EXPLANATORY NOTE

(This Note is not part of the Rules but is intended to indicate their general purport.)

These Rules make provision as to the amount payable to a solicitor or counsel assigned under a defence certificate granted under section 21 of the Legal Aid and Advice Act (Northern Ireland) 1965.

Rule 1 requires clerks of the Crown and peace and clerks of petty sessions to keep records of applications for defence certificates. Rule 2 provides for the form and manner in which defence certificates are to be granted. Rule 3 deals with the method of determining solicitors' fees and expenses. Rule 4 deals with the method of determining counsel's fees. Rule 5 deals with instances where more than one defence certificate is granted in respect of more than one charge against the same person and where more than one person is represented. Rule 6 provides for the committee appointed under Rule 9 of the Legal Aid Certificates Rules (Northern Ireland) 1966 to determine the amounts payable to solicitors and counsel under defence certificates. Rule 7 provides that in exceptional cases there shall be increases above the amounts otherwise allowable. Rule 8 governs fees to be allowed in connection with work done in giving notice of appeal or application for leave to appeal to the Court of Criminal Appeal.

1966. No. 54 [C]

LEGAL AID IN CRIMINAL CASES: APPEAL AID CERTIFICATES RULES

RULES, DATED 23RD MARCH, 1966, MADE BY THE MINISTRY OF HOME AFFAIRS UNDER SECTION 27 OF THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965.

The Ministry of Home Affairs (hereinafter referred to as "the Ministry"), in exercise of the powers conferred on it by section 27 of the Legal Aid and Advice Act (Northern Ireland) 1965(a) and of all other powers in that behalf thereunto enabling it, hereby, after consultation with the Lord Chief Justice, the Attorney General, the County Court Rules Committee and the Magistrates' Courts Rules Committee and with the approval of the Ministry of Finance, makes the following Rules:—

List of Applications for Appeal Aid Certificates

1.—(1) Every clerk of the Crown and peace and clerk of petty sessions shall keep a list of all cases in which application is made for an appeal aid certificate or in which such certificate is granted and shall record therein (*a*) the name of the appellant or respondent on whose behalf the application is made, (*b*) in general terms the subject of the appeal, (*c*) the date and result of such application, and (*d*) the result of the appeal.

(2) Each clerk of the Crown and peace and each clerk of petty sessions shall send to the Ministry a copy of the list specified in paragraph (1) at such times as the Ministry may from time to time direct.

(a) 1965. c. 8 (N.I.).

EXPLANATORY NOTE

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(a) 1965. c. 8 (N.I.).

Appeal Aid Certificates

2.—(1) Any appeal aid certificate granted by a Magistrates' Court shall be in Form A in the Schedule; and a copy of the certificate shall as soon as practicable after the certificate has been granted be sent by the clerk of petty sessions to the clerk of the Crown and peace (together with the name of the solicitor assigned) and to the Crown Solicitor for the county and to the Secretary of the Law Society.

(2) An appeal aid certificate granted by the county court shall be in Form B in the Schedule and the clerk of the Crown and peace shall send a copy of the certificate to the Crown Solicitor for the county and to the Secretary of the Law Society.

(3) When granting an appeal aid certificate the court shall, after taking into account any representations which the applicant may make, assign to him from the register maintained in pursuance of Rule 1 of the Legal Aid Certificates Rules (Northern Ireland) 1966(**a**) a solicitor to whose services the applicant shall be entitled.

(4) Except where the appeal aid certificate directs that a solicitor only shall be assigned, any member of the Bar whose name appears in the register maintained in pursuance of Rule 2 of the Legal Aid Certificates Rules (Northern Ireland) 1966 may be instructed on behalf of the person in respect of whom the appeal aid certificate is granted by the solicitor so assigned.

Fees for Solicitors

3.—(1) Subject to the provisions of these Rules, there shall be allowed to the solicitor assigned under an appeal aid certificate a fee of not less than £8 8s. 0d. and not exceeding £78 15s. 0d.

(2) Where the hearing of an appeal has not been concluded on the day on which it is started there shall be allowed to the solicitor, in addition to the fee allowed under paragraph (1) a daily fee in respect of the second and every subsequent day—

(*a*) where counsel has not been instructed, not exceeding £21 0s. 0d.;

(*b*) in any other case, not exceeding £15 15s. 0d.

(3) In addition to the fees payable under this Rule, the solicitor may be allowed—

(*a*) expenses actually and necessarily incurred on the scale applicable to witnesses for the prosecution in respect of—

(i) his travelling to and from the court at which the appeal is heard and to and from any other place visited for the purpose of preparing and conducting the appeal; and

(ii) costs in connection with the attendance of witnesses for the appellant; and

(*b*) subject to determination thereof under Rule 7 if the Ministry so directs, any other out-of-pocket expenses actually and necessarily incurred.

Fees for Counsel

4.—(1) Subject to the provisions of these Rules, there shall be allowed to counsel assigned under an appeal aid certificate a fee of not less than £8 8s. 0d. and not exceeding £63 0s. 0d.

(a) S.R. & O. (N.I.) 1966, No. 52.

(2) Where the hearing of an appeal has not been concluded at the end of the first relevant period thereof there shall be allowed to counsel in respect of each relevant period, or, in the case of an incomplete period, part thereof, after the first a refresher fee.

(3) In paragraph (2)—

(*a*) "relevant period" means either, as may be determined under Rule 7, any day on any part of which the appeal is going on or any period of five hours, whether continuous or not, during which the hearing of the appeal is going on;

(*b*) "refresher fee" means such fee in addition to the fee allowed under paragraph (1) not exceeding half thereof, as appears to be proper in all the circumstances of the case.

(4) There shall be allowed to counsel, in addition to any fee allowed under the foregoing paragraphs—

(*a*) in respect of any conference or consultation lasting not less than half an hour, a fee of £2 2s. 0d.;

(*b*) in respect of any conference or consultation lasting more than half an hour, such fee as appears to be proper in all the circumstances of the case;

(*c*) in respect of any application to the court for the case to stand out of the list, such fee as appears proper in all the circumstances of the case;

(*d*) for advice in writing, if in the opinion of the committee referred to in Rule 7 it was reasonably necessary to obtain counsel's advice in writing, a fee not exceeding £10 10s. 0d.

More than one Appeal Aid Certificate granted or more than one person represented

5.—(1) Where an appeal is made by one person in respect of more than one conviction or sentence and more than one appeal aid certificate has been granted in respect of that person, fees shall be allowed to the solicitor assigned (and to counsel if assigned) as if only one appeal aid certificate had been granted in respect of that person, unless the Judge otherwise orders.

(2) Where a solicitor or counsel represents two or more appellants in respect of whom appeal aid certificates have been granted and whose appeals are heard together, the amount to be allowed to the solicitor or counsel under, as the case may be, Rule 3(1) and (2) or Rule 4(1) and (2) shall be increased above the amount which would have been allowed to him if he had been representing only one such appellant (which amount is hereafter in this Rule referred to as the "normal amount") by such amount as appears to be proper in all the circumstances of the case, but save as aforesaid no payment other than one allowed under Rule 3(3) or Rule 4(4) or Rule 8 shall be allowed to the solicitor or counsel under these Rules in respect of more than one of the appellants:

Provided that any increase allowed by virtue of this Rule shall not exceed, in any case where the number of appellants is two, forty per cent. of the normal amount, in any case where the number of appellants is three, sixty per cent. thereof, and in any case where the number of appellants exceeds three a percentage thereof equal to the sum of forty per cent. and a percentage obtained by multiplying twenty by the number by which the number of appellants exceeds two.

Abandonment of Appeal

6. Where notice of abandonment of an appeal has been received by the clerk of the Crown and peace or the appeal is not proceeded with at the instance of the appellant or where the appellant fails to appear at the hearing of the appeal, there shall be allowed to the solicitor and to counsel previously assigned under an appeal aid certificate in that appeal, such fees not exceeding the fees mentioned in the foregoing Rules as the committee referred to in Rule 7 may determine.

Taxation

7.—(1) The amounts to be paid to a solicitor or counsel assigned under an appeal aid certificate shall be determined by the committee referred to in Rule 9 of the Legal Aid Certificates Rules (Northern Ireland) 1966.

(2) In determining as aforesaid the sums to be paid to a solicitor or counsel the committee shall take into account all the relevant circumstances, including the nature, importance, complexity or difficulty of the work and shall allow such amounts as appear to it to represent fair remuneration for the work reasonably undertaken and properly done.

(3) In determining as aforesaid the sums to be paid to a solicitor or counsel the committee shall not allow any payment in respect of any conference, consultation, attendance or visit unless it is satisfied that such conference, consultation, attendance or visit was reasonably necessary.

(4) In determining as aforesaid the sums to be paid to a solicitor or counsel in any case the committee shall take into account any amount allowed to such solicitor or counsel in the same case under a legal aid certificate.

(5) An application for the determination under this Rule of the sums payable to a solicitor or to counsel shall be made to the committee by the solicitor within three months from the date of the conclusion of the proceedings to which the certificate relates; so, however, that the committee may if reasonable cause for the delay is shown, waive the provisions of this paragraph and in so doing may allow such sums either wholly or in part.

Increase of Fees

8. If it appears to the committee at any time after the conclusion of the hearing of an appeal in respect of which an appeal aid certificate was granted that for any reason, including the exceptional length, complexity or difficulty of the case, the sums payable under these Rules, or any of them, would not provide fair remuneration according to the work reasonably undertaken and properly done by the solicitor, or, as the case may be, counsel, it shall certify accordingly and where it so certifies any limitation contained in these Rules, or, as the case may be, in such Rule as is mentioned in the certificate, on the amount of any fee payable shall not apply, and the committee shall, after taking into account all the relevant circumstances of the case, and having regard to the considerations mentioned in Rule 7, allow such fees in respect of the work to which the certificate relates as appear to it to represent fair remuneration according to the work reasonably undertaken and properly done.

Fees for work in applying for a case stated

9. Where a solicitor assigned under an appeal aid certificate reasonably undertakes in connection therewith work in applying for a case to be stated or in matters preliminary thereto, being work done within the ordinary time

for making the application for the case to be stated, there shall, in addition to the fees which may be paid to him under the foregoing Rules, be allowed amounts in respect of his disbursements on the said work, including, in a case where counsel is also assigned, counsel's fees not exceeding £10 10s. 0d. for his opinion, if any is given, in connection with the work, and a fee not exceeding £10 10s. 0d. in respect of the said work.

Interpretation

10. In these Rules the expression "Law Society" means the Incorporated Law Society of Northern Ireland.

Citation and Commencement

11. These Rules may be cited as the Legal Aid (Appeal Aid Certificates) Rules (Northern Ireland) 1966 and shall have effect from the 1st April, 1966.

Sealed with the Official Seal of the Ministry of Home Affairs for Northern Ireland this 23rd day of March, 1966.

(L.S.) *J. G. Hill,*
Assistant Secretary.

The Ministry of Finance for Northern Ireland hereby approves of the foregoing Rules.

Sealed with the Official Seal of the Ministry of Finance for Northern Ireland this 23rd day of March, 1966.

(L.S.) *R. R. Butler,*
Assistant Secretary.

SCHEDULE

FORM A

Appeal Aid Certificate by Magistrates' Court

I, being a Resident Magistrate [*or* Justice of the Peace having heard proceedings for an offence specified in Part II of Schedule 2 to the Magistrates' Courts Act (Northern Ireland) 1964], and being satisfied that the means of **A.B.,** an appellant [*or* respondent to an appeal] to the County Court against [a decision of a Magistrates' Court sitting for the Petty Sessions District of in the County [Borough] of] [my decision] made on the day of 19 , are insufficient to enable him to obtain legal aid and that it is desirable in the interests of justice that the applicant should have free legal aid in the preparation and conduct of the appeal [*or* in resisting the said appeal], do hereby grant in respect of him this appeal aid certificate.

*[And I direct that a solicitor only shall be assigned to him.]

Dated this day of 19

(Signed)
Resident Magistrate
[*or* Justice of the Peace for the said County [Borough]].

*Insert where direction made under section 22(8) of the Legal Aid and Advice Act (Northern Ireland) 1965.

FORM B

Appeal Aid Certificate by County Court

The Court being satisfied that **A.B.,** an appellant [*or* a respondent to an appeal] to the County Court for the County Court Division of against a decision of a Magistrates' Court for the Petty Sessions District of in the County of made on the day of 19 , [has unsuccessfully applied to a Magistrates' Court for the said Petty Sessions District] [has adequate reasons for not having made an application to a Magistrates' Court for the said Petty Sessions District] for an appeal aid certificate, that his means are insufficient to enable him to obtain legal aid and that it is desirable in the interests of justice that the said **A.B.** should have free legal aid in the preparation and conduct of his appeal [*or* in resisting the said appeal] do hereby grant in respect of him this appeal aid certificate.

*[And it is directed that a solicitor only shall be assigned to him.]

Dated this day of 19 .

(Signed)

County Court Judge for the said County Court Division.

*Insert where direction made under section 22(8) of the Legal Aid and Advice Act (Northern Ireland) 1965.

EXPLANATORY NOTE

(*This Note is not part of the Rules but is intended to indicate their general purport.*)

These Rules provide for the amounts to be paid to solicitors and counsel assigned to persons granted an appeal aid certificate under section 22 of the Legal Aid and Advice Act (Northern Ireland) 1965.

Rule 1 provides for the keeping of lists of applications for appeal aid certificates. Rule 2 deals with the form of the certificate. Rule 3 provides for the way in which solicitors' fees and expenses in connection with the appeal are to be determined. Rule 4 deals with counsel's fees when counsel is assigned. Rule 5 covers the instances in which more than one certificate is granted to a person convicted or sentenced for more than one offence charged. Rule 6 governs fees allowed when an appeal is abandoned. Rule 7 provides that the amounts due to a solicitor or counsel are to be determined by the Committee appointed by the Minister of Home Affairs under Rule 9 of the Legal Aid Certificates Rules (Northern Ireland) 1966. Rule 8 provides for increases in the amounts in exceptional cases. Rule 9 deals with fees for work in applying for a case stated.