

2016 No. 198

ACCESS TO JUSTICE

**The Criminal Defence Services (Remuneration) Order (Northern
Ireland) 2016**

Made - - - - - *24th March 2016*

Coming into operation - *15th April 2016*

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The Department of Justice makes the following Order in exercise of the powers conferred by Articles 23(3), 24(3) and (5) and 47 of the Access to Justice (Northern Ireland) Order 2003(a), and now vested in it(b).

In accordance with Article 47(2)(a) of the 2003 Order, the Department has consulted with the Lord Chief Justice, the Law Society, the General Council of the Bar of Northern Ireland and the Director of Public Prosecutions.

In accordance with Article 47(1) of the 2003 Order, the Department has had regard to the matters specified in that provision.

PART 1 GENERAL

Citation and commencement

1. This Order may be cited as the Criminal Defence Services (Remuneration) Order (Northern Ireland) 2016 and shall come into operation on 15th April 2016.

Interpretation

2. In this Order, unless the context otherwise requires –

“the 1980 Act” means the Criminal Appeal (Northern Ireland) Act 1980(c);

“criminal defence services” has the meaning given by Article 21(1) of the 2003 Order;

“the Department” means the Department of Justice;

“disbursements” means travelling and witness expenses and other out of pocket expenses incurred by a solicitor in providing criminal defence services;

“fee-earner” means a solicitor or any clerk who regularly does work for which it is appropriate to make a direct charge to the client;

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

“relevant proceedings” means the proceedings listed in Schedule 2 to the Access to Justice (2003 Order) (Commencement No. 8) Order (Northern Ireland) 2015(d);

“remuneration” means –

(a) in the case of a solicitor, the fees and disbursements payable under Article 24(3) of the 2003 Order,

(b) in the case of counsel, the fees payable under that provision,

and, in either case, includes the fees payable to the representative under Article 23(3) of that Order for any advice and assistance provided under regulation 4 of the Criminal Defence Services (General) Regulations (Northern Ireland) 2016(e);

(a) S.I. 2003/435 (N.I. 10). Articles 23, 24 and 47 of the 2003 Order were amended by section 6 of, and paragraph 6(25), (26) and (38) of Schedule 2 to, the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014 – 2014 c. 11 (N.I.)

(b) S.I. 2010/976

(c) 1980 c. 47. Sections 19 and 37 of, together with paragraph 1 of Schedule 1 to, the 1980 Act were repealed by the Access to Justice (2003 Order) (Commencement No. 8) Order (Northern Ireland) 2015 – S.R. 2015 No. 237 (C. 17)

(d) S.R. 2015 No. 237 (C. 17)

(e) S.R. 2016 No. 197

“representative” means a solicitor or counsel who has been selected by an individual under Article 30(1) of the 2003 Order;

“right to representation” means a right to representation granted under Article 26(1) or (5) of the 2003 Order;

“the Taxing Master” means the Master (Taxing Office).

Application

3.—(1) This Order shall apply for the determination of the remuneration payable to representatives in respect of providing criminal defence services where the work is done under a right to representation granted on or after 15th April 2016.

(2) Where a right to representation is granted before 15th April 2016 for proceedings in the Court of Appeal, the provisions of section 28 of the 1980 Act apply.

Scope

4.—(1) Article 5 and Part 2 of this Order apply to proceedings in the Court of Appeal only.

(2) Article 6 applies to proceedings in the Supreme Court only.

(3) Article 7 applies to retrials in the Crown Court only.

Proceedings in the Court of Appeal

5. In proceedings in the Court of Appeal, the remuneration payable to a representative shall be determined by the Taxing Master in accordance with Part 2 of this Order and such Practice Directions as may be issued by the Master.

Proceedings in the Supreme Court

6.—(1) In proceedings in the Supreme Court, the remuneration payable to a representative shall be determined by such officer as may be prescribed by order of the Supreme Court.

(2) Subject to paragraph (1), this Order does not apply to proceedings in the Supreme Court.

Retrials in the Crown Court

7.—(1) Paragraph (2) applies in relation to the remuneration payable to a representative in respect of the case of an appellant who is to be retried before the Crown Court by virtue of an order of the Court of Appeal under section 6 of the 1980 Act.

(2) The provisions of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005^(a) apply for the determination of the remuneration payable for the retrial as they apply in relation to free legal aid under Article 29 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981^(b).

(3) Subject to paragraphs (1) and (2), this Order does not apply to proceedings in the Crown Court.

(a) S.R. 2005 No. 112, which was amended by S.R. 2009 No. 267, S.R. 2011 No. 152, S.R. 2013 No. 293, S.R. 2015 No. 215, S.R. 2016 No. 200 and S.R. 2016 No. 201

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

PART 2

APPEAL TO COURT OF APPEAL FROM CROWN COURT

Service of notices and documents

8.—(1) Any document that is required to be sent to the Taxing Master under this Part may be sent –

- (a) by post or by personal delivery to an address specified by the Master; or
- (b) by electronic mail.

(2) Any notice or document that is required to be sent to a representative under this Part may be sent –

- (a) by post to the postal address given by the representative as their address for service; or
- (b) by electronic mail.

Claims for remuneration by representatives

9.—(1) Claims for remuneration by representatives shall be made and determined in accordance with the provisions of this Article and Article 10.

(2) Claims for disbursements by solicitors shall be made and determined in accordance with the provisions of this Article and Article 11.

(3) Subject to Article 15, no claim by a representative for remuneration in respect of work provided by way of criminal defence services shall be entertained unless it is submitted within three months of the conclusion of the proceedings to which the right to representation relates.

(4) Subject to paragraph (5), a claim for remuneration shall be submitted to the Taxing Master in such form and manner as the Master may direct and shall be accompanied by any receipts or other documents in support of any disbursement claimed.

(5) A claim shall –

- (a) summarise, where appropriate, the items of work done by the representative or other fee-earner in respect of which fees are claimed;
- (b) state the dates on which the items of work were done, the time taken where appropriate, the sums claimed and whether the work was done for more than one assisted person;
- (c) specify, where appropriate, the representative or other fee-earner who undertook each of the items of work claimed;
- (d) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(6) Where there are any special circumstances which should be drawn to the attention of the Taxing Master, the representative shall specify them.

(7) The representative shall supply such further particulars, information and documents as the Taxing Master may require.

Determination of representatives' fees

10.—(1) The Taxing Master shall consider the claim, any further particulars, information or documents submitted by the representative under Article 9 and any other relevant information and shall allow such work as appears to the Master to have been reasonably undertaken and properly done.

(2) The Taxing Office shall send to the representative a notice of the Taxing Master's provisional allowance.

(3) If, within 21 days from receipt of the notice, the representative notifies the Taxing Office in writing that the representative objects to the provisional allowance, the Office shall give a date and time at which the objection shall be considered by the Taxing Master.

(4) If no objection is received in accordance with paragraph (3), the provisional allowance shall stand confirmed.

(5) When the allowance has been confirmed or finalised by the Taxing Master after considering any objections, the Taxing Office shall issue a certificate certifying the amount of the allowance.

Determination of solicitors' disbursements

11. The Taxing Master shall allow such disbursements claimed by a solicitor under Article 9 as appear to the Master to have been actually and reasonably incurred.

Payment of remuneration

12.—(1) Having determined the remuneration payable to a representative in accordance with this Order, the Taxing Master shall notify the representative and the Department of the amount payable, and the Department shall authorise payment accordingly.

(2) Where the remuneration payable under paragraph (1) is varied as a result of any review or appeal made or brought pursuant to this Order, then –

- (a) where the remuneration is increased, the Department shall authorise payment of the increase;
- (b) where the remuneration is decreased, the representative shall repay the amount of such decrease; and
- (c) where the payment of any costs to the representative is ordered under Article 13(6)(b) or 14(5), the Department shall authorise such payment.

Review by the Taxing Master

13.—(1) Where a representative is dissatisfied with the amount of the remuneration allowed by the Taxing Master under Article 10, the representative may apply to the Master to review that decision.

(2) Subject to Article 15, the application under paragraph (1) for a review of the Taxing Master's decision under Article 10 must be made within 21 days of receipt of that decision or within such other period as may be fixed by the Master.

(3) Every applicant for review under this Article must at the time of making the application –

- (a) deliver to the Taxing Master the applicant's objections in writing specifying separately in relation to the items to be reviewed, the amount claimed for those items, the amount allowed and the grounds of objection to the amount allowed;
- (b) indicate in writing whether the applicant wishes to appear or to be represented at the review or whether they will accept a decision given in their absence.

(4) A review under this Article shall be carried out by the Taxing Master.

(5) The Taxing Master may require the applicant to provide any further information which the Master requires for the purposes of the review and, unless the Master otherwise directs, no further evidence shall be received on the hearing of a review and no ground of objection shall be valid which was not specified in the application under paragraph (3).

(6) On a review under this Article, the Taxing Master may –

- (a) confirm or vary the amount of remuneration allowed to the representative under Article 10, and may increase or reduce that amount to such extent as the Master thinks fit; and
- (b) allow the applicant a sum in respect of part or all of any reasonable costs incurred by the applicant in connection with the review.

(7) The Taxing Master shall communicate the decision on a review to the applicant in writing and shall state the reasons for that decision by reference to the objections and any special circumstances or facts relevant to it.

(8) The Taxing Master shall also communicate the decision on the review and the reasons for it to the Department and shall send to the Department copies of such documents as the Department may require.

Appeals to the High Court

14.—(1) Where a representative is dissatisfied with the decision of the Taxing Master on a review under Article 13, the representative may appeal against that decision to the High Court and the Department shall be a respondent to such an appeal.

(2) Where the Department is dissatisfied with the decision of the Taxing Master on an application for review under Article 13, it may appeal against that decision to the High Court and the representative shall be a respondent to the appeal.

(3) On any appeal under this Article, the High Court may confirm or vary the amount of remuneration allowed to the representative under Article 13, and may increase or reduce that amount to such extent as the High Court thinks fit.

(4) The decision of the High Court on an appeal under paragraph (1) or (2) shall be final.

(5) An appeal to the High Court under this Article shall be made in accordance with the provisions of Order 55 Part 2 of the Rules of the Court of Judicature (Northern Ireland) 1980(a).

Time limits

15.—(1) Subject to paragraph (2), the time limit within which any act is required or authorised to be done under this Order may, for good reason, be extended –

- (a) in the case of acts required or authorised to be done under Article 14, by the High Court and
- (b) in the case of acts required or authorised to be done by a representative under any other Article, by the Taxing Master.

(2) Where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the Taxing Master or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the remuneration, provided that the remuneration shall not be reduced unless the representative has been permitted a reasonable opportunity to show cause orally or in writing why the remuneration should not be reduced.

Sealed with the Official Seal of the Department of Justice on 24th March 2016



David Ford
Minister of Justice

(a) S.R. 1980 No. 346, to which there have been various amendments none of which are relevant to this Order. The Rules of the Supreme Court (Northern Ireland) 1980 were renamed in accordance with paragraph 3 of Schedule 11 to the Constitutional Reform Act 2005 (c. 4)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the remuneration payable to solicitors and counsel for providing representation under Part 2 of the Access to Justice (Northern Ireland) Order 2003 in respect of criminal appeals in the Court of Appeal and the Supreme Court, and in the case of an appellant who is to be retried before the Crown Court.

The Order deals with the manner in which the remuneration is to be determined and paid. In respect of appeals to the Court of Appeal, in part, the provisions draw on the corresponding provisions contained in section 28 of the Criminal Appeal (Northern Ireland) Act 1980, together with Practice Directions issued by the Master (Taxing Office) in respect of criminal appeals.

The legal aid provisions contained in the 1980 Act are being superseded by criminal defence services as the new legislative framework for the public funding of representation in criminal appeals.

In respect of appeals to the Court of Appeal, initial determinations will be undertaken by the Taxing Master. Provision is made enabling solicitors and counsel to apply to the Taxing Master for a review of the determination in a particular case, and for an appeal to the High Court against the decision of the Master on a review.

In respect of appeals to the Supreme Court, the remuneration payable will be determined by an officer of that Court.

Free legal aid in respect of criminal proceedings for cases up to and including the Crown Court will continue to be funded under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

This Order comes into operation on 15th April 2016.

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