

2012 No. 268

LEGAL AID AND ADVICE

**The Criminal Legal Aid (Recovery of Defence Costs Orders)
Rules (Northern Ireland) 2012**

Made - - - - *2nd July 2012*

Coming into operation - *15th October 2012*

The Department of Justice makes the following Rules in exercise of the powers conferred by Articles 33A and 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 and the Crown Court Rules Committee and it has obtained the approval of the Department of Finance and Personnel.

Citation, commencement and application

1.—(1) These Rules may be cited as the Criminal Legal Aid (Recovery of Defence Costs Orders) Rules (Northern Ireland) 2012 and shall come into operation on 15th October 2012.

(2) These Rules apply to cases in which a criminal aid certificate was granted on or after 15th October 2012.

Interpretation

2. In these Rules, unless the context otherwise requires—

“assisted person” means a person granted a criminal aid certificate;

“assisted person’s partner” means a person with whom the assisted person lives as a couple, and includes a person with whom the assisted person is not currently living but from whom they are not living separate and apart;

“the Commission” means the Northern Ireland Legal Services Commission established under Article 3 of the Access to Justice (Northern Ireland) Order 2003(c);

“criminal aid certificate” means a certificate granted under Article 29, or deemed to have been granted under Article 36(2), of the Order;

“family home” means the main or only residence of the assisted person’s partner and any children who normally live with that partner, whether or not the assisted person also resides there;

“financial means form” has the meaning given by rule 3;

(a) S.I. 1981/228 (N.I. 8)
(b) S.I. 1982/159 and S.I. 2010/976
(c) S.I. 2003/435 (N.I. 10)

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

3.—(1) Where it comes to the attention of the Commission that the financial means of an assisted person merit investigation or further investigation, the Commission may carry out such an investigation or further investigation.

(2) Where it decides to carry out an investigation or further investigation under paragraph (1), the Commission shall send a financial means form to the assisted person, in such form and manner as it may provide.

(3) The assisted person shall complete the financial means form referred to in paragraph (2) and then return the form to the Commission.

(4) Without prejudice to paragraphs (2) and (3), the assisted person shall supply such further particulars, information and documents as the Commission may require, including details of any change in the financial circumstances of the assisted person.

4.—(1) Where a criminal aid certificate has been granted in respect of a person for proceedings in the Crown Court, the Commission may apply to that court for an order requiring the assisted person to pay some or all of the cost of legal aid incurred under that certificate in the circumstances set out in these Rules.

(2) An order of the type mentioned in paragraph (1) shall be known as a Recovery of Defence Costs Order (an “RDCO”).

5.—(1) The judge hearing the case shall make an RDCO against an assisted person except as provided in paragraph (2) or (3).

(2) Subject to rule 12, an RDCO shall not be made against an assisted person who—

- (a) has not been convicted;
- (b) is directly or indirectly in receipt of—
 - (i) income support;
 - (ii) income-based jobseeker’s allowance;
 - (iii) guarantee state pension credit; or
 - (iv) income-related employment and support allowance;
- (c) has none of the following assets—
 - (i) capital over £3,000;
 - (ii) equity in that person’s principal residence over £100,000; or
 - (iii) gross annual income of over £22,235; or
- (d) is under the age of 18.

(3) Subject to rule 12, an RDCO shall not be made where the judge hearing the case is satisfied that—

- (a) it would not be reasonable to make such an order, on the basis of the information and evidence available; or
- (b) the payment of an RDCO would, owing to the exceptional circumstances of the case, involve undue financial hardship in respect of the assisted person, their dependants or immediate family.

6.—(1) An RDCO may be made up to a maximum amount of the full cost of legal aid incurred under the criminal aid certificate.

(2) An RDCO may provide for payment to be made forthwith or in specified instalments.

7. Where further information is required in order to decide whether to make an RDCO or to decide the terms of the RDCO, the judge may—

- (a) adjourn consideration of the matter; and
- (b) order that any further information which is required shall be provided.

8.—(1) Without prejudice to rule 9(1)(a), where it appears to the judge or the Commission that—

- (a) the assisted person has directly or indirectly transferred any resources to another person;
- (b) the assisted person has directly or indirectly deprived himself of any resources or expectations;
- (c) another person is or has been maintaining the assisted person in any proceedings; or
- (d) any of the resources of another person are or have been made available to the assisted person,

the judge or the Commission, as the case may be, may assess or estimate the value of the resources of that other person or the value of the resources or expectations of which the assisted person has so deprived himself, and may treat all or any of such resources or expectations as those of the assisted person.

(2) In this rule, “person” includes a company, partnership, body of trustees and any body of persons whether corporate or not corporate.

9.—(1) Except as provided in paragraph (2), for the purposes of calculating the financial resources of the assisted person—

- (a) the amount or value of every source of income and every resource of a capital nature available to the assisted person shall be taken into account; and
- (b) the amount or value of every source of income and every resource of a capital nature available to the assisted person’s partner shall be treated as the financial resources of the assisted person, unless the partner has a contrary interest in the criminal proceedings before the court.

(2) Unless there are exceptional circumstances, the following assets of the assisted person shall be taken into account by the judge when considering the terms of the order—

- (a) capital over £3,000;
- (b) equity in that person’s principal residence over £100,000;
- (c) gross annual income over £22,235.

(3) Notwithstanding any other provision in these Rules, where the assisted person’s principal residence is the family home, equity in that family home shall not be included as an asset of the assisted person.

10. Where requested to do so by the judge or the Commission, the solicitor for the assisted person shall provide an estimate of the total cost of legal aid which is likely to be incurred under the criminal aid certificate.

11. At the conclusion of the relevant proceedings, the judge shall—

- (a) subject to rule 5, make an RDCO and give reasons for the terms of the order;
- (b) if pursuant to rule 5(3) an RDCO is not made, give reasons for the decision not to make such an order.

12. Where information is required under rule 3 or 7(b) and such information fails to be provided, within such period as may be specified by the Commission or Court, an RDCO shall be made for the full cost of legal aid incurred under the criminal aid certificate.

13.—(1) The solicitor for the assisted person shall inform the Commission if it subsequently transpires that the cost of legal aid incurred under the criminal aid certificate was lower than the amount ordered to be paid under an RDCO.

(2) In the circumstances mentioned in paragraph (1), where the assisted person has paid the amount ordered to be paid under the RDCO, the balance shall be repaid to the assisted person.

14. On the application of the Commission or of their own motion, the judge may make an order prohibiting an individual who is required to furnish information or evidence from dealing with property where—

- (a) information has failed to be provided in accordance with these Rules;
- (b) the judge considers that there is a real risk that relevant property will be disposed of; or
- (c) at the conclusion of the case, the assessment of the cost of legal aid incurred under the criminal aid certificate or of the financial resources of the assisted person has not yet been completed.

15. Where an RDCO has been made, the assisted person and any other person affected shall have a right of appeal to the Court of Appeal against that order.

16. Any payment required to be made under an RDCO shall be made to the Commission in accordance with the order.

17. The Commission may enforce an RDCO in any manner which would be applicable to a civil debt between parties, and may add any costs incurred in connection with the enforcement to the amount to be paid under the RDCO.

Sealed with the Official Seal of the Department of Justice on 2nd July 2012

(L.S.)

David Ford
Minister of Justice

The Department of Finance and Personnel hereby approves the foregoing Rules

Sealed with the Official Seal of the Department of Finance and Personnel on 2nd July 2012

(L.S.)

John McKibbin
A senior officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules provide for Recovery of Defence Costs Orders to be made against legally-aided defendants who have been convicted in the Crown Court. The purpose of such an order is to recover such part of the cost of legal aid incurred under the criminal aid certificate as is reasonable in all the circumstances of the case, including the financial resources of the defendant. The Rules provide for the provision of information so that the judge may make the order, and for the freezing of assets where such information is required.

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