paragraph 15.

(2) The classes of work specified for the purposes of sub-paragraph (1) are:

(a) all preparation not falling within sub-paragraph (c) below;

(b) advocacy on the first day of the main hearing;

(c) preparation and advocacy on the second and subsequent days of the main hearing;

(d) appearing at the pleas and direction hearing, if any;

(e) appearing at any other hearings and applications;

(f) listening to or viewing evidence recorded on disc, tape or video cassette;

(g) attending conferences with expert witnesses.

PART 2

GRADUATED FEES FOR TRIAL

7.(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 formula:

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

(2) In the formula in sub-paragraph (1):

G is the amount of the graduated fee;

B is the basic fee specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed;

d is the number of days or parts of a day by which the trial exceeds one day;

e is the number of pages of prosecution evidence excluding the first 50;

w is the number of prosecution witnesses excluding the first 10;

D is the length of trial uplifts specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed;

E is the evidence uplift specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed;

W is the witness uplift specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed;

R is the refresher specified in paragraph 8 as appropriate to the offence for which the assisted person is tried and the category of trial advocate instructed.

8. For the purposes of paragraph 7 the basic fee, refresher, length of trial uplift, evidence uplift and witness uplift appropriate to any offence shall be those specified in the Table below as appropriate to the Class within which that offence falls according to paragraph 5 and the category of trial advocate instructed.

TABLE OF FEES AND UPLIFTS

(a) Trials - 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	£1,616.50	£413.50	£835.50	£1.44	£6.12
Class B	£1,091.00	£510.00	£636.50	£4.93	£46.47
Class C	£839.50	£431.50	£581.00	£8.47	£55.12
Class D	£1,550.50	£413.50	£574.50	£2.75	£18.13
Class E	£875.00	£431.50	£345.50	£3.55	£23.45
Class F	£847.50	£431.50	£467.00	£5.00	£17.12
Class G	£1,561.50	£510.00	£929.00	£7.71	£63.30
Class H	£1,000.50	£431.50	£637.00	£6.91	£60.18
Class I	£1,032.00	£510.00	£462.00	£10.83	£71.45

(b) Trials - 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	£808.50	£207.00	£418.00	£0.72	£3.06
Class B	£311.50	£145.50	£182.00	£1.41	£13.28
Class C	£240.00	£123.50	£166.00	£2.42	£15.75
Class D	£446.00	£145.50	£282.00	£1.08	£7.14
Class E	£250.00	£123.50	£98.50	£1.02	£6.70
Class F	£242.00	£123.50	£133.50	£1.43	£4.89
Class G	£446.00	£145.50	£265.50	£2.20	£18.09
Class H	£286.00	£123.50	£182.00	£1.97	£17.19
Class I	£295.00	£145.50	£132.00	£3.09	£20.41

PART 3

GRADUATED FEES FOR GUILTY PLEAS AND CRACKED TRIALS

9 (1) The amount of the graduated fee for a single trial advocate representing one assisted person in a guilty plea or cracked trial shall be the basic fee specified in paragraph 10 as appropriate to the offence with which the assisted person is charged, the category of trial advocate instructed and whether the case is a guilty plea or a cracked trial, increased by the evidence uplift.

(2) The evidence uplift shall be calculated as follows:

(a) there shall be no uplift in respect of the first 10 pages;

(b) the uplift set out in the third column of the applicable Table in paragraph 10 shall be payable in respect of each page from the 11th to the 50th;

(c) the uplift set out in the fourth column of the applicable Table in paragraph 10 shall be payable in respect of each page from the 51st to the 100th; and

(d) the uplift set out in the fifth column of the applicable Table in paragraph 10 shall be payable in respect of each page from and after the 101st.

(3) A case on indictment in which a pleas and directions hearing takes place is a cracked trial if it fulfils the following conditions:

(a) the matter did not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offered no evidence, and

(b) (i) in respect of one or more counts to which the assisted person pleaded guilty, he did not so plead at the pleas and direction hearing; or

(ii) in respect of one or more counts which were not proceeded with, the prosecution did not, before or at the pleas and directions hearing, declare an intention of not proceeding with them.

(4) A case on indictment in which no pleas and directions hearing takes place is a cracked trial if it was listed for trial but the case was disposed of without a trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offered no evidence.

(5) A case on indictment is a guilty plea if it was disposed of without a trial because the assisted person pleaded guilty to one or more counts and is not a cracked trial.

10. For the purposes of paragraph 9 the basic fee and evidence uplifts appropriate to any offence shall be those specified in the Table below as appropriate to the class within which that offence falls according to paragraph 5 and the category of trial advocate instructed.

TABLE OF FEES AND UPLIFTS

(a) Guilty plea-Queen's Counsel

Offence Falling within	Basic fee	<i>Evidence uplift Per page (pages 11 to50)</i>	<i>Evidence uplift Per page(pages 51 to 100)</i>	<i>Evidence uplift Per page(pages 101 to 400)</i>
Class A	£1,619.50	£6.14	£3.06	£2.04
Class B	£715.50	£6.03	£4.02	£2.68
Class C	£595.00	£6.03	£4.02	£2.68
Class D	£998.00	£6.03	£4.02	£2.68
Class E	£ 446.00	£4.02	£2.68	£1.79
Class F	£438.50	£3.22	£2.14	£1.43
Class G	£1,242.00	£8.04	£5.36	£3.57
Class H	£504.00	£8.04	£5.36	£3.57
Class I	£403.50	£8.04	£5.36	£3.57

(b) Guilty Plea - other trial advocate

Offence Falling within	Basic fee	<i>Evidence uplift Per page (pages 11 to50)</i>	<i>Evidence uplift Per page(pages 51 to 100)</i>	<i>Evidence uplift Per page(pages 101 to 400)</i>
Class A	£810.00	£3.07	£1.53	£1.02
Class B	£204.50	£1.72	£1.15	£0.77
Class C	£170.00	£1.72	£1.15	£0.77
Class D	£285.00	£1.72	£1.15	£0.77
Class E	£127.50	£1.15	£0.77	£0.51

Class F	£125.50	£0.92	£0.61	£0.41
Class G	£355.00	£2.30	£1.53	£1.02
Class H	£144.00	£2.30	£1.53	£1.02
Class I	£115.00	£2.30	£1.53	£1.02

(c) Cracked trial - Queen's Counsel

Offence Falling within	Basic fee	<i>Evidence uplift Per page (pages 11 to50)</i>	<i>Evidence uplift Per page(pages 51 to 100)</i>	<i>Evidence uplift Per page(pages 101 to 250)</i>
Class A	£1,694.50	£50.72	£17.04	£4.26
Class B	£1,143.50	£22.29	£8.39	£5.59
Class C	£880.00	£21.96	£8.39	£5.59
Class D	£1,625.00	£34.62	£12.78	£3.19
Class E	£917.00	£10.38	£8.39	£5.59
Class F	£888.50	£12.66	£8.39	£5.59
Class G	£1,637.00	£68.65	£16.77	£11.18
Class H	£1,048.50	£24.78	£8.39	£5.59
Class I	£1,081.50	£17.84	£8.39	£5.59

(d) Cracked trial - other trial advocate

Offence Falling within	Basic fee	<i>Evidence uplift Per page (pages 11 to50)</i>	<i>Evidence uplift Per page(pages 51 to 100)</i>	<i>Evidence uplift Per page(pages 101 to 250)</i>
Class A	£847.00	£25.36	£8.52	£2.13
Class B	£326.50	£6.37	£2.40	£1.60
Class C	£251.50	£6.27	£2.40	£1.60
Class D	£467.50	£10.51	£2.40	£1.60
Class E	£262.00	£2.97	£2.40	£1.60
Class F	£254.00	£3.62	£2.40	£1.60
Class G	£467.50	£19.61	£4.79	£3.19
Class H	£299.50	£7.08	£2.40	£1.60
Class I	£309.00	£5.10	£2.40	£1.60

PART 4

FIXED AND HOURLY FEES

11. (1) The basic fee payable for any person for appearing at a pleas and directions hearing or a pre-trial review shall be that set out in the Table following paragraph 22 as appropriate to the category of trial advocate but where a fee is also payable under sub-paragraph (2), an amount equal to that fee shall be deducted from the fee payable under this sub-paragraph.

(2) The basic fee payable to any person for entering a paper plea and directions shall be that set out in the Table following paragraph 22.

(3) This paragraph does not apply to a pleas and directions hearing which is or forms part of the main hearing in a case.

12. (1) The fixed fee set out in the Table following paragraph 22 as appropriate to the category of trial advocate shall be payable where:

(a) the assisted person fails to attend any hearing at which the trial advocate appears;

(b) at that hearing a bench warrant is issued for the arrest of the assisted person;
and

(c) that warrant is not executed within the three months beginning on the date on which it was issued.

(2) 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 (other than by reason of an application for postponement by the prosecution or the defence).

13. (1) This paragraph applies to:

(a) the hearing of an application to stay the indictment or any count on the ground that the proceedings constitute an abuse of the process of the court;

(b) any hearing relating to the question of whether any material should be disclosed by the prosecution to the defence or the defence to the prosecution (whether or not any claim to public interest immunity is made); and

(c) the hearing of an application under section 2(1) of the Criminal Procedure (Attendance of Witnesses) Act 1965⁽⁴⁶⁾ for disclosure of material held by third parties.

⁽⁴⁶⁾ 1965 c. 69.

(2) Where a hearing to which this paragraph applies is held on any day of the main hearing of a case on indictment, no separate fee shall be payable in respect of attendance at the hearing, but the hearing shall be included in the length of the main hearing for the purpose of calculating remuneration.

(3) Where a hearing to which this paragraph applies is held prior to the first or only day of the main hearing, it shall not be included in the length of the main hearing for the purpose of calculating remuneration and the trial advocate shall be remunerated for attendance at such a hearing:

(a) in respect of any day where the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the Table following paragraph 22 as appropriate to the category of trial advocate;

(b) in respect of any day where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half daily rate set out in the Table following paragraph 22 as appropriate to the category of trial advocate.

14. (1) This paragraph applies to:

(a) a hearing to which the court proceeds under section 2 of the Drug Trafficking Act 1994⁽⁴⁷⁾; and

(b) a hearing to which the court proceeds under section 71 of the Criminal Justice Act 1988⁽⁴⁸⁾.

(2) A hearing to which this paragraph applies shall not be included in the length of the main hearing or of any sentencing hearing for the purpose of calculating remuneration, and the trial advocate shall be remunerated for attendance at such a hearing:

(a) in respect of any day where the hearing begins before and ends after the luncheon adjournment, at the daily rate set out in the Table following paragraph 22 as appropriate to the category of trial advocate; and

(b) in respect of any day where the hearing begins and ends before the luncheon adjournment, or begins after the luncheon adjournment, at the half-daily rate set out in the Table following paragraph 22 as appropriate to the category of trial advocate.

15. (1) The fee payable to any person for appearing at a hearing to which this paragraph applies shall be that set out in the Table following paragraph 22 as appropriate to the category of person appearing and the circumstances of the hearing.

(2) This paragraph applies to the following hearings:

(a) a sentencing hearing following a case on indictment to which this Schedule applies, where sentence has been deferred under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000⁽⁴⁹⁾;

⁽⁴⁷⁾ 1994 c. 37.

⁽⁴⁸⁾ 1988 c. 33.

⁽⁴⁹⁾ 2000 c. 6.

(b) a sentencing hearing following a case on indictment to which this Schedule applies, other than a hearing within paragraph (a) or a sentencing hearing forming part of the main hearing.

16. A fee under this paragraph, of the amount set out in the Table following paragraph 22 as appropriate to the category of the person appearing, shall be payable to any person (whether the trial advocate or not) for appearing in the following hearings in a case on indictment, when not forming part of the main hearing or a hearing for which a fee is provided elsewhere in this Schedule:

(a) the hearing of a case listed for plea which is adjourned for trial;

(b) any hearing (other than a trial) which is listed but cannot proceed because of the failure of the assisted person or a witness to attend, the unavailability of a pre-sentence report or other good reason;

(c) bail and other applications; and

(d) the hearing of the case listed for mention only.

17. (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 or indictment in the Crown Court in respect of which a graduated fee is payable under this Schedule, it has been necessary for the trial advocate to do work by way of preparation substantially in excess of the amount normally done for cases of the same type because the case involves a very unusual or novel point of law or factual issue.

(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.

(4) A trial advocate claiming a special preparation fee shall supply such information and documents as may be required by the appropriate officer as proof of the unusual nature or novelty of the point of law or factual issue and of the number of hours of preparation.

18. (1) A wasted preparation fee may be claimed where a trial advocate instructed in any case to which this paragraph applies is prevented from representing the assisted person in the main hearing by any of the following circumstances:

(a) the trial advocate is instructed to appear in other proceedings at the same time as the main hearing in the case and has been unable to secure a change of date for either the main hearing or the other proceedings;

(b) the date fixed for the main hearing is changed by the court despite the trial advocate's objection;

(c) the trial advocate has withdrawn from the case with the leave of the court because of his professional code of conduct or to avoid embarrassment in the exercise of his profession;

(d) the trial advocate has been dismissed by his client;

(e) the trial advocate is obliged to attend at any place by reason of a judicial office held by him or other public duty.

(2) This paragraph applies to every case on indictment to which this Schedule applies provided that:

(a) the case goes to trial, and the trial lasts for five days or more; or

(b) the case is a cracked trial, and the number of pages of prosecution evidence exceeds 150.

(3) The amount of the wasted preparation fee shall be calculated from the number of hours of preparation reasonably carried out by the trial advocate, using the rates for hourly fees set out in the Table following paragraph 22; but no such fee shall be payable unless the number of hours of preparation is eight or more.

(4) A trial advocate claiming a wasted preparation fee shall supply such information and documents as may be required by the appropriate officer as proof of the circumstances in which he was prevented from representing the assisted person and of the number of hours of preparation.

19. (1) The hourly fee set out in the Table following paragraph 22 as appropriate to the category of trial advocate shall be payable in respect of work of the following types, provided that the trial advocate satisfies the appropriate officer that the work was reasonably necessary, namely:

(a) attendance by the trial advocate at conferences with prospective or actual expert witnesses; or

(b) travel for the purpose of attending a conference with the assisted person, where the appropriate officer is satisfied that the assisted person was unable or could not reasonably have been expected to attend a conference at the trial advocate's office or chambers;

and where that fee is allowed the trial advocate shall also be paid the reasonable expenses of travelling to and from the conference.

(2) In any case on indictment, a trial advocate shall be entitled to a fee in accordance with the Table following paragraph 22 for the number of periods or parts of a period of 10 minutes of running time of any disc, tape or video cassette or part thereof which he listens to or views as part of the evidence in the case.

20. The additional fee set out in the Table following paragraph 22 shall be payable in respect of each day of the main hearing in any case mentioned in paragraph 2 on which the trial advocate appears unattended by the representative.

21. (1) Subject to paragraph 15(4) of Schedule 1, and to paragraph 23(2), the remuneration payable to a trial advocate instructed in any case mentioned in paragraph 3 shall be the fixed fee set out in the Table following paragraph 22.

(2) Where the trial advocate appears in any case mentioned in paragraph 3 unattended by a representative, he shall be entitled to the additional fee set out in that Table.

22. The remuneration payable to a representative retained solely for the purpose of making a note of any hearing shall be the daily fee set out in the Table following this paragraph.

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	75.00
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
Work for which daily or half daily fee is payable	13, 14	330.00 per day 185.00 per half day	250.00 per day 140.00 per half day	178.25 per day 99.50 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
Work for which hourly fee is payable	17, 18, 19(1)	62.50 per hour	47.00 per hour	33.50 per hour
Listening to or viewing tapes etc	19(2)	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 within other cases within paragraph 3	21(1)	184.50	125.00	73.50
Additional fee for unattended advocate	21(2)	19.25	19.25	19.25
Noting brief	22	-	-	100.00 per day

PART 5

MISCELLANEOUS

23. (1) Where an assisted person is charged with more than one offence on one indictment, the graduated fee payable to the trial advocate shall be based on whichever of the those offences he shall select for the purposes.

(2) Where two or more cases to which this Schedule applies involving the same trial advocate are heard concurrently (whether involving the same or different assisted persons):

(a) the trial advocate shall select one case ("the principal case"), which shall be treated for the purposes of remuneration in accordance with the previous paragraphs of this Schedule;

(b) in respect of the main hearing in each of the other cases the trial advocate shall be paid a fixed fee of twenty per cent of:

- (i) the basic fee for the principal case, where that is a case falling within paragraph 2, or
- (ii) the fixed fee for the principal case, where that is a case falling within paragraph 3.

(3) Where a person appears at a hearing specified in paragraph 11, 12(2), 13, 14, 15 or 16(a) or (b), forming part of two or more cases involving different assisted persons, he shall be paid:

(a) in respect of the first such case, the fixed fee for that hearing specified in the Table following paragraph 22; and

(b) in respect of each of the other cases, twenty per cent of that fee.

(4) Subject to sub-paragraphs (1) to (3), where a person appears at a hearing forming part of two or more cases, he shall be paid the fixed fee for that hearing specified in the Table following paragraph 22 in respect of one such case, without any increase in respect of the other cases.

24. (1) Where in any case on indictment two trial advocates are instructed to represent the same assisted person:

(a) if the leading advocate is a Queen's Counsel, he shall receive the same graduated fee as if he were appearing alone;

(b) if the leading advocate is not a Queen's Counsel, he shall receive seventy- five per cent of the graduated fee payable to Queen's Counsel appearing alone;

(c) in either case, the junior advocate shall receive one-half of the graduated fee payable to a Queen's Counsel appearing alone.

(2) Where the assisted person is represented by a single trial advocate and another person charged on the same indictment with an offence falling within the same class is represented by two trial advocates, the single trial advocate shall receive the same graduated fee as if he were appearing as junior to another trial advocate.

(3) Sub-paragraph (2) shall not apply where the charge which the single trial advocate is instructed to defend (or where there is more than one such charge, the charge forming the basis of remuneration in accordance with paragraph 23(1)) is for an offence falling within Class A.

25. Where a person is instructed to appear in court which is not within 40 kilometres of his office or chambers, the appropriate officer may allow an amount for travelling and other expenses incidental to that appearance; provided that the amount shall not be greater than the amount, if any, which would be payable to a trial advocate from the nearest local Bar or the nearest advocate's office (whichever is the nearer) unless the person instructed to appear has obtained prior approval under CDS Regulations for the incurring of such expenses or can justify his attendance having regard to all the relevant circumstances of the case

TABLE OF OFFENCES

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
Class A: Homicide and related grave offences		
Murder	Common law	
Manslaughter	Common law	
Soliciting to murder	Offences against the Person Act 1861 s.4	1861 c.100
Child destruction	Infant Life (Preservation) Act 1929 s.1(1)	1929 c.34
Infanticide	Infanticide Act 1938 s.1(1)	1938 c.36
Causing explosion likely to endanger life or property	Explosive Substances Act 1883 s.2	1883 c.3
Attempt to cause explosion, making or keeping explosive etc.	Explosive Substances Act 1883 s.3	as above
Class B: Offences involving serious violence or damage, and serious drugs Offences		
Kidnapping	Common law	
False imprisonment	Common law	
Aggravated criminal damage	Criminal Damage Act 1971 s.1(2)	1971 c.48
Aggravated arson	Criminal Damage Act 1971 s.1(2), (3)	as above
Arson (where value exceeds £30,000)	Criminal Damage Act 1971 s.1(3) Firearms Act 1968 s.16	as above 1968 c.27
Possession of firearm with intent to endanger life	Firearms Act 1968 s.17	as above
Use of firearm to resist arrest	Firearms Act 1968 s.18	as above
Possession of firearm with criminal intent	Firearms Act 1968 s.5	1968 c.27
Possession or acquisition of certain prohibited weapons etc.	Theft Act 1968 s.10	1968 c.60
Aggravated burglary	Theft Act 1968 s.8(1)	as above
Armed robbery	Theft Act 1968 s.8(2)	as above
Assault with weapon with intent to rob	Theft Act 1968 s.21	as above
Blackmail	Public Order Act 1986 s.1	1986 c.64
Riot	Public Order Act 1986 s.2	as above
	Public Order Act 1986 s.38	as above

Violent disorder	Road Traffic Act 1988 s.1	1988 c.52
Contamination of goods with intent	Road Traffic Act 1988 s.3A	as above
Causing death by dangerous driving		
Causing death by careless driving while under the influence of drink or drugs	Theft Act 1968 s. 12A	1968 c.60
Aggravated vehicle taking resulting in death	Road Traffic Act 1988 s.22A	1988 c.52
Causing danger to road users		

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
Attempting to choke, suffocate, strangle etc.	Offences against the Person Act 1861 s.21	1861 c.100
Causing miscarriage by poison, instrument	Offences against the Person Act 1861 s.58	as above
Making threats to kill	Offences against the Person Act 1861 s.16	as above
Wounding or grievous bodily harm with intent to cause grievous bodily harm etc.	Offences against the Person Act 1861 s.18	as above
Endangering the safety of railway passengers	Offences against the Person Act 1861 ss.32, 33, 34	as above
Impeding persons endeavouring to escape wrecks	Offences against the Person Act 1861 s.17	as above
Administering chloroform, laudanum etc.	Offences against the Person Act 1861 s.22	as above
Administering poison etc. so as to endanger life	Offences against the Person Act 1861 s.23	as above
Cruelty to persons under 16	Children and Young Persons Act 1933 s.1	1933 c.12
Aiding and abetting suicide	Suicide Act 1961 s.2	1961 c.60
Placing wood etc. on railway	Malicious Damage Act 1861 s.35	1861 c.97
Exhibiting false signals etc	Malicious Damage Act 1861 s.47	as above
Prison mutiny	Prison Security Act 1992 s. 1	1992 c.25
Assaulting prison officer whilst possessing firearm etc.	Criminal Justice Act 1991 s.90	1991 c.53
Acquiring, possessing etc. the proceeds of criminal conduct	Criminal Justice Act 1988 s.93	1988 c.33
Producing or supplying a Class A or B drug	Misuse of Drugs Act 1971 s.4	1971 c.38
Possession of a Class A or B drug with intent to supply	Misuse of Drugs Act 1971 s.5(3)	as above
Manufacture and supply of scheduled substances	Criminal Justice (International Co-operation) Act 1990 s. 12	1990 c.5
Fraudulent evasion of controls on Class A and B drugs	Customs and Excise Management Act 1979 s.1 70 (2)(b), (c)	1979 c.2
Illegal importation of Class A and B drugs	Customs and Excise Management Act 1979 s.50	as above
Offences in relation to proceeds of drug trafficking	Drug Trafficking Act 1994 ss.49, 50 and 51	1994 c.37
Offences in relation to money laundering investigations	Drug Trafficking Act 1994 ss.52 and 53	as above
Practitioner contravening drug supply regulations	Misuse of Drugs Act 1971 ss.12 and 13	1971 c.38
Cultivation of cannabis plant	Misuse of Drugs Act 1971 s.6	as above
Occupier knowingly permitting drugs offences etc.	Misuse of Drugs Act 1971 s.8	as above
Activities relating to opium	Misuse of Drugs Act 1971 s.9	1990 c.5
Drug trafficking offences at sea	Criminal Justice (International Co-operation) Act 1990 s.18	1883 c.3
Firing on Revenue vessel	Customs and Excise Management Act 1979 s.85	
Making or possession of explosive in suspicious circumstances	Explosive Substances Act 1883 s.4(1)	1861 c.100
Causing bodily injury by explosives		as above
Using explosive or corrosives with intent to cause grievous bodily harm	Offences against the Person Act 1861 s.28	1982 c.28
Hostage taking	Offences against the Person Act 1861 s.29	1991 c.24
	Taking of Hostages Act 1982 s.1	

Assisting another to retain proceeds of terrorist activities	Northern Ireland (Emergency Provisions) Act 1991 s.53	as above
Concealing or transferring proceeds of terrorist activities	Northern Ireland (Emergency Provisions) Act 1991 s.54	1983 c.1 8
Offences against international protection of nuclear material	Nuclear Material (Offences) Act 1983 s.2	1861 c.100
Placing explosives with intent to cause bodily injury	Offences against the Person Act 1861 s.30	

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
Membership of proscribed organisations	Terrorism Act 2000, s.11	2000 c.11
Support or meeting of proscribed organisations	Terrorism Act 2000, s.12	as above
Uniform of proscribed organisations	Terrorism Act 2000, s.13	as above
Fund-raising for terrorism	Terrorism Act 2000, s.15	as above
Other offences involving money or property to be used for terrorism	Terrorism Act 2000, ss.16-18	as above
Disclosure prejudicing, or interference of material relevant to, investigation of terrorism	Terrorism Act 2000, s.39	as above
Weapons training	Terrorism Act 2000, s.54	as above
Directing terrorist organisation	Terrorism Act 2000, s.56	as above
Possession of articles for terrorist purposes	Terrorism Act 2000, s.57	as above
Unlawful collection of information for terrorist purposes	Terrorism Act 2000, s.58	as above
	Terrorism Act 2000, s.59	as above
Incitement of terrorism overseas		

Class C: Lesser offences involving violence or damage, and less serious drugs offences

Robbery (other than armed robbery)	Theft Act 1968 s.8(1)	1968 c.60
Unlawful wounding	Offences against the Person Act 1861 s.20	1861 c.100
Assault occasioning actual bodily harm	Offences against the Person Act 1861 s.47	as above
Concealment of birth	Offences against the Person Act 1861 s.60	as above
Abandonment of children under two	Offences against the Person Act 1861 s.27	as above
Arson (other than aggravated arson) where value does not exceed £30,000	Criminal Damage Act 1971 s.1(3)	1971 c.48
Criminal damage (other than aggravated criminal damage)	Criminal Damage Act 1971 s.1(1)	as above
Possession of firearm without certificate	Firearms Act 1968 s. 1	1968 c.27
Carrying loaded firearm in public place	Firearms Act 1968 s. 19	as above
Trespassing with a firearm	Firearms Act 1968 s.20	as above
Shortening of shotgun or possession of shortened shotgun	Firearms Act 1968 s.4	as above
Shortening of smooth bore gun	Firearms Amendment Act 1988 s.6(1)	1988 c.45
Possession or acquisition of shotgun without certificate	Firearms Act 1968 s.2	1968 c.27
Possession of firearms by person convicted of crime	Firearms Act 1968 s.21(4)	as above
Acquisition by or supply of firearms to person denied them	Firearms Act 1968 s.21(5)	as above
Dealing in firearms	Firearms Act 1968 s.3	as above
Failure to comply with certificate when transferring firearm	Firearms Act 1968 s.42	as above
Permitting an escape	Common law	
Rescue	Common law	
Escaping from lawful custody without force	Common law	
Breach of prison	Criminal Justice Act 1961 s.22	1961 c.39
	Prison Act 1952 s.39	1952 c.52

Harbouring escaped prisoners	Customs and Excise Management Act 1979	1979 c.2
Assisting prisoners to escape	s.68A (1) and (2)	
Fraudulent evasion of agricultural levy	Customs and Excise Management Act 1979 s.86	as above 1971 c.48
Offender armed or disguised	Criminal Damage Act 1971 s.2	as above
Making threats to destroy or damage property	Criminal Damage Act 1971 s.3	1984 c.37
Possessing anything with intent to destroy or damage property	Child Abduction Act 1984 s.1	as above
Child abduction by connected person	Child Abduction Act 1984 s.2	1977 c.45
Child abduction by other person	Criminal Law Act 1977 s.51	1861 c.97
Bomb hoax	Malicious Damage Act 1861 s.48	1971 c.38
Cutting away buoys etc.	Misuse of Drugs Act 1971 s.4	as above
Producing or supplying Class C drug	Misuse of Drugs Act 1971 s.5(3)	
Possession of a Class C drug with intent to supply		

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
Fraudulent evasion of controls on Class C drugs	Customs and Excise Management Act 1979 s.170 (2)(b), (c)	1979 c.2
Illegal importation of Class C drugs	Customs and Excise Management Act 1979 s.50	as above
Possession of Class A drug	Misuse of Drugs Act 1971 s.5(2)	1971 c.38
Failure to disclose knowledge or suspicion of money laundering	Drug Trafficking Offences Act 1986 s.26B	1986 c.32
Tipping-off in relation to money laundering investigations	Drug Trafficking Offences Act 1986 s.26C	as above
Assaults on officers saving wrecks	Offences against the Person Act 1861 s.37	1861 c.100
Attempting to injure or alarm the Sovereign	Treason Act 1842 s.2	1842 c.51
Assisting illegal entry or harbouring persons	Immigration Act 1971 s.25	1971 c.77
Administering poison with intent to injure etc.	Offences against the Person Act 1861 s.24	1861 c.100
Neglecting to provide food for or assaulting servants etc.	Offences against the Person Act 1861 s.26	as above
Setting spring guns with intent to inflict grievous bodily harm	Offences against the Person Act 1861 s.31	as above
Supplying instrument etc. to cause miscarriage	Offences against the Person Act 1861 s.59	as above
Failure to disclose information about terrorism	Terrorism Act 2000, s.19	2000 c.11
Circumcision of females	Prohibition of Female Circumcision Act 1985 s.1	1985 c.38 1885 c.49
Breaking or injuring submarine telegraph cables	Submarine Telegraph Act 1885 s.3	
Failing to keep dogs under proper control resulting in injury	Dangerous Dogs Act 1991 s.3	1991 c.65
Making gunpowder etc. to commit offences	Offences against the Person Act 1861 s.64	1861 c.100
Stirring up racial hatred	Public Order Act 1986 ss.18-23	1986 c.64

Class D: Serious sexual offences, offences against children

Rape	Sexual Offences Act 1956 s.1(1)	1956 c.69
Administering drugs to obtain intercourse	Sexual Offences Act 1956 s.4	as above
Sexual intercourse with girl under 13	Sexual Offences Act 1956 s.5	as above
Sexual intercourse with girl under 16	Sexual Offences Act 1956 s.6	as above
Sexual intercourse with defective	Sexual Offences Act 1956 s.7	as above
Procurement of a defective	Sexual Offences Act 1956 s.9	as above
Incest	Sexual Offences Act 1956 ss.10 and 11	as above
Buggery of person under 16 or animal	Sexual Offences Act 1956 s.12	as above
Gross indecency between male of 21 or over and male under 16	Sexual Offences Act 1956 s.13	as above
	Sexual Offences Act 1956 s.14	as above

Indecent assault on a woman	Sexual Offences Act 1956 s.15	as above
Indecent assault on a man	Sexual Offences (Amendment) Act 2000, s.3	2000 c.44
Abuse of position of trust	Indecency with Children Act 1960 s.1(1)	1960 c.33
Indecency with children under 14	Protection of Children Act 1978 s.1	1978 c.37
Taking, having etc. indecent photographs of children	Sexual Offences Act 1956 s.16	1956 c.69
Assault with intent to commit buggery	Sexual Offences Act 1956 s.17	as above
Abduction of woman by force	Sexual Offences Act 1956 s.25	as above
Permitting girl under 13 to use premises for sexual intercourse	Sexual Offences Act 1956 s.30	as above
Man living on earnings of prostitution	Sexual Offences Act 1956 s.31	as above
Woman exercising control over prostitute	Sexual Offences Act 1967 s.5	1967 c.60
Living on earnings of male prostitution		

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
Incitement to commit incest	Criminal Law Act 1977 s.54	1977 c.45
Allowing or procuring child under 16 to go abroad to perform	Children and Young Persons Act 1933 ss.25, 26	1933 c.12
Sexual intercourse with patients		1959 c.72
Ill-treatment of persons of unsound mind	Mental Health Act 1959 s.128 Mental Health Act 1983 s.127	1983 c.20 1956 c.69
Abduction of unmarried girl under 18 from parent	Sexual Offences Act 1956 s.19	as above
Abduction of unmarried girl under 16 from parent	Sexual Offences Act 1956 s.20	as above
Abduction of defective from parent	Sexual Offences Act 1956 s.21	as above
Procuration of girl under 21	Sexual Offences Act 1956 s.23	as above
Permitting girl under 16 to use premises for intercourse	Sexual Offences Act 1956 s.26	as above
Permitting defective to use premises for intercourse	Sexual Offences Act 1956 s.27	as above
Causing or encouraging prostitution of girl under 16	Sexual Offences Act 1956 s.28	as above
Causing or encouraging prostitution of defective	Sexual Offences Act 1956 s.29	as above

Class E: Burglary etc.

Burglary (domestic)	Theft Act 1968 s.9(3)(a)	1968 c.60
Going equipped to steal	Theft Act 1968 s.25	as above
Burglary (non-domestic)	Theft Act 1968 s.9(3)(b)	as above

Classes F and G: Other offences of dishonesty

The following offences are always in Class F

Destruction of registers of births etc.	Forgery Act 1861 s.36	1861 c.98
Making false entries in copies of registers sent to register	Forgery Act 1861 s.37	as above

The following offences are always in Class G

Counterfeiting notes and coins	Forgery and Counterfeiting Act 1981 s.14	1981 c.45
Passing counterfeit notes and coins	Forgery and Counterfeiting Act 1981 s.15	as above
Offences involving custody or control of counterfeit notes and coins	Forgery and Counterfeiting Act 1981 s.16	as above
Making, custody or control of counterfeiting materials etc.	Forgery and Counterfeiting Act 1981 s.175	as above
Illegal importation: counterfeit notes or coins	Customs and Excise Management Act 1979 s.50	1979 c.2
Fraudulent evasion: counterfeit notes or coins	Customs and Excise Management Act 1979 s.170 (2)(b), (c)	as above

The following offences are in Class G if the value involved exceeds £30,000, and in Class F otherwise

Theft	Theft Act 1968 s.1	1968 c.60
Removal of articles from places open to the public	Theft Act 1968 s.11	as above
Abstraction of electricity	Theft Act 1968 s.13	as above

Obtaining property by deception	Theft Act 1968 s.15	as above
Obtaining pecuniary advantage by deception	Theft Act 1968 s.16	as above
False accounting	Theft Act 1968 s.17	as above
Handling stolen goods	Theft Act 1968 s.22	as above
Obtaining services by deception	Theft Act 1978 s.1	1978 c.31
Evasion of liability by deception	Theft Act 1978 s.2	as above
Illegal importation: not elsewhere specified	Customs and Excise Management Act 1979 s.50	1979 c.2
Counterfeiting Customs documents		as above
Fraudulent evasion: not elsewhere specified	Customs and Excise Management Act 1979 s.168	as above
Forgery	Customs and Excise Management Act 1979 s.170 (2)(b), (c)	1981 c.45
Copying false instrument with intent		as above
Using a false instrument	Forgery and Counterfeiting Act 1981 s.1	as above
Using a copy of a false instrument	Forgery and Counterfeiting Act 1981 s.2	as above
	Forgery and Counterfeiting Act 1981 s.3	
	Forgery and Counterfeiting Act 1981 s.4	
<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
Custody or control of false instruments etc.	Forgery and Counterfeiting Act 1981 s.5	as above
Offences in relation to dies or stamps	Stamp Duties Management Act 1891 s.13	1891 c.38
Counterfeiting of dies or marks	Hallmarking Act 1973 s.6	1973 c.43
Fraudulent application of trade mark	Trade Marks Act 1938 s.58A	1938 c.22
Class H: Miscellaneous lesser offences		
Possession of offensive weapon	Prevention of Crime Act 1953 s.1	1953 c.14
Affray	Public Order Act 1986 s.3	1986 c.64
Assault with intent to resist arrest	Offences against the Person Act 1861 s.38	1861 c.100
Unlawful eviction and harassment of occupier	Protection from Eviction Act 1977 s.1	1977 c.43
Obscene articles intended for publication for gain	Obscene Publications Act 1964 s.1	1964 c. 74
Gross indecency between males (other than where one is 21 or over and the other is under 16)	Sexual Offences Act 1956 s.13	1956 c.69
Solicitation for immoral purposes	Sexual Offences Act 1956 s.32	as above
Buggery of males of 16 or over otherwise than in private	Sexual Offences Act 1956 s.12	as above
Acts outraging public decency	Common law	
Offences of publication of obscene matter	Obscene Publications Act 1959 s.2	1959 c.66
Keeping a disorderly house	Common law; Disorderly Houses Act 1751 s.8	25 Geo. 2 c.36
Indecent display		1981 c.42
Presentation of obscene performance	Indecent Displays (Control) Act 1981 s.1	1981 c.54
Procurement of intercourse by threats etc.	Theatres Act 1968 s.2	1968 c.69
Causing prostitution of women	Sexual Offences Act 1956 s.2	as above
Detention of woman in brothel or other premises	Sexual Offences Act 1956 s.22	as above
Procurement of a woman by false pretences	Sexual Offences Act 1956 s.24	as above
Procuring others to commit homosexual acts	Sexual Offences Act 1956 s.3	as above
Trade description offences (9 offences)	Sexual Offences Act 1967 s.4	1967 c.60
	Sexual Offences Act 1967 s.4	1968 c.29
	Trade Descriptions Act 1968 ss.1, 8, 9, 12, 13, 14, 18	1976 c.63
Absconding by person released on bail	Bail Act 1976 s.6(1), (2)	1976 c.63
Misconduct endangering ship or persons on board ship	Merchant Shipping Act 1970 s.27	1970 c.36
Obstructing engine or carriage on railway		1861 c.97
Offences relating to the safe custody of controlled drugs	Malicious Damage Act 1861 s.36	1861 c.97
Possession of Class B or C drug	Misuse of Drugs Act 1971 s.11	1971 c.38
	Misuse of Drugs Act 1971 s.5(2)	as above
	Offences against the Person Act 1861 s.35	1861 c.100
		1988 c.52

Wanton or furious driving	Road Traffic Act 1988 s.2	1981 c.14
Dangerous driving	Public Passenger Vehicles Act 1981 s.65	
Forgery and misuse of driving documents	Road Traffic Act 1960 s.233	1960 c.59
Forgery of driving documents	Road Traffic Act 1988 s.173	1988 c.52
Forgery etc. of licences and other documents	Road Traffic Regulations Act 1984 s.115	1984 c.27
Mishandling or falsifying parking documents etc.		
Aggravated vehicle taking	Theft Act 1968 s. 12A	1968 c.60
Forgery, alteration, fraud of licences etc.	Vehicle (Excise) Act 1971 s.26	1971 c.10
	Theft Act 1978 s.3	1978 c.31
Making off without payment	Bail Act 1976 s.9(1)	1976 c.63
Agreeing to indemnify sureties	Post Office Act 1953 s.11	1953 c.36
Sending prohibited articles by post	Customs and Excise Management Act 1979 s.3	1979 c.2
Impersonating Customs officer		as above
Obstructing Customs officer	Customs and Excise Management Act 1979 s. 16	

<i>Offence</i>	<i>Contrary to</i>	<i>Year and chapter</i>
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Class I: offences against public justice and similar offences

Perverting the course of public justice	Common law	
Perjuries (7 offences)	Perjury Act 1911 s.1-7(2)	1911 c.6
Corrupt transactions with agents	Prevention of Corruption Act 1906 s.1	1906 c.34
Corruption in public office	Public Bodies Corrupt Practices Act 1889 s.1	1889 c.69
Embracery	Common law	
Fabrication of evidence with intent to mislead a tribunal	Common law	
Personation of jurors	Common law	
Concealing an arrestable offence	Criminal Law Act 1967 s.5	1967 c.45
Assisting offenders	Criminal Law Act 1967 s.4(1)	as above
False evidence before European Court	European Communities Act 1972 s.11	1972 c.68
	Forgery Act 1861 s.34	1861 c.60
Personating for purposes of bail etc.	Criminal Justice and Public Order Act 1994 s.51(1)	1994 c.33
Intimidating a witness, juror etc.	Criminal Justice and Public Order Act 1994 s.51(2)	as above
Harming, threatening to harm a witness, juror etc.	Drug Trafficking Act 1994 s.58(1)	1994 c.37
Prejudicing a drug trafficking investigation	Cremation Act 1902 s.8(2)	1902 c.8
Giving false statements to procure cremation	Criminal Justice Act 1967 s.89	1967 c.80
False statement tendered under section 9 of the Criminal Justice Act 1967	Criminal Justice and Public Order Act 1994 s.75(1)	1994 c.33
Making a false statement to obtain interim possession order	Criminal Justice and Public Order Act 1994 s.75(2)	as above
Making false statement to resist making of interim possession order	Magistrates' Courts Act 1980 s.106	1980 c.43
False statement tendered under section 102 of the Magistrates' Courts Act 1980	Trade Descriptions Act 1968 s.29(2)	1968 c.29
Making false statement to authorised officer		

SCHEDULE 5

VERY HIGH COST CASES

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>
Solicitor, employed barrister, legal executive or other fee earner	Category 1 cases (fraud only) £ per hour	Category 2 cases £ per hour	Category 3 cases £ per hour	Category 4 cases (non- fraud only) £ per hour	Standard Rates £ per hour
Level A	180	140	110	100	55.75
Level B	140	110	90	80	47.25
Level C	100	80	70	60	34.00
Counsel					
Queen's Counsel	180	140	110	100	
Leading junior	140	110	90	80	
Led junior - 5 years' post qualification or more experience	100	80	70	60	
Led junior – less than 5 years' post qualification experience	75	60	55	50	
Junior alone	110	90	80	70	
Second led junior	70	55	50	-	
Solicitor Advocate					
Leading level A	180	140	110	100	
Led level A	140	110	90	80	
Leading level B	140	110	90	80	
Led level B	115	95	75	65	
Level A alone	145	120	100	85	
Level B alone	125	105	85	75	
Second advocate	70	55	50	-	

1.1 In circumstances where the Commission or (as the case may be) the appropriate officer considers the work undertaken not to be of the exceptional nature appropriate to a Very High Cost Case, the standard rates of pay set out in column 6 of Table 1 in this Schedule will apply.

Table 2 – Hourly rates for non-preparatory work

Type of work	Level	Rate (£ per hour)
Attendance at court	A	42.25
	B	34.00
	C	20.50
Travel and waiting	A	25.00
	B	25.00
	C	25.00

2.1 The Commission or (as the case may be) the appropriate officer may enhance by up to 100%:

(a) in exceptional circumstances, the applicable rate for attendance at court in Table 2 in this Schedule; and

(b) in very exceptional circumstances, the applicable rate for travel and waiting in Table 2 in this Schedule.

Table 3 - Daily rates for advocacy

<i>Column 1</i>	<i>Column 2</i> Category 1 cases (fraud only) £ per day	<i>Column 3</i> Category 2 cases £ per day	<i>Column 4</i> Category 3 cases £ per day	<i>Column 5</i> Category 4 cases (non- fraud only) £ per day
Queen's Counsel	600	480	430	400
Leading junior	450	360	320	300
Led junior - 5 years' post qualification or more experience	300	240	215	200
Led junior – less than 5 years' post qualification experience	200	170	160	155
Junior alone	330	260	230	215
Noter	125	105	95	90

3.1. Solicitor advocates will be paid the appropriate rate for a leading junior, a led junior, or a junior alone, as set out in Table 3 of this Schedule.

3.2. The full daily rate in Table 3 of this Schedule will be allowed if the advocate is in court for more than 3 ½ hours; half that rate will be allowed if he is in court for 3 ½ hours or less.

Table 4 - Preliminary hearings

	Amount payable for hearing £
Queen's Counsel	140
Leading junior	100
Led junior - 5 years' post qualification or more experience	70
Led junior – less than 5 years' post qualification experience	50
Junior alone	80
Noter	35

4.1. The rates in Table 4 of this Schedule will only apply where the hearing lasts two hours or less; otherwise the daily or half daily rate payable under Table 3 of this Schedule and paragraphs 3.1 and 3.2.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the funding and remuneration of services provided under Part I of the Access to Justice Act 1999 as part of the Criminal Defence Service.

It provides that, subject to some exceptions, the Lord Chancellor (rather than the Legal Services Commission) shall fund representation in criminal proceedings in the House of Lords, Court of Appeal and Crown Court until 4th April 2005 as part of the Criminal Defence Service.

It makes provision, in Schedules 1 to 4, for the remuneration of those supplying those services. Those provisions draw to a large extent on the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989, which related to criminal representation provided under Part V of the Legal Aid Act 1988, and which are being superseded by this Order.

Schedule 1 deals with the manner in which costs are to be determined and paid. There are specific provisions dealing with interim payments and staged payments in long trials. There are also provisions dealing with the redetermination of costs by an appropriate officer, appeals from the appropriate officer to a Costs Judge, and appeals from the Costs Judge to the High Court.

Schedules 2 and 3 deal respectively with solicitors' fees, and counsel's fees to which the fees in Schedule 4 do not apply. Schedule 4 deals with fees for advocacy in the Crown Court.

The Order provides that the Commission may fund services by making payments in respect of the provision of those services only where representation is provided in proceedings for contempt, and special provision is made for remuneration in respect of proceedings for contempt.

Where services are provided under the Criminal Defence Service under contract remuneration is limited to the rates set out in Part E of the Specification to the Legal Services Commission's General Criminal Contract. Special maximum rates are provided for services in very high costs cases, funded by the Lord Chancellor, or provided under individual contracts.