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STATUTORY INSTRUMENTS

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1979 No. 1572 (N.I. 11)

NORTHERN IRELAND

**The Legal Aid, Advice and Assistance  
(Northern Ireland) Order 1979**

*Laid before Parliament in draft*

*Made*

*3rd December 1979*

*Coming into operation on days to be appointed under Article 1 (2)*

ARRANGEMENT OF ORDER

Article

1. Title and commencement.
2. Interpretation.
3. Contributions from persons receiving legal aid.
4. Charge on property recovered for persons receiving legal aid.
5. Extension of assistance to representation in proceedings.
6. Contributions from persons receiving advice or assistance.
7. Minor and consequential amendments and repeals.

At the Court at Buckingham Palace, the 3rd day of December 1979

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 1979.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

(3) An order under paragraph (2) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force.

### *Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954 (a) 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 (b).

### *Contributions from persons receiving legal aid*

3. For subsections (1) and (2) of section 3 of the principal Act (contributions from persons receiving legal aid) there shall be substituted the following subsections—

“(1) Where a person receives legal aid in connection with any proceedings, his contribution to the legal aid fund in respect of those proceedings may include—

- (a) if his disposable income exceeds £1,700 a year, a contribution in respect of income not greater than one quarter of the excess or such other proportion of the excess or such amount as may be prescribed by regulations; and
- (b) if his disposable capital exceeds £1,200, a contribution in respect of capital not greater than the excess or such lesser amount as may be so prescribed.

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

- (a) for the yearly sum specified in subsection (1), such other yearly sum as may be prescribed by the regulations;
- (b) for the capital sum so specified, such other capital sum as may be so prescribed.

(2A) Regulations made under subsections (1) and (2) shall be subject to affirmative resolution.”.

### *Charge on property recovered for persons receiving legal aid*

4.—(1) For section 3 (9) of the principal Act (charge on property recovered for persons receiving legal aid) there shall be substituted the following subsection—

“(9) In this section references to the net liability of the legal aid fund on any person’s account in relation to any proceedings are references to the aggregate amount of—

- (a) the sums paid or payable out of that fund on his account in respect of those proceedings to any solicitor or counsel; and
- (b) if he has received any advice or assistance in connection with those proceedings or any matter to which those proceedings relate, any sums paid or payable out of that fund in respect of that advice or assistance to any solicitor,

being sums not recouped to that fund by sums which are recovered by virtue of an order or agreement for costs made in his favour with respect to those proceedings, or by virtue of any right of his to be indemnified against expenses incurred by him in connection with those proceedings.”.

(2) Section 18 (6) of the principal Act (which is superseded by this Article) is hereby repealed.

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(a) 1954 c. 33 (N.I.).

(b) 1965 c. 8 (N.I.).

*Extension of assistance to representation in proceedings*

5.—(1) In section 7A of the principal Act (scope of advice and assistance)—

- (a) in subsection (1) for the words “the following provisions of this section” there shall be substituted the words “subsection (2) and section 7AA”;
- (b) subsections (3) and (4) and in subsection (6) the definitions of “statutory inquiry” and “statutory provision” are hereby repealed.

(2) After section 7A of the principal Act there shall be inserted the following section—

“Represent-  
ation in  
proceedings.

7AA.—(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 section 7A (2) and subject to any prescribed exceptions, section 7 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 section.

(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 paragraph (a) of section 7 (1) were omitted or for the weekly sum specified in that 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.

(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 subsection (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.”

(3) In section 1 of the principal Act (scope of legal aid)—

(a) in subsection (6) paragraph (c) is hereby repealed;

(b) after subsection (6) there shall be inserted the following subsection—

“(6A) A person may be refused legal aid if, in the particular circumstances of the case, it appears—

(a) unreasonable that he should receive it; or

(b) more appropriate that he should receive assistance by way of representation;

and regulations may prescribe the criteria for determining any question arising under paragraph (b).”

(4) In section 8 of the principal Act (power to award costs out of legal aid fund) after subsection (6) there shall be inserted the following subsection—

“(7) References in this section and section 9 to legal aid include references to assistance by way of representation.”

(5) In section 19 (1) of the principal Act (interpretation of Part I) at the appropriate places in alphabetical order there shall be inserted the following definitions—

“‘assistance by way of representation’ has the meaning assigned to it by section 7AA (1);

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

‘statutory provision’ has the meaning assigned to it by section 1 (f) of the Interpretation Act (Northern Ireland) 1954;”

#### *Contributions from persons receiving advice or assistance*

6. In section 7C of the principal Act (contributions from persons receiving advice or assistance)—

(a) in subsection (2) for the words from “such amount” onwards there shall be substituted the words “such amount as may be prescribed”;

(b) subsection (3) is hereby repealed; and

(c) in subsection (4) for the words “any sum specified in subsection (2) or (3)” there shall be substituted the words “the sum specified in subsection (2).”

#### *Minor and consequential amendments and repeals*

7.—(1) The principal Act shall have effect subject to the provisions of paragraphs (2) to (19).

(2) In section 2 (financial conditions of legal aid)—

(a) in subsection (1) for the word “larger” where it twice occurs there shall be substituted the word “other”;

(b) in subsection (2) for the words from “which include” to “made thereunder” there shall be substituted the words “made under subsection (1)”.

(3) In section 4 for subsections (5) and (6) (provision for applying the rules in Schedule 1 to the Supplementary Benefits (Northern Ireland) Order 1977 (a)) there shall be substituted the following subsection—

“(5) The regulations may also include, in relation to legal aid, provision for securing that in computing resources the rules set out in paragraphs 17, 18 and 23 to 25 of Schedule 1 to the Supplementary Benefits (Northern Ireland) Order 1977 shall be observed to such extent as may be prescribed.”.

(4) In section 4 for subsection (8) (determination of disposable income, disposable capital and maximum contribution) there shall be substituted the following subsection—

“(8) Subject to the provisions of this section, the disposable income and disposable capital of a person applying for legal aid, and the maximum amount of his contribution to the legal aid fund in respect of any proceedings, shall be determined by the Supplementary Benefits Commission for Northern Ireland, and the Commission may call attention to any special circumstances affecting the maximum amount of the lump sum and periodical payments which he could reasonably make on account of any contribution.”.

(5) In section 6 (2) (solicitors and counsel entitled to give advice or assistance or to act for persons receiving legal aid) after the words “his conduct” there shall be inserted the words “when giving or selected to give advice or assistance, his conduct”.

(6) In sections 7 (1) (b), 7C (2) and 7E for the words “Supplementary Benefits etc. Act (Northern Ireland) 1966” there shall be substituted the words “Supplementary Benefits (Northern Ireland) Order 1977”.

(7) In section 7 (2) (variation of limits on disposable income and disposable capital) the words “not less than £42” and “not less than £300” are hereby repealed.

(8) In section 7B (2) (financial limit on prospective costs of advice and assistance) for the word “larger” there shall be substituted the word “other”.

(9) In section 7D (3) (a) (first charge for benefit of solicitor on any costs or property recovered) the words “or expenses” are hereby repealed.

(10) In section 7E (application of provisions to advice and assistance) for the words “the purposes of section 7” there shall be substituted the words “the purposes of sections 7 and 7C”.

(11) In section 9 (provisions supplementary to section 8)—

(a) in subsection (2) (a) for the words from “the taxing master” to the end there shall be substituted the words “a statutory officer appointed under section 70 of the Judicature (Northern Ireland) Act 1978 (b)”;

(b) in subsection (2) (b) for the words from “such taxing master” to the end there shall be substituted the words “a statutory officer of the powers under section 8 of a judge of the High Court or a county court judge”;

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(a) S.I. 1977/2156 (N.I. 27).

(b) 1978 c. 23.

(c) in subsection (3) for the words "officers of the Supreme Court" there shall be substituted the words "statutory officers".

(12) In section 10 (5) (content of Law Society scheme) paragraph (b) is hereby repealed.

(13) In sections 10 (9) (laying of Law Society's Report) and 27 (1) (expenses of legal aid in criminal cases) for the word "Parliament" there shall be substituted the words "the Parliament of the United Kingdom".

(14) At the end of section 15 (1) (advisory committees) there shall be added the words "and to make to him recommendations on such matters so relating as they consider appropriate."

(15) In section 16 (secrecy)—

(a) in subsection (1) in paragraph (a) after the word "any" there shall be inserted the words "committee, court, tribunal or other"; and

(b) in subsection (3) for the words "one hundred pounds" there shall be substituted "£500".

(16) In section 17 (1) (proceedings for misrepresentation etc.) for the words "one hundred pounds" there shall be substituted "£500".

(17) In section 18 (right to indemnity to inure for benefit of legal aid fund)—

(a) in subsection (3) for the words from "receives legal aid" onwards there shall be substituted the words "receives legal aid, advice or assistance in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contribution, if any, under section 3 or 7C) the right shall inure also for the benefit of the legal aid fund as if the expenses incurred by that fund on behalf of the said person in connection with the legal aid, advice or assistance had been incurred by him";

(b) in subsection (5) after the words "receiving legal aid" there shall be inserted the words "advice or assistance".

(18) In section 19 (interpretation of Part I)—

(a) in subsection (1) in the definition of "person" after the word "unincorporate" there shall be inserted the words "which is not concerned in a representative, fiduciary or official capacity" and for the words "or advice" there shall be substituted the words "advice or assistance";

(b) subsections (2), (3) and (4) (which are spent) are hereby repealed.

(19) In Part I of Schedule 1 (proceedings for which legal aid may be given) paragraph 5 is hereby repealed.

(20) In Schedule 6 to the Supplementary Benefits (Northern Ireland) Order 1977 paragraphs 6, 7 and 8 are hereby repealed.

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

## EXPLANATORY NOTE

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

This Order extends the provisions of the Legal Aid and Advice Act (Northern Ireland) 1965 relating to legal advice and assistance so as to permit assistance by way of representation in proceedings in circumstances to be specified in regulations. The Order also amends the provisions of that Act concerning the contributions payable by assisted persons and enables regulations to prescribe the maximum contributions payable by those receiving legal aid and legal advice and assistance (including assistance by way of representation). The Order makes other minor amendments to the Act of 1965 including the increase of fines for offences under that Act and the removal of the obligation to embody certain of the rules relating to supplementary benefit in regulations concerning the assessment of resources. Several minor amendments to facilitate the consolidation of the Act of 1965 are also included.