

1986 No. 1515

LEGAL AID AND ADVICE, ENGLAND AND WALES
COURTS-MARTIAL (APPEALS)The Legal Aid in Criminal Proceedings (Costs) (Amendment)
(No. 3) Regulations 1986

<i>Made</i>	- - -	<i>2nd September 1986</i>
<i>Laid before Parliament</i>		<i>9th September 1986</i>
<i>Coming into Operation</i>		<i>1st October 1986</i>

The Lord Chancellor, in exercise of the powers conferred by section 39 of the Legal Aid Act 1974(a) and now vested in him(b) and having had regard to the principle of allowing fair remuneration according to the work actually and reasonably done, hereby makes the following Regulations:

1. These Regulations may be cited as the Legal Aid in Criminal Proceedings (Costs) (Amendment) (No. 3) Regulations 1986 and shall come into operation on 1st October 1986.

2. In these Regulations a regulation or schedule referred to by number means a regulation or schedule so numbered in the Legal Aid in Criminal Proceedings (Costs) Regulations 1982(c).

3. In regulation 7—

(a) for “regulation 8(1)” in paragraph (3)(a), there shall be substituted “regulation 8(4)”;

(b) for paragraph (4), there shall be substituted—

“(4) Where counsel claims that

(a) it would be inappropriate to allow a standard fee under regulation 8(2); or

(b) regulation 8(5)(b) should be applied in relation to an item of work,

he shall give full particulars in support of the claim.”.

(a) 1974 c. 4.

(b) S.I. 1980/705.

(c) S.I. 1982/1197, as amended by S.I. 1986/273 and 444 and other instruments not relevant to these Regulations.

4. For regulation 8, there shall be substituted—

“8.— (1) The appropriate authority shall consider the claim, any further particulars, information or documents submitted by counsel under regulation 7 and any other relevant information and shall allow such work as appears to it to have been actually and reasonably done.

(2) Where the work allowed has been done by junior counsel in the Crown Court, the appropriate authority shall, subject to paragraph (3), allow such of the standard fees specified in Part I of Schedule 2 as may be applicable to that work, unless it appears to the appropriate authority that the standard fee would be inappropriate taking into account all the relevant circumstances of the case, in which case it shall allow fees in accordance with paragraphs (4) and (5).

(3) The appropriate authority may not allow a standard fee in respect of—

- (a) proceedings in which the indictment includes counts in respect of an offence which is classified as a class 1 or 2 offence in accordance with directions given by the Lord Chief Justice under section 75 of the Supreme Court Act 1981(a);
- (b) proceedings in any other case—
 - (i) which lasted more than three days or which at the time of listing were reasonably expected to last more than three days;
 - (ii) in which the indictment is disposed of by a plea of guilty but which if contested would reasonably have been expected to last more than three days,

unless counsel requests that a standard fee be allowed.

(4) The appropriate authority may, except where standard fees are allowed under paragraph (2), allow any of the following classes of fee to counsel in respect of work allowed by it under this regulation:

- (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 sub-paragraphs (a) and (b);
 - (ii) written advice on evidence, plea, appeal, case stated or other written work;
 - (iii) attendance at pre-trial reviews, applications and appearances (including bail applications and adjournments for sentence) not covered by sub-paragraphs (a) and (b).

(5) In the case of proceedings in the Crown Court or a magistrates' court, the appropriate authority shall, except where standard fees are allowed

(a) 1981 c. 54.

under paragraph (2), allow such fees in respect of such work as it considers reasonable in such amounts as it may determine in accordance with Part II of Schedule 2; provided that where:

- (a) any work allowed was done after 30th June 1987, the appropriate authority may allow such fees in such amounts as appear to it to be fair remuneration for such work having regard to the amounts specified in Part II of Schedule 2; or
- (b) it appears to the appropriate authority, 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 II of Schedule 2 would not provide fair remuneration for some or all of the work it has allowed, it may allow such amount as appears to it to be fair remuneration for the relevant work.

(6) In the case of proceedings in the Court of Appeal, the appropriate authority shall allow such fees in respect of such work as it considers reasonable in such amounts as appear to it to be fair remuneration for such work.”.

5. In regulation 10—

- (a) for paragraph (1), there shall be substituted—

“(1) Where—

- (a) a solicitor or counsel is dissatisfied with the costs (other than standard fees allowed under regulation 8(2)) determined under these Regulations by an appropriate authority for proceedings other than proceedings before a magistrates’ court; or

- (b) counsel is dissatisfied with the decision to allow standard fees,

he may apply to the appropriate authority to redetermine those costs or to review that decision as the case may be.”;

- (b) in paragraph (2), for “items” there shall be substituted “matters”;

- (c) for paragraph (6), there shall be substituted—

“(6) The appropriate authority shall—

- (a) redetermine the costs, whether by way of increase, decrease or in the amounts previously determined; or

- (b) review the decision to allow standard fees under regulation 8(2) and confirm it or allow fees in accordance with regulation 8(4) and (5),

in the light of the objections made by the applicant or on his behalf and shall notify the applicant of its decision.”.

6. In regulation 11—

- (a) in paragraph (1), the words “on a redetermination” shall be omitted;

- (b) for paragraph (3), there shall be substituted—

“(3) The appellant shall send a copy of any notice given under paragraph (2) to the appropriate authority.”;

- (c) in paragraph (11), the words “who redetermined the costs on its behalf as the case may be” and “on the redetermination” shall be omitted;
- (d) for paragraph (12), there shall be substituted—
- “(12) The taxing master shall have the same powers as the appropriate authority under these Regulations and, in the exercise of such powers, may—
- (a) alter the redetermination of the appropriate authority in respect of any sum allowed, whether by increase or decrease as he thinks fit;
- (b) confirm the decision to allow standard fees under regulation 8(2) or allow fees in accordance with regulation 8(4) and (5).”;
- (e) in paragraph (13), the words “or the determining officer who redetermined the costs on its behalf as the case may be” shall be omitted;
- (f) in paragraph (14), after “regulation 10” there shall be inserted “or confirms a decision to allow standard fees”.

7. In regulation 12, after paragraph (5) there shall be inserted—

“(5A) Subject to regulation 13, an appeal under paragraph (5) shall be instituted within 21 days of receiving notification of the taxing master’s decision under regulation 11(13).”.

8. In paragraph (1)(a) of regulation 13, after “redetermination” in both places in which it appears there shall be inserted “or review”.

9. For paragraph 1 of Schedule 1, there shall be substituted, in respect of work done on or after 1st October 1986—

“1. Subject to paragraphs 2 and 3, the appropriate authority shall allow fees for work allowed by it under regulation 5 at the following rates:

(a) Magistrates’ court proceedings

<i>Class of work</i>	<i>Standard Rate</i>		
Preparation	£30.50	per hour	(£31.50 per hour for a fee earner whose office is situated within a London postal district)
Advocacy	£38	per hour	
Attendance at court where counsel assigned	£20	per hour	
Travelling and waiting	£18	per hour	
Routine letters written and routine telephone calls	£2.40	per item	

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(b) Crown Court and Court of Appeal proceedings

<i>Class of work</i>	<i>Grade of fee-earner</i>	<i>Standard rate</i>		
Preparation	Senior Solicitor	£36	per hour	(£37— per hour for a fee earner whose office is situated within a London postal district)
	Solicitor, legal executive or fee-earner of equivalent experience	£30.50		£31.50—
Advocacy	Articled clerk or fee-earner of equivalent experience	£20	per hour	£22—
	Senior solicitor	£38	per hour	
Attendance at court where counsel assigned	Solicitor	£38	per hour	
	Senior solicitor	£29	per hour	
Travelling and waiting	Solicitor, legal executive or fee-earner of equivalent experience	£23	per hour	
	Articled clerk or fee-earner of equivalent experience	£15	per hour	
	Senior solicitor	£18	per hour	
	Solicitor, legal executive or fee-earner of equivalent experience	£18	per hour	
Routine letters written and routine telephone calls	Articled clerk or fee-earner of equivalent experience	£9	per hour	
		£2.40	per item	

10. For Schedule 2 there shall be substituted, in respect of work done on or after 1st October 1986, the following Schedule—

“

SCHEDULE 2

Regulation 8

COUNSEL'S FEES

PART 1

STANDARD FEES

1. The appropriate authority shall allow the fees specified in the Table and
 - (a) a standard fee shall cover preparation and the first day's hearing including, where they took place on that day, short conferences, applications and appearances (including bail applications), views and any other preparation;
 - (b) a standard refresher shall cover any day during which a hearing continued, including, where they took place on that day, short conferences, applications and appearances (including bail applications), views and any other preparation;
 - (c) a standard appearance fee shall cover attendance at applications and appearances (including bail applications and adjournments for sentence) not covered by (a) and (b) but shall not cover attendance at a pre-trial review.
2. The standard fee specified for "Committals for sentence" shall be allowed to a junior counsel in respect of proceedings arising out of a breach of an order of the Crown Court or other similar matters.
3. Where a case listed for jury trial is not reached, the appropriate authority shall allow the standard refresher appropriate to the length of time which

passed before counsel was released, unless counsel undertakes a further case on the same day, in which case the standard appearance fee shall be allowed.

4. Where counsel represents more than one defendant, the appropriate authority shall increase the standard fee by 20% for each additional defendant who is substantively dealt with at the hearing in respect of which that standard fee is to be paid.

5. Where counsel appears on behalf of a defendant in respect of more than one indictment on the same day, the appropriate authority shall increase the standard fee by 20% for each additional indictment.

6. Where counsel attends in respect of—

(a) a case listed for plea which is adjourned for trial; or

(b) a case listed for hearing which is not opened due to the failure of the defendant or a witness to attend or the non-availability of a social enquiry report or for some other good reason;

the appropriate authority shall allow the standard appearance fee.

7. Where counsel is instructed to appear in a court which is not within 25 miles of his chambers, the appropriate authority may allow an amount in respect of counsel's attendance at that court to cover any travelling and hotel expenses actually and reasonably incurred and necessarily and exclusively attributable to counsel's attendance at that court; provided that the amount allowed shall not be greater than the amount, if any, which would be payable to counsel practising from the nearest local Bar unless counsel can justify his attendance having regard to all the relevant circumstances of the case.

TABLE

Type of proceedings	Standard fee
Jury trials (including any case prepared for trial in which no jury is sworn)	£160
Guilty pleas	£85
Appeals against conviction	£85
Appeals against sentence	£55
Committals for sentence	£55
Standard appearance fee	£35

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Type of proceedings	Standard fee
Standard refresher fee	
(1) Half day ending within 3 hours of start of proceedings on that day	£60
(2) Full day ending before 5.30 pm	£115
(3) Full day ending after 5.30 pm	£175

PART II

DETERMINATION OF OTHER FEES

1. The appropriate authority shall allow such fee in respect of an item of work allowed under regulation 8(5), not exceeding the maximum amount specified in respect of that item of work, as appears to it to provide fair remuneration.

2. Where an hourly rate is specified in a Table in this Schedule in respect of an item of work allowed under regulation 8(5), the appropriate authority 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 does not relate to a full day, the appropriate authority shall allow such fee as appears to it 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 matters shall not exceed the maximum amounts specified for "Committals for sentence".

5. Paragraph 7 of Part I of this Schedule shall apply where counsel's fees are determined under this Part of the Schedule.

TABLE 1
JUNIOR COUNSEL

Court	Type of proceedings	Basic fee	Full day Refresher fee	Subsidiary fees		
				Attendance at consultations, Conferences & views	Written work	Attendance at pre-trial reviews, applications and other appearances
Magistrates' Court	All cases	Maximum amount: £348	Maximum amount: £120	£20 per hour Minimum amount: £10	Maximum amount: £38	Maximum amount: £70
Crown court	Jury trials	Maximum amount: £405				
	Cases prepared for trial in which no jury is sworn	Maximum amount: £236				
	Guilty pleas	Maximum amount: £142				
	Appeals against conviction	Maximum amount: £156	Maximum amount: £133	£22 per hour Minimum amount: £11	Maximum amount: £44	Maximum amount: £73
	Appeals against sentence	Maximum amount: £81				
	Committals for sentence	Maximum amount: £81				

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TABLE 2
QUEEN'S COUNSEL

Court	Type of proceedings	Basic fee	Full day Refresher fee	Subsidiary fee		Attendance at pre-trial reviews, applications and other appearances
				Attendance at consultations, Conferences & views	Written work	
		Maximum amount:	Maximum amount:	£38 per hour Minimum amount:	Maximum amount:	Maximum amount:
Magistrates' Court	All cases	£3,350	£225	£19	£80	£155
		Maximum amount:	Maximum amount:	£44 per hour Minimum amount:	Maximum amount:	Maximum amount:
Crown court	All cases	£4,060	£250	£22	£90	£195 "

Hailsham of St. Marylebone, C.

Dated 2nd September 1986.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Legal Aid in Criminal Proceedings (Costs) Regulations 1982, introducing a new system of prescribed standard fees for certain items of work done by junior counsel in the Crown Court. They also increase the current rates of remuneration for legal aid work in criminal proceedings done on or after 1st October 1986 with an overall increase of 5% for work done by counsel and 6.5% for work done by solicitors. A separate London rate 2% above the standard rate is prescribed in respect of preparation done by solicitors' firms whose offices are situated in a London postal district. Other consequential and minor amendments are also made.

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