

EXPLANATORY MEMORANDUM TO

The Legal Advice and Assistance (Amendment) Regulations (Northern Ireland) 2012

SR 2012 No. 419

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Articles 4, 5, 8, 22 and 27 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and is subject to the negative resolution procedure.

2. Purpose

The Legal Advice and Assistance (Amendment) Regulations (NI) 2012 will provide for:

- assistance by way of representation (ABWOR) in a magistrate's court for Declarations of Parentage;
- a statutory footing for issues currently provided by Authorisations by the Minister; and
- interim payment of disbursements under the ABWOR scheme.

Declarations of Parentage

The Regulations will allow the Legal Services Commission (the Commission) to grant legal aid for stand alone applications for declaration of parentage for stand alone declarations of parentage in the magistrates' court. The Currently, the Commission can only fund declarations of parentage in the lower court tier if it is part of other proceedings, such as contact proceedings.

Authorisations

The Regulations will put three authorisations made by the Minister of Justice, which allow the Commission to grant ABWOR for specified proceedings, on a statutory footing. The authorisations are detailed below.

- Non-Molestation Orders

¹http://www.nilsc.org.uk/uploads/consultation/documents/Amendments%20to%201965%20Regs%20Consultation%20Paper_FINAL160310.pdf

http://www.nilsc.org.uk/uploads/consultation/documents/Substantive%20Amendment%20Regulations%20--%20Consultation%20Draft_FINAL.pdf

This authorisation, made on 22 December 2010, varied the means test for civil legal aid for persons applying for non-molestation orders and introduced a system of fixed contributions. The usual means test applies to persons opposing applications for non-molestation orders.

➤ Mental Health Review Tribunal

This authorisation, made on 23 December 2010, allows applications for legal aid to be granted for representation at this tribunal without reference to the means test for civil legal aid. The usual merits test continues to apply.

➤ Care Tribunal

This authorisation, made on 3 April 2012, ensures that legal aid is available for proceedings before the Care Tribunal for individuals deemed to be unsuitable to work with children or vulnerable adults.

Interim Payment of Disbursements

The draft Regulations would enable the Commission to make interim payments to solicitors in respect of disbursements under the ABWOR scheme. At present, there is provision for the interim payment of disbursements in the higher courts, but not in the magistrates' courts. The provision for the interim payment of disbursements applies where the total liability for the disbursement exceeds £500, and does not exceed £2,500, or the maximum fee authorised by the Commission, whichever is the greater.

Consultation

The proposal for the interim payment of disbursements was included in a public consultation document which issued in March 2010 entitled "Proposed miscellaneous amendments to the Legal Aid (General) Regulations (NI) 1965"¹ which issued to a range of interested parties and is available on the Commission's website. This proposal received general support.

There was no consultation on the provision for ABWOR for declarations of parentage at the magistrates' court as this proposal amends a gap in the legislation to allow such applications to be made at the lower court tier.

There was no consultation on the provision regarding the authorisations as the provision merely puts on a statutory footing what is currently provided for by authorisation.

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Position in Great Britain

Legal aid is available for declarations of parentage at the lower court tiers in the other jurisdictions in the UK. There are similar provisions in England and Wales, and Scotland, for assistance and representation in the Mental Health and Care Tribunals, and provisions for waivers in the financial test for non-molestation orders. There are provisions for the interim payment of disbursements in England and Wales, and Scotland.

Equality Impact

The proposal for the interim payment of disbursements was screened for an equality impact and none was found. The other proposals were not screened as legal aid is already available for declarations of parentage at the higher courts and those matters covered by authorisations.

Regulatory Impact

A regulatory impact assessment was not conducted for the proposals, however, the responses to the consultation on the interim payment of disbursements welcomed the proposal as it will assist those engaged by solicitors at the magistrates' court, such as experts, as they will no longer have to wait until the end of proceedings to receive payment.

Financial Implications

It is expected that these amendments will have a minimal financial impact. The interim payment of disbursements merely provides for earlier payment of expenses authorised by the Commission. The Authorisations are already in effect, but require a statutory footing. There may be an increase in stand alone applications for declaration of parentage at the magistrates' court tier, however, this should be offset by a reduction in the number of stand alone applications for declarations of parentage at the higher courts.

Section 24 of the Northern Ireland Act

These provisions are compliant with S.24 of the Northern Ireland Act 1998.

Operational Date

It is proposed that the Regulations will come into operation on 10 December 2012.

¹http://www.nilsc.org.uk/uploads/consultation/documents/Amendments%20to%201965%20Regs%20Consultation%20Paper_FINAL160310.pdf

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