STATUTORY RULES OF NORTHERN IRELAND

2016 No. 198

ACCESS TO JUSTICE

The Criminal Defence Services (Remuneration) Order (Northern Ireland) 2016

Made - - - -	*24th March 2016*
Coming into operation	*15th April 2016*

The Department of Justice makes the following Order in exercise of the powers conferred by Articles 23(3), 24(3) and (5) and 47 of the Access to Justice (Northern Ireland) Order 2003(**1**), and now vested in it(**2**).

In accordance with Article 47(2)(a) of the 2003 Order, the Department has consulted with the Lord Chief Justice, the Law Society, the General Council of the Bar of Northern Ireland and the Director of Public Prosecutions.

In accordance with Article 47(1) of the 2003 Order, the Department has had regard to the matters specified in that provision.

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the Criminal Defence Services (Remuneration) Order (Northern Ireland) 2016 and shall come into operation on 15th April 2016.

Interpretation

2. In this Order, unless the context otherwise requires –

"the 1980 Act" means the Criminal Appeal (Northern Ireland) Act 1980(**3**);

"criminal defence services" has the meaning given by Article 21(1) of the 2003 Order;

(**1**) S.I. 2003/435 (N.I. 10). Articles 23, 24 and 47 of the 2003 Order were amended by section 6 of, and paragraph 6(25), (26) and (38) of Schedule 2 to, the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 – 2014 c. 11 (N.I.)

(**2**) S.I. 2010/976

(**3**) 1980 c. 47. Sections 19 and 37 of, together with paragraph 1 of Schedule 1 to, the 1980 Act were repealed by the Access to Justice (2003 Order) (Commencement No. 8) Order (Northern Ireland) 2015 – S.R. 2015 No. 237 (C. 17)

"the Department" means the Department of Justice;

"disbursements" means travelling and witness expenses and other out of pocket expenses incurred by a solicitor in providing criminal defence services;

"fee-earner" means a solicitor or any clerk who regularly does work for which it is appropriate to make a direct charge to the client;

"the 2003 Order" means the Access to Justice (Northern Ireland) Order 2003;

"relevant proceedings" means the proceedings listed in Schedule 2 to the Access to Justice (2003 Order) (Commencement No. 8) Order (Northern Ireland) 2015(**4**);

"remuneration" means –

(a) in the case of a solicitor, the fees and disbursements payable under Article 24(3) of the 2003 Order,

(b) in the case of counsel, the fees payable under that provision,

and, in either case, includes the fees payable to the representative under Article 23(3) of that Order for any advice and assistance provided under regulation 4 of the Criminal Defence Services (General) Regulations (Northern Ireland) 2016(**5**);

"representative" means a solicitor or counsel who has been selected by an individual under Article 30(1) of the 2003 Order;

"right to representation" means a right to representation granted under Article 26(1) or (5) of the 2003 Order;

"the Taxing Master" means the Master (Taxing Office).

Application

3.—(1) This Order shall apply for the determination of the remuneration payable to representatives in respect of providing criminal defence services where the work is done under a right to representation granted on or after 15th April 2016.

(2) Where a right to representation is granted before 15th April 2016 for proceedings in the Court of Appeal, the provisions of section 28 of the 1980 Act apply.

Scope

4.—(1) Article 5 and Part 2 of this Order apply to proceedings in the Court of Appeal only.

(2) Article 6 applies to proceedings in the Supreme Court only.

(3) Article 7 applies to retrials in the Crown Court only.

Proceedings in the Court of Appeal

5. In proceedings in the Court of Appeal, the remuneration payable to a representative shall be determined by the Taxing Master in accordance with Part 2 of this Order and such Practice Directions as may be issued by the Master.

Proceedings in the Supreme Court

6.—(1) In proceedings in the Supreme Court, the remuneration payable to a representative shall be determined by such officer as may be prescribed by order of the Supreme Court.

(2) Subject to paragraph (1), this Order does not apply to proceedings in the Supreme Court.

(**4**) S.R. 2015 No. 237 (C. 17)
(**5**) S.R. 2016 No. 197

Retrials in the Crown Court

7.—(1) Paragraph (2) applies in relation to the remuneration payable to a representative in respect of the case of an appellant who is to be retried before the Crown Court by virtue of an order of the Court of Appeal under section 6 of the 1980 Act.

(2) The provisions of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005(**6**) apply for the determination of the remuneration payable for the retrial as they apply in relation to free legal aid under Article 29 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**7**).

(3) Subject to paragraphs (1) and (2), this Order does not apply to proceedings in the Crown Court.

PART 2

APPEAL TO COURT OF APPEAL FROM CROWN COURT

Service of notices and documents

8.—(1) Any document that is required to be sent to the Taxing Master under this Part may be sent –

(a) by post or by personal delivery to an address specified by the Master; or

(b) by electronic mail.

(2) Any notice or document that is required to be sent to a representative under this Part may be sent –

(a) by post to the postal address given by the representative as their address for service; or

(b) by electronic mail.

Claims for remuneration by representatives

9.—(1) Claims for remuneration by representatives shall be made and determined in accordance with the provisions of this Article and Article 10.

(2) Claims for disbursements by solicitors shall be made and determined in accordance with the provisions of this Article and Article 11.

(3) Subject to Article 15, no claim by a representative for remuneration in respect of work provided by way of criminal defence services shall be entertained unless it is submitted within three months of the conclusion of the proceedings to which the right to representation relates.

(4) Subject to paragraph (5), a claim for remuneration shall be submitted to the Taxing Master in such form and manner as the Master may direct and shall be accompanied by any receipts or other documents in support of any disbursement claimed.

(5) A claim shall –

(a) summarise, where appropriate, the items of work done by the representative or other fee-earner in respect of which fees are claimed;

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

(**6**) 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, S.R. 2016 No. 200 and S.R. 2016 No. 201

(**7**) S.I. 1981/228 (N.I. 8)