STATUTORY INSTRUMENTS

2014 No. 2422

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Criminal Legal Aid (Remuneration) (Amendment) (No.2) Regulations 2014

Made - - - -	*9th September 2014*
Laid before Parliament	*11th September 2014*
Coming into force - -	*2nd October 2014*

The Lord Chancellor makes these Regulations(**a**), in exercise of the powers conferred by sections 2(3) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(**b**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Criminal Legal Aid (Remuneration) (Amendment) (No.2) Regulations 2014 and come into force on 2nd October 2014.

(2) In these Regulations "the 2013 Regulations" means the Criminal Legal Aid (Remuneration) Regulations 2013(**c**).

Amendments to the 2013 Regulations

2.—(1) The 2013 Regulations are amended as follows.

(2) In the Table of Contents, after regulation 17 (Determination of litigators' disbursements), insert—

"17A. Interim payment of litigators' fees".

(3) After regulation 17 (Determination of litigators' disbursements), insert regulation 17A as set out in the Schedule to these Regulations.

(4) In regulation 21 (Hardship payments)—

(a) at the beginning of paragraph (7), insert "Subject to paragraphs (9) and (10)"; and

(b) after paragraph (8) insert—

"(9) Where a litigator has received an interim payment under regulation 17A, the amount of that interim payment must be deducted from any hardship payment payable to that litigator under this regulation.

(10) Where a litigator has already received one or more hardship payments under this regulation, the amount deducted under paragraph (9) excludes any interim payment already deducted from any earlier hardship payment.".

(**a**) Section 42(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) provides that in Part 1 of that Act "Regulations" means Regulations made by the Lord Chancellor.
(**b**) 2012 c.10.
(**c**) S.I. 2013/435 to which there are amendments not relevant to these Regulations.

(5) In regulation 22 (Computation of final claim where an interim payment has been made), for "18 to 21", wherever it occurs, substitute "17A to 21".

(6) In Schedule 1 (Advocates' Graduated Fee Scheme)—

(a) for paragraph 6 (Scope of Part 3) substitute—

"**6.**—(1) Subject to sub-paragraph (2) and to paragraph 22, this Part does not apply to a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for a summary trial.

(2) This Part applies in all cases where the trial is a cracked trial because the prosecution offer no evidence on all counts against a defendant and the judge directs that a not guilty verdict be entered."; and

(b) for paragraph 9 (Scope of Part 4) substitute—

"**9.**—(1) Subject to sub-paragraph (2), this Part applies to a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

(2) This Part does not apply where the trial is a cracked trial because the prosecution offer no evidence on all counts against a defendant and the judge directs that a not guilty verdict be entered.".

(7) In Schedule 2 (Litigators' Graduated Fee Scheme)—

(a) for paragraph 4 (Scope) substitute—

"**4.**—(1) Subject to sub-paragraph (2) and to paragraph 21, this Part does not apply to a guilty plea or cracked trial in a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

(2) This Part applies in all cases where the trial is a cracked trial because the prosecution offer no evidence on all counts against a defendant and the judge directs that a not guilty verdict be entered."; and

(b) for paragraph 10 (Scope of Part 3) substitute—

"**10.**—(1) Subject to sub-paragraph (2), this Part applies to a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

(2) This Part does not apply where the trial is a cracked trial because the prosecution offer no evidence on all counts against a defendant and the judge directs that a not guilty verdict be entered.".

Transitional provision

3. The amendments made by these Regulations apply to criminal proceedings in which a determination under section 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is made on or after 2nd October 2014.

Signed by authority of the Lord Chancellor

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

9th September 2014

SCHEDULE

Regulation 2(3)

"**Interim payment of litigators' fees**

17A.—(1) A litigator may make a claim to the appropriate officer for an interim payment of the litigator's fees, in relation to proceedings in the Crown Court, in accordance with this regulation.

(2) Subject to paragraphs (3) to (6), a litigator may make a claim for an interim payment under this regulation in relation to one or more of the following stages in the proceedings—

(a) after a plea and case management hearing at which directions for trial are given;

(b) where representation is transferred to the litigator following the ordering of a retrial, after the date for the retrial has been set; and

(c) after commencement of a trial which is listed for 10 days or more.

(3) A litigator may not make a claim for an interim payment under paragraph (2)(a) or (b) in relation to a case committed or sent for trial to the Crown Court on the election of a defendant where the magistrates' court has determined the case to be suitable for summary trial.

(4) Subject to paragraphs (5) and (6), a litigator may make only one claim in relation to each of the stages in the proceedings set out in paragraph (2).

(5) A litigator may not make a claim for an interim payment under paragraph (2)(a) or (b) at the same time as, or after, that litigator has made a claim for an interim payment under paragraph (2)(c).

(6) A litigator may not make a claim for an interim payment under paragraph (2)(c) if the trial in question is a retrial and the litigator was the litigator for the first or a previous trial.

(7) A litigator may not make a claim for an interim payment at the same time as, or after, that litigator has made a claim under regulation 5.

(8) A litigator must make a claim for an interim payment to the appropriate officer in such form and manner as the appropriate officer may direct.

(9) A litigator must supply such information and documents as the appropriate officer may require to determine the claim for interim payment.

(10) Where a claim for an interim payment is made in accordance with this regulation, the appropriate officer must authorise payment.

(11) Where the claim is made under paragraph (2)(a) the amount of the interim payment is the sum of—

(a) the fee which, on a final determination of fees, would be paid to the litigator if paragraph 13 of Schedule 2 and the scenario "Before trial transfer (original litigator)" set out in the table following that paragraph applied; and

(b) any additional payments which, on a final determination of fees, would be paid to the litigator under paragraph 12 of Schedule 2.

(12) Where the claim is made under paragraph (2)(b), the amount of the interim payment is the sum of—

(a) the fee which, on a final determination of fees, would be paid to the litigator under paragraph 13 of Schedule 2 and the scenario "Transfer before cracked retrial (new litigator)" set out in the table following that paragraph; and

(b) any additional payments which, on a final determination of fees, would be paid to the litigator under paragraph 12 of Schedule 2.

(13) Where the claim is made under paragraph (2)(c), the amount of the interim payment is—

(a) the sum of—

(i) the fee determined in accordance with paragraph (14) on the basis that the trial length is one day; and

(ii) any additional payments which, on a final determination of fees, must be paid to the litigator under paragraph 12 of Schedule 2;

(b) less any amount paid to the litigator, in the proceedings in question, for a claim under paragraph (2)(a) or (b).

(14) The fee referred to in paragraph (13)(a)(i) is—

(a) where the number of pages of prosecution evidence is less than or equal to the PPE Cut-off specified in the table following paragraph 5(2) of Schedule 2, the basic fee specified in the table following paragraph 7(2) of that Schedule;

(b) where the pages of prosecution evidence exceeds the PPE Cut-off specified in the table following paragraph 5(2) of Schedule 2, the final fee as calculated in accordance with paragraph 9(2) of that Schedule.

(15) For purposes of paragraphs (11) to (14)—

(a) the number of defendants;

(b) the number of pages of prosecution evidence served on the court; and

(c) the offence with which the assisted person is charged

are determined as at the date of the claim for the interim payment.

(16) Where a litigator has received a hardship payment under regulation 21, the amount of that hardship payment must be deducted from any interim payment payable to that litigator under this regulation.

(17) Where a litigator has already received one or more interim payments under this regulation, the amount to be deducted under paragraph (16) excludes any hardship payment already deducted from any earlier interim payment.

(18) Regulations 28 to 30 do not apply to a payment under this regulation.

(19) In this regulation, "PPE Cutoff" has the meaning given in Schedule 2."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Criminal Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/435) ("the 2013 Regulations") which make provision for the funding and remuneration of advice, assistance and representation made available under sections 13, 15 and 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10).

Regulation 2(3) and the Schedule introduce interim payment of fees for litigators in proceedings in the Crown Court. Effectively, a litigator may make a claim for an interim payment at one or both of two stages in proceedings. The first is where a not guilty plea is entered following a plea and case management hearing (regulation 17A(2)(a) as set out in the Schedule), or alternatively, where a retrial is ordered and representation has been transferred to a new litigator (paragraph (2)(b)). However, an interim fee is not available at this stage in cases committed or sent for trial to the Crown Court on the election of a defendant (paragraph (3)). The second stage is where the trial is listed for 10 days or more and the trial has commenced (paragraph (2)(c)).

Paragraphs (11) to (14) of new regulation 17A set out the mechanisms for calculating the amount of each interim payment. Any hardship payment made under regulation 21 of the 2013 Regulations will be deducted from any subsequent claim for an interim payment under new regulation 17A and vice versa (regulation 21 of the 2013 Regulations, as amended by regulation 2(4) of these Regulations, and paragraphs (16) and (17) of new regulation 17A). Regulation 2(5) includes payments under new regulation 17A among the interim payments to be deducted from the final claim under regulation 22 of the 2013 Regulations.

The fee regime for certain cracked trials and guilty pleas is amended for advocates and litigators. Regulation 2(6) and (7) excludes from the fixed fees applicable to cases committed or sent for trial to the Crown Court on the election of a defendant a case where the trial is a cracked trial because the prosecution offer no evidence on all counts and the judge directs that a not guilty verdict be entered. The graduated fee scheme will apply in these cases.

The amendments made by these Regulations apply to criminal proceedings in which a determination under section 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is made on or after 2nd October 2014.

A full impact assessment of the effect of the policy implemented by this instrument on the costs of business and the voluntary sector was produced with the Government's response to consultation, *Transforming Legal Aid – Next Steps: Government Response* and is available at https://consult.justice.gov.uk/.

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