STATUTORY RULES OF NORTHERN IRELAND

2012 No. 268

LEGAL AID AND ADVICE

The Criminal Legal Aid (Recovery of Defence Costs Orders) Rules (Northern Ireland) 2012

Made - - - -	*2nd July 2012*
Coming into operation	*15th October 2012*

The Department of Justice makes the following Rules in exercise of the powers conferred by Articles 33A and 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.

Citation, commencement and application

1.—(1) These Rules may be cited as the Criminal Legal Aid (Recovery of Defence Costs Orders) Rules (Northern Ireland) 2012 and shall come into operation on 15th October 2012.

(2) These Rules apply to cases in which a criminal aid certificate was granted on or after 15th October 2012.

Interpretation

2. In these Rules, unless the context otherwise requires—

"assisted person" means a person granted a criminal aid certificate;

"assisted person's partner" means a person with whom the assisted person lives as a couple, and includes a person with whom the assisted person is not currently living but from whom they are not living separate and apart;

"the Commission" means the Northern Ireland Legal Services Commission established under Article 3 of the Access to Justice (Northern Ireland) Order 2003(**3**);

"criminal aid certificate" means a certificate granted under Article 29, or deemed to have been granted under Article 36(2), of the Order;

(**1**) S.I. 1981/228 (N.I. 8)
(**2**) S.I. 1982/159 and S.I. 2010/976
(**3**) S.I. 2003/435 (N.I. 10)

"family home" means the main or only residence of the assisted person's partner and any children who normally live with that partner, whether or not the assisted person also resides there;

"financial means form" has the meaning given by rule 3;

"the Order" means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

3.—(1) Where it comes to the attention of the Commission that the financial means of an assisted person merit investigation or further investigation, the Commission may carry out such an investigation or further investigation.

(2) Where it decides to carry out an investigation or further investigation under paragraph (1), the Commission shall send a financial means form to the assisted person, in such form and manner as it may provide.

(3) The assisted person shall complete the financial means form referred to in paragraph (2) and then return the form to the Commission.

(4) Without prejudice to paragraphs (2) and (3), the assisted person shall supply such further particulars, information and documents as the Commission may require, including details of any change in the financial circumstances of the assisted person.

4.—(1) Where a criminal aid certificate has been granted in respect of a person for proceedings in the Crown Court, the Commission may apply to that court for an order requiring the assisted person to pay some or all of the cost of legal aid incurred under that certificate in the circumstances set out in these Rules.

(2) An order of the type mentioned in paragraph (1) shall be known as a Recovery of Defence Costs Order (an "RDCO").

5.—(1) The judge hearing the case shall make an RDCO against an assisted person except as provided in paragraph (2) or (3).

(2) Subject to rule 12, an RDCO shall not be made against an assisted person who—

(a) has not been convicted;

(b) is directly or indirectly in receipt of—

(i) income support;

(ii) income-based jobseeker's allowance;

(iii) guarantee state pension credit; or

(iv) income-related employment and support allowance;

(c) has none of the following assets—

(i) capital over £3,000;

(ii) equity in that person's principal residence over £100,000; or

(iii) gross annual income of over £22,235; or

(d) is under the age of 18.

(3) Subject to rule 12, an RDCO shall not be made where the judge hearing the case is satisfied that—

(a) it would not be reasonable to make such an order, on the basis of the information and evidence available; or

(b) the payment of an RDCO would, owing to the exceptional circumstances of the case, involve undue financial hardship in respect of the assisted person, their dependants or immediate family.