STATUTORY RULES OF NORTHERN IRELAND

2016 No. 398

LEGAL AID AND ADVICE

The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016

Made - - - -	*9th November 2016*
Coming into operation	*1st December 2016*

The Department of Justice makes the following Rules in exercise of the powers conferred by Article 36(3) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**1**), and now vested in it(**2**).

In accordance with Article 36(3) of that Order, the Department has consulted with the Lord Chief Justice, the Attorney General, the County Court Rules Committee and the Magistrates' Courts Rules Committee and it has obtained the approval of the Department of Finance.

In accordance with Article 37 of that Order, the Department has had regard to the matters specified in that Article.

Citation, commencement and application

1. These Rules may be cited as the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016 and shall come into operation on 1st December 2016.

2. In these Rules a reference to a rule or Schedule by number alone is a reference to the rule or Schedule so numbered in or to the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009(**3**).

3.—(1) Without prejudice to paragraph (2), these Rules apply for the determination of costs which are payable in respect of work done under a criminal aid certificate granted under Article 28, 28A or 30 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 on or after 1st December 2016.

(2) These Rules also apply for the determination of costs which are payable –

(**1**) S.I. 1981/228 (N.I. 8)
(**2**) S.I. 1982/159 and S.I. 2010/976
(**3**) S.R. 2009 No. 313, which was amended by S.R. 2014 No. 178

(a) in respect of work done under a criminal aid certificate granted under Article 28, 28A or 30 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 before 1st December 2016;

(b) where a Certificate of Exceptionality is granted to the representative under rules 10A to 10D of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009, as amended by these Rules ("the amended Rules"); and

(c) subject to paragraph (3), the work which is the subject-matter of the Certificate of Exceptionality was done on or after 1st December 2016.

(3) If satisfied that it is in the interests of justice to do so, the Department of Justice may treat any work done before 1st December 2016 as forming part of the additional hours of preparation work authorised under rule 10C or 10D of the amended Rules, as applicable.

Amendments to the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009

4. The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 are amended as follows.

5. In rule 2, after the definition of 'category of offence', insert –

""Certificate of Exceptionality" has the meaning given by rules 10A to 10E;".

6. In rule 6 –

(a) in paragraph (1), for the word "claims" substitute "Subject to rule 10E, claims";

(b) in paragraph (4), for the words "a claim", substitute "Subject to paragraph (4A), a claim";

(c) following paragraph (4), insert –

"(4A) Where the solicitor is claiming fees under rule 10E, the claim shall –

(a) summarise, where appropriate, the items of work done by a fee-earner in respect of which the fees are claimed under rule 10E;

(b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person; and

(c) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.".

7. In rule 8 –

(a) in paragraph (1), for the word "claims" substitute "Subject to rule 10E, claims";

(b) in paragraph (3), for the words "a claim", substitute "Subject to paragraph (3A), a claim";

(c) following paragraph (3), insert –

"(3A) Where counsel is claiming fees under rule 10E, the claim shall –

(a) summarise, where appropriate, the items of work done in respect of which the fees are claimed under rule 10E; and

(b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person.".

8. After rule 8, insert –

"**Exceptional Preparation – Application for Certificate of Exceptionality**

10A.—(1) Where a representative considers that a case (or part of a case which is the subject-matter of the application) –

(a) involves a point of law or factual issue that is very unusual or novel;

(b) additional preparation work is reasonably required on the part of the representative in order to prepare the assisted person's defence; and

(c) that work is substantially in excess of the amount normally required for cases of the same type,

the representative may apply to the Department for a Certificate of Exceptionality in accordance with the provisions of this rule.

(2) The application may be submitted by a representative on his own behalf or on behalf of himself and another representative of the assisted person.

(3) The application shall be submitted by the representative at the earliest opportunity after the Public Prosecution Service has settled the charges against the assisted person.

(4) The application shall be submitted to the Department in such form and manner as the Department may direct, specifying –

(a) the basis upon which the application is made;

(b) the nature of the work which is the subject-matter of the application;

(c) the number of additional hours sought for each piece of work which is the subject-matter of the application; and

(d) the representative or other fee-earner who will be responsible for each piece of the work.

(5) A representative applying for additional funding under this rule shall supply such further information and documents (including a Costed Case Plan) as may be required by the Department in support of the application.

(6) In this rule a "Costed Case Plan" means a case plan in such form as the Department may direct setting out the additional preparation work which the representative is proposing to undertake, together with the estimated hours and cost of same in accordance with the prescribed hourly rates of payment applicable to that category of representative or other fee-earner.

Exceptional Preparation – Determination of application

10B.—(1) The Department may grant an application for a Certificate of Exceptionality only if it is satisfied that each of the criteria prescribed in rule 10A(1) is met.

(2) Subject to paragraph (1), the Department shall grant a Certificate of Exceptionality to each representative it deems satisfies the criteria.

(3) If it is not satisfied that the criteria prescribed in rule 10A(1) are met, the Department shall refuse the application or, if it considers it appropriate to do so, it may defer its decision on the application until such time as the representative supplies further information to satisfy the criteria.

(4) The Department shall communicate its decision made under this rule, together with its reasons for refusing the application or deferring its decision, as applicable, in writing to the representative (or each representative, as applicable).