STATUTORY INSTRUMENTS

1977 No. 1252 (N.I. 19)

NORTHERN IRELAND

The Legal Aid, Advice and Assistance (Northern Ireland) Order 1977

Laid before Parliament in draft

Made *26th July* 1977

Coming into Operation in accordance with Article 1 (2)

At the Court at Buckingham Palace, the 26th day of July 1977

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a) 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 and commencement

1.—(1) This Order may be cited as the Legal Aid, Advice and Assistance (Northern Ireland) Order 1977.

(2) Articles 1, 2, 3 (1), (2) and (4), 5, 6 and 7 shall come into operation on the fourteenth day after the day on which the Order is made and the other provisions of the Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

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

(2) In this Order "the principal Act" means the Legal Aid and Advice Act (Northern Ireland) 1965 (c).

Amendment of Part 1 *of principal Act*

3.—(1) In section 1 (1) (*b*) of the principal Act (restriction of legal aid in connection with proceedings before the House of Lords to appeals from the

(a) 1974 c. 28. (b) 1954 c. 33 (N.I.). (c) 1965 c. 8 (N.I.).

Court of Appeal) for the words "on appeal from the Court of Appeal" there shall be substituted the words "on any appeal from Northern Ireland" and in paragraph 1 (*a*) of Schedule 1 to the principal Act for the words "in relation to appeals from the Court of Appeal" there shall be substituted the words "in relation to any appeal from Northern Ireland".

(2) Section 1 (6) (*b*) of the principal Act (legal aid to be given only to persons ordinarily resident in the United Kingdom or domiciled in any part thereof or in connection with proceedings in respect of a matter which arose or is alleged to have arisen in Northern Ireland) is hereby repealed.

(3) Section 3 (3) of the principal Act (re-assessment of a person's contributions following changes in the financial limits for legal aid) and section 5 of the principal Act (legal aid in matters not involving litigation) are hereby repealed.

(4) In section 4 (3) of the principal act (assessment of disposable capital and income and of maximum contribution) after the words "legal aid" there shall be inserted the words ", advice or assistance".

(5) In section 6 of the principal Act, subsection (1) (panels of solicitors and barristers) is hereby repealed; in subsection (2) for the words "to have his name on the appropriate panels or any of them" there shall be substituted the words "to give advice or assistance or to act for persons receiving legal aid"; in subsection (3) for the words "the panels or any of them" there shall be substituted the words "acting for persons receiving legal aid, advice or assistance"; in subsection (4) after the words "legal aid," there shall be inserted the words "advice or assistance he himself shall be entitled to select" and the words from "shall be selected" to the word "himself" and paragraph (*b*) and the word "and" preceding it are hereby repealed; and in subsection (7) the words "from the panel" are hereby repealed.

(6) For section 7 of the principal Act (legal advice) there shall be substituted the sections set out in the Schedule.

(7) In section 10 (1) of the principal Act (functions of Law Society) for the words "and legal advice" there shall be substituted the words ", advice and assistance".

(8) In sections 14 (1) to (3) (regulations), 16 (1) and (5) (secrecy) and 17 (1) and (4) (proceedings for misrepresentation etc.) of the principal Act for the words "or advice" there shall be substituted the words ", advice or assistance"; in section 14 (2) (*a*) (*b*) and (*e*) and (3) (*b*) (*c*) and (*d*) of the principal act after the words "legal aid" (except where they occur in the phrase "legal aid fund") there shall be inserted the words ", advice or assistance" and section 18 (7) and (8) of the principal Act are hereby repealed.

(9) In section 19 (1) of the principal Act (interpretation) before the definition of "Law Society" there shall be inserted the following definitions:—

> ""advice" and "assistance" mean respectively advice and assistance under this Part;",

and for the definitions of "legal aid" and "legal advice" there shall be substituted the following definition:—

> ""legal aid" means legal aid under this Part;".

Criminal aid certificates

4. A certificate referred to as a legal aid certificate, a defence certificate or an appeal aid certificate shall be known as a criminal aid certificate and accordingly—

(*a*) in section 20 (1) of the principal Act for the words "a certificate (in this Part referred to as a "legal aid certificate")", in section 21 (1) for the words "a certificate (in this Part referred to as a "defence certificate")" and in section 22 (3) for the words "a certificate (in this Part referred to as "an appeal aid certificate")" there shall be substituted the words "a criminal aid certificate";

(*b*) in section 31 of the principal Act, the definitions of "appeal aid certificate", "defence certificate" and "legal aid certificate" are hereby repealed and after the definition of "the certifying authority" there shall be inserted the following definition:—

""criminal aid certificate" means a certificate granted under section 20 (1), 21 (2) or 22 (3);";

(*c*) in any other provision of Part II of the principal Act for the words "legal aid certificate", "defence certificate" or "appeal aid certificate" wherever they occur there shall be substituted the words "criminal aid certificate";

(*d*) in section 5 (3) of the Northern Ireland (Emergency Provisions) (Amendment) Act 1975 (a) for the words "defence certificate" and in any other statutory provision for the words "legal aid certificate", "defence certificate" or "appeal aid certificate" wherever they occur there shall be substituted the words "criminal aid certificate";

and in paragraph (*d*) "statutory provision" has the same meaning as in section 1 (*f*) of the Interpretation Act (Northern Ireland) 1954.

Extension of legal aid

5.—(1) In subsection (1) of section 20 of the principal Act (granting of certificates by magistrates' courts for legal aid) after the words "any person charged before it with an offence" there shall be inserted the words ", or who appears or is brought before it to be dealt with,"; for paragraph (*b*) of that subsection (person granted certificate for legal aid by magistrates' court entitled to have counsel only where he is charged with murder and the court thinks fit) there shall be substituted the following paragraph:—

"(*b*) subject to subsection (1A), counsel;"

and after the said subsection (1) there shall be inserted the following subsection:—

"(1A) Legal aid given for the purposes of any proceedings before a magistrates' court shall not include representation by counsel except in the case of an indictable offence where the court is of opinion that, because of circumstances which make the case unusually grave or difficult, representation by both solicitor and counsel would be desirable.".

(2) After subsection (4) of section 21 of the principal Act (legal aid for persons returned for trial for an indictable offence) there shall be added the following subsection:—

"(5) The foregoing provisions of this section shall be extended to apply to persons who appear or are brought before a county court or court of assize to be dealt with and shall, for the purposes of their application to persons to whom they are extended by this subsection, be amended as follows:—

(*a*) in subsection (1) for the words "returned for trial for an indictable offence" there shall be substituted the words "appearing or brought

(a) 1975 c. 62.

before a county court or court of assize to be dealt with" and the words "in the preparation and conduct of his defence at the trial" and "for that purpose" shall be omitted;

(*b*) in subsection 2 (*b*) for the words from "is to be" onwards there shall be substituted the words "appears or is brought";

(*c*) in subsection 3 (*b*) for the words "returned for trial upon any other charge" there shall be substituted the words "appearing or brought before it" and the words "in the preparation and conduct of his defence at the trial" shall be omitted.".

Report on means of applicant for free legal aid

6. After section 24 of the principal Act there shall be inserted the following section:—

"Report on means of applicant for free legal aid.

24A.—(1) Where a person has applied for free legal aid and has furnished a statement of means under subsection (1) of section 24, the court having power to grant a certificate entitling him to such legal aid may, before or after the granting of the certificate, require the Supplementary Benefits Commission to enquire into the means of that person and where such a request is made the Commission shall comply with it and make a report to the court.

(2) Where the court receives a report under subsection (1) before a certificate is granted, it shall, in determining whether or not to grant the certificate, have regard to the report and where the court receives such a report after a certificate has been granted, it may revoke the certificate if it appears to the court that the person to whom the certificate was granted—

(*a*) wilfully withheld material information from the court; or

(*b*) knowingly made a false statement in furnishing information to the court; or

(*c*) furnished to the court, due to error or mistake, a statement of means which was misleading to a significant extent.

(3) Where a certificate is revoked under subsection (2), the cost of legal aid incurred to the date of revocation may be recovered from the person to whom the certificate was granted (or if such a person was a child or young person, the parent or guardian) as a civil debt due to the Crown and a county court notwithstanding any limitation imposed on its jurisdiction under or by virtue of any enactment shall have jurisdiction to hear and determine any action brought to recover such cost."

Repeal

7. Section 25 (1) (*a*) of the Magistrates' Courts Act (Northern Ireland) 1964 (relating to rules under section 43 (3) of the Criminal Justice Act (Northern Ireland) 1945 (a) which was repealed by section 30 of the principal Act) is hereby repealed.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1945 c. 15 (N.I.).

SCHEDULE

Article 3 (6).

SECTIONS TO BE SUBSTITUTED FOR SECTION 7 OF THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965

Legal Advice and Assistance

Persons eligible for advice and assistance.

7.—(1) Advice and assistance to which this section applies shall, subject to and in accordance with the following provisions of this Act, be available in Northern Ireland for any person if—

(*a*) his disposable income does not exceed £42 a week; or

(*b*) he is directly or indirectly in receipt of supplementary benefit under the Supplementary Benefits etc. Act (Northern Ireland) 1966 (a) or family income supplement under the Family Income Supplements Act (Northern Ireland) 1971 (b);

and in either case his disposable capital does not exceed £300.

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

(*a*) for the weekly sum specified in subsection (1) such other weekly sum, not less than £42, as may be prescribed by the regulations;

(*b*) for the capital sum so specified, such other capital sum, not less than £300, as may be so prescribed.

Scope and general conditions of advice and assistance.

7A.—(1) Subject to the following provisions of this section and to any prescribed exceptions and conditions, section 7 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 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 subsection (1), section 7 does not apply to any advice or assistance 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; 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) Without prejudice to subsection (2), section 7 does not apply to 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 such step on his behalf (as distinct from assisting him in taking such a step on his own behalf), except—

(a) 1966 c. 28 (N.I.). (b) 1971 c. 8 (N.I.).

(*a*) in the case of civil proceedings before a court or tribunal, any step which consists only of negotiating on his behalf with a view to a settlement of a claim to which the proceedings relate; and

(*b*) any step consisting of such assistance as is mentioned in subsection (4).

(4) Section 7 also applies to any assistance given by a solicitor to any party to proceedings (whether criminal or civil) before a magistrates' court or to proceedings before a county court, whether by representing him in those proceedings or otherwise in connection with them, where the assistance is given in compliance with a request which is made to a solicitor by the court or given in accordance with a proposal which is made by a solicitor and approved by the court and which (in either case)—

(*a*) is so made or approved at a time (whether at or after the beginning of the proceedings) when the solicitor is present within the precincts of the court, but

(*b*) is not made or approved at any such time as is mentioned in paragraph (*a*) or (*b*) of subsection (2); and

(*c*) the court is satisfied that—

(i) the proceedings are proceedings in respect of which legal aid may be granted under this Act; and

(ii) an application for legal aid in respect of the proceedings has not been made previously and been refused.

(5) Section 1 (7) shall apply to advice and assistance in like manner as it applies to legal aid.

(6) In this section—

"civil aid certificate" means a certificate required in accordance with regulations made under section 14 to be obtained as a condition of entitlement to legal aid;

"criminal aid certificate" means a certificate issued under section 20, 21 or 22;

"statutory inquiry" means an inquiry or hearing held or to be held in pursuance of a duty imposed by any statutory provision; and

"statutory provision" has the meaning assigned to it by section 1 (*f*) of the Interpretation Act (Northern Ireland) 1954.

Financial limit on prospective cost of advice and assistance.

7B.—(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 subsection (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 subsection is £25 or such larger sum as may be substituted for that sum by regulations.

(3) For the purposes of this section 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 section 7C, would be properly chargeable by the solicitor or his firm in respect of the advice or assistance;

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

(4) In paragraph (*b*) of subsection (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 the regulations by such committee or other person or body of persons as, in accordance with the provisions of the regulations and of a scheme, is the appropriate committee, person or body for determining whether approval for the purposes of that paragraph should be given in that case.

(5) In subsection (4) "scheme" means a scheme for the time being in force under section 10, and "the regulations" means any regulations for the time being in force under section 14.

Contributions from persons receiving advice or assistance.

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

(2) Where a client's disposable income exceeds £20 a week and he is not (directly or indirectly) in receipt of supplementary benefit under the Supplementary Benefits etc. Act (Northern Ireland) 1966 or of family income supplement under the Family Income Supplements Act (Northern Ireland) 1971, subsection (1) shall not exempt him from liability to pay, in respect of the advice or assistance, charges or fees up to, but not in the aggregate exceeding, such amount as is applicable to him in accordance with the following provisions of this section.

(3) The amount applicable to a client for the purposes of subsection (2), where his disposable income falls within a range specified in the first column of the following Table, is the amount specified in relation to that range in the second column of that Table.

TABLE

Disposable income range	*Maximum contribution*
Exceeding £20 but not exceeding £21 a week	£4
Exceeding £21 but not exceeding £23 a week	£7
Exceeding £23 but not exceeding £25 a week	£10
Exceeding £25 but not exceeding £27 a week	£13
Exceeding £27 but not exceeding £29 a week	£16
Exceeding £29 but not exceeding £31 a week	£19
Exceeding £31 but not exceeding £33 a week	£22
Exceeding £33 but not exceeding £35 a week	£24
Exceeding £35 but not exceeding £37 a week	£27
Exceeding £37 but not exceeding £39 a week	£30
Exceeding £39 but not exceeding £42 a week	£33

(4) Regulations may provide that for any sum specified in subsection (2) or (3) there shall be substituted such other sum as may be prescribed by the regulations.

Payment of charges or fees otherwise than through client's contribution.

7D.—(1) This section applies to any charges or fees which, apart from section 7C, would be properly chargeable in respect of advice or assistance given to a client, in so far as those charges or fees are not payable by the client in accordance with that section.

(2) In the following provisions of this section "the solicitor"—

(*a*) in relation to any advice or assistance given by a solicitor employed by a firm of solicitors, and so given in the course of that employment, or given by counsel on instructions given to him by a solicitor in the course of such employment, means that firm of solicitors, and

(*b*) in any other case, means the solicitor by whom any advice or assistance is given or, where it is given by counsel, the solicitor on whose instructions counsel gives it.

(3) Except in so far as regulations otherwise provide, charges or fees to which this section applies shall constitute a first charge for the benefit of the solicitor—

(*a*) on any costs or expenses which (whether by virtue of a judgment or order of a court or an agreement or otherwise) are payable to a client by any other person in respect of the matter in connection with which the advice or assistance is given, and

(*b*) on any property (of whatever nature and wherever situated) which is recovered or preserved for a client in connection with that matter, including his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.

(4) In so far as the charge created by subsection (3) in respect of any charges or fees to which this section applies is insufficient to meet them, the deficiency shall, subject to subsection (5), be payable to the solicitor out of the legal aid fund.

(5) For the purpose of determining what charges or fees would be properly chargeable as mentioned in subsection (1), and whether there is a deficiency to be payable out of the legal aid fund in accordance with subsection (4), charges or fees in respect of advice or assistance given to a client shall, in such circumstances as may be prescribed, be taxed or assessed in such manner as may be prescribed.

Application of provisions to advice and assistance.

7E. The powers conferred by section 4 (4) and 14 (power to make regulations) shall, without prejudice to section 17 of the Interpretation Act (Northern Ireland) 1954, be construed as including power to make different regulations in relation to advice and assistance sought or received in pursuance of section 7 and in relation to legal aid respectively and those powers shall (without prejudice to their generality) be taken to include power to make provision as to the cases in which a person is for the purposes of section 7 to be taken to be (directly or indirectly) in receipt of supplementary benefit under the Supplementary Benefits etc. Act (Northern Ireland) 1966 or of family income supplement under the Family Income Supplements Act (Northern Ireland) 1971 and also to include power to modify the provision of sections 7 to 7D and this section in any manner for the purposes of the application of those provisions to advice or assistance—

(*a*) sought or received by a person who is under such age (not exceeding the age of eighteen years) as may be specified in the regulations; or

(*b*) sought or received on behalf of any such person by his parents or guardian or other person under whose care he is, or by a person acting for the purposes of any proceedings in Northern Ireland as his next friend or guardian.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

This Order extends legal aid to all appeals from Northern Ireland to the House of Lords, re-names legal aid, defence and appeal aid certificates as criminal aid certificates, empowers a court to allow representation by both solicitor and counsel in certain circumstances and makes provision for reports on means of applicants for free legal aid.

The Order also makes provision for legal advice and assistance and specifies the persons eligible for, and the scope and conditions of, advice and assistance.