

**NOTICE OF AMENDMENTS TO GENERAL CRIMINAL CONTRACT
AND GUIDANCE MANUALS**

For implementation on 2 October 2006

The contract amendments set out in this notice, which have been subject to consultation with The Law Society and other representative bodies, come into force on 2 October 2006. This notice also contains details of changes to the structure of guidance manuals and amendments to Duty Solicitor and Police Station Register Arrangements.

The original consultation document (including the proposed amendments in appendices), and an outcome document showing the consultation responses, are available on our website www.legalservices.gov.uk

For ease of reference we have used the same section numbers here as in the other documents.

A further urgent consultation was issued to The Law Society and other representative bodies on 7 July and closed on 21 July 2006. The consultation proposed the amendment of the General Criminal Contract to extend the scope of the Criminal Investigations Class to include applications for warrants for further detention to the High Court. The Contract amendments arising from this further consultation are provided under section E of this notice. Although these amendments will be incorporated into the Contract from 2 October 2006 they will apply retrospectively from 25 July 2006.

Summary of Changes

A CDS Act Changes

A1 Early Cover: Contract Changes

Amendments to introduce a new, non-means tested scheme to cover early work in criminal proceedings in certain circumstances. This scheme supplements the introduction of means testing for criminal proceedings in the magistrates' courts.

A2 Prescribed Proceedings: Changes to Contract and Guidance

[The Commission has decided not to proceed with these amendments at this time.]

A3 Consequential and Drafting Changes

Technical amendments to supplement the introduction of means testing for criminal proceedings in the magistrates' courts, and the transfer of responsibility for granting representation from the courts (in their judicial capacity) to the Commission.

B Other Changes to the Contract (and Related Guidance)

B1 Change of Solicitor

Amendments to reform the remuneration scheme for cases that transfer between one legal service provider and another.

C Changes to the Guidance Manuals

C1 Rationalisation of the Guidance Manuals

Amendments to reduce duplication in our Guidance Manuals and to merge two of them together.

D Change to the Police Station Register Arrangements

D1 Former solicitors holding PSQ to be treated as accredited

An amendment to allow former solicitors who hold the Police Station Qualification to be treated as qualified police station representatives, without having to go through the accreditation process again.

E Warrants of Further Detention

E1 Extend scope of Criminal Investigations Class

Scope of the Criminal Investigations Class to include applications for warrants for further detention to the High Court. When Section 23 of the Terrorism Act 2006 is in force any application for a warrant which would take the period of detention beyond 14 days from the time of arrest, must be made to a High Court Judge. These amendments apply retrospectively from 25 July 2006.

A CDS Act Changes

A1 Early Cover: Contract Changes

General Criminal Contract Specification

Part A Scope and Structure of Contract Work

Amend Part A, Rule 3.2.1 (c) as follows:

- (c) **Representation in a magistrates' court** which is either covered by ~~pursuant to a Representation Order or by subsection (iii) below~~ including:
- (i) advice on an appeal;
 - (ii) any related bail proceedings in the Crown Court or High Court,
 - (iii) Pre-Order Cover and Early Cover provided in accordance with Part B, Rule 5.13 of this Specification,
- but excluding any proceedings that are sent for trial under section 51 of the Crime and Disorder Act 1998 (except proceedings in a magistrates' court following a remittal under paragraphs 10(3)(a) or 13(2) of Schedule 3 to the Crime and Disorder Act 1998);

Insert new Part A, Rules 3.3.7 and 8 as follows:

Qualifying Criteria

Other

- 7. In order to receive Pre-Order Cover the appropriate requirements set out in Part B, Rule 5.13.1 must be met.
- 8. In order to receive Early Cover the appropriate requirements set out in Part B, Rule 5.13.2 must be met.

Amend Part A, Rule 3.6.3 as follows:

- 3. The maximum fee payable for Claims for Pre-Order Cover under paragraph 3.2.1(c)(iii) is £49.70 (national) £52.55 (London) inclusive of travel, waiting and disbursements but exclusive of VAT. Claims should be made at the hourly rates set out in Part E, Section 3.5.

Part B Rules and Guidance on Performing Contract Work

Amend Part B, Rule 2.14.3 as follows:

- 3. Once a Representation Order has been granted, any Early Cover or Pre-Order Cover (Part B, Rule 5.13) given to the Client on issues which form part of the Case covered by the Representation Order must be claimed under the Order in accordance with the Rules set out in Part A, Section 3 of this Specification and Part B, Rule 5.13.

CONTRACT AMENDMENTS – 2 OCTOBER 2006

Amend Part B, Rule 5.13 as follows:

5.13 Pre-Order Cover and Early Cover

Pre-Order Cover

1. Where an application for a Representation Order is made and refused on the interests of justice test (irrespective of whether the Client passes or fails the means test), you may claim a limited amount of work carried out on that Matter or Case as Pre-Order Cover at the rates applicable to magistrates' court Representation (see Part E Section 3.5) provided that all of the following conditions are met:
 - (a) a qualified Solicitor who is a designated fee-earner (see Part D, Rule 3.2) or a Quality Mark Supervisor in the crime category has determined that the case meets the interests of justice criteria set out in Schedule 3 of the Access to Justice Act 1999, and has documented on file the reasons why (either by retaining a copy of the application for Representation or by some other means);
 - (b) the effective date of refusal is the date on which you are first notified of refusal by the court in writing or by other means. If you appeal against the court's decision to refuse, then any work reasonably undertaken in relation to lodging the appeal may be claimed as pre-Order Cover provided that it does not exceed the maximum fee set out in (c) below. Further work undertaken on the case itself once an appeal has been lodged may not be claimed if the appeal is unsuccessful. If a Representation Order is granted on appeal then all the work undertaken since the date on which the original properly completed application was received by the court, including any pre-Order work, shall be claimed under the Order as part of the standard fee Claim. A copy of the court's written notification of refusal of the Representation Order must be available on file;
 - (c) the work done may include any combination of preparation, advocacy, routine letters and telephone calls, travel and waiting claimed at the applicable rates in Part E Section 3.5, but the maximum fee claimed and payable shall not exceed a total of £49.70 (national) or £52.55 (London). This figure includes any travel, waiting and disbursements but is exclusive of VAT;
 - ~~(d) any pre-Order work undertaken for a Client who is granted a Representation Order shall be included as part of the standard or non-standard fee Claim under that Order and may not be claimed separately. If you act for more than one Client in the same Case and if one or more of those Clients is not granted a Representation Order a separate claim for pre-Order cover may be made for each Client and the maximum fee above will apply to each separate Claim. You must assign a separate UFN to each Claim;~~
 - ~~(e) pre-Order cover may not be claimed by a court Duty Solicitor for work undertaken during the court Duty Period. Any work undertaken that falls within scope of the court duty solicitor scheme shall be included in a single Claim for the Duty Period at the applicable court Duty Solicitor rates set out in Part E Section 3.4 of this Specification.~~
- (d) you do not make any claim for an Early Cover fee in respect of this work.

Early Cover

2. Where an application for a Representation Order is made and refused on means you may claim one Early Cover fee (see Part E Section 3.7) in respect of work carried out on that Matter or Case provided that all of the following conditions are also met:
 - (a) a properly completed application for Representation has been received by the Representation Authority by 9am on the third working day following the date of charge (or, if the Client has been remanded in custody by the court, by 9am on the sixth working day following the date of charge);
 - (b) you have taken all reasonable steps to assist the Client to complete and submit the application with the appropriate supporting evidence;
 - (c) the application has not been granted or refused by 9 am on the date of the first hearing;
 - (d) you represent the Client at the first hearing;
 - (e) the first hearing moves the case forward and any adjournment is justified;
 - (f) the final decision is that the case passes the interests of justice test but not the means test.

3. In cases where the first hearing takes place before the Client has been able to submit an application within the timescale set out at 2(a) you may still claim an Early Cover fee provided that:
 - (a) conditions 2(d) & (e) have been met; and
 - (b) the Client proceeds to submit an application in accordance with conditions 2(a) & (b); and
 - (c) the subsequent determination of that application satisfies 2(f).

4. No disbursements may be claimed under Early Cover.

General provisions on Pre-Order Cover and Early Cover

5. Any work undertaken in the Criminal Proceedings Class relating to an application for a Representation Order for a Client who is subsequently granted one shall be included as part of the standard or non-standard fee Claim under that Order and may not be claimed separately. If you act for more than one Client in the same Case and if one or more of those Clients is not granted a Representation Order a separate claim for Pre-Order Cover or Early Cover as appropriate may be made for each Client. You must assign a separate UFN to each Claim.

6. Neither payment for Pre-Order Cover nor Early Cover fees may be claimed by a court Duty Solicitor for work undertaken during the court Duty Period. Any work undertaken that falls within scope of the court duty solicitor scheme shall be included in a single Claim for the Duty Period at the applicable court Duty Solicitor rates set out in Part E Section 3.4 of this Specification.

Part E Remuneration under the General Criminal Contract

Insert new Part E, Rule 3.7 as follows:

3.7 Early Cover

Early Cover Fee: £75.00

Note:

No disbursements, travel or waiting may be claimed under Early Cover. The fee may only be claimed if the conditions described in Part B 5.13.2 are met.

A2 Prescribed Proceedings: Changes to Contract and Guidance

[The Legal Services Commission has decided not to proceed with these amendments at this time.]

A3 Consequential and Drafting Changes

General Criminal Contract Standard Terms

Part A: Introduction

Amend 1.1 by inserting the following definitions retaining alphabetical order:

“Early Cover” has the meaning described in Part B 5.13 of the Specification

“Pre-Order Cover” has the meaning described in Part B 5.13 of the Specification

“Representation Authority” means the organisation currently responsible for issuing Representation Orders

General Criminal Contract Specification

Part A: Scope and Structure of Contract Work

Amend Part A, Rule 3.3 as follows:

3.3 Qualifying Criteria

Merits

1. The Sufficient Benefit Test set out in Part B, Rule 2.5 of this Specification must be met in order to receive Advice and Assistance under paragraph 3.2.1(a) above.
2. The appropriate Advocacy Assistance merits test set out in Part B, Rule 4.3 must be met in order to receive Advocacy Assistance under paragraphs 3.2.1(b)(i) to (~~iv~~xiii) (other than where this is provided by the court Duty Solicitor acting as such).
3. The appropriate Advocacy Assistance merits test set out in Part B, Rule 4.3 must be met in order to receive Advocacy Assistance under paragraph 3.2.1(d) above.
4. A Client must have been granted a Representation Order by a Representation Authority or court (or by the Commission in proceedings prescribed under section 12(2)(g) of the Act) in order to receive Representation under paragraphs 3.2.1(c), (d) or (e) above, except in the case of 3.2.1(c)(iii) where the requirements in Part B, Rule 5.13 must have been met.
5. A Client must have had an application approved by the Contractor under Devolved Powers in accordance with Part B, Rule 4.5 of this Specification in order to receive Advocacy Assistance in the magistrates’ court under paragraph 3.2.1(b) above (except

CONTRACT AMENDMENTS – 2 OCTOBER 2006

where it is being provided by a court Duty Solicitor acting as such) or in the Crown Court under 3.2.1(d) above.

Financial

6. In order to receive Advice and Assistance under paragraph 3.2.1(a) above from the court Duty Solicitor acting as such the Client is not required to satisfy any financial criteria.
7. In order to receive Representation in magistrates' court proceedings the Client is required to satisfy financial criteria. The Client's eligibility will be assessed by the Representation Authority.

B Other Changes to the Contract (and Related Guidance)

B1 Change of Solicitor

General Criminal Contract Specification

Part E: Remuneration under the General Criminal Contract

Amend Part E, Rule 3.5.6 and insert new Rule 3.5.6A as follows:

6 Subject to paragraphs 3.5.5 and 3.5.6A, where there is a change of firm assigned under a Representation Order in proceedings to which the standard fee table applies the proceedings shall be treated as category 1 proceedings for the purposes of a Claim for costs in respect of work done under the Representation Order by the firm formerly assigned.

6A. Where there is a change of firm assigned under a Representation Order issued on or after 2 October 2006 in proceedings to which the standard fee table applies, the provisions for payment to the firm originally assigned (“the old firm”) and the newly assigned firm (“the new firm”) shall be as follows:

(a) Except in the circumstances described in sub-paragraph (b) (below), the old firm and the new firm may each submit Claims for costs. However, subject to paragraph 3.5.5 (above) for the purposes of the old firm’s Claim for costs under the Representation Order, the proceedings shall be treated as category 1 proceedings;

(b) Where

- (i) the conducting solicitor moves from the old firm to the new firm (e.g. becomes a partner in, or employee of, the new firm); or
- (ii) the old firm and the new firm are, or will shortly be, closely related (e.g. the old firm has restructured to facilitate the creation of the new firm or there has been, or will shortly be, a merger of the old firm and the new firm or an acquisition of the old firm by the new firm); or
- (iii) the old firm is unable to continue representing the client following the termination of all, or part, of its contract (or, in anticipation of this, ceases to represent the client);

payment shall be as if one firm had been assigned throughout and only the new firm may submit a Claim for costs;

(c) Where the new firm submits a Claim under sub-paragraph (b) above, it shall do so taking account of both its costs and the costs of the old firm, but payment shall be made only to the new firm. It shall be for the old firm and the new firm to agree between themselves any division of monies.

C Changes to the Guidance Manuals

C1 Rationalisation of the Guidance Manuals

Duty Solicitor Manual

Remove Chapter 9 (Own Client/Duty Solicitor Cases). (This merely duplicates provisions in the Contract and the Police Station and Court Duty Solicitor Costs Assessment Manual, and is the only part of this Manual that does not relate directly to the operation of the Duty Solicitor Arrangements.)

Re-number Chapter 10 and Appendices 10A to C, and amend any references in this and other documents accordingly.

Police Station and Court Duty Solicitor Costs Assessment Manual

Remove Chapter 10 (Court Duty Solicitor). (This merely duplicates provisions in the Contract.)

Remove all Appendices (1, 3 to 7, 10 and 12) that duplicate parts of the Contract. Replace all references to Appendices in the Manual with references to the relevant parts of the Contract.

Move Chapter 1.2 to end of Chapter 2 and remove remainder of Chapter 1 (which merely duplicates guidance provided elsewhere).

Re-number remaining Chapters (2 to 9) as Chapters 12 to 19 and insert at end of Criminal Bills Assessment Manual.

Re-number remaining Appendices (2, 8, 9 and 11) as 13 to 16 of the Criminal Bills Assessment Manual.

Amend contents list of that manual accordingly and insert headings Part 1: Representation and Part 2: Police Station before Chapters 1 and 12 respectively.

Amend all references accordingly in this and other contract documents.

D Change to the Police Station Register and Duty Solicitor Arrangements

D1 Former solicitors holding PSQ to be treated as accredited

Police Station Register Arrangements 2001 (as amended)

Amend paragraph 2.7 as follows:

- 2.7 The representative may, where the Commission refuses to register under paragraph 2.2 or 2.9, appeal to a regional committee established under the Commission's Duty Solicitor Arrangements 2001 or a future version of those Arrangements.

Add a new Paragraph 2.9 as follows:

- 2.9 The Commission shall, unless a senior member of staff in the Head Office CDS Policy Team decides there is good reason to refuse, register a representative on the police station register as accredited without having to complete any of the relevant tests if the applicant has previously been a Duty Solicitor and currently holds either CLAS membership or the Police Station Qualification (by passporting or otherwise), provided he or she produces proof of the same together with a signed certificate of fitness from a supervising solicitor.

Duty Solicitor Arrangements 2001 (as amended)

Amend paragraph 7.13 as follows:

- 7.13 The following decisions of the Commission under these Arrangements may be the subject of appeal by an applicant for membership of a Local Scheme or by a Duty Solicitor:
- (a) a decision to refuse an applicant membership of a Local Scheme under Section 4 of these Arrangements;
 - (b) a decision to remove or suspend a Duty Solicitor from a Local Scheme under paragraphs 5.2 or 5.4;
 - (c) a decision to refuse to register a police station representative under paragraph 2.2 or 2.9 of the Police Station Register Arrangements 2001;
 - (d) a decision to suspend or remove a police station representative under paragraph 6.4 of the Police Station Register Arrangements 2001;
 - (e) a decision to suspend a solicitor from acting as a supervising solicitor for probationary representatives under Part B, Rule 3.3 of the General Criminal Contract Specification.

E Warrants of Further Detention

These amendments apply retrospectively from 25 July 2006.

E1 Extend scope of Criminal Investigations Class

General Criminal Contract Specification

Part A Scope and Structure of Contract Work

Amend Part A, Rule 2.2.2 (d) as follows:

- (d) **Advocacy Assistance** in a magistrates' court, High Court, ~~or~~ before a judicial authority or a senior judge in connection with an application for a warrant of further detention, or for an extension of such a warrant, under sections 43 or 44 of the Police and Criminal Evidence Act 1984 or paragraphs 29 or 36 of Schedule 8 of the Terrorism Act 2000;

Part B Rules and Guidance on Performing Contract Work

Amend Part B, Rule 1.1.2 as follows:

- 2. An application form need not be completed prior to advising and assisting the Client under the following Units of Work, provided that you ensure that the Client satisfies the relevant Qualifying Criteria prior to giving the advice:
 - (a) Police Station Advice and Assistance under Part A, paragraphs 2.2.1(b) or (c) of this Specification;
 - (b) ~~magistrates' court~~ Advocacy Assistance under Part A, paragraph 2.2.2(d) of this Specification (warrants of further detention);

Amend Part B, Rule 2.6.1 as follows:

- 1. Regulations do not impose any financial criteria in relation to the following Units of Work:
 - (a) Police Station Advice and Assistance under Part A, paragraphs 2.2.1(b) and (c) of this Specification;
 - (b) ~~magistrates' court~~ Advocacy Assistance under Part A, paragraph 2.2.2(d) of this Specification (warrants of further detention);

Part E Remuneration under the General Criminal Contract

Insert new Rule 2.4 as follows:

2.4 Advocacy Assistance (Warrants of further detention before the High Court or senior judge)

| | <u>National</u> | <u>London</u> |
|---|------------------------|-----------------------|
| <u>Routine letter out</u> | <u>7.50 per item</u> | <u>7.50 per item</u> |
| <u>Routine telephone calls</u> | <u>4.15 per item</u> | <u>4.15 per item</u> |
| <u>All other preparation work including any work which was reasonably done arising out of or incidental to the proceedings, interviews with client, witnesses, and other parties; obtaining evidence; preparation and consideration of, and dealing with, documents, negotiations and notices; dealing with letters written and received and telephone calls which are not routine.</u> | <u>75.00 per hour</u> | <u>79.50 per hour</u> |
| <u>Attending counsel in conference or at the trial or hearing of any summons or application at court, or other appointment</u> | <u>37.00 per hour</u> | <u>37.00 per hour</u> |
| <u>Attending without counsel at the trial or hearing of any cause or the hearing of any summons or application at court, or other appointment</u> | <u>75.00 per hour</u> | <u>75.00 per hour</u> |
| <u>Travelling and waiting</u> | <u>33.25 per hour</u> | <u>33.25 per item</u> |

Note:

No enhanced rates are payable for this unit of work.