
 STATUTORY RULES OF NORTHERN IRELAND

2010 No.**LEGAL AID AND ADVICE****The Criminal Aid Certificates Rules (Northern Ireland) 2010**

Made - - - - 2010

Coming into operation - 2010

To be laid before Parliament

The Lord Chancellor 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 the Lord Chancellor(b).

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

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Criminal Aid Certificates Rules (Northern Ireland) 2010.

(2) These Rules shall come into operation on.....2010.

(3) In these Rules –

“the 2003 Act” means the Extradition Act 2003(c);

“the applicant” means the person applying for free legal aid under Part III of the Order, or sections 184 and 185 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 sections 184 and 185 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(d);

“diversionary youth conference” has the meaning given by Article 10A(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998(e);

“the Law Society” means the Law Society of Northern Ireland;

(a) S.I. 1981/228 (N.I. 8)

(b) S.I. 1982/159

(c) 2003 c. 41

(d) S.I. 2003/435 (N.I. 10)

(e) S.I. 1998/1504 (N.I. 9); Article 10A was inserted by section 58 of the Justice (Northern Ireland) Act 2002 (c. 26)

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

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) in the certificate.

(2) Where application is made to the appropriate judge or a judge of the High Court for a criminal aid certificate under sections 184 and 185 of the 2003 Act, or such a certificate is granted, the chief clerk or clerk acting for that judge 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) in 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 Articles 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 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.

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).

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

- (a) includes representation by one junior counsel; and
- (b) may include representation by more than one counsel in respect of the whole or any specified part of any proceedings only in the cases specified and in the manner provided for by the following provisions of this rule.

(5) Subject to paragraphs (6) to (8), a criminal aid certificate may provide for the services of more than one counsel in the following terms:

- (a) a Queen's Counsel with a junior counsel; or
- (b) two junior counsel.

(6) A criminal aid certificate may be granted in respect of a Queen's Counsel with a junior counsel if and only if:

- (a) in the opinion of the court the case for the assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented except by a Queen's Counsel assisted by junior counsel; and
- (b) either:
 - (i) the case for the assisted person is exceptional compared with the generality of cases involving similar offences; or
 - (ii) a Queen's Counsel has been instructed on behalf of the prosecution and either the number of prosecution witnesses exceeds 80 or the number of pages of prosecution evidence exceeds 1,000,

and for this purpose the number of pages of prosecution evidence shall include all witness statements, documentary and pictorial exhibits and records of interview with the assisted person and with other defendants forming part of the committal papers or included in any notice of additional evidence.

(7) A criminal aid certificate may be granted in respect of two junior counsel if and only if:

- (a) in the opinion of the court the case for the assisted person involves substantial novel or complex issues of law or fact which could not be adequately presented by one junior counsel; and
- (b) either:
 - (i) two or more counsel have been instructed on behalf of the prosecution;
 - (ii) the case for the assisted person is exceptional compared with the generality of cases involving similar offences;
 - (iii) the number of prosecution witnesses exceeds 80; or
 - (iv) the number of pages of prosecution evidence exceeds 1,000,

and for this purpose the number of pages of prosecution evidence shall include all witness statements, documentary and pictorial exhibits and records of interview with the assisted person and with other defendants forming part of the committal papers or included in any notice of additional evidence.

(8) No certificate shall be granted so as to provide for representation in the terms of paragraph (5)(a) unless the court granting the certificate is of the opinion that the assisted person could not be adequately represented under a certificate granted in the terms of paragraph (5)(b).

(9) Every application for a criminal aid certificate in the terms provided for by paragraph (5) shall be in writing specifying:

- (a) the terms of the certificate sought and the grounds of the application; and
- (b) which of the conditions in paragraphs (6), (7) and (8) is relied upon in support of the certificate sought, and on what grounds it is contended that each such condition is fulfilled.

(10) A court may, before granting a criminal aid certificate in the terms provided for by paragraph (5), require written advice from any counsel already assigned to the applicant on the question of what representation is needed in the proceedings.

(11) A court making a decision whether to grant a certificate under paragraph (5) shall make annotations to the written application under paragraph (9), stating whether each of the conditions relied upon in support of the certificate granted or sought is fulfilled.

(12) A decision to grant a certificate under paragraph (5) may only be made by a judge of the court before which the assisted person is to be tried.

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).

Assigning solicitors and counsel: free legal aid in extradition proceedings

6.—(1) When granting a criminal aid certificate under sections 184 and 185 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).

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

<i>Certificate</i>	<i>Form</i>
Granted under Article 28 of the Order	Form A
Granted under Article 28A of the Order	Form B
Granted under Article 29(2) by a magistrates’ court where the charge is one of murder	Form C
Granted under Article 29(2) by a magistrates’ court where the charge is other than murder	Form D
Granted under Article 29(2) by a judge where the charge is murder	Form E
Granted under Article 29(2) by a judge where the charge is other than murder	Form F
Granted under Article 30(3) by a magistrates’ court	Form G
Granted under Article 30(4) by a county court	Form H
Granted under sections 184 and 185 of the 2003 Act	Form I

(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 certified copy of it to—
 - (i) the Commission, and
 - (ii) the solicitor assigned under rule 3, 4, 5 or 6; 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 certified copy of it to the chief clerk.

(3) Where a criminal aid certificate is granted under Article 29(2) of the Order, the chief clerk shall furnish to the solicitor assigned under rule 4—

- (a) a copy of the depositions in the case, and
- (b) if the complaint is in writing, a copy of the complaint.

Revocation and transitional provision

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

- (a) the Legal Aid Certificates Rules (Northern Ireland) 1966**(a)**;
- (b) the Legal Aid (Defence Certificates) Rules (Northern Ireland) 1966**(b)**;
- (c) the Legal Aid (Appeal Aid Certificates) Rules (Northern Ireland) 1966**(c)**;
- (d) the Legal Aid Certificates (Amendment) Rules (Northern Ireland) 2003**(d)**.

(2) Without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954**(e)**, any certificate granted, copy sent, or assigning or other thing done under those Rules shall not be invalidated by paragraph (1) but shall, insofar as it could have been granted, sent or done under a provision of these Rules, have effect as if granted, sent or done under that provision.

Signed by authority of the Lord Chancellor

Parliamentary Under-Secretary of State
Ministry of Justice

Dated

We approve

Two of the Lords Commissioners
of Her Majesty's Treasury

Dated

(a) S.R. & O. (N.I.) 1966 No. 52
(b) S.R. & O. (N.I.) 1966 No. 53
(c) S.R. & O. (N.I.) 1966 No. 54
(d) S.R. 2003 No. 513
(e) 1954 c. 33 (N.I.)

SCHEDULE

Forms of Criminal Aid Certificates

Form A

**LEGAL AID, ADVICE AND ASSISTANCE (NORTHERN IRELAND) ORDER 1981
(ARTICLE 28)**

**CRIMINAL AID CERTIFICATE FOR PROCEEDINGS IN MAGISTRATES’
COURT**

Petty Sessions District of

County Court Division of

An application having been made by:

DOB:

Who has been charged with the following offence(s):

[Charge 1]

[Charge 2]

The court, being satisfied that the means of the applicant (“A”) are insufficient to enable A to obtain legal aid and that it is desirable in the interests of justice that A should have free legal aid in the preparation and conduct of A’s defence before the court, hereby grants this criminal aid certificate and assigns to A as solicitor,

Solicitor’s name:

Solicitor’s firm:

[And I further direct that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable, counsel shall be assigned to A for that purpose] *

Date

DISTRICT JUDGE (MAGISTRATES’ COURTS)

* insert if applicable

CHARGES LEGAL AID GRANTED IN RESPECT OF

[Charge 1]

[Charge 2]

Form B

LEGAL AID, ADVICE AND ASSISTANCE (NORTHERN IRELAND) ORDER 1981 (ARTICLE 28A)

CRIMINAL AID CERTIFICATE FOR DIVERSIONARY YOUTH CONFERENCE

Personal Identifier No. (PIN) []

Case No.: []

Related Case Nos.: [] Related persons subject to the conference []

Petty Sessions District of [] County Court Division of []

Details of Applicant: Name []

Address

.....Post Code.....

Male [] Female [] Date of Birth [] National Insurance No. []

I, A. B., being a District Judge (Magistrates' Court), and being satisfied that

(a) the applicant has agreed to attend a diversionary youth conference in respect of the following

Offence(s) Date of Offence(s)

and (b) the means of the applicant ("A") are insufficient to enable A to obtain legal aid and that it is desirable in the interests of justice that A should have free legal aid in preparing for and participating in the diversionary youth conference, do hereby grant this criminal aid certificate and assign to A as solicitor:

Name Instructing Solicitor's LSC Ref No. []

Firm's Name Firm's Code No.: []

Address of Firm

.....Post Code.....

and (c) (tick if the insertion, see * below, is applicable) []

Signed District Judge (Magistrates' Courts)

Dated

* the offence with respect to which the diversionary youth conference is convened is an indictable offence and I am of the opinion that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable, and I do hereby direct that counsel shall be assigned to A as well as a solicitor for that purpose.

Form C

**LEGAL AID, ADVICE AND ASSISTANCE (NORTHERN IRELAND) ORDER 1981
(ARTICLE 29(2))**

**CRIMINAL AID CERTIFICATE GRANTED BY MAGISTRATES' COURT
WHERE THE CHARGE IS ONE OF MURDER**

Petty Sessions District of

County Court Division of

An application having been made by:

DOB:

Who has been returned for trial for the following offence(s):

[Charge 1]

[Charge 2]

The court, being satisfied that the means of the applicant (“A”) are insufficient to enable A to obtain legal aid, hereby grants this criminal aid certificate and assigns to A as solicitor,

Solicitor’s name:

Solicitor’s firm:

And I further direct that counsel shall be assigned to A for that purpose.

Date

DISTRICT JUDGE (MAGISTRATES’ COURTS)

CHARGES LEGAL AID GRANTED IN RESPECT OF

[Charge 1]

[Charge 2]

Form D

**LEGAL AID, ADVICE AND ASSISTANCE (NORTHERN IRELAND) ORDER 1981
(ARTICLE 29(2))**

**CRIMINAL AID CERTIFICATE GRANTED BY MAGISTRATES' COURT WHERE
THE CHARGE IS OTHER THAN MURDER**

Petty Sessions District of

County Court Division of

An application having been made by:

DOB:

Who has been returned for trial for the following offence(s):

[Charge 1]

[Charge 2]

The court, being satisfied that the means of the applicant ("A") are insufficient to enable A to obtain legal aid and that it is desirable in the interests of justice that A should have free legal aid in the preparation and conduct of A's defence at the trial, hereby grants this criminal aid certificate and assigns to A as solicitor,

Solicitor's name:

Solicitor's firm:

And I further direct that counsel shall be assigned to A for that purpose.

Date

DISTRICT JUDGE (MAGISTRATES' COURTS)

CHARGES LEGAL AID GRANTED IN RESPECT OF

[Charge 1]

[Charge 2]

Form E

**LEGAL AID, ADVICE AND ASSISTANCE (NORTHERN IRELAND) ORDER 1981
(ARTICLE 29(2))**

**CRIMINAL AID CERTIFICATE GRANTED BY CROWN COURT
WHERE THE CHARGE IS ONE OF MURDER**

An application having been made by:

DOB:

Who has been returned for trial for the following offence(s):

[Charge 1]

[Charge 2]

The court, being satisfied that the means of the applicant (“A”) are insufficient to enable A to obtain legal aid, hereby grants this criminal aid certificate and assigns to A as solicitor,

Solicitor’s name:

Solicitor’s firm:

[And I further direct, pursuant to rule 4(5)(a), that A shall have the services of a Queen’s Counsel with a junior counsel]*

[And I further direct, pursuant to rule 4(5)(b), that A shall have the services of two junior counsel]*

Date

ONE OF HER MAJESTY’S JUDGES OF THE CROWN COURT

* insert if applicable

CHARGES LEGAL AID GRANTED IN RESPECT OF

[Charge 1]

[Charge 2]

Form F

**LEGAL AID, ADVICE AND ASSISTANCE (NORTHERN IRELAND) ORDER 1981
(ARTICLE 29(2))**

**CRIMINAL AID CERTIFICATE GRANTED BY CROWN COURT
WHERE THE CHARGE IS OTHER THAN MURDER**

An application having been made by:

DOB:

Who has been returned for trial for the following offence(s):

[Charge 1]

[Charge 2]

The court, being satisfied that the means of the applicant (“A”) are insufficient to enable A to obtain legal aid and that it is desirable in the interests of justice that A should have free legal aid in the preparation and conduct of A’s defence at the trial, hereby grants this criminal aid certificate and assigns to A as solicitor,

Solicitor’s name:

Solicitor’s firm:

[And I further direct, pursuant to rule 4(5)(a), that A shall have the services of a Queen’s Counsel with a junior counsel]*

[And I further direct, pursuant to rule 4(5)(b), that A shall have the services of two junior counsel]*

Date

ONE OF HER MAJESTY’S JUDGES OF THE CROWN COURT

* insert if applicable

CHARGES LEGAL AID GRANTED IN RESPECT OF

[Charge 1]

[Charge 2]

Form G

**LEGAL AID, ADVICE AND ASSISTANCE (NORTHERN IRELAND) ORDER 1981
(ARTICLE 30(3))**

CRIMINAL AID CERTIFICATE FOR APPEAL TO COUNTY COURT

Petty Sessions District of

County Court Division of

An application having been made by:

DOB:

Who has been [convicted of] [sentenced for]* the following offence(s):

[Charge 1]

[Charge 2]

The court, being satisfied that the means of the applicant (“A”) are insufficient to enable A to obtain legal aid and that it is desirable in the interests of justice that A should have free legal aid in the preparation and conduct of the appeal, hereby grants this criminal aid certificate and assigns to A as solicitor,

Solicitor’s name:

Solicitor’s firm:

[And I further direct, under Article 30(8) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, that only a solicitor shall be assigned to A for that purpose]**

Date

DISTRICT JUDGE (MAGISTRATES’ COURT)

* delete as appropriate

** insert if applicable

CHARGES LEGAL AID GRANTED IN RESPECT OF

[Charge 1]

[Charge 2]

Form H

**LEGAL AID, ADVICE AND ASSISTANCE (NORTHERN IRELAND) ORDER 1981
(ARTICLE 30(4))**

CRIMINAL AID CERTIFICATE FOR APPEAL TO COUNTY COURT

County Court Division of



An application having been made by:

DOB:

Who has been [convicted of] [sentenced for]* the following offence(s):

[Charge 1]

[Charge 2]

The court, being satisfied that the means of the applicant (“A”) are insufficient to enable A to obtain legal aid and that it is desirable in the interests of justice that A should have free legal aid in the preparation and conduct of the appeal, hereby grants this criminal aid certificate and assigns to A as solicitor,

Solicitor’s name:

Solicitor’s firm:

[And I further direct, under Article 30(8) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, that only a solicitor shall be assigned to A for that purpose]**

Date

ONE OF HER MAJESTY’S JUDGES OF THE COUNTY COURT

* delete as appropriate

** insert if applicable

CHARGES LEGAL AID GRANTED IN RESPECT OF

[Charge 1]

[Charge 2]

Form I

**EXTRADITION ACT 2003
(SECTIONS 184 AND 185)**

**CRIMINAL AID CERTIFICATE GRANTED BY THE APPROPRIATE JUDGE
OR THE HIGH COURT**

An application having been made by:

DOB:

A person in respect of whom a [Part 1] [Part 2]* warrant has been issued by a judicial authority of a [Category 1] [Category 2]* territory.

The court, being satisfied that the means of the applicant (“A”) are insufficient to enable A to obtain legal aid and that it is desirable in the interests of justice that A should have free legal aid in the preparation and conduct of the extradition proceedings, hereby grants this criminal aid certificate and assigns to A as solicitor,

Solicitor’s name:

Solicitor’s firm:

[And I further direct, under section 184(10) of the Extradition Act 2003, that only a solicitor shall be assigned to A for that purpose]**

[And I further direct that two counsel shall be assigned to A for that purpose]**

Date

[THE APPROPRIATE JUDGE]
[ONE OF HER MAJESTY’S JUDGES OF THE HIGH COURT]*

* delete as appropriate

** insert if applicable

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules make provision regarding the granting of free legal aid under Part III of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and sections 184 and 185 of the Extradition Act 2003.

The Rules are a consolidating instrument to replace the Legal Aid Certificates Rules (Northern Ireland) 1966, the Legal Aid (Defence Certificates) Rules (Northern Ireland) 1966 and the Legal Aid (Appeal Aid Certificates) Rules (Northern Ireland) 1966, which are revoked.

Rule 2 provides for the manner in which applications for the grant of a criminal aid certificate are to be recorded.

Rules 3 to 6 prescribe the manner in which solicitors and counsel are to be assigned in pursuance of such certificates.

Rule 7, together with the Schedule, prescribes the form of criminal aid certificates to be used when free legal aid is granted:

- for proceedings in the Magistrates' Court under Articles 28 and 28A of the 1981 Order;
- for proceedings in the Crown Court under Article 29 of the 1981 Order;
- for appeals to the County Court under Article 30 of the 1981 Order;
- for extradition proceedings under sections 184 and 185 of the 2003 Act.