Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Legal Aid (Northern Ireland) Order 2005

Made - - - - 2005
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

Title, commencement and interpretation

1.—(1) This Order may be cited as the Legal Aid (Northern Ireland) Order 2005.

(2) Except as provided by paragraph (3), this Order comes into operation on the day after the day on which it is made.

(3) Paragraph 8 of Schedule 1, and Article 3(1) so far as relating to it, come into operation on the day appointed under Article 1(2) of the Access to Justice (Northern Ireland) Order 2003 for the coming into operation of Article 12(5) of that Order.

(4) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

Exceptional legal aid

2. After Article 10 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) insert—

"**Exceptional legal aid**

10A.—(1) The Lord Chancellor may by direction require that legal aid is to be available in connection with excluded proceedings in circumstances specified in the direction.

(2) If the Commission requests him to do so, the Lord Chancellor may authorise legal aid to be available in connection with any proceedings (whether excluded proceedings or not) —

(a) in circumstances specified in the authorisation; or

(b) in an individual case so specified.

(3) For the purposes of this Article "excluded proceedings" means proceedings before a court or tribunal which are not—

(a) proceedings of a description mentioned in Part I of Schedule 1;

(b) proceedings for the purposes of which free legal aid may be given under Part III; or

(c) proceedings in relation to which assistance by way of representation may be approved under Article 5.

(4) Legal aid under a direction or authorisation under this Article shall consist of such representation, on terms provided for by the direction or authorisation, by a solicitor or by counsel (or by both) as is specified in the direction or authorisation.

(5) In paragraph (4) "representation" includes all such assistance as is usually given by a solicitor or counsel in—

(a) the steps preliminary or incidental to proceedings; or

(b) arriving at or giving effect to a compromise to avoid or bring an end to proceedings.

(6) A direction or authorisation under this Article may make provision about financial matters relating to legal aid under the direction (including, in particular, provision about eligibility, contributions, charges, remuneration and costs).

(7) Articles 10(3) to (5A), 11, 12, 13, 16 and 17 and Schedule 2 do not apply to legal aid under a direction or authorisation under this Article, unless they are applied (with or without modification) by the provisions of the direction or authorisation.

(8) A direction or authorisation under this Article may be varied or revoked.

(9) The Lord Chancellor must publish, or require the Commission to publish,

(a) directions under paragraph (1) and directions varying or revoking such directions; and

(b) authorisations under paragraph (2)(a) and authorisations varying or revoking such authorisations.

(10) The Lord Chancellor or the Commission may publish an authorisation under paragraph (2)(b), or an authorisation varying or revoking such an authorisation, if the Lord Chancellor or the Commission considers it appropriate to do so.

(11) In this Article "the Commission" means the Northern Ireland Legal Services Commission.".

Amendments and repeals

3.—(1) Schedule 1 (minor and consequential amendments) has effect.

(2) Schedule 2 (repeals) has effect.