EXPLANATORY NOTE

(This Note is not part of the Rules but is intended to indicate their general purport.)

These Rules provide for the amounts to be paid to solicitors assigned under legal aid certificates granted under section 20 of the Legal Aid and Advice Act (Northern Ireland) 1965 as well as to counsel assigned or instructed under the Act.

Rules 1 and 2 provide for the maintenance of registers of solicitors and counsel willing to undertake the defence of legally aided persons in criminal cases. Rule 3 provides for records of applications for legal aid certificates. Rule 4 deals with the form of the certificates and the manner in which counsel are to be instructed. Rule 5 provides for the manner in which solicitor's fees and expenses are to be determined. Rule 6 provides for the determination of counsel's fees. Rule 7 deals with cases in which more than one certificate is granted in respect of charges against the same person and cases where more than one person is represented by the same solicitor or counsel. Rule 8 deals with work in connection with appeals. Rule 9 provides for the determination of fees allowed under the Rules by a committee selected from a panel appointed by the Minister of Home Affairs and Rule 10 with an increase in fees in exceptional cases.

1966. No. 53 [C]

LEGAL AID IN CRIMINAL CASES: DEFENCE CERTIFICATES RULES

RULES, DATED 23RD MARCH, 1966, MADE BY THE MINISTRY OF HOME AFFAIRS UNDER SECTION 27 OF THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965.

The Ministry of Home Affairs (hereinafter referred to as "the Ministry"), in exercise of the powers conferred on it by section 27 of the Legal Aid and Advice Act (Northern Ireland) 1965(a) (hereinafter referred to as "the Act") and of all other powers in that behalf thereunto enabling it, hereby, after consultation with the Lord Chief Justice, the Attorney General, the County Court Rules Committee, the Magistrates' Courts Rules Committee and with the approval of the Ministry of Finance, makes the following Rules:—

List of Applications for Defence Certificates

1.—(1) Each clerk of the Crown and peace and each clerk of petty sessions shall keep a list of all cases in which application for a defence certificate is made to a certifying authority for which he acts or in which such certificate is granted by such a certifying authority and shall record therein for each case (*a*) the name of the person returned for trial, (*b*) in general terms the charge or charges preferred, (*c*) the date and result of such application, and (*d*) whether or not he pleaded guilty.

Each clerk of the Crown and peace shall include in his list particulars of every case in which the defence of any person is undertaken at the request of a Judge under section 27(2) of the Act.

(2) Each clerk of the Crown and peace and each clerk of petty sessions

(a) 1965. c. 8 (N.I.).

shall send to the Ministry a copy of the list specified in paragraph (1) at such times as the Ministry may from time to time direct.

Defence Certificates

2.—(1) A defence certificate granted by a Magistrates' Court shall be in form A(i) or A(ii) in the Schedule, and the clerk of petty sessions shall, as soon as practicable after the certificate has been granted, send a copy thereof to the clerk of the Crown and peace, the Crown Solicitor for the County in which the Court sat and the Secretary of the Law Society.

(2) A defence certificate granted by a Judge shall be in form B(i) or B(ii) in the Schedule and the clerk of the Crown and peace shall send a copy thereof to the Crown Solicitor for the County in which the Court sat and to the Secretary of the Law Society.

(3) A certifying authority shall, when granting a defence certificate, after taking into account any representations which the person charged may make, assign to him, from the register maintained in pursuance of Rule 1 of the Legal Aid Certificates Rules (Northern Ireland) 1966(**a**) a solicitor, to whose services the person shall be entitled.

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

(5) The clerk of the Crown and peace shall furnish to the solicitor assigned as aforesaid a copy of the depositions in the case and, if the complaint is in writing, of the complaint.

(6) Any member of the Bar whose name appears in the register maintained in pursuance of Rule 2 of the Legal Aid Certificates Rules (Northern Ireland) 1966 may be instructed, on behalf of the person charged, by the solicitor assigned as aforesaid, and, in any case in which a certifying authority has given a certificate as provided for in paragraph (4), one such member of the Bar and a member of the Bar, being one of Her Majesty's Counsel who has expressed his willingness to undertake the defence, may be so instructed. Any member of the Bar instructed as aforesaid shall, for the purposes of these Rules, be regarded as having been assigned in pursuance of a defence certificate.

Fees for Solicitors

3.—(1) Subject to the provisions of these Rules, there shall be allowed to a solicitor assigned under a defence certificate or to a solicitor who has undertaken a defence at the request of the Judge under section 27(2) of the Act, a fee of not less than £8 8s. 0d. and not exceeding £78 15s. 0d. or, in a case where two counsel have been assigned under the certificate, such fee as appears to represent fair remuneration according to the work reasonably undertaken and properly done.

(2) Where a trial has not been concluded on the day on which it started there shall be allowed to the solicitor, in addition to the fee allowed under paragraph (1), a daily fee, in respect of the second and every subsequent day—

(*a*) where the trial is at the county court and counsel has not been instructed, not exceeding £21;

(*b*) in any other case, not exceeding £15 15s. 0d.

(**a**) S.R. & O. (N.I.) 1966, No. 52.

(3) In addition to any fees payable under the foregoing provisions of this Rule the solicitor may be allowed—

(*a*) expenses actually and necessarily incurred on the scale applicable to witnesses for the prosecution in respect of—

(i) his travelling to and from the court at which the trial takes place and to and from any other place visited for the purpose of preparing and conducting the defence; and

(ii) costs in connection with the attendance of witnesses for the defence; and

(*b*) subject to determination thereof under Rule 6 if the Ministry so directs any other out-of-pocket expenses actually and necessarily incurred.

Fees for Counsel

4.—(1) Subject to the provisions of these Rules there shall be allowed to counsel assigned under a defence certificate or to a counsel who has undertaken a defence at the request of the Judge under section 27(2) of the Act, a fee of not less than £8 8s. 0d. and not exceeding £63 0s. 0d. or, in the case of two counsel being so assigned, such fees as appear to be proper in all the circumstances of the case.

(2) Where a trial has not been concluded at the end of the first relevant period thereof there shall be allowed to counsel in respect of each relevant period or, in the case of an incomplete period, part thereof, after the first a refresher fee.

(3) In paragraph (2)—

(*a*) "relevant period" means either, as may be determined under Rule 6, any day on any part of which the trial is going on or any period of five hours, whether continuous or not, during which the trial is going on;

(*b*) "refresher fee" means such fee in addition to the fee allowed under paragraph (1), not exceeding half the fee so allowed, as appears to be proper in all the circumstances of the case.

(4) There shall be allowed to counsel, in addition to any fees allowed under the foregoing paragraphs—

(*a*) in respect of any conference or consultation lasting not less than half an hour, a fee of £2 2s. 0d., or, in the case of two counsel being assigned, such fees as appear to be proper in all the circumstances of the case;

(*b*) in respect of any conference or consultation lasting more than half an hour, such fee as appears to be proper in all the circumstances of the case;

(*c*) in respect of any application to the court for the case to stand out of the list, such fee as appears proper in all the circumstances of the case;

(*d*) for advice in writing, if in the opinion of the committee referred to in Rule 6 it was reasonably necessary to obtain counsel's advice in writing, a fee not exceeding £10 10s. 0d., or, in the case of two counsel being assigned, such fees as appear to be proper in all the circumstances of the case.

More than one Defence Certificate granted or more than one person represented

5.—(1) Where more than one charge is brought at the same court against any person in respect of whom more than one defence certificate has been

granted, fees shall be allowed to the solicitor or counsel assigned as if only one defence certificate had been granted in respect of that person, unless the Judge otherwise orders.

(2) Where a solicitor or counsel assigned under a defence certificate or who has undertaken a defence at the request of the Judge under section 27(2) of the Act represents two or more persons charged in the same indictment, the amount to be allowed, whether one or more defence certificates have been granted, to the solicitor or counsel under, as the case may be, Rule 3(1) and (2) or Rule 4(1) and (2) shall be increased in respect of each such person, other than the person charged first in the indictment, by such amount as appears to be proper in all the circumstances of the case, but save as aforesaid no payment, other than a payment under Rule 3(3), Rule 4(4) or Rule 8, shall be allowed to the solicitor or counsel in respect of any person charged other than the person charged first in the indictment:

Provided that any increases allowed by virtue of this Rule shall not exceed—

(i) in respect of the person charged second in the indictment, forty per cent. of the amount which would be payable but for the said increase;

(ii) in respect of any person other than the persons charged first or second in the indictment, twenty per cent. of the said amount.

Taxation

6.—(1) The amounts to be paid to a solicitor or counsel assigned under a defence certificate or who has undertaken a defence at the request of the Judge under section 27(2) of the Act shall be determined in accordance with these Rules by the committee referred to in Rule 9 of the Legal Aid Certificates Rules (Northern Ireland) 1966.

(2) In determining as aforesaid the amounts to be paid to a solicitor or counsel the committee shall take into account all the relevant circumstances, including the nature, importance, complexity or difficulty of the work, and the time involved, and shall allow such amounts as appear to the committee to represent fair remuneration for the work reasonably undertaken and properly done.

(3) In determining as aforesaid the amounts to be paid to a solicitor or counsel, the committee shall not allow any payment in respect of any conference, consultation, attendance or visit unless it is satisfied that such conference, consultation, attendance or visit was reasonably necessary.

(4) In determining as aforesaid the amounts to be paid to a solicitor or counsel in any case, the committee shall take into account any amount allowed to such solicitor or counsel in the same case under a legal aid certificate.

(5) An application for the determination under this Rule of sums payable to a solicitor or counsel shall be made to the committee by the solicitor within three months from the date of the conclusion of the proceedings to which the defence certificate relates; so, however, that the committee may, if reasonable cause for delay is shown, waive the provisions of this paragraph and in so doing may allow such sums as aforesaid either wholly or in part.

Increase of Fees

7. If it appears to the committee at any time after the conclusion of a case that for any reason, including the exceptional length, complexity or difficulty of the case, the amounts payable by virtue of these Rules or any of them would not provide fair remuneration according to the work reasonably undertaken and properly done by the solicitor or, as the case may be, by counsel it shall