SCHEDULE 1

Advocates' Graduated Fee Scheme

PART 1

Definitions and Scope

Interpretation

1.—(1) In this Schedule—

"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) must be treated as a separate case from the proceedings in which the order was made;

"cracked trial" means a case on indictment in which—

- (a) [FI the assisted person enters a plea of not guilty to one or more counts at the first hearing at which he or she enters a plea and—
 - (i) the case does not proceed to trial (whether by reason of pleas of guilty or for other reasons) or the prosecution offers no evidence; and
 - (ii) either-
 - (aa) in respect of one or more counts to which the assisted person pleaded guilty, the assisted person did not so plead at [F2 first hearing at which he or she entered a plea]; or
 - (bb) in respect of one or more counts which did not proceed, the prosecution did not, before or at the [F3 first hearing at which the assisted person entered a plea], declare an intention of not proceeding with them; or
- (b) the case is listed for trial without a [F4hearing at which the assisted person enters a plea]; [F5cexcluded hearing" means—
- (a) the first hearing at which the assisted person enters a plea;
- (b) any hearing which forms part of the main hearing, or
- (c) any hearing for which a fee is payable under a provision of this Schedule other than paragraph 12(2);]

"guilty plea" means a case on indictment which—

- (a) is disposed of without a trial because the assisted person pleaded guilty to one or more counts; and
- (b) is not a cracked trial;

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"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;

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"standard appearance" means an appearance by the trial advocate or substitute advocate in any of the following hearings [F7unless it is an excluded hearing]—

- (a) F8
- (b) a pre-trial review;
- (ba) F9 F10 ...
- (bb) a case management hearing;]
- (c) the hearing of a case listed for plea which is adjourned for trial;
- (d) any hearing (except a trial, [F11the first hearing at which the assisted person enters a pleal or a hearing referred to in paragraph 2(1)(b)) which is listed but cannot proceed because of the failure of the assisted person or a witness to attend, the unavailability of a presentence report or other good reason;
- (e) custody time limit applications;
- (f) bail and other applications (except where any such applications take place in the course of a hearing referred to in paragraph 2(1)(b));
- (g) the hearing of the case listed for mention only, including applications relating to the date of the trial (except where an application takes place in the course of a hearing referred to in paragraph 2(1)(b));
- (h) F12...
- (i) a preliminary hearing; or
- (j) a hearing, whether contested or not, relating to breach of bail, failure to surrender to bail or execution of a bench warrant,

provided that a fee is not payable elsewhere under this Schedule in respect of the hearing;

"substitute advocate" means an advocate who is not an instructed advocate or the trial advocate but who undertakes work on the case; F13...

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[F14"unused material" means material disclosed pursuant to the prosecutors' obligations in Part 1 of the Criminal Procedure and Investigations Act 1996, but does not include—

- (a) witness statements;
- (b) documentary and pictorial exhibits;
- (c) records of interviews with the assisted person; and
- (d) records of interviews with other defendants].
- (2) For the purposes of this Schedule, the number of pages of prosecution evidence served on the court must be determined in accordance with sub-paragraphs (3) to (5).
 - (3) The number of pages of prosecution evidence includes all—
 - (a) witness statements;
 - (b) documentary and pictorial exhibits;
 - (c) records of interviews with the assisted person; and
 - (d) records of interviews with other defendants,

which form part of the F15... served prosecution documents or which are included in any notice of additional evidence.

(4) Subject to sub-paragraph (5), a document served by the prosecution in electronic form is included in the number of pages of prosecution evidence.

- (5) A documentary or pictorial exhibit which—
 - (a) has been served by the prosecution in electronic form; and
 - (b) has never existed in paper form,

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

- (6) In proceedings on indictment in the Crown Court initiated otherwise than by [F16] sending] for trial, the appropriate officer must determine the number of pages of prosecution evidence in accordance with sub-paragraphs (2) to (5) or as nearly in accordance with those sub-paragraphs as possible as the nature of the case permits.
- [F17(7)] A reference in this Schedule to a "band" is to the band of the offence concerned set out in Table B in the AGFS Banding Document, as read in conjunction with Table A in that document.
- (8) Where the band within which an offence described in Table B in the AGFS Banding Document falls depends on the facts of the case, the band within which the offence falls is to be determined by reference to Table A in that document.]

Textual Amendments

- F1 Words in Sch. 1 para. 1(1) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(6)(a)
- **F2** Words in Sch. 1 para. 1(1) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(6)(b)
- Words in Sch. 1 para. 1(1) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(6)(c)
- F4 Words in Sch. 1 para. 1(1) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(6)(d)
- F5 Words in Sch. 1 para. 1(1) inserted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(11)(a)(i)
- **F6** Words in Sch. 1 para. 1(1) omitted (5.5.2015) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015 (S.I. 2015/882), regs. 1, **2(16)(a)(i)** (with reg. 3)
- F7 Words in Sch. 1 para. 1(1) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(11)(a)(ii)(aa)
- F8 Words in Sch. 1 para. 1(1) omitted (1.4.2018) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 7(a)(i) (with reg. 34)
- F9 Words in Sch. 1 para. 1(1) omitted (1.4.2018) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 7(a)(ii) (with reg. 34)
- **F10** Words in Sch. 1 para. 1(1) inserted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(11)(a)(ii)(cc)
- **F11** Words in Sch. 1 para. 1(1) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), **5(11)(a)(ii)**(dd)
- F12 Words in Sch. 1 para. 1(1) omitted (1.4.2018) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 7(a)(iii) (with reg. 34)
- F13 Word in Sch. 1 para. 1(1) omitted (5.5.2015) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015 (S.I. 2015/882), regs. 1, 2(16)(a)(ii) (with reg. 3)
- **F14** Words in Sch. 1 para. 1(1) inserted (17.9.2020) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2020 (S.I. 2020/903), regs. 1(2), 4(2) (with reg. 7)
- F15 Words in Sch. 1 para. 1(3) omitted (5.10.2015) by virtue of The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(7)(a) (with reg. 10(1))
- **F16** Word in Sch. 1 para. 1(6) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), **5(7)(b)** (with reg. 10(1))

F17 Sch. 1 para. 1(7)(8) substituted for Sch. 1 para. 1(7) (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 7(b) (with reg. 34)

Application

- 2.—(1) Subject to sub-paragraphs (2) to (11), this Schedule applies to—
 - (a) every case on indictment; and
 - (b) the following proceedings in the Crown Court—
 - (i) an appeal against conviction or sentence;
 - (ii) a sentencing hearing following a committal for sentence to the Crown Court; and
 - (iii) 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).
- (2) [F18Sub-paragraph (3) applies] where, following a trial, an order is made for a new trial and the same trial advocate appears at both trials where—
 - (a) the defendant is an assisted person at both trials; or
 - (b) the defendant is an assisted person at the new trial only; or
 - (c) the new trial is a cracked trial or guilty plea.
- (3) F19... In respect of a new trial, or if the trial advocate so elects, in respect of the first trial, the graduated fee payable to the trial advocate must be calculated in accordance with Part 2 or Part 3, as appropriate, except that the fee must be reduced by—
 - (a) 30%, where the new trial started within one month of the conclusion of the first trial;
 - (b) 20%, where the new trial did not start within one month of the conclusion of the first trial;
 - (c) 40%, where the new trial becomes a cracked trial or guilty plea within one month of the conclusion of the first trial; or
 - (d) 25% where the new trial becomes a cracked trial or guilty plea more than one month after the conclusion of the first trial.

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- (5) [F21Sub-paragraph (6) applies] in the circumstances set out in sub-paragraph (2) but where a different trial advocate appears for the assisted person at each trial.
- (6) F22... In respect of each trial, the graduated fee payable to the trial advocate must be calculated in accordance with Part 2 or Part 3 as appropriate.

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- (8) Where following a case on indictment a Newton hearing takes place—
 - (a) for the purposes of this Schedule the case is to be treated as having gone to trial;
 - (b) the length of the trial is to be taken to be the combined length of the main hearing and the Newton hearing;
 - (c) the provisions of this Schedule relating to cracked trials and guilty pleas do not apply; and
 - (d) no fee is payable under paragraph 15 in respect of the Newton hearing.

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- [F25(10)] Where, at any time after proceedings are sent for trial to the Crown Court they are—
 - (a) discontinued by a notice served under section 23A of the Prosecution of Offences Act 1985 (discontinuance of proceedings after accused has been sent for trial), or

(b) dismissed pursuant to paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (applications for dismissal),

the provisions of paragraph 22 apply.]

- (11) For the purposes of this Schedule, a case on indictment which discontinues at or before [F26the first hearing at which the assisted person enters a plea] otherwise than—
 - (a) by reason of a plea of guilty being entered; or
- (b) in accordance with sub-paragraph (10), must be treated as a guilty plea.

Textual Amendments

- F18 Words in Sch. 1 para. 2(2) substituted (30.9.2022) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), Sch. 1 para. 1(2) (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), 2(1)) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, Sch.)
- F19 Words in Sch. 1 para. 2(3) omitted (30.9.2022) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), Sch. 1 para. 1(3) (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), 2(1)) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, Sch.)
- F20 Sch. 1 para. 2(4) omitted (30.9.2022) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), Sch. 1 para. 1(4) (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), 2(1)) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, Sch.)
- F21 Words in Sch. 1 para. 2(5) substituted (30.9.2022) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), Sch. 1 para. 1(5) (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), 2(1)) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, Sch.)
- F22 Words in Sch. 1 para. 2(6) omitted (30.9.2022) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), Sch. 1 para. 1(6) (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), 2(1)) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, Sch.)
- F23 Sch. 1 para. 2(7) omitted (30.9.2022) by virtue of The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 (S.I. 2022/848), reg. 1(1), Sch. 1 para. 1(7) (with reg. 3) (as amended (31.10.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1035), regs. 1(1), 2(1)) (which affecting provision is amended so that the increases to certain fees apply to a wider range of cases (23.12.2022) by The Criminal Legal Aid (Remuneration) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/1267), regs. 1(1), 3, Sch.)
- F24 Sch. 1 para. 2(9) omitted (5.10.2015) by virtue of The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(11)(b)(i) (with reg. 10(1))
- F25 Sch. 1 para. 2(10) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), 5(11)(b)(ii) (with reg. 10(1))

F26 Words in Sch. 1 para. 2(11) substituted (5.10.2015) by The Civil and Criminal Legal Aid (Amendment) (No.2) Regulations 2015 (S.I. 2015/1678), regs. 1(2)(a), **5(8)(a)**

[F27Bands of Offences]

- **3.**—(1) For the purposes of this Schedule—
 - (a) every indictable offence falls within the [F28band of that offence set out in the AGFS Banding Document] and, subject to sub-paragraph (2), indictable offences not specifically so listed are deemed to fall within [F29band 17.1];
 - (b) conspiracy to commit an indictable offence contrary to section 1 of the Criminal Law Act 1977 M1 (the offence of conspiracy), incitement to commit an indictable offence and attempts to commit an indictable offence contrary to section 1 of the Criminal Attempts Act 1981 M2 (attempting to commit an offence) fall within the same [F30] band] as the substantive offence to which they relate;
 - (c) where the [F31AGFS Banding Document] specifies that the [F32band] within which an offence falls depends on whether the value [F33, amount or weight] involved exceeds a stated limit, the value [F33, amount or weight] must be presumed not to exceed that limit unless the advocate making the claim under regulation 4 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 [F34band] depends on the value [F35, amount or weight] involved, that value [F35, amount or weight] must be taken to be the total value [F35, amount or weight] involved in all those offences, but where two or more counts relate to the same property, the value [F35, amount or weight] of that property must be taken into account once only;
 - (e) where an entry in the [F36AGFS Banding Document] specifies an offence as being contrary to a statutory provision, then subject to any express limitation in the entry that entry includes every offence contrary to that statutory provision whether or not the words of description in the entry are appropriate to cover all such offences;
 - (f) where in a case on indictment there is a hearing to determine the question of whether an assisted person is unfit to plead or unfit to stand trial, the trial advocate must elect whether that hearing falls within the same [F37] band] as the indictable offence to which it relates or within [F38] and
- [F39(g)] where in a case on indictment a restriction order is made, the offence is to be treated as if it falls within band 1.3, regardless of the band within which the offence would fall within the AGFS Banding Document but for this paragraph.]
- (2) Where an advocate in proceedings in the Crown Court is dissatisfied with the [F40 banding within band 17.1] of an indictable offence not listed in the [F41 AGFS Banding Document], the advocate may apply to the appropriate officer when lodging the claim for fees to [F42 re-band] the offence.
 - (3) The appropriate officer must, in light of the objections made by the advocate—
 - (a) confirm the [F43banding] of the offence within [F44band 17.1]; or
- (b) [F45re-band] the offence, and must notify the advocate of the decision.

Textual Amendments

- F27 Sch. 1 para. 3 heading substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(2) (with reg. 34)
- F28 Words in Sch. 1 para. 3(1)(a) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(a)(i) (with reg. 34)
- F29 Words in Sch. 1 para. 3(1)(a) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(a)(ii) (with reg. 34)
- F30 Word in Sch. 1 para. 3(1)(b) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(b) (with reg. 34)
- F31 Words in Sch. 1 para. 3(1)(c) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(c)(i) (with reg. 34)
- F32 Word in Sch. 1 para. 3(1)(c) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(c)(ii) (with reg. 34)
- F33 Words in Sch. 1 para. 3(1)(c) inserted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(c)(iii) (with reg. 34)
- F34 Word in Sch. 1 para. 3(1)(d) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(d)(i) (with reg. 34)
- F35 Words in Sch. 1 para. 3(1)(d) inserted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(d)(ii) (with reg. 34)
- F36 Words in Sch. 1 para. 3(1)(e) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(e) (with reg. 34)
- F37 Word in Sch. 1 para. 3(1)(f) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(f)(i) (with reg. 34)
- F38 Words in Sch. 1 para. 3(1)(f) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(f)(ii) (with reg. 34)
- F39 Sch. 1 para. 3(1)(g) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(3)(g) (with reg. 34)
- **F40** Words in Sch. 1 para. 3(2) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(4)(a) (with reg. 34)
- **F41** Words in Sch. 1 para. 3(2) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, **8(4)(b)** (with reg. 34)
- F42 Word in Sch. 1 para. 3(2) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(4)(c) (with reg. 34)
- **F43** Word in Sch. 1 para. 3(3) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, **8(5)(a)** (with reg. 34)
- F44 Words in Sch. 1 para. 3(3) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(5)(b) (with reg. 34)
- F45 Word in Sch. 1 para. 3(3) substituted (1.4.2018) by The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2018 (S.I. 2018/220), regs. 1, 8(5)(c) (with reg. 34)

Marginal Citations

- **M1** 1977 c. 45.
- **M2** 1981 c. 47.

Changes to legislation:There are currently no known outstanding effects for the The Criminal Legal Aid (Remuneration) Regulations 2013, PART 1.