

2016 No. 398

LEGAL AID AND ADVICE

The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016

Made - - - - - *9th November 2016*

Coming into operation - *1st December 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(a), and now vested in it(b).

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

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 Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016 and shall come into operation on 1st December 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 Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009(c).

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 28, 28A or 30 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 on or after 1st December 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 28, 28A or 30 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 before 1st December 2016;
- (b) where a Certificate of Exceptionality is granted to the representative under rules 10A to 10D of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009, as amended by these Rules ("the amended Rules"); and

(a) S.I. 1981/228 (N.I. 8)
(b) S.I. 1982/159 and S.I. 2010/976
(c) S.R. 2009 No. 313, which was amended by S.R. 2014 No. 178

(c) subject to paragraph (3), the work which is the subject-matter of the Certificate of Exceptionality was done on or after 1st December 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 1st December 2016 as forming part of the additional hours of preparation work authorised under rule 10C or 10D of the amended Rules, as applicable.

Amendments to the Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009

4. The Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 are amended as follows.

5. In rule 2, after the definition of ‘category of offence’, insert –

“‘Certificate of Exceptionality’ has the meaning given by rules 10A to 10E;”.

6. In rule 6 –

- (a) in paragraph (1), for the word “claims” substitute “Subject to rule 10E, claims”;
- (b) in paragraph (4), for the words “a claim”, substitute “Subject to paragraph (4A), a claim”;
- (c) following paragraph (4), insert –

“(4A) Where the solicitor is claiming fees under rule 10E, the claim shall –

- (a) summarise, where appropriate, the items of work done by a fee-earner in respect of which the fees are claimed under rule 10E;
- (b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person; and
- (c) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.”.

7. In rule 8 –

- (a) in paragraph (1), for the word “claims” substitute “Subject to rule 10E, claims”;
- (b) in paragraph (3), for the words “a claim”, substitute “Subject to paragraph (3A), a claim”;
- (c) following paragraph (3), insert –

“(3A) Where counsel is claiming fees under rule 10E, the claim shall –

- (a) summarise, where appropriate, the items of work done in respect of which the fees are claimed under rule 10E; and
- (b) state, where appropriate, the dates on which the items of work were done, the time taken, the sums claimed and whether the work was done for more than one assisted person.”.

8. After rule 8, insert –

“Exceptional Preparation – Application for Certificate of Exceptionality

10A.—(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 Public Prosecution Service has settled the charges against the assisted person.

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

(5) 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.

(6) 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

10B.—(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 10A(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 10A(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

10C.—(1) This rule applies where the Department grants a Certificate of Exceptionality under rule 10B.

(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 10E(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).

(7) If a representative fails to comply with paragraph (5) without good reason, the Department shall revoke the Certificate granted to that representative, provided that the Certificate shall not be revoked unless the representative has been permitted a reasonable opportunity to show cause in writing why the Certificate should not be revoked.

(8) Where a Certificate of Exceptionality granted to a representative has been revoked under paragraph (7), that representative's fees shall be determined under rule 6 or 8, as appropriate, as if the Certificate had never been granted.

Exceptional Preparation – Appeal to the taxing master

10D.—(1) A representative may appeal to the taxing master against a decision made by the Department under rule 10B or 10C and, subject to rule 15, such an appeal shall be instituted within 21 days of receiving notification of the decision by giving notice in writing to the taxing master.

(2) The provisions of rule 13(3) to (13) shall apply with the necessary modifications to an appeal brought under paragraph (1).

(3) The decision of the taxing master on an appeal under paragraph (1) shall be final.

Exceptional Preparation – Determination of representatives' fees

10E.—(1) This rule applies to the determination of fees where the fees are claimed by a representative to whom a Certificate of Exceptionality has been granted under rule 10B, and that certificate has not been revoked under rule 10C.

(2) Fees payable under this rule shall be assessed and determined by the Department in accordance with this rule and having regard to such directions and guidance as may be issued by the Department.

(3) When determining the fees payable to a representative under paragraph (2), the Department shall –

- (a) have regard to any standard fees payable to the representative under rule 6 or rule 8, as appropriate;
- (b) assess the fees claimed for any additional preparation work based only on the hours recorded in the contemporaneous records maintained by the representative; and
- (c) where it decides that an additional payment is required under Article 37 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(a), allow fees for such additional preparation work at rates no higher than those set out for the appropriate representative (or other fee-earner, as applicable) in the relevant table following paragraph (7).

(4) If the Department authorised additional preparation work under rule 10C(1) to (4) –

(a) S.I. 1981/228 (N.I. 8). Article 37 of the 1981 Order was amended by Article 49(1) of, together with paragraph 6(3) of Schedule 4 to, the Access to Justice (Northern Ireland) Order 2003 – S.I. 2003/435 (N.I. 10)

(a) the representative shall account to the Department for the manner in which any authorised hours were expended; and

(b) the work allowed this rule shall not exceed the total number of hours so authorised.

(5) The Department shall not allow payment for any additional hours claimed under the Certificate of Exceptionality unless satisfied by the representative that the additional preparation work was reasonably undertaken and properly done.

(6) The Department may require the representative to provide any further information which it requires for the purpose of the determination under this rule.

(7) Any fees allowed under this rule shall be paid to the representative together with the standard fees allowed under Schedule 1.

TABLES OF PRESCRIBED HOURLY RATES FOR EXCEPTIONAL PREPARATION WORK

SOLICITOR

	Senior Solicitor	Solicitor	An apprentice or fee earner of equivalent experience
Hourly rate	£100	£80	£40

COUNSEL

	Queen's Counsel	Junior Counsel
Hourly rate	£100	£80

(8) For the purposes of this rule "senior solicitor" means a solicitor who has not less than eight years' post qualification experience in criminal defence work.

(9) The provisions of rules 5, 6, 8 and 11 to 13 shall apply with the necessary modifications to the fees payable under this rule."

Sealed with the Official Seal of the Department of Justice on 9th November 2016



Claire Sugden
Minister of Justice

The Department of Finance hereby approves the foregoing Rules

Sealed with the Official Seal of the Department of Finance on 9th November 2016



Emer Morelli
A senior officer of the Department of Finance

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009, which prescribe the remuneration for solicitors and counsel assigned under Article 28, 28A or 30 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

The Rules make provision for the payment of additional remuneration in exceptional cases. They provide for an application for a Certificate of Exceptionality in an individual case, where a representative is required to undertake additional preparation work because the case involves a point of law or factual issue that is very unusual or novel. The Rules prescribe hourly rates of payment for the additional work authorised by the Department of Justice.

The Rules come into operation on 1st December 2016.

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