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STATUTORY RULES OF NORTHERN IRELAND

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**2012 No. 430**

**MAGISTRATES' COURTS**

**The Magistrates' Courts (Costs in Criminal Cases)  
(Amendment) Rules (Northern Ireland) 2012**

*Made* - - - - *3rd December 2012*

*Coming into operation* *1st January 2013*

The Magistrates' Courts Rules Committee makes the following Rules in exercise of the powers conferred by Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(1)</sup> and section 7 of the Costs in Criminal Cases Act (Northern Ireland) 1968<sup>(2)</sup> after consultation with the Department of Justice and with the agreement of the Lord Chief Justice.

**Citation and commencement**

1. These Rules may be cited as the Magistrates' Courts (Costs in Criminal Cases) (Amendment) Rules (Northern Ireland) 2012 and shall come into operation on 1st January 2013.

**Amendments to the Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1988**

2. The Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1988<sup>(3)</sup> shall be amended as follows.

3. In rule 4—

- (a) for “Secretary of State”, substitute “Director of Public Prosecutions”;
- (b) for the words from “the amount” to “Schedule 1”, substitute—

“the court may order the payment of—

- (a) such amount as it thinks just, in respect of the remuneration and outlay (other than outlay incurred in connection with witnesses recoverable under rule 5 and the Schedule) of the solicitor for the prosecution or, as the case may be, the defence in taking instructions, preparing the case, attending in court and, where counsel is not instructed, conducting the proceedings at the hearing and in respect of all other reasonable charges incidental to the proceedings;

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(1) S.I. 1981/1675 (N.I. 26): Article 13 was amended by paragraph 65 of Schedule 5 and by Schedule 18 to the Constitutional Reform Act 2005 (c.4); and by paragraph 133 of Schedule 18 to S.I. 2010/976.  
(2) 1968 c.10 (N.I.): section 7 was amended by rule 48 of S.R. 1979 No. 90.  
(3) S.R. 1988 No. 136; to which the most recent relevant amendment was made by S.R. 2008 No. 363.

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- (b) where it is reasonable to instruct counsel, such amount as it thinks just in respect of counsel's fees; or
  - (c) such amount for costs and outlay incurred by a party appearing in person as it thinks just".
4. In rule 5, for "Schedule 2", substitute "the Schedule".
  5. Omit Schedule 1.
  6. For Schedule 2, substitute the Schedule set out in the Schedule to these Rules.

*William A McNally*  
*Peter Luney*  
*Robin Steer*  
*John Rea*

Dated 3rd December 2012

SCHEDULE Rule 6

“SCHEDULE Rule 5

Amounts payable in connection with the attendance of witnesses, etc.

## PART 1

### SUBSISTENCE ALLOWANCES

#### Day subsistence

1. Where a witness, other than a professional or expert witness, has been necessarily absent from his or her place of residence, business or employment for the purpose of attending as a witness, and for a period not including an overnight absence, the following allowances are payable:

Attendance lasting up to five hours	£2.25
Attendance lasting between five hours and ten hours	£4.50
Attendance lasting over ten hours	£9.75

#### Overnight allowance

2. Where a witness has been necessarily absent from his or her place of residence overnight for the purpose of attending as a witness, and has stayed in a hotel because he or she could not otherwise get to court in time in the morning or get home on the same day, the following allowances are payable:

Attendance overnight in Belfast (ordinary witness)	£95.00 per night
Attendance overnight in Belfast (professional or expert witness)	£85.25 per night
Attendance overnight elsewhere (ordinary witness)	£65.00 per night
Attendance overnight elsewhere (professional or expert witness)	£55.25 per night

#### Night subsistence allowance

3. Where a witness, other than a professional or expert witness, has been necessarily absent from his or her place of residence overnight for the purpose of attending as a witness, and has stayed with family or friends because he or she could not otherwise get to court in time in the morning or get home on the same day, an allowance of £25.00 per night is payable.

## PART 2

### TRAVEL COSTS

4. Where a witness has travelled to and from court, the following rates are payable—
- full reimbursement of rail, bus and coach fares at standard class rates;
  - where it is necessary for an expert witness to undertake preparation for court on a train, a first-class rail fare;
  - in respect of a private car—

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- (i) a rate of 25p per mile; and
- (ii) in respect of another witness or person authorised to come to court with the witness, and who travels in the witness’s car, a rate of 2p per mile for the first passenger and 1p per mile for every other passenger; or
- (iii) where the court considers it reasonable that it was necessary to use private transport instead of public transport, a rate of 45p per mile;
- (d) if the witness was a passenger in another person’s private car, and the driver was not a witness or person authorised to come to court with the witness; the rate under sub-paragraph (c)(i) or (c)(iii) as applicable;
- (e) in respect of a private motorcycle—
  - (i) a rate of 23.8p per mile;
  - (ii) if it can be shown that it was necessary to use private transport instead of public transport, a rate of 25.4p per mile;
- (f) in respect of a bicycle, a rate of 20p per mile;
- (g) in respect of parking, where payment is made under sub-paragraph (c)(iii) or (e)(ii), full reimbursement;
- (h) in the event of an emergency, or where the witness is ill, disabled or elderly, or where there is no other available method of transport, and the court considers it reasonable, full reimbursement of the cost of taxi fares or other hired vehicles, including any reasonable tips;
- (i) where the court considers it reasonable, the economy-class fare in respect of another form of transport, including air and sea transport.

### PART 3

#### LOSS OF EARNINGS

##### **Employed persons (ordinary witnesses)**

5. If an employed witness, other than a professional or expert witness, loses pay while taking time off work to attend court, the following allowances are payable:

For an absence of work up to four hours	£33.50
For an absence of work of over four hours	£67.00

##### **Self-employed persons (ordinary witnesses)**

6. If a self-employed witness, other than a professional or expert witness, loses earnings while taking time off work to attend court, the following allowances are payable:

For an absence of work up to four hours	£42.95
For an absence of work of over four hours	£85.90

### **Compensatory allowance (professional witnesses)**

7. Where a professional witness attends court, and is not entitled to payment under paragraph 12, the following allowances are payable:

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For an absence from the witness's practice or home of up to two hours	£83.50
For an absence from the witness's practice or home of between two and four hours	£117.00
For an absence from the witness's practice or home of between four and six hours	£174.00
For an absence from the witness's practice or home of more than six hours	£234.00

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8. A sum that the court considers to be reasonable may be paid in respect of other fees paid to professional witnesses.

### **Costs of employing a person to cover absence, a locum or childcare costs**

9. If a witness, other than a professional or expert witness, employs a person to work or act in his or her absence while the witness is at court, a sum is payable up to a maximum of £67.00 per day.

10. If an allowance under paragraph 5 or 6 is payable, payment under paragraph 9 may only be made where the court considers it to be necessary and reasonable.

11. If a witness pays for childcare costs while he or she is at court, a sum that the court considers to be reasonable is payable up to a maximum of £67.00 per day.

12. If a professional witness employs a locum to work or act in his or her absence while the witness is at court, the following allowances are payable:

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For an absence from the witness's practice of up to two hours	£89.00
For an absence from the witness's practice of between two and four hours	£125.00
Where the court considers it reasonable, for an absence from the witness's practice of more than four hours	£234.00

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## **PART 4**

### **OTHER COSTS**

13. Where a witness, other than a professional or expert witness, incurs other costs which the court considers to be reasonable, a sum up to a maximum of £67.00 per day is payable.

## **PART 5**

### **EXPERT WITNESS FEES**

14. A sum that the court considers to be reasonable may be paid in respect of fees paid to expert witnesses.”

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## **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules amend the Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1988 ([S.R. 1988 No. 136](#)) so as to remove the maximum amount payable for fees of solicitors or counsel; update the amounts payable in connection with the attendance of witnesses, etc.; and substitute reference to the Secretary of State with reference to the Director of Public Prosecutions in consequence of paragraph 3 of Schedule 14 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 ([S.I.2010/976](#)).