STATUTORY RULES OF NORTHERN IRELAND

2016 No. 201

LEGAL AID AND ADVICE

The Legal Aid for Crown Court Proceedings (Costs) (Amendment No. 2) Rules (Northern Ireland) 2016

Made - - - -	*23rd March 2016*
Coming into operation	*16th April 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 and the Crown Court Rules Committee and it has obtained the approval of the Department of Finance and Personnel.

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 Legal Aid for Crown Court Proceedings (Costs) (Amendment No. 2) Rules (Northern Ireland) 2016 and shall come into operation on 16th April 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 Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005(**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 29, or deemed to have been granted under Article 36(2), of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 on or after 16th April 2016.

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

(a) in respect of work done under a criminal aid certificate granted under Article 29, or deemed to have been granted under Article 36(2), of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 before 16th April 2016;

(**1**) S.I. 1981/228 (N.I. 8)
(**2**) S.I. 1982/159 and S.I. 2010/976
(**3**) S.R. 2005 No. 112, which was amended by S.R. 2009 No. 267, S.R. 2011 No. 152, S.R. 2013 No. 293, S.R. 2015 No. 215 and S.R. 2016 No. 200

(b) a Certificate of Exceptionality is granted to the representative under rules 11A to 11D of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005, 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 16th April 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 16th April 2016 as forming part of the additional hours of preparation work authorised under rule 11C or 11D of the amended Rules, as applicable.

Amendments to the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005

4. The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 are amended as follows.

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

""Certificate of Exceptionality" has the meaning given by rules 11A to 11E;".

6. After rule 11, insert –

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

11A.—(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 assisted person has been returned for trial and, subject to paragraph (4), not later than the commencement of the trial.

(4) If satisfied that it was not reasonably practicable for the representative to submit the application earlier, the Department may accept such application after the commencement of the trial.

(5) The application shall be submitted to the Department in such form and manner as it 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.

(6) 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.

(7) 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

11B.—(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 11A(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 11A(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).

Exceptional Preparation – Grant of application

11C.—(1) This rule applies where the Department grants a Certificate of Exceptionality under rule 11B.

(2) The Department shall authorise additional hours by the representative or other fee-earner, as applicable, at the rate specified in the relevant table following rule 11E(7), up to a specified maximum to cover such additional preparation work as it will approve under the Certificate.

(3) Where the Department has authorised additional preparation work under paragraph (2), the representative may carry out such additional work up to the maximum number of hours specified under the Certificate.

(4) If further hours of preparation work are required, in excess of those authorised under paragraph (2), the representative shall apply in advance to the Department for an extension under the Certificate.

(5) Without prejudice to paragraphs (2) to (4), the Department shall require the representative (or each representative, as applicable) –

(a) to record contemporaneously the number of hours the representative or other fee-earner spends in preparation work on the case, together with a description of the nature of the work performed on each occasion and a note of the fee-earner performing that work, as applicable;

(b) to maintain such records in a permanently accessible format; and

(c) to provide periodic reports and projections as to the future costs of the case to the Department at such times and in such a form as the Department shall direct.

(6) The periodic reports provided to the Department under paragraph (5)(c) shall, if so directed by the Department, include copies of the records maintained by the representative under paragraph (5)(b).