Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1981 No. 228 (NI 8)

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

18th February 1981

F1

F2

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F1 Order repealed (prosp.) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), arts. 1(2), 49(2), **Sch. 5** and the repeal being partly in operation, as to which see individual Articles

F2 functions transfered by SI 1982/159

Modifications etc. (not altering text)

C1 Order power to amend conferred (1.9.2012) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 90(2)(b)**, 111(3); S.R. 2012/214, art. 4

C2 Order applied (with modifications) (30.4.2007) by Legal Aid (Asylum and Immigration Appeals) (Northern Ireland) Regulations 2007 (S.I. 2007/1318), **reg. 7(5)**

C3 Order: functions of Lord Chancellor transferred to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(1), **Sch. 17 para. 36** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

(2) Subject to paragraph (3), this Order shall come into operation on the seventh day after the day on which it is made.

(3) **[**[F3]Paragraph 1(*b*)**]** of Part I of Schedule 1 shall come into operation on such day as the**[**[F4] Lord Chancellor**]** may by order appoint.

F3 2002 c. 26

F4 SI 1982/159

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) For the purposes of section 42(2) of the Northern Ireland Constitution Act 1973 (validity of Acts of the Parliament of Northern Ireland), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland shall be deemed to be provisions of such an Act.

(3) References in this Order to counsel and solicitors shall be construed in accordance with Article 10 of the European Communities (Services of Lawyers) Order 1978**[**F5, as it has effect by virtue of regulation 5 of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020**]**.

[F6(4) In this Order—

"the Department" means the Department of Justice;

"the Director" means the Director of Legal Aid Casework designated under section 2 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014.**]**

F5 Words in art. 2(3) inserted (31.12.2020) by The Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020 (S.I. 2020/1342), reg. 1(1), **Sch. para. 4** (with Sch. para. 13)

F6 Art. 2(4) inserted (1.4.2015) by Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 (c. 11), s. 12(1), **Sch. 2 para. 1(1)** (with ss. 2(3), 9, Sch. 1 para. 3(3)); S.R. 2015/193, art. 2(e)

PART II

LEGAL ADVICE AND ASSISTANCE, AND LEGAL AID OTHER THAN FREE LEGAL AID AVAILABLE UNDER PART III

Legal advice and assistance

Persons eligible for advice and assistance

3.—(1) Advice and assistance to which this Article applies shall, subject to and in accordance with the following provisions of this Part, be available for any person if—

(a) his disposable income does not exceed**[**F7£234**]** a week; or

(b) he is (directly or indirectly) in receipt of**[**F8 income support**[**F9, an income-based jobseeker's allowance (payable under the Jobseekers (Northern Ireland) Order 1995) or an income-related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007 (employment and support allowance),**]][**F10 or

(c) he is in receipt of a guarantee credit under the State Pension Credit Act (Northern Ireland) 2002,**]**

and **[**F11in any case**]** his disposable capital does not exceed**[**F12 £1,000**][**F13 £3,000**]**.

(2) Regulations may provide that there shall be substituted—

(a) for the weekly sum specified in paragraph (1) such other weekly sum as may be prescribed;

(b) for the capital sum so specified, such other capital sum as may be prescribed.

[F14(3) Regulations made by virtue of paragraph (2)(b) may provide for the substitution of different capital sums in relation to—

(a) advice and assistance other than assistance by way of representation; and

(b) assistance by way of representation.**]**

F7 Words in art. 3(1)(a) substituted (6.4.2009) by Legal Advice and Assistance (Financial Conditions) Regulations (Northern Ireland) 2009 (S.R. 2009/103), **reg. 3**
F8 1986 NI 18
F9 Words in art. 3(1)(b) substituted (27.10.2008) by Employment and Support Allowance (Consequential Provisions No. 2) Regulations (Northern Ireland) 2008 (S.R. 2008/412), **reg. 2(2)**
F10 Art. 3(1)(c) and word inserted (7.1.2013) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 82(2)(a)**, 111(3); S.R. 2012/449, art. 2(a)
F11 Words in art. 3(1) substituted (7.1.2013) by Justice Act (Northern Ireland) 2011 (c. 24), **ss. 82(2)(b)**, 111(3); S.R. 2012/449, art. 2(a)
F12 SR 1992/106
F13 in relation to assistance by way of representation, SR 1986/241
F14 1986 NI 12

Scope and general conditions of advice and assistance

4.—(1) Subject to paragraph (2) and Article 5 and to any prescribed exceptions and conditions, Article 3 applies to any oral or written advice given by a solicitor or, if and so far as may be necessary, counsel—

(a) on the application of Northern Ireland law to any particular circumstances which have arisen in relation to the person seeking the advice; and

(b) as to any steps which that person might appropriately take (whether by way of settling any claim, bringing or defending any proceedings, making an agreement, will or other instrument or transaction, obtaining further legal or other advice or assistance, or otherwise) having regard to the application of Northern Ireland law to those circumstances;

and applies to any assistance given by a solicitor or, if and so far as may be necessary, by counsel to any person in taking any such steps as are mentioned in sub-paragraph (*b*), whether the assistance is given by taking any such steps on his behalf or by assisting him in taking them on his own behalf.

(2) Notwithstanding anything in paragraph (1), Article 3 does not apply to any advice or asistance given to a person in connection with any proceedings before a court or tribunal—

(a) at a time when a civil aid certificate issued to him in connection with those proceedings is in force;[F15][F16]. . .

[[F16](aa) at a time when—

(i) the Commission has informed him that legal aid is available to him in connection with those proceedings under a direction given under Article 10A(1)(a) or an authorisation given under Article 10A(2)(a); or

(ii) the Lord Chancellor has informed him that legal aid is available to him in connection with those proceedings under an authorisation given under Article 10A(2)(b).

and he has not been informed by the Commission or the Lord Chancellor that such legal aid has ceased to be so available; or.**]**

(b) in the case of criminal proceedings, at a time when a criminal aid certificate made in respect of him for the purposes of those proceedings is in force.

(3) Save as expressly provided by this Part or by regulations made thereunder—

(a) the fact that the services of counsel or a solicitor are given by way of advice or assistance shall not affect the relationship between or rights of counsel, solicitor and client, or any privilege arising out of such relationship; and

(b) the rights conferred by this Part on a person receiving advice or assistance shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.

(4) In this Article—

"civil aid certificate" means a certificate required in accordance with regulations made under Article 22 to be obtained as a condition of entitlement to legal aid;

"criminal aid certificate" means a certificate under Article 28(1), 29(2) or 30(3).

F15 prosp. rep. by 2002 c. 26
F16 2005 NI 19

Representation in proceedings

5.—(1) In this Part "assistance by way of representation" means any assistance given to a person by taking on his behalf any step in the institution or conduct of any proceedings before a court or tribunal, or of any proceedings in connection with a statutory inquiry, whether by representing him in those proceedings or by otherwise taking any step on his behalf (as distinct from assisting him in taking such a step on his own behalf).

(2) Without prejudice to Article 4(2) and subject to any prescribed exceptions, Article 3 does not apply to any assistance by way of representation unless it is approved by an appropriate authority in accordance with regulations made for the purposes of this Article.

(3) Regulations may—

(a) describe the proceedings in relation to which assistance by way of representation may be approved by reference to the court, tribunal or statutory inquiry, to the issues involved, to the capacity in which the person requiring the assistance is concerned, or in any other way;

(b) specify, in relation to any proceedings so described, the assistance by way of representation which may be approved; and

(c) preclude the giving of approval in the case of persons who would not be eligible for assistance if sub-paragraph (*a*) of Article 3(1) were omitted or for the weekly sum specified in that sub-paragraph there were substituted such lower weekly sum as may be prescribed.

(4) Regulations may also make provision—

(a) as to which committees, courts, tribunals or other persons or bodies of persons are to be appropriate authorities;

(b) as to the procedure to be followed in applying for approval, the criteria for determining whether approval should be given and the conditions which should or may be imposed; and

(c) as to the circumstances in which approval may be withdrawn and the effect of its withdrawal.

[[F17](4A) Without prejudice to paragraphs (3) and (4), regulations may make provision in relation to assistance by way of representation for purposes corresponding to those of Article 10(5A) to (5E) (legal aid for proceedings under the Children (Northern Ireland) Order 1995).**]**

(5) Where a person receives any assistance by way of representation in any civil proceedings before a court or any proceedings before a tribunal, then, except in so far as regulations otherwise provide, his liability by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the

dispute; and regulations shall make provision as to the court, tribunal or person by whom that amount is to be determined and the extent to which any determination of that amount is to be final.

(6) For the purposes of any inquiry under paragraph (5) as to the means of a person against whom an order for costs has been made, his dwelling house and household furniture and the tools and implements of his trade shall be left out of account except in such cases and to such extent as may be prescribed and except as so prescribed they shall, in all parts of the United Kingdom, be protected from seizure in execution to enforce the order.

F17 1995 NI 2

Financial limit on prospective cost of advice and assistance

6.—(1) Where a person seeks or receives any advice or assistance, then if at any time (whether before or after the advice or assistance has begun to be given) it appears to the solicitor from whom it is sought or received (or, in the case of advice or assistance sought or received from counsel, it appears to the solicitor instructing counsel) that the cost of giving it is likely to exceed the limit applicable under paragraph (2)—

(a) the solicitor shall determine to what extent that advice or assistance can be given without exceeding that limit; and

(b) shall not give it (or, as the case may be, not instruct counsel to give it) so as to exceed that limit except with the approval of the appropriate authority.

(2) The limit applicable under this paragraph is**[**[F18] £88**]** or such other sum as may be prescribed.

(3) For the purposes of this Article the cost of giving any advice or assistance shall be taken to consist of such of the following as are applicable in the circumstances, that is to say—

(a) any expenses (including fees payable to counsel) which may be incurred by the solicitor or his firm in, or in connection with, the giving of the advice or assistance; and

(b) any charges or fees (not being charges for disbursements) which, apart from Article 7, would be properly chargeable by the solicitor or his firm in respect of the advice or assistance;

and in sub-paragraph (*b*) "charges for disbursements" means charges in respect of such expenses (including fees payable to counsel) as are mentioned in sub-paragraph (*a*).

(4) In sub-paragraph (*b*) of paragraph (1) the reference to the approval of the appropriate authority shall, in relation to the giving of advice or assistance in any particular case, be construed as a reference to approval given in accordance with regulations by such committee or other person or body of persons as, in accordance with the provisions of regulations and of a scheme, is the appropriate committee, person or body for determining whether approval for the purposes of that sub-paragraph should be given in that case.

(5) In paragraph (4) "scheme" means a scheme for the time being in force under Article 18.

F18 SR 1996/205

Contributions from persons receiving advice or assistance

7.—(1) In respect of advice or assistance given to any person (in this Article and Article 8 referred to as "a client"), a client shall not, except in accordance with the following provisions of this Article, be required to pay any charge or fee.