

EXPLANATORY MEMORANDUM TO

The Civil Legal Services (Scope) Regulations (Northern Ireland) 2016

SR 2016 No. 202

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Justice ("the Department") to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 12(6) of the Access to Justice (Northern Ireland) Order 2003 ("the 2003 Order") and is subject to the draft affirmative resolution procedure.

2. Purpose

- 2.1. These Regulations amend Schedule 2 to the 2003 Order regarding the scope of civil legal services. They will come into operation on 1 October 2016.
- 2.2. The effect of these amendments is to bring within scope the following proceedings in a court of summary jurisdiction: applications for warrants of further detention and applications for extensions of warrants of further detention, together with proceedings relating to declarations of parentage. Certain other forms of proceedings are also brought within the scope of civil legal services: proceedings before the Parole Commissioners for Northern Ireland, certain proceedings before the Care Tribunal and proceedings under Part 13A of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995.
- 2.3. Further, the Regulations provide that the Department may not fund civil legal services to any guardian ad litem for the purposes of any proceedings under the Children (Northern Ireland) Order 1995. This exclusion reflects the fact that a guardian ad litem is funded elsewhere by the public purse, so there is no requirement for legal aid to fund the guardian.

3. Background

- 3.1. In April 2015 the Department implemented civil legal services under the the 2003 Order. When the relevant provisions in Articles 10 to 20A of the 2003 Order were commenced, together with a suite of secondary legislation made under those provisions, it provided a new legislative framework for the funding of civil cases. That framework replaced the previous framework provided under Part 2 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 ("the 1981 Order").
- 3.2. However, representation for certain proceedings -- as listed at paragraph 2.2 above -- were not listed under Article 12(5) of, together with Schedule 2 to, the 2003 Order as services which may be funded by way of civil legal services. Currently, those proceedings continue to be funded under the 1981 Order.

- 3.3. In addition, these Regulations amend Schedule 2 to the 2003 Order to provide that the Department may not fund civil legal services to any guardian ad litem for the purposes of any proceedings under the Children (Northern Ireland) Order 1995.

4. Consultation

- 4.1. As part of the Assembly's control mechanism with the draft affirmative procedure, the Department consulted with the Justice Committee of the Northern Ireland Assembly. The draft Regulations were then debated by the Assembly, when they were approved by resolution.
- 4.2. No wider consultation took place on the draft Regulations.

5. Equality Impact

- 5.1. An equality screening exercise was carried out. This indicated that a full equality impact assessment was not required under section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

- 6.1. The Regulations were screened for their regulatory impact. The provisions contained in the Regulations will impose no additional costs on businesses, charities or the voluntary sector. Accordingly, a full Regulatory Impact Assessment was not considered necessary.

7. Financial Implications

- 7.1. These Regulations are intended to replicate the position under the 1981 Order. On that basis, they are not expected to have any specific financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department considers these Regulations to be compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. Not applicable.

11. Additional Information

- 11.1. Not applicable.