1981 No. 366

LEGAL AID AND ADVICE

The Legal Advice and Assistance Regulations (Northern Ireland) 1981

Made . . . . . *20th October 1981*

Coming into operation . . . *31st December 1981*

To be laid before Parliament

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The Secretary of State, in pursuance of Articles 4, 5, 6, 7, 8, 14 and 22 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(**a**) and with the concurrence of the Treasury, hereby makes the following regulations:—

Title and commencement

1. These regulations may be cited as the Legal Advice and Assistance Regulations (Northern Ireland) 1981 and shall come into operation on 31st December 1981.

Revocation

2. The Legal Advice and Assistance Regulations (Northern Ireland) 1980(**b**) are hereby revoked.

Interpretation

3. In these regulations, unless the context otherwise requires:—

"advice" and "assistance" mean respectively advice and assistance under Part II of the Order;

"appropriate authority" means an authority specified in regulation 16;

"appropriate committee" means the legal aid committee or a certifying committee appointed under the provisions of a scheme;

"assessed deficiency" means the amount by which the sum allowed to the solicitor by the appropriate committee in assessing his bill under regulation 23 as being fair and reasonable remuneration for the work necessarily done by him exceeds any contribution payable by the client to the solicitor under Article 7 of the Order together with the value of any charge arising under Article 8 of the Order;

"assistance by way of representation" means assistance by way of representation under Part II of the Order;

"child" means a person under the age that is for the time being the upper limit of compulsory school age by virtue of Article 36 of the Education and Libraries (Northern Ireland) Order 1972(**c**);

"client" means a person seeking or receiving advice and assistance or on whose behalf advice and assistance is sought;

"an extension" means the grant of prior authority to exceed the limit applicable under Article 6(2) of the Order and where appropriate the grant of prior authority to exceed any further limit under regulation 15(2) or (4) or 17(5);

"family income supplement" means family income supplement under the Family Income Supplements Act (Northern Ireland) 1971(**d**);

"the Fund" means the Legal Aid Fund;

"legal aid" means legal aid under Part II of the Order;

"Legal Aid Committee" means the committee appointed by the Council of The Law Society under the provisions of a scheme;

(**a**) S.I. 1981/228 (N.I. 8)
(**b**) S.R. 1980 No. 390
(**c**) S.I. 1972/1263 (N.I. 12)
(**d**) 1971 c. 8 (N.I.)

"the Order" means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;

"patient" means a person who by reason of mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(**a**) is incapable of managing and administering his property and affairs;

"scheme" means a scheme made under Article 18 of the Order;

"secretary" means the secretary of an appropriate committee and includes any person duly authorised to act on the secretary's behalf to the extent that he is so authorised;

"Law Society" means the Incorporated Law Society of Northern Ireland;

"supplementary benefit" means supplementary benefit under the Supplementary Benefits (Northern Ireland) Order 1977(**b**).

Powers exercisable by secretaries

4. Subject to regulation 16, any function which an appropriate committee is empowered to perform under these regulations may be performed on behalf of that committee by its secretary, save the withdrawal of approval of assistance by way of representation under regulation 21.

Applications for advice and assistance

5.—(1) An application for advice and assistance shall be made by a client in person to the solicitor from whom the advice and assistance is sought, except where regulation 6 (attendance on behalf of a client) or regulation 9 (clients resident outside Northern Ireland) applies.

(2) The client shall furnish the solicitor with the information necessary to enable the solicitor to determine:—

(*a*) his disposable capital; and

(*b*) his disposable income or, where appropriate, whether he is in receipt of supplementary benefit or family income supplement.

(3) The information required by this regulation shall be furnished on a form approved by the Law Society.

Attendance on behalf of a client

6.—(1) Where a client cannot for good reason attend upon the solicitor in order to apply for advice and assistance he may authorise another person to attend upon his behalf.

(2) The person so authorised shall furnish the solicitor with the information necessary to enable the solicitor to determine the client's disposable capital and either his disposable income or, where appropriate, whether the client is in receipt of supplementary benefit or family income supplement.

(3) The information required by this regulation shall be furnished on a form approved by the Law Society.

Determination of disposable income and disposable capital and maximum contribution

7.—(1) The solicitor to whom an application for advice and assistance is made shall determine the disposable income and disposable capital of the client and, where

(**a**) 1961 c. 15 (N.I.)
(**b**) S.I. 1977/2156 (N.I. 27)

appropriate, of any person whose resources may be treated as those of the client in accordance with Schedule 1 to these regulations.

(2) Where the solicitor is satisfied that any of the persons whose disposable incomes are to be determined under paragraph (1) is in receipt of supplementary benefit or family income supplement, he shall not determine that person's disposable income.

(3) The solicitor shall also determine the maximum contribution, if any, payable to him by the client under Article 7(2) of the Order in accordance with the provisions of Schedule 2 to these regulations.

(4) A solicitor shall not give advice and assistance to any person until either the form referred to in regulation 5(3) has been signed by the client or, where appropriate, the form referred to in regulation 6(3) has been signed on behalf of the client and in any case until the solicitor has determined the matters referred to in paragraphs (1) and (3).

Children and patients

8.—(1) A solicitor shall not accept an application for advice and assistance from a child unless he has been authorised to do so by the appropriate committee and it shall withhold such authority unless it is satisfied that it is reasonable in the circumstances that the child should receive advice and assistance.

(2) A solicitor may accept an application for advice and assistance on behalf of a child or patient from:—

(*a*) in the case of a child, his parent, guardian or other person in whose care he is; or

(*b*) in the case of a patient, his spouse, or committee appointed under Part V of the Mental Health Act (Northern Ireland) 1961 or nearest relative or guardian within the meaning of Part II of that Act; or

(*c*) in the case of a child or a patient, a person acting for the purposes of any proceedings as his next friend or guardian ad litem; or

(*d*) in the case of a child or a patient, any other person where the appropriate committee is satisfied that it is reasonable in the circumstances and has given prior authority for the advice and assistance to be given to such other person on behalf of the child or patient.

Clients resident outside Northern Ireland

9. Where the client resides outside Northern Ireland the appropriate committee may give the solicitor prior authority to accept a postal application for advice and assistance if it is satisfied that it is reasonable in the circumstances to do so.

Advice and assistance from more than one solicitor

10. A person shall not be given advice and assistance for the same matter by more than one solicitor without the prior authority of the appropriate committee, and such authority may be given on such terms and conditions as the committee may in its discretion see fit to impose.

Separate matters

11. Where more than one separate matter is involved each matter shall be the subject of a separate application for advice and assistance provided that matters connected with or arising from proceedings for divorce or judicial separation, whether actual or prospective between the client and his spouse, shall not be treated as separate matters for the purpose of advice and assistance.

Refusal of advice and assistance

12. A solicitor shall be entitled for reasonable cause either to refuse to accept an application for advice and assistance or (having accepted an application) to decline to give advice and assistance and may, if he thinks fit, refuse to disclose his reasons for doing so to the client or person seeking advice and assistance on his behalf; but he shall give the appropriate committee such information about such a refusal as the committee may require for the purpose of performing its functions under the scheme.

Power to require information

13. An appropriate committee may require a solicitor who has given advice and assistance to furnish such information as it may from time to time require for the purpose of performing its functions under the scheme and the solicitor shall not be precluded, by reason of any privilege arising out of the relationship between solicitor and client, from disclosing such information to it.

Entrusting functions to others

14. Nothing in these regulations shall prevent a solicitor from entrusting any function under these regulations to a partner of his or to a competent and responsible representative of his employed in his office or otherwise under his immediate supervision.

Extensions

15.—(1) Subject to paragraph (2) and regulation 17(5), where it appears to the solicitor that the cost of giving advice and assistance is likely to exceed the limit applicable under Article 6(2) of the Order, he shall apply to the appropriate committee for an extension and shall furnish such information as may enable the committee to consider and determine that application.

(2) No extension shall be required under paragraph (1) if the advice and assistance relates to matters of such a kind, and its cost will not exceed such an amount, as may be specified in any notice given by the appropriate committee, with the consent of the Law Society, that it will approve the said limit being exceeded in the classes of case mentioned in the notice.

(3) Where an appropriate committee receives an application in accordance with paragraph (1) it shall consider:—

(*a*) whether it is reasonable for the advice and assistance to be given; and

(*b*) whether the estimated amount of the costs to be incurred in giving advice and assistance is fair and reasonable.

(4) If the appropriate committee is satisfied that it is reasonable for the advice and assistance to be given and that the estimated amount of the costs to be incurred in giving advice and assistance is fair and reasonable it shall grant an extension and shall prescribe such higher limit as it thinks fit and may limit the advice and assistance to such subject matter as it thinks fit.

Approval of assistance by way of representation

16. The appropriate authorities for the approval of assistance by way of representation under Article 5 of the Order in respect of the proceedings specified in Schedule 3 shall be:—

(*a*) the Legal Aid Committee; or

(*b*) a certifying committee

provided that a secretary may approve such an application on behalf of his committee and that in every case in which he does not do so he shall refer the application to his committee for its consideration and approval or refusal as the case may be.