STATUTORY INSTRUMENTS

2015 No. 882

LEGAL AID AND ADVICE, ENGLAND AND WALES

The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015

Made - - - -	*24th March 2015*
Laid before Parliament	*26th March 2015*
Coming into force - -	*5th May 2015*

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 and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015 and come into force on 5th May 2015.

Amendments to the Criminal Legal Aid (Remuneration) Regulations 2013

2.—(1) The Criminal Legal Aid (Remuneration) Regulations 2013(**c**) are amended as follows.

(2) In regulation 2(1)(**d**) (interpretation)—

(a) at the appropriate places insert—

""main hearing" means—

(a) in relation to a case which goes to trial, the trial;

(b) in relation to a guilty plea (within the meaning of Schedule 1), the hearing at which pleas are taken or, where there is more than one such hearing, the last such hearing;

(c) in relation to a cracked trial (within the meaning of Schedule 1), the hearing at which—

(i) the case becomes a cracked trial by meeting the conditions in the definition of a cracked trial, 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, whether or not the parties attended the hearing;

(d) in relation to an appeal against conviction or sentence in the Crown Court, the hearing of the appeal;

(**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.
(**d**) Regulation 2 was amended by S.I. 2013/2803.

(e) in relation to proceedings arising out of a committal for sentence in the Crown Court, the sentencing hearing; and

(f) in relation to proceedings arising out of an alleged breach of an order of the Crown Court, the hearing at which those proceedings are determined;", and

""trial advocate" means, unless otherwise provided, an advocate instructed pursuant to a section 16 determination to represent the assisted person at the main hearing in any case;", and

(b) in the definition of "representative", at the end insert "or trial advocate".

(3) In each of the following, for "an instructed" substitute "a trial"—

(a) regulation 4(1), (3) and (6) (claims for fees by advocates – Crown Court);

(b) regulation 18(2) (interim payments in cases awaiting determination of fees);

(c) regulation 21(8)(**a**) (hardship payments);

(d) regulation 22(2)(**b**) (computation of final claim where an interim payment has been made);

(e) regulation 23(3) (payment of fees to advocates – Crown Court), and

(f) paragraphs 17(4) (fees for special preparation) and 18(4) (fees for wasted preparation) of Schedule 1 (advocates' graduated fee scheme).

(4) In each of the following, for "An instructed" substitute "A trial"—

(a) regulation 4(4) and (5);

(b) regulation 18(5), and

(c) paragraphs 17(5) and 18(5) of Schedule 1.

(5) In each of the following, for "instructed" substitute "trial"—

(a) regulation 4(2);

(b) regulation 18(3) and (6);

(c) regulation 23(1), and

(d) paragraph 26 of Schedule 1, including the heading (payment of fees to instructed advocate).

(6) In each of the following, for "the instructed" substitute "the trial"—

(a) regulation 4(3);

(b) regulation 22(1) and (2)(b);

(c) regulation 23(2)(b), and

(d) paragraphs 17(4) and 18(4) of Schedule 1.

(7) After regulation 4(7), insert—

"(8) In this regulation, where the main hearing is a trial, "trial advocate" means an advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.".

(8) In regulation 13(3) (authorisation of expenditure), omit "trial or other".

(9) In regulation 18, after paragraph (6), insert—

"(7) In this regulation, where the main hearing is a trial, "trial advocate" means an advocate who—

(**a**) Regulation 21 was amended by S.I. 2014/2422.
(**b**) Regulation 22 was amended by S.I. 2014/2422.

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.".

(10) In regulation 21—

(a) for paragraph (8)(a) substitute—

"(a) payment must be made to the—

(i) appropriate trial advocate who attends the first day of trial, where the trial has commenced;

(ii) appropriate trial advocate, where a trial has not commenced, or

(iii) appropriate instructed advocate, where there is no trial advocate, and";

(b) in paragraph (8)(b), before the words "instructed advocate" insert "appropriate trial advocate or the appropriate", and

(c) after paragraph (10), insert—

"(11) In paragraph (8)—

"appropriate instructed advocate" means—

(a) where the section 16 determination provides for representation by a single advocate, the instructed advocate, or

(b) where the section 16 determination provides for representation by more than one advocate, the leading instructed advocate or the led instructed advocate, as appropriate, and

"appropriate trial advocate" means—

(a) where the section 16 determination provides for representation by a single advocate, the trial advocate, or

(b) where the section 16 determination provides for representation by more than one advocate, the leading trial advocate or the led trial advocate, as appropriate.".

(11) In regulation 22—

(a) in paragraph (1), after "an instructed advocate" insert ", a trial advocate", and

(b) after paragraph (2) insert—

"(3) In this regulation, where the main hearing is a trial, "trial advocate" means an advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.".

(12) In regulation 23, after paragraph (3) insert—

"(4) In this regulation, where the main hearing is a trial, "trial advocate" means an advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.".

(13) In regulation 25 (recovery of overpayments), after paragraph (4) insert—

"(5) In this regulation, where the main hearing is a trial, "trial advocate" means, for the purposes of the meaning of "representative", the advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.".

(14) In regulation 28 (redetermination of fees by appropriate officer)—

(a) at the beginning of paragraph (1)(b), for "an" substitute "a";

(b) for "instructed", wherever it appears, substitute "trial", and

(c) after paragraph (9) insert—

"(10) In this regulation, where the main hearing is a trial, "trial advocate" means an advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.".

(15) In regulation 31 (time limits), after paragraph (3) insert—

"(4) In this regulation, where the main hearing is a trial, "trial advocate" means, for the purposes of the meaning of "representative", the advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.".

(16) In Schedule 1—

(a) in paragraph 1(1) (interpretation)—

(i) omit the definitions of "main hearing" and "trial advocate", and

(ii) at the end of the definition of "substitute advocate", omit "and";

(b) in paragraph 17, after sub-paragraph (6) insert—

"(7) In sub-paragraphs (4) and (5), where the main hearing is a trial, "trial advocate" means the advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.";

(c) in paragraph 18—

(i) in sub-paragraph (5), after the words "in which the" omit "instructed", and

(ii) after sub-paragraph (5) insert—

"(6) In sub-paragraphs (4) and (5), where the main hearing is a trial, "trial advocate" means an advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.", and

(d) in paragraph 26—

(i) for "trial", wherever it appears, substitute "instructed", and

(ii) after sub-paragraph (4) insert—

"(4A) In this paragraph, where the main hearing is a trial, "trial advocate" means an advocate who—

(a) is instructed pursuant to a section 16 determination to represent the assisted person at the trial, and

(b) attends the first day of the trial.".

Transitional provision

3. The amendments made by these Regulations apply to criminal proceedings in the Crown Court in which a determination under section 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is made on or after 5th May 2015.

Shailesh Vara
Parliamentary Under Secretary of State
Ministry of Justice

24th March 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Criminal Legal Aid (Remuneration) Regulations 2013 (S.I. 2013/435) ("the 2013 Regulations") make provision for the 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). These Regulations amend the 2013 Regulations in relation to claims for and payment of fees to advocates for representation in criminal proceedings in the Crown Court. No change is made to the amount of fees that are payable under the 2013 Regulations.

Regulation 2 amends the 2013 Regulations to provide that claims for fees by advocates must be made by and paid to the "trial advocate" (the advocate who attends the main hearing and, in relation to trials, the advocate who attends on the first day). The amendments do not affect staged payments in long proceedings, which relate solely to preparation done before trial.

Regulation 3 provides that the amendments made by regulation 2 apply to determinations of representation for criminal proceedings made on or after 5th May 2015.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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