
STATUTORY INSTRUMENTS

1981 No. 228

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

[^{F1}PART II

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

[^{F1}Costs of successful unassisted parties

F1 Pt. 2 (to the extent that it remains in operation) repealed (1.4.2015) by [Access to Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/435\)](#), arts. 1(2), 49(5), [Sch. 5](#) (with transitional provisions and savings in art. 48, Sch. 3); S.R. 2015/194, art. 2, [Sch.](#) (with transitional provisions and savings in art. 3)

Power to award costs out of the legal aid fund

16.—(1) Where a person receives legal aid in connection with any proceedings between him and a person not receiving legal aid (in this Article and Article 17 referred to as “the unassisted party”) and those proceedings are finally decided in favour of the unassisted party, the court by which the proceedings are so decided may, subject to the provisions of this Article, make an order for the payment to the unassisted party out of the legal aid fund of the whole or any part of the costs incurred by him in those proceedings.

(2) An order may be made under this Article in respect of costs if (and only if) the court is satisfied that it is just and equitable in all the circumstances that provision for those costs should be made out of public funds; and before making such an order the court shall in every case (whether or not application is made in that behalf) consider what orders should be made for costs against the person receiving legal aid and for determining his liability in respect of such costs.

(3) Without prejudice to paragraph (2), an order shall not be made under this Article in respect of costs incurred in a court of first instance, whether by that court or by any appellate court, unless—

- (a) the proceedings in the court of first instance were instituted by the party receiving legal aid; and
- (b) the court is satisfied that the unassisted party will suffer severe financial hardship unless the order is made.

(4) An order under this Article shall not be made by any court in respect of costs incurred by the unassisted party in any proceedings in which, apart from this Article, an order would not be made for the payment of his costs.

(5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under this Article, or a refusal to make such an order, except on a point of law.

(6) In this Article “costs” means costs as between party and party; but the costs in respect of which an order may be made under this Article include the costs of applying for that order.

(7) References in this Article and Article 17 to legal aid include references to assistance by way of representation.

Provisions supplementary to Article 16

17.—(1) Provision may be made by regulations—

- (a) for determining the proceedings which are or are not to be treated as separate proceedings for the purposes of Article 16, or as having been instituted by the party receiving legal aid for the purposes of Article 16(3)(a);
- (b) for modifying Article 16(3)(b) in its application to an unassisted party who is concerned in proceedings only in a fiduciary, representative or official capacity; and
- (c) for regulating the procedure to be followed in connection with orders under Article 16.

(2) Regulations made by virtue of paragraph (1)(c) may in particular make provision—

- (a) for the reference of applications for orders under Article 16, or of any questions of fact relevant to such applications, for inquiry and report by a statutory officer appointed under section 70 of the Judicature (Northern Ireland) Act 1978 ;
- (b) for the exercise by a statutory officer of the powers under Article 16 of a judge of the High Court or a county court judge;
- (c) for enabling the Law Society to be heard in connection with any order under Article 16.

(3) Regulations for the purposes of paragraphs (1) and (2), in so far as they relate to statutory officers, shall not be made^{F2} except after consultation with] the Lord Chief Justice.

(4) For the purposes of Article 16 proceedings shall be treated as finally decided in favour of the unassisted party—

- (a) if no appeal lies against the decision in his favour;
- (b) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted; or
- (c) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal;

and where an appeal against the decision is brought out of time, the court by which the appeal (or any further appeal in those proceedings) is determined may, if the appeal is allowed, make an order for the repayment by the unassisted party to the legal aid fund of the whole or any part of the sum previously paid to him in respect of those proceedings under Article 16.

(5) Where a court decides any proceedings in favour of the unassisted party and an appeal lies (with or without leave) against the decision, the court may, if it thinks fit, make or refuse to make an order under Article 16 forthwith, but any order so made shall not take effect—

- (a) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;
- (b) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.

(6) Where a party begins to receive legal aid in connection with any proceedings after those proceedings have been instituted, or ceases to receive legal aid before they are finally decided, or otherwise receives legal aid in connection with part only of any proceedings, the reference in Article 16(1) to the costs incurred by the unassisted party in those proceedings shall be construed as a reference to so much of those costs as is attributable to that part.]

F2 SI 1982/159

Changes to legislation:

Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, Costs of successful unassisted parties is up to date with all changes known to be in force on or before 25 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

- Order power to amend conferred by [2011 c. 24 \(N.I.\) Sch. 5 para. 5\(a\)](#)
- Act rev.in pt. by [1996 c. 25 s.79Sch.4 paras.19\(2\)36](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 28(7)(c) inserted by [2011 c. 24 \(N.I.\) s. 83\(2\)\(a\)](#)
- art. 29(2A) inserted by [2015 c. 9 \(N.I.\) Sch. 2 para. 3](#)
- art. 29(2A) words substituted in earlier affecting provision 2015 c. 9 (N.I.), Sch. 2 para. 3 by [2022 c. 4 \(N.I.\) s. 4\(9\)\(c\)](#)