STATUTORY RULES OF NORTHERN IRELAND

2012 No. 135

LEGAL AID AND ADVICE

The Criminal Aid Certificates Rules (Northern Ireland) 2012

Made - - - - 14th March 2012

Coming into operation 16th April 2012

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 [F1], and now vested in it [F2].

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

F1 S.I. 1981/228 (N.I. 8)
F2 S.I. 1982/159 and S.I. 2010/976

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Aid Certificates Rules (Northern Ireland) 2012 and shall come into operation on 16th April 2012.

(2) In these Rules—

"the 2003 Act" means the Extradition Act 2003 [F3];

"the applicant" means the person applying for free legal aid under Part III of the Order, or section 184 of the 2003 Act, as applicable;

"the appropriate judge" has the meaning given by section 185(6) of the 2003 Act;

"the assisted person" means the person granted free legal aid under Part III of the Order, or section 184 of the 2003 Act, as applicable;

"the certifying authority" has the meaning given by Article 29(2) of the Order;

"the Commission" means the Northern Ireland Legal Services Commission established under Article 3 of the Access to Justice (Northern Ireland) Order 2003 [F4];

"criminal aid certificate" means a certificate granted under Part III of the Order, or section 184 of the 2003 Act, as applicable;

"the Department" means the Department of Justice established by the Department of Justice Act (Northern Ireland) 2010 [F5];

"diversionary youth conference" has the meaning given by Article 10A(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 [F6];

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

F3 2003 c. 41
F4 S.I. 2003/435 (N.I. 10)
F5 2010 c. 3
F6 S.I. 1998/1504 (N.I. 9); Article 10A was inserted by section 58 of the Justice (Northern Ireland) Act 2002 (c. 26)

Record of cases

2.—(1) Where application is made to a court or the certifying authority for a criminal aid certificate under Part III of the Order, or such a certificate is granted, the clerk of petty sessions or chief clerk acting for that court or authority, as applicable, shall record—

(a) the date of the grant or refusal of the certificate, and

(b) a summary of such particulars as are contained in the application or (where a certificate is granted) on the certificate.

(2) Where application is made to the appropriate judge, or a judge of the High Court, for a criminal aid certificate under section 184 of the 2003 Act, or such a certificate is granted, the chief clerk or clerk acting for that judge, as applicable, shall record—

(a) the date of the grant or refusal of the certificate, and

(b) a summary of such particulars as are contained in the application or (where a certificate is granted) on the certificate.

(3) Each chief clerk shall keep a record of all cases in which the defence of any person is undertaken at the request of a judge under Article 36(2) of the Order.

Assigning solicitors and counsel: free legal aid in the magistrates' court

3.—(1) When granting a criminal aid certificate under Article 28(1) or 28A of the Order, a magistrates' court shall, after taking into account any representations which the applicant may make, assign a solicitor who is practising in Northern Ireland and is willing to undertake the defence of legally aided persons in criminal cases.

(2) The assisted person shall be entitled to the services of any solicitor assigned under paragraph (1).

(3) Where, in the case of an indictable offence, a magistrates' court has thought fit to direct that the assisted person shall have counsel assigned under Article 28(2) of the Order, any member of the Bar who is practising in Northern Ireland and is willing to appear as counsel for legally aided persons in criminal cases may be instructed, on behalf of the assisted person, by the solicitor assigned under paragraph (1).

(4) Any member of the Bar instructed as provided under paragraph (3) shall, for the purposes of The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 [F7], be regarded as having been assigned in pursuance of a criminal aid certificate under Article 28(2) of the Order.

(5) Any criminal aid certificate which may have been granted to a person under Article 28 of the Order shall cease to have effect upon the granting of a criminal aid certificate to that person under Article 28A of the Order in respect of the same charge or subject-matter.

F7 S.R. 2009 No. 313

Assigning solicitors and counsel: free legal aid in the Crown Court

4.—(1) When granting a criminal aid certificate under Article 29(2) of the Order, the certifying authority shall, after taking into account any representations which the applicant may make, assign a solicitor who is practising in Northern Ireland and is willing to undertake the defence of legally aided persons in criminal cases.

(2) The assisted person shall be entitled to the services of any solicitor assigned under paragraph (1).

(3) Any member of the Bar who is practising in Northern Ireland and is willing to appear as counsel for legally aided persons in criminal cases may be instructed, on behalf of the assisted person, by the solicitor assigned under paragraph (1), and, in any case in which the certifying authority has granted a certificate as provided for under paragraph (5)(b), one such member of the Bar and a member of the Bar, being one of Her Majesty's Counsel who is practising in Northern Ireland or a senior counsel practising outside of Northern Ireland, may be so instructed.

(4) Any member of the Bar instructed as provided under paragraph (3) shall, for the purposes of The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 [F8], be regarded as having been assigned in pursuance of a criminal aid certificate under Article 29 of the Order.

(5) A criminal aid certificate granted under Article 29 of the Order—

(a) includes representation by one counsel; and

(b) may include representation by two counsel only in the cases specified and in the manner provided for by the following provisions of this rule.

(6) Where the charge is one of murder, or the case appears to present exceptional difficulties, the certifying authority may certify that in its opinion the interests of justice require that the assisted person shall have the services of two counsel.

(7) For the purposes of paragraph (6), the term "exceptional" means that the case for or against the assisted person involves substantial novel or complex issues of law or fact, such that it could not be adequately presented by one counsel.

(8) Every application for a criminal aid certificate in respect of two counsel shall be made in writing, in such form as the Department may direct, specifying:

(a) the terms of the certificate sought and the grounds of the application; and, where the charge is other than murder,

(b) which of the conditions in paragraph (7) is relied upon in support of the certificate sought, and on what grounds it is contended that each such condition is fulfilled.

(9) The certifying authority may, before granting a criminal aid certificate in respect of two counsel, require written advice from any counsel already assigned to the applicant on the question of what representation is needed in the proceedings.

(10) The certifying authority making a decision whether to grant a certificate in respect of two counsel shall record the reason for the decision in writing, in such form as the Department may direct, stating whether each of the conditions relied upon in support of the certificate granted or sought is fulfilled.

(11) Without prejudice to paragraphs (6) and (7), where a judge of the court before which the assisted person is to be tried is of the opinion that in the interests of justice a criminal aid certificate in respect of two counsel must be granted in order to protect the assisted person's rights under the Human Rights Act 1998 [F9], the judge shall grant such a certificate.

F8 S.R. 2005 No. 112, which was amended by S.R. 2009 No. 267 and S.R. 2011 No. 152
F9 1998 c. 42

Assigning solicitors and counsel: free legal aid in the county court

5.—(1) When granting a criminal aid certificate under Article 30(3) or (4) of the Order, a magistrates' court or county court, as applicable, shall, after taking into account any representations which the applicant may make, assign a solicitor who is practising in Northern Ireland and is willing to undertake the defence of legally aided persons in criminal cases.

(2) The assisted person shall be entitled to the services of any solicitor assigned under paragraph (1).

(3) Except where the court directs under Article 30(8) of the Order that only a solicitor shall be assigned, any member of the Bar who is practising in Northern Ireland and is willing to appear as counsel for legally aided persons in criminal cases may be instructed, on behalf of the assisted person, by the solicitor assigned under paragraph (1).

(4) Any member of the Bar instructed as provided under paragraph (3) shall, for the purposes of The Magistrates' Courts and County Courts Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 [F10], be regarded as having been assigned in pursuance of a criminal aid certificate under Article 30 of the Order.

F10 S.R. 2009 No. 313

Assigning solicitors and counsel: free legal aid in extradition proceedings

6.—(1) When granting a criminal aid certificate under section 184 of the 2003 Act, the appropriate judge or judge of the High Court, as applicable, shall, after taking into account any representations which the applicant may make, assign a solicitor who is practising in Northern Ireland and is willing to undertake the defence of legally aided persons in extradition proceedings.

(2) The assisted person shall be entitled to the services of any solicitor assigned under paragraph (1).

(3) Except where the judge directs under section 184(10) of the 2003 Act that only a solicitor shall be assigned, any member of the Bar who is practising in Northern Ireland and is willing to appear as counsel for legally aided persons in extradition proceedings may be instructed, on behalf of the assisted person, by the solicitor assigned under paragraph (1).

(4) Any member of the Bar instructed as provided under paragraph (3) shall, for the purposes of The Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992 [F11], be regarded as having been assigned in pursuance of a criminal aid certificate under Part III of the Order.

F11 S.R. 1992 No. 314; to which the most recent amendment was made by S.R. 2011 No. 396

Criminal aid certificates

7.—(1) A criminal aid certificate granted as mentioned in the first column of the following Table shall be in the form indicated in the second column, being a form set out in the Schedule.

Table

Certificate	*Form*

Granted under Article 28 of the Order – full certificate	Form A
Granted under Article 28 of the Order – limited certificate	Form B
Granted under Article 28A of the Order	Form C
Granted under Article 29(2) of the Order by a magistrates' court where the charge is one of murder	Form D
Granted under Article 29(2) of the Order by a magistrates' court where the charge is other than murder	Form E
Granted under Article 29(2) of the Order by a Crown Court judge where the charge is one of murder	Form F
Granted under Article 29(2) of the Order by a Crown Court judge where the charge is other than murder	Form G
Granted under Article 30(3) of the Order by a magistrates' court	Form H
Granted under Article 30(4) of the Order by a county court	Form I
Granted under section 184 of the 2003 Act	Form J

(2) Where a criminal aid certificate is granted—

(a) the clerk of petty sessions or (as the case may be) the chief clerk shall send a copy of it to—

(i) the Commission, and

(ii) the solicitor assigned under rule 3, 4, 5 or 6, as applicable; and

(b) in the case of a certificate granted by a magistrates' court under Article 29(2) or 30(3) of the Order, the clerk of petty sessions shall send a copy of it to the chief clerk.

Revocation and transitional provision

8.—(1) The following rules are hereby revoked, namely—

(a) the Legal Aid Certificates Rules (Northern Ireland) 1966 [F12];

(b) the Legal Aid (Defence Certificates) Rules (Northern Ireland) 1966 [F13];

(c) the Legal Aid (Appeal Aid Certificates) Rules (Northern Ireland) 1966 [F14];

(d) the Legal Aid Certificates (Amendment) Rules (Northern Ireland) 2003 [F15].

(2) Without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 [F16], any certificate granted, copy sent, or assigning or other thing done under those Rules shall not be