1978 No. 201

LEGAL AID AND ADVICE

Legal Advice and Assistance Regulations (Northern Ireland) 1978

Made . . . . . 19*th July* 1978

Coming into operation . . . 1*st September* 1978

To be laid before Parliament

The Secretary of State in pursuance of sections 1, 4, 7A, 7B, 7C, 7D, 7E and 14 of the Legal Aid and Advice Act (Northern Ireland) 1965(**a**) hereby makes the following regulations:

Citation and commencement

1. These regulations may be cited as the Legal Advice and Assistance Regulations (Northern Ireland) 1978 and shall come into operation on 1st September 1978.

Interpretation

2. In these regulations:—

"the Act" means the Legal Aid and Advice Act (Northern Ireland) 1965;

"advice" and "assistance" mean respectively advice and assistance under Part I of the Act;

"applicant" means applicant for advice and assistance;

"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(**b**);

"client" means a person receiving advice and assistance;

"the Committee" means the Legal Aid Committee established under section 10(4) of the Act;

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

"the fund" means the legal aid fund;

"Scheme" means a Scheme for the time being in force under section 10 of the Act;

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

Exercise of Committee's functions

3. Where the Committee is required or entitled to perform any function under regulation 4, 7 or 9 that function may be performed on their behalf by the secretary or chairman of the Committee.

(a) 1965 c. 8 (N.I.) as modified by S.I. 1973/2163 (1973 III, p. 7541) and amended by S.I. 1977/1252 (N.I. 19)
(b) S.I. 1972/1263 (N.I. 12)
(c) 1971 c. 8 (N.I.)
(d) S.I. 1977/2156 (N.I. 27)

Eligibility for advice and assistance

4. Subject to the provisions of the Act and these regulations:—

(i) any person (not being a child) shall be entitled to receive advice and assistance;

(ii) advice and assistance on behalf of a child may be applied for and received by his parent or guardian or other person under whose care he is, or by a person acting for the purposes of any proceedings as his next friend or guardian;

(iii) a person (not being a child) authorised to do so by any person who cannot for good reason attend upon a solicitor may apply for and receive advice and assistance on that person's behalf;

(iv) a person shall not be given advice and assistance for the same matter by more than one solicitor without the prior authority of the Committee and such authority shall be given only on such terms and conditions as the Committee may in their discretion see fit to impose.

Application for advice and assistance

5.—(1) Save as is hereinafter provided in this regulation, every applicant shall furnish the solicitor, on such form as the Committee may approve, with such information as will enable the solicitor to determine the disposable capital of the applicant and either his disposable income or that he is in receipt of supplementary benefit or family income supplement.

(2) Where a person is applying for advice and assistance on behalf of a child he shall furnish the solicitor with such information as will enable the solicitor to determine the disposable capital and disposable income of the child and the disposable capital of any person whose resources may be treated as the child's and either that person's disposable income or that he is in receipt of supplementary benefit or family income supplement.

(3) Where a person is authorised to receive advice and assistance on behalf of a person who cannot for good reason attend upon a solicitor he shall furnish the solicitor with such information as will enable the solicitor to determine the disposable capital of that person and either that person's disposable income or that he is in receipt of supplementary benefit or family income supplement.

Determination of disposable income and capital

6.—(1) The determination of the disposable income and disposable capital and maximum contribution of the applicant, or, as the case may be, of the person on whose behalf the applicant is seeking advice and assistance and, where that person is a child, of any person whose resources may be treated as the child's, shall be made by the solicitor to whom the applicant applies save that where the solicitor is satisfied that any of those persons is in receipt of supplementary benefit or family income supplement he shall not determine the disposable income or maximum contribution of the applicant or, as the case may be, of that person.

(2) The determination of disposable income and disposable capital shall be made in accordance with the schedule.

Duties of solicitors

7.—(1) 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 applicant or person seeking

advice and assistance on his behalf, but shall give the Committee such information as the Committee may from time to time require for the purpose of performing their functions under the Scheme.

(2) A solicitor who has given advice and assistance shall, if required, complete and send to the Committee such form as it may approve and shall give them such additional information as they may from time to time require for the purpose of performing their functions under the Scheme and shall not be precluded, by reason of any privilege arising out of the relationship between solicitor and client, from disclosing such information to them.

(3) 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.

(4) A solicitor shall not give advice or assistance to any person where he has not determined the disposable capital and (unless the person is in receipt of supplementary benefit or family income supplement) disposable income of any person whose resources fall to be determined by him in accordance with regulation 6(1).

(5) Where it appears to a solicitor that the cost of giving the advice and assistance is likely to exceed the limit applicable under section 7B(2) of the Act he shall apply to the Committee for prior authority to exceed that limit and shall give them such information as may enable them to consider and determine that application.

(6) Where an applicant is required to pay a contribution towards the cost of the advice and assistance, the solicitor may collect that contribution in such instalments as may be agreed between him and the applicant and where the total contribution is likely to exceed the cost of giving advice and assistance, he shall require the applicant to pay a sum sufficient only to defray his expected costs.

(7) Where there is a deficiency in the charges or fees properly chargeable for the advice and assistance, after deduction of any contribution payable by the client under the provisions of section 7C of the Act and the value of any charge under the provisions of section 7D thereof, the solicitor shall submit a bill to the Committee requesting payment of the deficiency.

(8) If any solicitor or barrister is dissatisfied with any decision of the Committee as to the payment of a deficiency in his charges or fees for advice and assistance he may make written representations to it.

(9) Where the charges or fees properly chargeable for the advice and assistance are less than any contribution paid by the client the solicitor shall refund the excess contribution.

Charges on property recovered or preserved

8.—(1) The provisions of section 7D(3) of the Act shall not apply to:—

(*a*) any periodical payment of maintenance, which for this purpose means money or money's worth paid towards the support of a spouse, former spouse, child or any other person whose support the payer has previously been responsible for or has made payments;

(*b*) the first £2,500 of any money, or of the value of any property, recovered or preserved by virtue of an order made, or deemed to be made, under the provisions of

(i) section 19 of the Matrimonial Causes Act (Northern Ireland) 1939(e),

(ii) section 5 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951(f),

(iii) sections 1, 3A or 4 of the Inheritance (Family Provision) Act (Northern Ireland) 1960(g),

(*c*) monies payable as benefits or allowances under the Social Security (Northern Ireland) Act 1975(h), the Family Income Supplements Act (Northern Ireland) 1971, the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975(i), the Child Benefit (Northern Ireland) Order 1975(j) and the Supplementary Benefits (Northern Ireland) Order 1977.

(*d*) any rebate under the Housing (Northern Ireland) Order 1976(k);

(*e*) any dwelling, household furniture or tools of trade recovered or preserved for the applicant as a result of advice and assistance given to him by the solicitor;

(*f*) one-half of any redundancy payment within the meaning of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(l) recovered or preserved for the applicant.

(2) Where in the opinion of the solicitor:—

(*a*) it would cause grave hardship or distress to the client to enforce the charge on property recovered or preserved for him or,

(*b*) the charge on property recovered or preserved could be enforced only with unreasonable difficulty because of the nature of the property,

the solicitor may apply to the Committee for authority not to enforce, either wholly or partly, the charge and, if the Committee so authorise, any deficiency in the solicitor's charges or fees shall be computed as if section 7D(3)(*b*) of the Act did not apply to that property or to such part of it as the Committee may have authorised.

Duties of the Committee

9.—(1) Where the Committee receive an application in accordance with regulation 7(5) from a solicitor to exceed the limit applicable under section 7B(2) of the Act they 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 the advice and assistance is fair and reasonable;

and if they approve the application, shall prescribe whatever larger amount they think fit and may authorise that the advice and assistance be limited to such subject matter as they think fit.

(2) Where the Committee receive from a solicitor a request in accordance with regulation 7(7) to pay the deficiency in his fees and charges they shall scrutinise the bill and, if necessary, assess it and shall pay the solicitor either the deficiency claimed or such lesser sum as they consider to constitute fair and reasonable remuneration for work necessarily done in connection with the matter on which advice and assistance was sought.

(e) 1939 c. 13 (N.I.)
(f) 1951 c. 7 (N.I.)
(g) 1960 c. 15 (N.I.)
(h) 1975 c. 15
(i) 1975 c. 17
(j) S.I. 1975/1504 (N.I. 16)
(k) S.I. 1976/1780 (N.I. 25)
(l) 1965 c. 19 (N.I.)