

2005 No. 2621

**LEGAL SERVICES COMMISSION, ENGLAND AND
WALES**

**The Criminal Defence Service (Funding) (Amendment) Order
2005**

<i>Made</i> - - - -	<i>20th September 2005</i>
<i>Laid before Parliament</i>	<i>21st September 2005</i>
<i>Coming into force</i> - -	<i>3rd October 2005</i>

The Secretary of State, in exercise of the powers conferred upon the Lord Chancellor by section 14(3) of the Access to Justice Act 1999(a) and now vested in him(b), having 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) (Amendment) Order 2005 and shall come into force on 3rd October 2005.

Interpretation

2. In this Order a reference to a Schedule by number alone is a reference to the Schedule so numbered in the Criminal Defence Service (Funding) Order 2001(c).

Transitional provisions

3.—(1) Article 4 of this Order shall apply only in respect of appeals made on or after 3rd October 2005 and articles 5 to 22 of this Order shall apply only in respect of proceedings in which a representation order is made on or after that date.

(2) In respect of all other appeals or proceedings the Criminal Defence Service (Funding) Order 2001 shall have effect as if this Order had not been made.

Amendments to the Criminal Defence Service (Funding) Order 2001

4. In paragraph 22(7) of Schedule 1 for “Part 8” substitute “Part 52”.

5. In paragraph 4 in Part 1 of Schedule 2—

(a) 1999 c. 22.

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

(c) S.I. 2001/855. The relevant amending instruments are S.I. 2001/3341 and 2004/2045.

(a) for sub-paragraph (1) substitute—

“(1) Upon a determination the appropriate officer may, subject to the provisions of this paragraph, allow fees at more than the relevant prescribed rate specified in paragraph 1 for preparation, advocacy (other than in the Crown Court), attendance at court where more than one representative is assigned, routine letters written and routine telephone calls, in respect of offences in Class A, B, C, D, G or I in the Table of Offences at the end of Part 5 of Schedule 4.

(1A) The appropriate officer may allow fees at more than the prescribed rate 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.”;

(b) in sub-paragraph (4) omit “Except in proceedings to which sub-paragraph (5) applies,”; and

(c) omit sub-paragraph (5).

6. In paragraph 5 of Schedule 3 for “24” substitute “25”.

7. In paragraph 1(1) in Part 1 of Schedule 4—

(a) in the definition of “trial advocate” add at the end “including a Queen’s Counsel or a leading junior counsel so instructed after the hearing at which pleas are taken”;

(b) in the definition of “main hearing”—

(i) in paragraph (b) omit “or cracked trial”; and

(ii) after paragraph (b) insert —

“(bb) in relation to a cracked trial, the hearing at which—

(i) the case becomes a cracked trial by meeting the conditions in paragraph 9(3) or (4), whether or not any pleas were taken at that hearing; or

(ii) a formal verdict of not guilty was entered as a result of the prosecution offering no evidence under the administrative procedure, whether or not the parties were required by the court to attend the hearing;”.

8. In paragraph 2 in Part 1 of Schedule 4 omit sub-paragraphs (3) and (4).

9. In the Table in paragraph 8 in Part 2 of Schedule 4 for the provisions of (a) to (f) substitute the provisions in Part 1 of the Schedule to this Order.

10. In paragraph 9 in Part 3 of Schedule 4—

(a) in sub-paragraph (1) for “uplift” substitute “and witness uplifts”; and

(b) for paragraph 9(2) substitute—

“(2) The evidence and witness uplifts shall be calculated in accordance with the Table in paragraph 10.”.

11. In paragraph 10 in Part 3 of Schedule 4—

(a) at the beginning insert “(1) Subject to sub-paragraphs (2) and (3) of this paragraph,” after “evidence” in the first line insert “and witness” and for the provisions of the Table substitute the provisions in Part 2 of the Schedule to this Order; and

(b) at the end add the following sub-paragraphs—

“(2) Where the trial of a case does not commence on the date first fixed or, if it is entered in a warned list, the case is not taken and disposed of from the first warned list in which it is entered, the basic fee and evidence and witness uplifts for the offence shall be those specified for the last third in the Table in sub-paragraph (1) above.

(3) In this paragraph references to the first, second and last third are references to the first, second and last third—

- (i) where a case is first listed for trial on a fixed date, of the period of time beginning after the date the case is so listed and ending before the date so fixed,
- (ii) where the case is first placed in a warned list, of the period of time beginning after the date on which the case is so placed and ending before the date of the start of that warned list, and

where the number of days in this period of time cannot be divided by three equally, any days remaining after such division shall be added to the last third.”.

12. In paragraph 14(1) in Part 4 of Schedule 4 at the end of paragraph (a) omit “and” and at the end of paragraph (b) insert—

“; and

- (c) a hearing to which the court proceeds under Part 2 of the Proceeds of Crime Act 2002^(a)”.

13. In paragraph 16 in Part 4 of Schedule 4—

- (a) after “in a case on indictment” insert “or in any proceedings specified in paragraph 3 of this Schedule”; and
- (b) in paragraph (b) after “other than a trial” insert (within the brackets) “, a pleas and directions hearing, a plea and case management hearing or a pre-trial review”.

14. In paragraph 17(2) in Part 4 of Schedule 4 for “case or indictment” substitute “case on indictment”.

15. In paragraph 19 in Part 4 of Schedule 4—

- (a) after sub-paragraph (1)(a) insert the following sub-paragraph—
 - “(aa) attendance by the trial advocate at one view per case for up to one hour (exclusive of travelling time); or”;
- (b) in sub-paragraph (1)(b) after “travel for the purpose of attending” insert “a view, or”;
- (c) in sub-paragraph (1A)(b) after “not more than 15 days” insert “and cracked trials where it was accepted by the court at the pleas and directions hearing or the plea and case management hearing that the trial would last not less than 11 days and not more than 15 days”;
- (d) in sub-paragraph (1A)(c) after “not more than 20 days” insert “and cracked trials where it was accepted by the court at the pleas and directions hearing or the plea and case management hearing that the trial would last not less than 16 days and not more than 20 days”;
- (e) in sub-paragraph (1A)(d) after “not more than 25 days” insert “and cracked trials where it was accepted by the court at the pleas and directions hearing or the plea and case management hearing that the trial would last not less than 21 days and not more than 25 days”;
- (f) in sub-paragraph (1A)(e) after “not more than 35 days” insert “and cracked trials where it was accepted by the court at the pleas and directions hearing or the plea and case management hearing that the trial would last not less than 26 days and not more than 35 days”; and
- (g) in sub-paragraph (1A)(f) after “not more than 40 days” insert “and cracked trials where it was accepted by the court at the pleas and directions hearing or the plea and case management hearing that the trial would last not less than 36 days and not more than 40 days”.

(a) 2002 c.29.

16. In paragraph 23(3) in Part 5 of Schedule 4 for “15 or 16(a) or (b)” substitute “15, 16(a) or (b) or 16A”.

17. In paragraph 24(1) in Part 5 of Schedule 4—

- (a) in paragraph (b) for “seventy-five per cent” substitute “the proportion” and at the end add “calculated by dividing that fee by 875 and multiplying the product by 750”; and
- (b) in paragraph (c) for “one-half” substitute “the proportion” and at the end add “calculated by dividing that fee by 875 and multiplying the product by 500”.

18. In paragraph 26 in Part 5 of Schedule 4 for “25” (in each place) substitute “40” and for “7(1)(b)” substitute “7(1)(a)”.

19. In paragraphs 29(1) and 30(1) in Part 5 of Schedule 4 for “instructed” substitute “assigned under a representation order”.

20. Insert “or plea and case management hearing” after “pleas and directions hearing” in paragraphs 8(1) (in each place) and 12(10B) (in both places) of Schedule 1 and paragraphs 2(2)(a) and (7), 4(b), 6(2)(d), 9(3) (in each place) and (4), 11(1) and (3) and 19(1A)(a) of Schedule 4, and in the Table following paragraph 22 of that Schedule after “Pleas and directions hearing”.

21. Insert “or other advocate” after “trial advocate” in paragraphs 11(1), 13(3) (in each place) and 14(2) (in each place) of Schedule 4.

22. For Tables 1, 3 and 4 in Schedule 5 substitute the Tables in Part 3 of the Schedule to this Order.

20th September 2005

Falconer of Thoroton, C.

SCHEDULE

PART 1

Article 9

(Provisions to be substituted in Table in paragraph 8 of Schedule 4)

(a) Trials (1-10 days) – Queen’s Counsel

<i>Offence falling within</i>	<i>Basic fee</i>	<i>Refresher</i>	<i>Length of trial uplift: per day</i>	<i>Evidence uplift: per page</i>	<i>Witness uplift: per witness</i>
Class A	£1,618.75	£453.25	£685.13	£1.45	£6.16
Class B	£853.13	£319.38	£481.25	£2.17	£14.37
Class C	£853.13	£319.38	£481.25	£2.17	£14.37
Class D	£853.13	£319.38	£481.25	£2.17	£14.37
Class E	£853.13	£319.38	£481.25	£2.17	£14.37
Class F	£853.13	£319.38	£481.25	£2.17	£14.37
Class G	£853.13	£319.38	£481.25	£2.17	£14.37
Class H	£853.13	£319.38	£481.25	£2.17	£14.37
Class I	£853.13	£319.38	£481.25	£2.17	£14.37

(b) Trials (1-10 days) – other trial advocates

<i>Offence falling within</i>	<i>Basic fee</i>	<i>Refresher</i>	<i>Length of trial uplift: per day</i>	<i>Evidence uplift: per page</i>	<i>Witness uplift: per witness</i>
Class A	£740	£207	£313	£0.66	£2.82
Class B	£250	£136	£143	£1.48	£12.22
Class C	£250	£136	£143	£1.48	£12.22
Class D	£390	£146	£220	£0.99	£6.57
Class E	£210	£124	£109	£1.21	£5.10
Class F	£210	£124	£109	£1.21	£5.10
Class G	£370	£146	£210	£2.02	£16.64
Class H	£250	£136	£143	£1.48	£12.22
Class I	£250	£136	£143	£1.48	£12.22

(c) Trials (11-25 days) – Queen’s Counsel

<i>Offence falling within</i>	<i>Basic fee</i>	<i>Refresher</i>	<i>Length of trial uplift: per day</i>	<i>Evidence uplift: per page</i>	<i>Witnesses uplift: per witness</i>	<i>Length of trial gradient</i>
Class A	£1,618.75	£453.25	£856.63	£1.82	£7.70	0%
Class B	£853.13	£319.38	£602.00	£2.71	£17.96	0%
Class C	£853.13	£319.38	£602.00	£2.71	£17.96	0%
Class D	£853.13	£319.38	£602.00	£2.71	£17.96	0%
Class E	£853.13	£319.38	£602.00	£2.71	£17.96	0%
Class F	£853.13	£319.38	£602.00	£2.71	£17.96	0%
Class G	£853.13	£319.38	£602.00	£2.71	£17.96	0%
Class H	£853.13	£319.38	£602.00	£2.71	£17.96	0%
Class I	£853.13	£319.38	£602.00	£2.71	£17.96	0%

(d) Trials (11-25 days) – other trial advocates						
<i>Offence falling within</i>	<i>Basic fee</i>	<i>Refresher</i>	<i>Length of trial uplift: per day</i>	<i>Evidence uplift: per page</i>	<i>Witnesses uplift: per witness</i>	<i>Length of trial gradient</i>
Class A	£740	£311	£376	£0.79	£3.38	0%
Class B	£250	£204	£172	£1.78	£14.66	0%
Class C	£250	£204	£172	£1.78	£14.66	0%
Class D	£390	£219	£264	£1.19	£7.88	0%
Class E	£210	£186	£131	£1.45	£6.12	0%
Class F	£210	£186	£131	£1.45	£6.12	0%
Class G	£370	£219	£252	£2.42	£19.97	0%
Class H	£250	£204	£172	£1.78	£14.66	0%
Class I	£250	£204	£172	£1.78	£14.66	0%

(e) Trials (26-40 days) – Queen’s Counsel						
<i>Offence falling within</i>	<i>Basic fee</i>	<i>Refresher</i>	<i>Length of trial uplift: per day</i>	<i>Evidence uplift: per page</i>	<i>Witnesses uplift: per witness</i>	
Class A	£1,618.75	£453.25	£856.63	£1.82	£7.70	
Class B	£853.13	£319.38	£602.00	£2.71	£17.96	
Class C	£853.13	£319.38	£602.00	£2.71	£17.96	
Class D	£853.13	£319.38	£602.00	£2.71	£17.96	
Class E	£853.13	£319.38	£602.00	£2.71	£17.96	
Class F	£853.13	£319.38	£602.00	£2.71	£17.96	
Class G	£853.13	£319.38	£602.00	£2.71	£17.96	
Class H	£853.13	£319.38	£602.00	£2.71	£17.96	
Class I	£853.13	£319.38	£602.00	£2.71	£17.96	

(f) Trials (26-40 days) – other trial advocates						
<i>Offence falling within</i>	<i>Basic fee</i>	<i>Refresher</i>	<i>Length of trial uplift: per day</i>	<i>Evidence uplift: per page</i>	<i>Witnesses uplift: per witness</i>	
Class A	£740	£311	£376	£0.79	£3.38	
Class B	£250	£204	£172	£1.78	£14.66	
Class C	£250	£204	£172	£1.78	£14.66	
Class D	£390	£219	£264	£1.19	£7.88	
Class E	£210	£186	£131	£1.45	£6.12	
Class F	£210	£186	£131	£1.45	£6.12	
Class G	£370	£219	£252	£2.42	£19.97	
Class H	£250	£204	£172	£1.78	£14.66	
Class I	£250	£204	£172	£1.78	£14.66	

PART 2

Article 11

(Provisions to be substituted in Table in paragraph 10 of Schedule 4)

(a) Guilty pleas and trials that crack in the first third – Queen’s Counsel

<i>Offence falling within</i>	<i>Basic fee</i>	<i>Evidence uplift per page (pages 1 to 1,000)</i>	<i>Evidence uplift per page (pages 1 to 10,000)</i>
Class A	£1,214.50	£2.18	£1.09
Class B	£639.63	£1.93	£0.96
Class C	£639.63	£1.37	£0.68
Class D	£639.63	£3.06	£1.53
Class E	£639.63	£0.98	£0.49
Class F	£639.63	£1.29	£0.65
Class G	£639.63	£1.71	£0.85
Class H	£639.63	£1.77	£0.88
Class I	£639.63	£1.72	£0.86

(b) Trials that crack beyond the first third – Queen’s Counsel

<i>Offence falling within</i>	<i>Basic fee</i>	<i>Evidence uplift per page (pages 1 to 1,000)</i>	<i>Witness uplift per witness (witnesses 11 to 80)</i>	<i>Evidence uplift per page (pages 1,001 to 10,000)</i>	<i>Evidence uplift (witnesses in excess of 80)</i>
Class A	£1,618.75	£4.36	£19.57	£4.36	£4.89
Class B	£853.13	£3.86	£26.14	£3.86	£6.54
Class C	£853.13	£2.74	£21.40	£2.74	£5.36
Class D	£853.13	£6.12	£43.41	£6.12	£10.85
Class E	£853.13	£1.96	£15.01	£1.96	£3.75
Class F	£853.13	£2.57	£19.44	£2.57	£4.87
Class G	£853.13	£3.41	£23.02	£3.41	£5.76
Class H	£853.13	£3.53	£23.35	£3.53	£5.84
Class I	£853.13	£3.45	£23.92	£3.45	£5.99

(c) Guilty pleas and trials that crack in the first third – other trial advocates			
<i>Offence falling within</i>	<i>Basic fee</i>	<i>Evidence uplift per page (pages 1 to 1,000)</i>	<i>Evidence uplift per page (pages 1,001 to 10,000)</i>
Class A	£555	£1.14	£0.57
Class B	£188	£0.99	£0.50
Class C	£188	£0.74	£0.37
Class D	£293	£1.45	£0.72
Class E	£158	£0.43	£0.22
Class F	£158	£0.66	£0.33
Class G	£278	£1.25	£0.63
Class H	£188	£0.67	£0.33
Class I	£188	£0.52	£0.26

(d) Trials that crack beyond the first third – other trial advocates							
<i>Offence falling within</i>	<i>Basic fee</i>	<i>Evidence uplift per page (pages 1 to 250)</i>	<i>Evidence uplift per page (pages 251 to 1,000)</i>	<i>Evidence uplift per page (pages 1,001 to 10,000)</i>	<i>Evidence uplift per page (pages 10,001 to excess of 80)</i>		
Class A	£740.00	£4.91	£2.28	£0.75	£2.28	£2.88	£11.53
Class B	£250.00	£4.27	£1.99	£0.66	£1.99	£5.82	£23.29
Class C	£250.00	£3.17	£1.47	£0.49	£1.47	£8.67	£34.69
Class D	£390.00	£6.22	£2.89	£0.95	£2.89	£7.20	£28.79
Class E	£210.00	£1.86	£0.87	£0.29	£0.87	£2.98	£11.91
Class F	£210.00	£2.86	£1.33	£0.44	£1.33	£2.35	£9.39
Class G	£370.00	£5.39	£2.51	£0.83	£2.51	£5.64	£22.55
Class H	£250.00	£2.87	£1.34	£0.44	£1.34	£7.83	£31.30
Class I	£250.00	£2.24	£1.04	£0.34	£1.04	£4.71	£18.85

PART 3

Article 22

(Tables to be substituted in Schedule 5)

Table 1 Hourly rates for preparation

<i>Column 1</i>	<i>Column 2</i> <i>Category 1</i> <i>cases (fraud</i> <i>and terrorism</i> <i>only)</i>	<i>Column 3</i> <i>Category 2</i> <i>cases</i>	<i>Column 4</i> <i>Category 3</i> <i>cases</i>	<i>Column 5</i> <i>Category 4</i> <i>cases (non-</i> <i>fraud only)</i>	<i>Column 6</i> <i>Standard</i> <i>rates</i>
	<i>£ per hour</i>	<i>£ per hour</i>	<i>£ per hour</i>	<i>£ per hour</i>	<i>£ per hour</i>
Solicitor, employed barrister, legal executive or other fee earner					
Level A	160	125	100	100	55.75
Level B	140	110	90	90	47.25
Level C	100	80	70	70	34.00
Pupil/junior	50	40	35	35	
Counsel					
Queen's Counsel	160	125	100	100	
Leading junior advocate	140	110	90	90	
Led junior advocate	100	80	70	70	
Junior advocate alone	110	90	80	80	
Second led junior advocate	70	55	50	-	
Solicitor Advocate					
Leading level A	160	125	100	100	
Led level A	140	110	90	90	
Leading level B	140	110	90	90	
Led level B	115	95	75	75	
Level A alone	145	120	100	100	
Level B alone	125	105	85	85	
Second advocate	70	55	50	50	

Table 3 Daily rates for advocacy

	<i>Category 1 cases (fraud and terrorism only)</i>	<i>Category 2 cases</i>	<i>Category 3 cases</i>	<i>Category 4 cases (non-fraud only)</i>
	<i>£ per day</i>	<i>£ per day</i>	<i>£ per day</i>	<i>£ per day</i>
Queen's Counsel	525	525	525	525
Leading junior	450	450	450	450
Led junior	300	300	300	300
Junior alone	330	330	330	330
Second led junior	150	150	150	-
Noter	125	125	125	125

Table 4 Preliminary hearings

	<i>Amount payable for hearing</i>
	<i>£</i>
Queen's Counsel	125
Leading junior	100
Led junior	70
Junior alone	80
Second led junior	40
Noter	35

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Criminal Defence Service (Funding) Order 2001 (“the 2001 Order”).

The principal amendments are as follows:

- (a) An appeal to the High Court against a costs judge’s decision will be governed by Part 52 of the Civil Procedure Rules 1998 instead of Part 8 of those rules (article 4).
- (b) The power to grant an uplift of solicitors’ fees is restricted to certain types of work in respect of certain offences and to a maximum of 100 per cent in all cases (article 5).
- (c) Schedule 4 to the 2001 Order which concerns fees for advocacy in the Crown Court is amended so that it covers all guilty pleas and cracked trials (article 8).
- (d) New scales of graduated fees for trials in the Crown Court are substituted in the table in paragraph 8 in Part 2 of Schedule 4 (article 9 and Part 1 of the Schedule).
- (e) A new payment scheme for guilty pleas and cracked trials is introduced by the substitution of new scales in the table in paragraph 10 in Part 3 of Schedule 4 (article 11 and Part 2 of the Schedule).
- (f) The proportions of the fees payable to advocates other than Queen’s Counsel where two trial advocates are instructed to represent the same person are altered (article 17).
- (g) The rates of pay in very high cost cases for preparation, advocacy and preliminary hearings are altered by the substitution of new tables in Schedule 5 to the 2001 Order (article 22).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

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