

STATUTORY INSTRUMENTS

1981 No. 228

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

PART III

FREE LEGAL AID IN CRIMINAL PROCEEDINGS

Modifications etc. (not altering text)

C1 Pt. 3 transfer of functions (1.4.2015) by [Legal Aid and Coroners' Courts Act \(Northern Ireland\) 2014](#) (c. 11), **ss. 1(2)(a)(3)(4), 12(1)** (with **ss. 2(3), 9, Sch. 1 para. 3(3)**); S.R. 2015/193, art. 2(a)

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 [^{F1}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.

[^{F2}(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 ^{F3}...;
- (b) give particulars of the offence charged; and
- (c) set out the grounds of the application.

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(5) Where an application is made by virtue of this Article, [^{F4}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.

(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](#))

[^{F5}Free legal aid for diversionary youth conferences

28A.—(1) Where a diversionary youth conference has been, or is to be, convened with respect to a child, he may make an application for free legal aid to a magistrates' court.

(2) An application under paragraph (1) shall be made—

(a) by a written statement in the prescribed form addressed to the clerk of petty sessions for a magistrates' court; or

(b) if an application under sub-paragraph (a) is refused, in person to a magistrates' court.

(3) If, on an application made under paragraph (1), it appears to the court that—

(a) the means of the child are insufficient to enable him to obtain legal aid; and

(b) it is desirable in the interests of justice that he should have free legal aid in preparing for and participating in the diversionary youth conference,

the court may grant in respect of him a criminal aid certificate.

(4) A person in respect of whom a criminal aid certificate has been granted under this Article shall be entitled to have—

(a) a solicitor; and

(b) subject to paragraph (5), counsel,

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

(5) Free legal aid given for the purposes of any diversionary youth conference shall not include representation by counsel except where—

(a) the offence with respect to which the diversionary youth conference is convened is an indictable offence; and

(b) the court is of the opinion that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable.]

F5 2002 c. 26

Free legal aid in the Crown Court

29.—(1) Any person returned for trial for an indictable offence^[F6] or in respect of whom a notice of transfer has been given under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988^[F7] (serious and complex fraud) or under Article 4 of the Children's Evidence (Northern Ireland) Order 1995 (certain cases involving children)] shall be entitled to free legal aid in the preparation and conduct of his defence at the trial and to have solicitor and counsel assigned to him for that purpose in such manner as may be prescribed by rules made under Article 36, if a criminal aid certificate is granted in respect of him in accordance with the provisions of this Article.

(2) Subject to the provisions of this Article, a criminal aid certificate may be granted in respect of any person—

- (a) by a magistrates' court, upon his being returned for trial; or
- (b) by the judge of the court before which he is to be tried, at any time after reading ^{F8}... the written statements tendered^{F8}... at the preliminary enquiry,^[F6 or]
- ^[F6](c) where a notice of transfer is given under Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988, by the magistrates' court before which the person to whom the notice relates is brought or by the Crown Court sitting at the place specified by the notice as the proposed place of trial or at any place substituted for it by a direction mentioned in Article 4(5) of that Order, ^{F9} . . .]
- (d) ^{F9}^[F7 or]
- ^[F7](e) where a notice of transfer is given under Article 4 of the Children's Evidence (Northern Ireland) Order 1995, by the magistrates' court before which the person to whom the notice relates is brought or by the Crown Court sitting at the place specified by the notice as the proposed place of trial or at any place substituted for it by a direction mentioned in paragraph 2(4) of Schedule 1 to that Order,]

and such court or judge is in this Part referred to as “the certifying authority”.

(3) A criminal aid certificate shall not be granted in respect of any person unless it appears to the certifying authority that his means are insufficient to enable him to obtain such aid, but where it so appears to the certifying authority, that authority—

- (a) shall grant a criminal aid certificate in respect of any person returned for trial upon a charge of murder; and
- (b) may grant a criminal aid certificate in respect of any person returned for trial upon any other charge if it appears to the certifying authority, having regard to all the circumstances of the case (including the nature of the defence, if any, as may have been set up), that it is desirable in the interests of justice that he should have free legal aid in the preparation and conduct of his defence at the trial.

(4) Where a criminal aid certificate is granted to any person under this Article 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 the Court of Appeal or of an application for leave to appeal and in matters preliminary thereto, being work done within the ordinary time for giving the notice or making the application; and
- (b) obtaining the opinion of the counsel assigned to that person as to the appeal or application or matters connected therewith; ^{F10}and

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(c) applying to a magistrates' court for bail under section 91 of the Justice Act (Northern Ireland) 2011.]

(5) The foregoing provisions of this Article shall apply to persons who appear or are brought before the Crown Court to be dealt with and shall, for the purposes of their application to such persons be amended as follows:—

- (a) in paragraph (1) for the words “returned for trial for an indictable offence” there shall be substituted the words “ appearing or brought before the Crown Court to be dealt with ” and the words “in the preparation and conduct of his defence at the trial” and “for that purpose” shall be omitted;
- (b) in paragraph (2)(b) for the words from “is to be” onwards there shall be substituted the words “ appears or is brought ”;
- (c) in paragraph (3)(b) for the words “returned for trial upon any other charge” there shall be substituted the words “ appearing or brought before it ” and the words “in the preparation and conduct of his defence at the trial” shall be omitted.

F6 1988 NI 16

F7 1995 NI 3

F8 Words in art. 29(2)(b) repealed (17.10.2022) by [Criminal Justice \(Committal Reform\) Act \(Northern Ireland\) 2022](#) (c. 4), s. 5(2), **Sch. para. 7**; S.R. 2022/221, art. 2(d)

F9 Art. 29(2)(d) and preceding word repealed (4.7.1996) by [Criminal Procedure and Investigations Act 1996](#) (c. 25), s. 46(2), **Sch. 5** (as modified in its application to Northern Ireland by Sch. 4 paras. 19, 36)

F10 Art. 29(4)(c) and word added (11.6.2012) by [Justice Act \(Northern Ireland\) 2011](#) (c. 24), **ss. 83(3), 111(3)**; S.R. 2012/214, art. 3(a)

Free legal aid on appeal to the county court

30.—(1) Where a person who has been convicted of an offence or sentenced for an offence by a magistrates' court desires to appeal to a county court against the conviction or the sentence, but has not sufficient means to enable him to obtain legal aid for the purpose, he may make an application for free legal aid to the court by which he was convicted or sentenced, or to any magistrates' court ^{F11}..., and where a person so convicted or sentenced has given notice of appeal to a county court, the other party to the appeal, if he has not sufficient means to enable him to obtain legal aid for the purpose of resisting the appeal, may make an application for free legal aid to any magistrates' court ^{F11}....

(2) An application made under paragraph (1) may be made either—

- (a) in person to the court; or
- (b) by letter addressed to the clerk of petty sessions ^{F12}..., setting out the facts of the case and the grounds of the application.

(3) If on an application made under paragraph (1) it appears to the court that—

- (a) the means of the applicant are insufficient to enable him to obtain legal aid; and
- (b) it is desirable in the interests of justice that the applicant should have free legal aid in the preparation and conduct of his appeal, or, as the case may be, in resisting the appeal;

the court may grant in respect of him a criminal aid certificate.

(4) Where, on an application made under paragraph (1), the magistrates' court has refused to grant a criminal aid certificate the applicant may make an application for the same purpose to the court to which the appeal lies either—

- (a) in person to that court; or

- (b) by letter addressed to the chief clerk and setting out the facts of the case and the grounds of the application;

and the court shall have the like power exercisable on the like grounds of granting a criminal aid certificate as the magistrates' court.

(5) Without prejudice to paragraph (4), an application for free legal aid under this Article may be made in person to the court before which the appeal is heard by an applicant who has not made the previous application to a magistrates' court or clerk of petty sessions which is required under this Article; and if the court before which the appeal is heard is satisfied that there were adequate reasons for the applicant not making a previous application as aforesaid it shall deal with his application as if duly made under paragraph (4).

(6) In paragraph (5) the expression "adequate reasons" includes lack of knowledge by the applicant of the law or procedure.

(7) A person in respect of whom a criminal aid certificate has been granted under this Article shall be entitled, subject to paragraph (8), to have a solicitor and counsel assigned to him in the manner prescribed by rules made under Article 36.

(8) Where before the court to which the appeal lies a party may be heard by a solicitor, the court granting the criminal aid certificate may direct that a solicitor only shall be assigned.

(9) A person in respect of whom a criminal aid certificate has been granted shall be entitled to free legal aid—

- (a) in giving notice of appeal to a county court, and in matters preliminary thereto;
- (b) in the preparation and conduct of his appeal or, as the case may be, in resisting the appeal;
- (c) in applying for a case to be stated for the opinion of the Court of Appeal, and in matters preliminary thereto.

(10) Paragraph (9)(a) and (c) shall apply in relation to work reasonably undertaken and properly done by the solicitor assigned to the person to whom a criminal aid certificate has been granted, being work done within the ordinary time for giving the notice of appeal or, as the case may be, making the application for the case to be stated.

(11) Paragraph (9)(a), (b) and (c) shall, where counsel is assigned to the person to whom a criminal aid certificate has been granted, include the obtaining by the solicitor assigned to that person of the counsel's opinion as to the appeal or application or matters connected therewith.

(12) This Article shall, with the necessary modifications, apply to—

- (a) an appeal under ^{F13}Article 141(1) of the Magistrates' Courts (Northern Ireland) Order 1981] as if the appeal were an appeal against a conviction; and
- (b) an appeal under ^{F14}Article 51(4) of the Mental Health (Northern Ireland) Order 1986] as if the appeal were an appeal against sentence.

F11 Words in art. 30(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 85(2)(a), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

F12 Words in art. 30(2)(b) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 85(2)(b), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

F13 1981 NI 26

F14 1986 NI 4

Resolution of doubts under Articles 28 to 30

31. If, on a question of granting a person free legal aid under Article 28,^{F15} 28A,] 29 or 30, there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable

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in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.

F15 2002 c. 26

Statements for purposes of free legal aid

32.—(1) Before a person is granted free legal aid under Article 28,^[F16 28A,] 29 or 30 he may be required to furnish a written statement in the prescribed form about matters relevant for determining whether his means are insufficient to enable him to obtain legal aid, and if a person in furnishing such a written statement as aforesaid (whether required so to do or not) knowingly makes any false statement or false representation he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding^[F17 level 3 on the standard scale] or to imprisonment for a term not exceeding three months or to both.

(2) Notwithstanding any statutory provision prescribing the period within which summary proceedings may be commenced, proceedings for an offence under paragraph (1) may be commenced at any time within the period of six months from the date on which evidence, sufficient in the opinion of the Attorney General to justify a prosecution for the offence, comes to the knowledge of the Attorney General, or within the period of twelve months after the commission of the offence, whichever period last expires.

(3) For the purposes of paragraph (2) a certificate purporting to be signed by the Attorney General as to the date on which such evidence as aforesaid has come to the knowledge of the Attorney General, shall be conclusive evidence thereof.

F16 2002 c. 26

F17 1984 NI 3

Report on means of applicant for free legal aid

33.—(1) Where a person has applied for free legal aid and has furnished a statement of means under Article 32(1) the court having power to grant a certificate entitling him to such legal aid may, before or after the granting of the certificate, require the^[F18 Department for Social Development] to arrange for an officer of that Department to enquire into the means of that person and where such a request is made that Department shall comply with it and arrange for the officer to make a report to the court.

(2) Where the court receives a report under paragraph (1) before a certificate is granted, it shall, in determining whether or not to grant the certificate, have regard to the report and where the court receives such a report after a certificate has been granted, it may revoke the certificate if it appears to the court that the person to whom the certificate was granted—

- (a) wilfully withheld material information from the court; or
- (b) knowingly made a false statement in furnishing information to the court; or
- (c) furnished to the court, due to error or mistake, a statement of means which was misleading to a significant extent.

(3) Where a certificate is revoked under paragraph (2), the cost of legal aid incurred to the date of revocation may be recovered from the person to whom the certificate was granted (or if such person was a child or young person, the parent or guardian) as a civil debt due to the Crown and a county court notwithstanding any limitation imposed on its jurisdiction under any statutory provision shall have jurisdiction to hear and determine any action brought to recover such cost.

[^{F19}(4) Paragraph (3) does not apply in relation to a person who is already subject to an order under Article 33A(1) in respect of the cost of legal aid incurred.]

F18 2005 NI 19

F19 Art. 33(4) inserted (1.4.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\)](#), **ss. 81(3)**, 111(3); S.R. 2012/142, art. 2(b)

Modifications etc. (not altering text)

C2 Art. 33(1) continued (1.4.2015) by [Legal Aid and Coroners' Courts Act \(Northern Ireland\) 2014 \(c. 11\)](#), s. 12(1), **Sch. 2 para. 1(2)** (with ss. 2(3), 9, Sch. 1 para. 3(3), Sch. 2 para. 1(2)); S.R. 2015/193, art. 2(e)

[^{F20}**Order to recover costs of legal aid**

33A.—(1) Where a person has been granted a criminal aid certificate the court may, subject to rules made under Article 36, make an order requiring him to pay some or all of the cost of legal aid incurred to the date of the order unless he is already subject to an action under Article 33(3) to recover that cost.

(2) Rules made under Article 36 may make provision about—

- (a) the descriptions of courts by which, and individuals against whom, an order under paragraph (1) may be made,
- (b) the circumstances in which such an order may be made and the principles to be applied in deciding whether to make such an order and the amount to be paid,
- (c) the persons who may apply to the court for such an order to be made and the circumstances and manner in which that application may be made,
- (d) the determination of the cost of legal aid incurred for the purposes of the making of such an order,
- (e) the manner in which, and persons by whom, an investigation into the means of any person may be carried out for the purposes of making such an order,
- (f) the furnishing of information and evidence to the court or the [^{F21}Director] for the purpose of enabling the court to decide whether to make such an order and (if so) the amount to be paid,
- (g) prohibiting persons who are required to furnish information or evidence from dealing with property until they have furnished the information or evidence or until a decision whether to make an order, or as to the amount to be paid, has been made,
- (h) rights of appeal against such an order,
- (i) the person or body to which, and manner in which, payments required by such an order must be made and what that person or body is to do with them,
- (j) the enforcement of such an order (including provision for the imposition of charges in respect of unpaid amounts), and
- (k) such other matters as the Department of Justice considers necessary or appropriate.]

F20 Art. 33A inserted (1.4.2012) by [Justice Act \(Northern Ireland\) 2011 \(c. 24\)](#), **ss. 81(2)**, 111(3); S.R. 2012/142, art. 2(b)

F21 Word in [art. 33A\(2\)\(f\)](#) substituted (1.4.2015) by [Legal Aid and Coroners' Courts Act \(Northern Ireland\) 2014 \(c. 11\)](#), s. 12(1), **Sch. 2 para. 1(3)** (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, art. 2(e)

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Free legal aid for children and young persons

34. The parent or guardian of a child^{F22} . . . may, on behalf of that child^{F23} . . . , make any application for free legal aid under the provisions of this Part, and any written statement of the means of that child^{F23} . . . required under Article 32(1).

- F22** Words in art. 34 repealed (16.4.2007) by [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), ss. 86, 87, [Sch. 13](#); [S.R. 2007/237](#), [art. 2](#), [Sch.](#)
- F23** [1998 NI 9](#)

Further provisions as to issue of certificates

35. For the purposes of this Part, the expressions “defence” and “trial” shall be taken as relating not only to proceedings on the issue of the defendant's guilt, but also to proceedings on the question of the sentence to be passed or order to be made; and any power to grant a criminal aid certificate to a person returned for trial or to a person charged with an offence before a magistrates' court shall be exercisable after as well as before that person has pleaded or has been found guilty.

[^{F24}Court-ordered youth conferences

35A.—(1) In this Part references to—

- (a) the preparation and conduct of a person's defence before a court or at a trial;
- (b) the preparation and conduct of an appeal; and
- (c) resisting an appeal,

include preparation for and participation in any court-ordered youth conference (but not any diversionary youth conference).

(2) In Article 29, as it applies by virtue of paragraph (5) of that Article, references to free legal aid to which a person appearing or brought before the Crown Court to be dealt with is entitled include free legal aid in the preparation for and participation in any court-ordered youth conference (but not any diversionary youth conference).]

- F24** [2002 c. 26](#)

Expenses of free legal aid and making of rules

36.—(1) In any case where a criminal aid certificate has been granted in respect of any person, the expenses properly incurred in pursuance of that certificate including the fees of a solicitor and, where counsel has been assigned, of counsel, shall be defrayed out of moneys provided by [^{F25}the Assembly], subject nevertheless to any rules made under this Article and to any directions as to the vouching of payments and the keeping of accounts, records or receipts which may be given by the Treasury.

(2) If upon the trial before the Crown Court of a person in respect of whom a criminal aid certificate has not been granted, his defence is undertaken by counsel or solicitor or both at the request of the judge, the cost thereof may be paid as if a criminal aid certificate had been granted to that person.

(3) The [^{F26}Lord Chancellor], after consultation with the Lord Chief Justice, the Attorney General, and, where appropriate the Crown Court Rules Committee, the County Court Rules Committee and the Magistrates' Courts Rules Committee, and with the approval of the Treasury, may make rules generally for carrying this Part into effect and such rules shall in particular prescribe—

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- (a) the form of criminal aid certificates;
 - (b) the manner in which counsel and solicitors are to be assigned in pursuance of such certificates;
 - [^{F27}(bb) the form for the purpose of Article 28A(2)(a);]
 - (c) the form for the purpose of Article 32(1); and
 - (d) the rates or scales of payment of any fees, costs or other expenses which are payable under this Part.
- [^{F28}(4) Except as provided by paragraph (5), rules under this Article are subject to negative resolution.
- (5) The rules to which paragraph (6) applies shall not be made unless a draft of the rules has been laid before, and approved by resolution of, the Assembly.
- (6) This paragraph applies to—
- (a) rules made under this Article which contain any provision made by virtue of Article 31 (as substituted by section 80 of the Justice Act (Northern Ireland) 2011);
 - (b) rules made under this Article which contain any provision made by virtue of Article 36A (as substituted by Schedule 2 to the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014);
 - (c) rules made under this Article which contain any provision made by virtue of Article 36B (as substituted by Schedule 2 to the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014);
 - (d) rules made under this Article which contain any provision made by virtue of Article 38A (as inserted by Schedule 2 to the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014).]

F25 Words in art. 36(1) substituted (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(5), **Sch. 18 para. 130(3)(a)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

F26 SI 1982/159

F27 2002 c. 26

F28 Art. 36(4)-(6) substituted for art. 36(4) (1.4.2015) by [Legal Aid and Coroners' Courts Act \(Northern Ireland\) 2014 \(c. 11\)](#), s. 12(1), **Sch. 2 para. 1(4)** (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, art. 2(e)

Modifications etc. (not altering text)

C3 Art. 36(1): functions of Treasury or Minister for the Civil Service transferred to Department of Finance and Personnel (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), **15(4)(e)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

C4 Art. 36(3): functions of Treasury or Minister for the Civil Service transferred to Department of Finance and Personnel (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), **15(4)(e)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

Assignment of solicitor and counsel

[^{F29}**36A.**—(1) Rules under Article 36(3)(b) must provide that, subject to paragraphs (2) and (3) and to any provision made by virtue of paragraph (4), a person in respect of whom a criminal aid

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certificate has been granted may select any solicitor or counsel willing to act for that person to be assigned so to act.

(2) A solicitor shall not be assigned in pursuance of a criminal aid certificate if the solicitor is for the time being prohibited from being so assigned by an order under Article 51B(1) or (3) of the Solicitors (Northern Ireland) Order 1976.

(3) A counsel shall not be assigned in pursuance of a criminal aid certificate if the counsel is for the time being prohibited from being so assigned by a determination of the General Council of the Bar of Northern Ireland, or by any determination of any such committee as may be established by that Council to determine charges preferred against counsel.

(4) Rules under Article 36(3)(b) may—

(a) provide that in prescribed circumstances the right referred to in paragraph (1)—

(i) does not apply in cases of a prescribed description,

(ii) is not to include a right to select a solicitor or counsel of a prescribed description,

(iii) is to select only a solicitor or counsel registered under Article 36B, or only a solicitor or counsel of a prescribed description,

(b) restrict the right to select a solicitor or counsel in place of a solicitor or counsel previously selected.

(5) Rules under Article 36(3)(b) may provide that, in prescribed circumstances, Article 36(1) does not require the Department to defray, or to continue to defray, the expenses incurred by a particular solicitor or counsel (but such provision shall not prejudice any right of a person to select another solicitor or counsel).

(6) The circumstances which may be prescribed by rules under paragraph (4) or (5) include that a determination has been made by a prescribed body or person.

(7) A solicitor or counsel who has been selected to act for a person may select another person to act for that person, as the agent of the solicitor or counsel, if that other person is of such a description that nothing in this Article or Article 36B would prohibit the person selecting that solicitor or counsel to act for that person.

(8) In this Article “ prescribed ” means prescribed by rules under Article 36(3)(b).]

<p>F29 Arts. 36A, 36B substituted (1.4.2015) for art. 36A by Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 (c. 11), s. 12(1), Sch. 2 para. 1(5) (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, art. 2(e)</p>
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^{F30}Register of solicitors and counsel eligible to be assigned

36B.—(1) Rules under Article 36(3)(b) may—

(a) make provision for the registration by the Department of counsel and solicitors who are eligible to be assigned in pursuance of criminal aid certificates;

(b) provide that only those counsel or solicitors who are registered may be so assigned; and

(c) require registration of firms with which registered solicitors are connected.

(2) Those rules may require the Department to prepare a code of practice in relation to—

(a) the conditions to be complied with in order to qualify for registration, and

(b) the carrying out by registered counsel and registered solicitors, and any firm which is registered in connection with a registered solicitor, of their functions with regard to the provision of free legal aid.

(3) Those rules may—

- (a) require registered counsel and registered solicitors, and any firm which is registered in connection with a registered solicitor, to comply with any such code of practice;
- (b) require the Department or persons authorised by the Department to monitor compliance with any such code of practice; and
- (c) make provision about procedures for cases in which—
 - (i) it appears to the Department or a person authorised by the Department that a registered counsel or solicitor, or any firm which is registered in connection with a registered solicitor, may not be complying with any such code of practice, or
 - (ii) a person who holds any judicial office asks the Department to investigate whether a registered counsel or solicitor, or any firm which is registered in connection with a registered solicitor, is complying with any such code of practice,and the sanctions which may be imposed by virtue of this sub-paragraph may include provision for a counsel, solicitor or firm to cease to be registered.

(4) Those rules—

- (a) may make provision imposing charges;
- (b) may make provision with respect to the powers of investigation which may be exercised by the Department, or by persons authorised by the Department, for the purpose of monitoring compliance with any code of practice prepared under the rules;
- (c) may make provision for obstruction of the exercise of powers conferred by virtue of sub-paragraph (b) to be certified to the High Court in prescribed circumstances, and for any power of the High Court in relation to contempt of court to be exercisable in relation to such obstruction.]

F30 Arts. 36A, 36B substituted (1.4.2015) for art. 36A by Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 (c. 11), s. 12(1), **Sch. 2 para. 1(5)** (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, **art. 2(e)**

Remuneration of solicitors and counsel

37. The^{F31} Lord Chancellor] in exercising any power to make rules as to the amounts payable under this Part to counsel or a solicitor assigned to give legal aid, and any person by whom any amount so payable is determined in a particular case, shall have regard^{F32}, among the matters which are relevant, to—

- (a) the time and skill which work of the description to which the rules relate requires;
- (b) the number and general level of competence of persons undertaking work of that description;
- (c) the cost to public funds of any provision made by the rules; and
- (d) the need to secure value for money,

but nothing in this Article shall require him to have regard to any fees payable to solicitors and counsel otherwise than under this Part.]

F31 SI 1982/159

F32 Words in art. 37 substituted (9.3.2005) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), arts. 1(2), 49(1), Sch. 4 para. 6(3); S.R. 2005/111, art. 3 (with transitional provisions and savings in arts. 4, 5, 6) (as amended (29.8.2009) by S.R. 2009/312, **art. 3** (with savings in arts. 4, 5))

Changes to legislation: Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, PART III is up to date with all changes known to be in force on or before 27 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

Adaptation for purposes of Part III of rights to indemnity

38.—(1) This Article shall have effect for the purpose of adapting in relation to this Part any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of this Part shall be disregarded.

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any matter in respect of which a criminal aid certificate may be granted—

- (a) is granted such a certificate; or
- (b) has his defence before the Crown Court undertaken by counsel or solicitor or both at the request of the judge;

then the right shall inure also for the benefit of the^[F33] Lord Chancellor] as if any expenses defrayed or cost paid under Article 36 in relation to that certificate or defence had been expenses incurred by that person.

(4) Where—

- (a) a person's right to be indemnified against expenses incurred in connection with any matter in respect of which a criminal aid certificate may be granted arises by virtue of an agreement and is subject to any express condition conferring on those liable thereunder any right with respect to proceedings in relation to that matter; and
- (b) those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity;

the right to be indemnified shall be treated for the purposes of paragraph (3) as not being subject to that condition.

(5) Nothing in paragraphs (3) and (4) shall be taken as depriving any person or body of persons of the protection of any statutory provision or, save as provided in paragraph (4), as conferring any larger right on the^[F33] Lord Chancellor] to recover money in respect of any expenses than the person referred to in paragraph (3) would have had if the expenses had been incurred by him.

F33 SI 1982/159

^[F34]Restriction of disclosure of information

38A.—(1) Information which is furnished—

- (a) to the Department or to any court, tribunal or other person or body on whom functions are imposed or conferred by or under this Part, and
- (b) in connection with the case of a person seeking free legal aid under this Part,

shall not be disclosed except as permitted by rules under Article 36.

(2) Paragraph (1) does not limit the disclosure of—

- (a) information in the form of a summary or collection of information so framed as not to enable information relating to any individual to be ascertained from it, or
- (b) information about the amount of any grant, loan or other payment made to any person or body by the Department.

(3) Paragraph (1) does not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case it was furnished and, where the person did not furnish it himself or herself, with that of the person or body who did.

Changes to legislation: *Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, PART III is up to date with all changes known to be in force on or before 27 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*

(4) A person who discloses any information in contravention of this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Proceedings for an offence under this Article shall not be brought except by, or with the consent of, the Director of Public Prosecutions.

(6) Nothing in this Article applies to information furnished to a person assigned to provide free legal aid under this Part by or on behalf of a person receiving such legal aid.]

F34 Art. 38A inserted (1.4.2015) by [Legal Aid and Coroners' Courts Act \(Northern Ireland\) 2014 \(c. 11\)](#), s. 12(1), [Sch. 2 para. 1\(6\)](#) (with ss. 2(3), 9, [Sch. 1 para. 3\(3\)](#)); S.R. 2015/193, art. 2(e)

Interpretation of Part III

39. In this Part—

“the certifying authority” has the meaning assigned to that expression by Article 29(2);

[^{F35}“child” has the meaning given in Article 2(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (N.I. 9);]

[^{F35}“court-ordered youth conference” has the meaning assigned to that expression by Article 33A(5) of the Criminal Justice (Children) (Northern Ireland) Order 1998;]

“criminal aid certificate” means a certificate granted under Article 28(1), [^{F35}28A(3),] 29(2) or 30(3);

[^{F35}“diversionary youth conference” has the meaning assigned to that expression by Article 10A(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998;]

“magistrates' court” has the meaning assigned to that expression by [^{F36} Article 2(2)(b) of the Magistrates' Courts (Northern Ireland) Order 1981];

^{F37} ...

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 .

F35 [2002 c. 26](#)

F36 [1981 NI 26](#)

F37 Words in art. 39 repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), [Sch. 1 para. 85\(3\)](#), [Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); S.R. 2016/387, art. 2(k)(m) (with art. 3)

Changes to legislation:

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, PART III is up to date with all changes known to be in force on or before 27 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.

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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\(9\)\(c\)](#)