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STATUTORY INSTRUMENTS

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**1994 No. 2218**

**LEGAL AID AND ADVICE,  
ENGLAND AND WALES**

**The Legal Aid in Criminal and Care Proceedings  
(Costs) (Amendment) (No. 3) Regulations 1994**

*Made* - - - - *25th August 1994*  
*Laid before Parliament* *2nd September 1994*  
*Coming into force* - - *1st October 1994*

The Lord Chancellor, in exercise of the powers conferred on him by sections 25(2), 34 and 43 of the Legal Aid Act 1988(1), having had regard to the matters specified in section 34(9) and consulted the General Council of the Bar and the Law Society, and with the consent of the Treasury, hereby makes the following Regulations:—

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Legal Aid in Criminal and Care Proceedings (Costs) (Amendment) (No. 3) Regulations 1994 and shall come into force on 1st October 1994.

(2) In these Regulations a regulation or Schedule or Part of a Schedule referred to by number alone means a regulation, Schedule or Part of a Schedule so numbered in the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989(2).

**Transitional provisions**

2.—(1) Regulations 3 to 7 of these Regulations shall not apply where the legal aid order was granted (or if there is more than one legal aid order, then any such order was granted) before 1st October 1994.

(2) In the circumstances to which paragraph (1) refers, the fees to be allowed shall be determined as if these Regulations had not been made.

**Amendment of the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989**

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(1) 1988 c. 34; sections 25(2), 34 and 43 were amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18 paragraphs 60 and 63. Section 43 is an interpretation provision and is cited because of the meaning assigned to the word “regulations”.

(2) S.I.1989/343; the relevant amending instruments are 1990/488, 1991/529, 838 and 2037, 1992/592 and 1993/934.

### **Travel and waiting time in proceedings involving counsel not assigned under the legal aid order**

3. For regulation 5(3)(f) there shall be substituted the following sub-paragraph:—
  - “(f) where counsel has been instructed by the solicitor although not assigned under the legal aid order, state
    - (i) the amount agreed in respect of counsel’s fee;
    - (ii) the time spent by counsel in preparation, advocacy, travelling and waiting;
    - (iii) the amounts agreed for counsel’s travelling and waiting time and travelling costs in proceedings specified in paragraph 2(2) of Schedule 1 Part III.”.
4. Regulation 7A shall be amended as follows:—
  - (a) by inserting after paragraph (1) the following paragraph:—

“(1A) In proceedings specified in paragraph 2(2) of Schedule 1 Part III, counsel’s agreed fees shall also include any fees agreed in respect of counsel’s travelling and waiting time and travelling costs.”;
  - (b) by substituting in paragraph (2) for “preparation, advocacy and waiting” the words “preparation and advocacy”;
  - (c) by omitting from paragraph (3) the words “, but as regards the costs payable in respect of travelling shall allow only such costs as have actually been incurred by the solicitor”;
  - (d) by inserting in paragraph (4)(b) after “Schedule 1 Part III” the words “and the travelling costs allowed in respect of counsel”.
5. Paragraph 4(2)(e) of Schedule 1 Part III shall be amended by substituting for “preparation, advocacy and waiting time” the words “preparation and advocacy”.
6. Paragraph 6 of Schedule 1 Part III shall be amended as follows:—
  - (a) by substituting for “and 7” the words “7 and 7A”;
  - (b) by inserting in sub-paragraph (a) after “fee-earners” the words “and unassigned counsel”.

### **Allowance of fees at enhanced rates**

7.—(1) In paragraphs 1(1) and 2 of Schedule 1 Part I for the word “basic” at each of the places at which it occurs there shall be substituted “prescribed”.

(2) —For paragraph 3 of Schedule 1 Part I there shall be substituted the following paragraph:—

“3.—(1) Upon a determination the appropriate authority may allow fees at more than the relevant prescribed rate specified in paragraph 1 subject to the provisions of this regulation where it appears to the appropriate authority, 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 dispatch; or
- (c) the case involved exceptional circumstances or complexity.

(2) Where the appropriate authority considers that any item or class of work should be allowed at more than the prescribed rate, it shall apply to that item or class of work a percentage enhancement in accordance with the following provisions of this regulation.

(3) In determining the percentage by which fees should be enhanced above the prescribed rate the appropriate authority shall 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;

(c) the novelty, weight and complexity of the case.

(4) Except in proceedings to which 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 relate to serious or complex fraud, the percentage above the relevant prescribed rate by which fees for work may be enhanced shall not exceed 200 per cent.

(6) The appropriate authority may have regard to the generality of proceedings to which these Regulations apply in determining what is exceptional within the meaning of this regulation.”.

Dated 27th July 1994

*Mackay of Clashfern, C.*

We consent,

*Derek Conway*

*Timothy Kirkhope*

Two of the Lords Commissioners of Her Majesty's Treasury

Dated 25th August 1994

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations amend the Legal Aid in Criminal and Care Proceedings (Costs) Regulations 1989 as follows.

(1) They introduce provision for the payment of travelling and waiting time and travelling costs for counsel who is instructed by the solicitor although not assigned under the legal aid order. The provision applies to magistrates' courts proceedings for which standard fees are payable (regulations 3 to 6).

(2) They amend the provisions governing the circumstances and the manner in which a solicitor representing an assisted person in criminal proceedings may be allowed fees at enhanced rates (regulation 7).