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STATUTORY RULES OF NORTHERN IRELAND

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**2005 No. 111 (C. 10)**

**ACCESS TO JUSTICE**

**The Access to Justice (Northern Ireland) Order 2003  
(Commencement No. 3, Transitional Provisions  
and Savings) Order (Northern Ireland) 2005**

*Made* - - - - *8th March 2005*  
*Coming into operation* *9th March 2005*

The Lord Chancellor, in exercise of the powers conferred on him by Articles 1(2) and 48(1) of the Access to Justice (Northern Ireland) Order 2003(1) and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation and interpretation**

1. This Order may be cited as the Access to Justice (Northern Ireland) Order 2003 (Commencement No. 3, Transitional Provisions and Savings) Order (Northern Ireland) 2005.

2. In this Order:

“the appointed day” means the day appointed by the Lord Chancellor, under Article 1(2) of the 2003 Order and all other powers enabling him in that behalf, for the revocation of Article 4 of this Order;

“the 1981 Order” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(2);

“the 2003 Order” means the Access to Justice (Northern Ireland) Order 2003.

**Commencement**

3. Subject to Articles 4 and 5 of this Order, paragraph 6(3) of Schedule 4 to the 2003 Order shall come into operation on 9th March 2005.

**Transitional provisions and savings**

4. Until the appointed day, paragraph 6(3) of Schedule 4 to the 2003 Order shall be modified so that Article 37 of the 1981 Order reads as follows:

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(1) S.I.2003/435 (N.I. 10)  
(2) S.I. 1981/228 (N.I. 8)

“(1) The Lord Chancellor in exercising any power to make rules as to the amounts payable under this Part to counsel or a solicitor assigned to give legal aid in respect of proceedings before a court other than the Crown Court, and any person by whom any amount so payable is determined in respect of a particular case before such a court, shall have regard to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done.

(2) The Lord Chancellor in exercising any power to make rules as to the amounts payable under this Part to counsel or a solicitor assigned to give legal aid in respect of proceedings before the Crown Court, and from 4th April 2005 any person by whom any amount so payable is determined in respect of a particular case before that Court, shall have regard, among the matters which are relevant, to –

- (a) the time and skill which work of the description to which the rules relate requires;
- (b) the number and general level of competence of persons undertaking work of that description;
- (c) the cost to public funds of any provision made by the rules; and
- (d) the need to secure value for money,

but nothing in this paragraph shall require him to have regard to any fees payable to solicitors and counsel otherwise than in accordance with this paragraph.”

**5.—**(1) Subject to paragraph (2), nothing in the provision commenced by this Order or in the transitional provisions of this Order shall have effect in relation to any work carried out under a criminal aid certificate granted under Article 29 of the 1981 Order before 4th April 2005.

(2) Where counsel or a solicitor has claimed payment under rules made under Article 36(3) of the 1981 Order after the coming into operation of this Order (“the new rules”) in relation to any work carried out under a criminal aid certificate granted under Article 29 of the 1981 Order before 4th April 2005, his claim shall be determined and paid in accordance with the new rules.

**6.** Until the appointed day, for the avoidance of doubt, any rules made under Article 36(3) of the 1981 Order before the coming into operation of this Order shall remain in force notwithstanding the making of this Order.

Signed by authority of the Lord Chancellor

Dated 8th March 2005

*Baroness Ashton of Upholland*  
Parliamentary Under-Secretary of State,  
Department for Constitutional Affairs

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## EXPLANATORY NOTE

*(This note is not part of the Order.)*

This Commencement Order, which is the third to be made under the Access to Justice (Northern Ireland) Order 2003, brings into operation on 9th March 2005 paragraph 6(3) of Schedule 4 to the Access to Justice (Northern Ireland) Order 2003 subject to the transitional provisions in Article 4 of this Order.

The effect of the amendment is that Article 37 (remuneration of solicitors and counsel) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 is amended so as to replace the fair remuneration principle with the value for money test in respect of proceedings in the Crown Court.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order.)*

<i>Provision of Order</i>	<i>Date of Commencement</i>	<i>Statutory Rule Number</i>
Article 3(1) and (4) partially	28th July 2003	<a href="#">S.R. 2003 No. 344</a>
Article 4	28th July 2003	
Article 48(2) and (3) partially	28th July 2003	
Schedule 1, paragraphs 1 to 11, 13 and 14	28th July 2003	
Schedule 3, paragraphs 8 to 11	28th July 2003	
Article 3(1), (2), (3) and (4)	1st November 2003	
Article 7(1) to (5)	1st November 2003	
Article 8	1st November 2003	
Article 46(1) and (3)	1st November 2003	(As amended by <a href="#">S.R. 2003 No. 439</a> )
Article 48(2) and (3)	1st November 2003	
Article 49(1) and (2) partially	1st November 2003	
Schedule 1, paragraphs 12(1) (b) and (2) and paragraphs 15 to 18	1st November 2003	
Schedule 3, paragraphs 1 to 7 and paragraphs 12 and 13	1st November 2003	
Schedule 4, paragraphs 10(a) and 17	1st November 2003	
Schedule 5 (partially)	1st November 2003	
Article 12(8) to (11)	2nd November 2003	<a href="#">S.R. 2003 No. 440</a>
Article 49(1) and (2) partially	2nd November 2003	

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Provision of Order</i>	<i>Date of Commencement</i>	<i>Statutory Rule Number</i>
Schedule 4, paragraphs 6(1) and (2)	2nd November 2003	
Schedule 5 partially	2nd November 2003	