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## STATUTORY INSTRUMENTS

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# 1981 No. 228

## Legal Aid, Advice and Assistance (Northern Ireland) Order 1981

### PART III

#### FREE LEGAL AID IN CRIMINAL PROCEEDINGS

##### Free legal aid in the magistrates' court

**28.**—(1) If it appears to a magistrates' court that the means of any person charged before it with any offence, or who appears or is brought before it to be dealt with, are insufficient to enable him to obtain legal aid and that it is desirable in the interests of justice that he should have free legal aid in the preparation and conduct of his defence before it, the court may grant in respect of him a criminal aid certificate, and thereupon he shall be entitled to such aid and to have—

- (a) a solicitor; and
- (b) subject to paragraph (2), counsel,

assigned to him for that purpose in such manner as may be prescribed by rules made under Article 36.

(2) Free legal aid given for the purposes of any [<sup>F1</sup>defence] before a magistrates' court shall not include representation by counsel except in the case of an indictable offence where the court is of opinion that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable.

[<sup>F2</sup>(2A) The power conferred by paragraph (1) to grant a criminal aid certificate includes power to grant a certificate for a limited period, for the purposes of specified proceedings only or for the purposes of limited aspects of proceedings, and to vary or remove any limitation imposed by a criminal aid certificate.]

(3) An application for free legal aid under paragraph (1) may be made to a magistrates' court by letter, and may be so made by any person arrested or summoned for an offence, as well as by a person charged with an offence before such a court.

- (4) A letter applying for free legal aid by virtue of this Article shall—
- (a) be addressed to the clerk of petty sessions <sup>F3</sup>...;
  - (b) give particulars of the offence charged; and
  - (c) set out the grounds of the application.

(5) Where an application is made by virtue of this Article, [<sup>F4</sup>a court of summary jurisdiction] shall have the like power exercisable on the like grounds of granting a criminal aid certificate as a magistrates' court would have if the applicant had been charged with the offence before it.

(6) The refusal of a criminal aid certificate made by letter shall not prevent the applicant being granted a criminal aid certificate at the hearing.

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**Changes to legislation:** *Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Section 28* is up to date with all changes known to be in force on or before 28 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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(7) Where a criminal aid certificate is granted to any person that person shall be entitled to free legal aid in respect of work reasonably undertaken and properly done by the solicitor assigned to that person in—

(a) giving notice of appeal to a county court;

(b) applying for a case to be stated for the opinion of the Court of Appeal;

and in matters preliminary thereto, being work done within the ordinary time for giving the notice or, as the case may be, making the application for the case to be stated.

**F1** 2002 c. 26

**F2** Art. 28(2A) inserted (1.8.2007) by [Justice and Security \(Northern Ireland\) Act 2007 \(c. 6\)](#), **ss. 46**, 53(4); S.I. 2007/2045, **art. 2(2)** (with transitional provisions in art. 3)

**F3** Words in art. 28(4)(a) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), Sch. 1 para. 85(1)(a), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F4** Words in art. 28(5) substituted (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), **Sch. 1 para. 85(1)(b)** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k) (with art. 3)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- art. 28(7) words inserted by [2011 c. 24 \(N.I.\) s. 83\(2\)\(b\)](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Order power to amend conferred by [2011 c. 24 \(N.I.\) Sch. 5 para. 5\(a\)](#)
- Act rev.in pt. by [1996 c. 25 s.79Sch.4 paras.19\(2\)36](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 28(7)(c) inserted by [2011 c. 24 \(N.I.\) s. 83\(2\)\(a\)](#)
- art. 29(2A) inserted by [2015 c. 9 \(N.I.\) Sch. 2 para. 3](#)
- art. 29(2A) words substituted in earlier affecting provision [2015 c. 9 \(N.I.\), Sch. 2 para. 3](#) by [2022 c. 4 \(N.I.\) s. 4\(9\)\(c\)](#)