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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**Access to Justice (Northern Ireland) Order 2003**

**PART II**

**NORTHERN IRELAND LEGAL SERVICES COMMISSION**

*Civil legal services*

**Civil legal services**

**10.**—(1) For the purposes of this Order “civil legal services” means advice, assistance and representation, other than advice, assistance or representation which the Commission is required to fund as criminal defence services.

(2) The Lord Chancellor may by order provide that “civil legal services” is to include services (other than advice, assistance and representation) which—

- (a) are specified in the order,
- (b) fall within any of the descriptions specified in paragraph (3), and
- (c) are not services which the Commission is required to fund as criminal defence services.

(3) The descriptions of services referred to in paragraph (2) are—

- (a) the provision of general information about the law and legal system and the availability of legal services,
- (b) the provision of help by the giving of advice as to how the law applies in particular circumstances,
- (c) the provision of help in preventing, or settling or otherwise resolving, disputes about legal rights and duties,
- (d) the provision of help in enforcing decisions by which such disputes are resolved, and
- (e) the provision of help in relation to legal proceedings not relating to disputes.

(4) An order under paragraph (2) may make provision, including provision amending this Order—

- (a) about financial matters relating to services specified in the order (including, in particular, provision about eligibility, contributions, charges, remuneration and costs);
- (b) modifying the application of Articles 11 to 20 in relation to such services.

(5) Every person who exercises any function relating to civil legal services shall have regard to the desirability of exercising it, so far as is reasonably practicable, so as to—

- (a) promote improvements in the quality of those services and in the ways in which they are made accessible to those who need them,
- (b) secure that the services provided in relation to any matter are appropriate having regard to its nature and importance, and

- (c) achieve the swift and fair resolution of disputes without unnecessary or unduly protracted proceedings in court.

### **Funding of services**

**11.**—(1) The Commission shall establish and maintain a fund from which it shall fund civil legal services.

(2) The Lord Chancellor—

- (a) shall pay to the Commission the sums which he determines are appropriate for the funding of civil legal services by the Commission, and
- (b) may determine the manner in which and times at which the sums are to be paid to the Commission and may impose conditions on the payment of the sums.

(3) In making any determination under paragraph (2) the Lord Chancellor shall take into account (in addition to such other factors as he considers relevant) the need for civil legal services as notified to him by the Commission under Article 6(4).

(4) The Lord Chancellor shall lay before each House of Parliament a copy of every determination under paragraph (2)(a).

(5) In funding civil legal services the Commission shall aim to obtain the best possible value for money.

(6) Subject to regulations, the Commission shall pay into the fund established under paragraph (1)

- (a) sums received from the Lord Chancellor under paragraph (2),
- (b) sums received by the Commission by virtue of regulations under Articles 17 and 20,
- (c) sums received by the Commission by virtue of an order by a court under Article 19(7), and
- (d) such other receipts of the Commission as the Lord Chancellor may, with the concurrence of the Treasury, determine.

(7) The Commission shall pay out of the fund established under paragraph (1) any costs payable under a court order under Article 19(2) or under regulations under Article 20(2)(d).

(8) Where the Commission considers that the amount in the fund established under paragraph (1) significantly exceeds the amount which will be paid out before the next payment by the Lord Chancellor under paragraph (2), it shall—

- (a) inform the Lord Chancellor, and
- (b) if he so directs, pay to the Lord Chancellor so much of the excess as is specified in the direction.

(9) The Lord Chancellor—

- (a) may by direction impose requirements on the Commission as to the descriptions of services to be funded from any specified amount paid into the fund established under paragraph (1);
- (b) may by order require the Commission to establish and maintain two funds in place of the fund established under paragraph (1), being—
  - (i) a fund from which the Commission shall fund civil legal services in connection with any such matter as is specified in the order, and
  - (ii) a fund from which the Commission shall fund other civil legal services.

(10) An order under paragraph (9)(b) may make such amendments to this Order as the Lord Chancellor considers appropriate in consequence of the establishment of two funds in place of the fund established under paragraph (1).

## Services which may be funded

12.—(1) The Commission shall set priorities in its funding of civil legal services, and the priorities shall be set—

- (a) in accordance with any directions given by the Lord Chancellor, and
  - (b) after taking into account the need for such services.
- (2) The Commission may fund civil legal services by—
- (a) entering into contracts with persons or bodies for the provision of services by them,
  - (b) making payments to persons or bodies in respect of the provision of services by them,
  - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, services,
  - (d) establishing and maintaining bodies to provide, or facilitate the provision of, services,
  - (e) making grants or loans to individuals to enable them to obtain services,
  - (f) itself providing services, or
  - (g) doing anything else which it considers appropriate for funding services,

but this paragraph is subject to Article 41.

(3) The Lord Chancellor may by order require the Commission to discharge the function in paragraph (2) in accordance with the order.

(4) The Commission may fund different civil legal services, or civil legal services provided by different means—

- (a) in relation to different areas in Northern Ireland, and
- (b) in relation to different descriptions of cases.

(5) The Commission may not fund as civil legal services any of the services specified in Schedule 2.

(6) Regulations may amend Schedule 2 by adding new services or omitting or varying any services; and regulations under this paragraph may, in particular, describe the services which are not to be funded as civil legal services by reference to—

- (a) the court or tribunal before which proceedings are to take place,
- (b) the issues involved, or
- (c) the capacity in which a person seeking a service is concerned.

(7) If the effect of regulations amending Schedule 2 under paragraph (6) is that no advice or assistance of any description is to be funded as regards any area, then, so long as Schedule 2 so provides, Article 14(2)(b), 3(b), (6) and (7), and the words “advice, assistance and” in Article 10(1), shall not have effect.

(8) The Lord Chancellor—

- (a) may by direction require the Commission to fund the provision of any of the services specified in Schedule 2 in circumstances specified in the direction, and
- (b) may authorise the Commission to fund the provision of any of those services in circumstances specified in the authorisation or, if the Commission requests him to do so, in an individual case so specified.

(9) A direction or authorisation under paragraph (8) may impose limitations on the funding of a service specified in Schedule 2, and may, in particular, require or authorise the Commission to fund the service for a limited period, for the purposes of specified proceedings only, or for the purposes of limited aspects of proceedings.

(10) Articles 13 to 20 do not apply to civil legal services funded under a direction or authorisation under paragraph (8) unless they are applied (with or without modifications) by the provisions of the direction or authorisation.

(11) The Lord Chancellor shall either—

- (a) publish, or
- (b) require the Commission to publish,

any authorisation under paragraph (8)(b), unless it relates to an individual case (in which case he or the Commission may publish it if appropriate).

### **Individuals for whom services may be funded**

**13.**—(1) The Commission may only fund civil legal services for an individual if his financial resources are such that, under regulations, he is an individual for whom the services may be funded by the Commission.

(2) Regulations may provide that, in prescribed circumstances and subject to any prescribed conditions, services of a prescribed description may be funded by the Commission for individuals without reference to their financial resources.

(3) Regulations under this Article may include provision requiring the furnishing of information.

### **Decisions about provision of funded services**

**14.**—(1) The services which the Commission may fund as civil legal services are those which the Commission considers appropriate (subject to Article 12(5) and the priorities set under Article 12(1)).

(2) Any decision as to whether to fund civil legal services for an individual shall—

- (a) in the case of representation, be taken—
  - (i) by the Commission, or
  - (ii) in prescribed circumstances, by such person as may be prescribed;
- (b) in the case of advice and assistance, be taken by the person from whom the advice or assistance is sought.

(3) The grant of representation for the purposes of proceedings includes any such advice and assistance as to an appeal—

- (a) as may be specified by the Commission, or
- (b) as may be prescribed in relation to representation granted by virtue of paragraph (2)(a)(ii).

(4) The Commission may fund representation for an individual for a limited period, for the purposes of specified proceedings only, or for the purposes of limited aspects of proceedings, and may amend, withdraw or revoke the representation, or vary or remove any limitation imposed on the representation.

(5) Without prejudice to the generality of paragraph (4), the grant of representation may be limited under that paragraph as regards the persons who may represent the individual to representation only in pursuance of a contract made with the Commission.

(6) Regulations may—

- (a) prohibit the giving of advice or assistance without the approval of the Commission to the extent that the costs of giving it exceed such limit as may be prescribed;
- (b) prohibit the funding of advice or assistance by the Commission except where it is provided by a person in pursuance of a contract made with the Commission.

(7) No decision may be taken under this Article to fund advice and assistance for an individual in connection with any proceedings at a time when he has been granted a right to representation in respect of those proceedings under any provision of this Part (but this does not affect paragraph (3) or any assistance included in representation).

### **Funding code**

**15.**—(1) The Commission shall prepare a code setting out the criteria according to which any decision is to be taken as to—

- (a) whether to fund (or continue to fund) civil legal services for an individual for whom they may be funded by the Commission, and
- (b) if so, what services are to be funded for him.

(2) In settling the criteria to be set out in the code the Commission shall consider the extent to which they ought to reflect the following factors—

- (a) the likely cost of funding the services and the benefit which may be obtained by their being provided,
- (b) the availability of sums in the fund established under Article 11(1) for funding civil legal services and (having regard to present and likely future demands on that fund) the appropriateness of applying them to fund the services,
- (c) the importance of the matters in relation to which the services would be provided for the individual,
- (d) the availability to the individual of services not funded by the Commission and the likelihood of his being able to avail himself of them,
- (e) if the services are sought by the individual in relation to a dispute, the prospects of his success in the dispute,
- (f) the conduct of the individual in connection with civil legal services funded by the Commission (or an application for funding) or in, or in connection with, any proceedings,
- (g) the public interest, and
- (h) such other factors as the Lord Chancellor may by order require the Commission to consider.

(3) The code shall seek to secure that, where more than one description of service is available, the service funded is that which (in all the circumstances) is the most appropriate having regard to the criteria set out in the code.

(4) The code shall also specify procedures for the making of decisions about the funding of civil legal services by the Commission, including—

- (a) provision about the form and content of applications for funding,
- (b) provision imposing conditions which must be satisfied by an individual applying for funding,
- (c) provision requiring applicants to be informed of the reasons for any decision to refuse an application,
- (d) provision for the giving of information to individuals whose applications are refused about alternative ways of obtaining or funding services, and
- (e) provision establishing procedures for reviews of decisions about funding and for the giving of information about those procedures.

(5) The Commission may from time to time prepare a revised version of the code.

(6) Before preparing the code the Commission shall undertake such consultation as appears to it to be appropriate; and before revising the code the Commission shall undertake such consultation as appears to it to be appropriate unless it considers that it is desirable for the revised version to come into force without delay.

(7) The Lord Chancellor may by order require the Commission to discharge its functions relating to the code in accordance with the order.

### **Procedure relating to funding code**

**16.**—(1) After preparing the code or a revised version of the code, the Commission shall send a copy to the Lord Chancellor.

(2) If he approves it he shall lay it before each House of Parliament.

(3) The Commission shall publish—

(a) the code as first approved by the Lord Chancellor, and

(b) where he approves a revised version, either the revisions or the revised code as appropriate.

(4) The code as first approved by the Lord Chancellor shall not come into force until it has been approved by a resolution of each House of Parliament.

(5) A revised version of the code which does not contain changes in the criteria set out in the code shall not come into force until it has been laid before each House of Parliament.

(6) Subject as follows, a revised version of the code which does contain such changes shall not come into force until it has been approved by a resolution of each House of Parliament.

(7) Where the Lord Chancellor considers that it is desirable for a revised version of the code containing such changes to come into force without delay, he may (when laying the revised version before Parliament) also lay before each House a statement of his reasons for so considering.

(8) In that event the revised version of the code—

(a) shall not come into force until it has been laid before each House of Parliament, and

(b) shall cease to have effect at the end of the period of 120 days beginning with the day on which it comes into force unless a resolution approving it has been made by each House (but without that affecting anything previously done in accordance with it).

### **Terms of provision of funded services**

**17.**—(1) An individual for whom civil legal services are funded by the Commission shall not be required to make any payment in respect of the services except where regulations otherwise provide.

(2) Regulations may provide that, in prescribed circumstances, an individual for whom civil legal services are so funded shall—

(a) pay a fee of such amount as is fixed by or determined under the regulations,

(b) if his financial resources are, or relevant conduct is, such as to make him liable to do so under the regulations, pay the cost of the services or make a contribution in respect of the cost of the services of such amount as is so fixed or determined, or

(c) if the services relate to a dispute and he has agreed to make a payment (which may exceed the cost of the services) only in specified circumstances, make in those circumstances a payment of the amount agreed, or determined in the manner agreed, by him;

and in sub-paragraph (b) “relevant conduct” means conduct in connection with the services (or any application for their funding) or in, or in connection with, any proceedings in relation to which they are provided.

(3) The regulations may include provision for any amount payable in accordance with the regulations to be payable by periodical payments or one or more capital sums, or both.

(4) The regulations may also include provision for the payment by an individual of interest (on such terms as may be prescribed) in respect of—

- (a) any loan made to him by the Commission in connection with civil legal services,
- (b) any payment in respect of the cost of services required by the regulations to be made by him later than the time when the services are provided, or
- (c) so much of any payment required by the regulations to be made by him which remains unpaid after the time when it is required to be paid.

(5) The regulations shall include provision for the repayment to an individual of any payment made by him in excess of his liability under the regulations.

(6) The regulations may—

- (a) include provision requiring the furnishing of information, and
- (b) make provision for the determination of the cost of services for the purposes of the regulations.

(7) Except so far as regulations otherwise provide, where civil legal services have been funded by the Commission for an individual, sums expended by the Commission in funding the services (except to the extent that they are recovered under Articles 18 to 20), and other sums payable by the individual by virtue of regulations under this Article, shall constitute a first charge—

- (a) on any costs which (whether by virtue of a judgment or order of a court or an agreement or otherwise) are payable to him in respect of the matter in connection with which the services are provided, and
- (b) on any property (of whatever nature and wherever situated) which is recovered or preserved by him (whether for himself or any other person) in connection with that matter, including any property recovered or preserved in any proceedings and his rights under any compromise or settlement arrived at to avoid or bring to an end any proceedings.

(8) Regulations may make provision about the charge, including—

- (a) provision as to whether it is in favour of the Commission or the body or person by whom the services were provided, and
- (b) provision about its enforcement.

### **Costs orders against assisted parties**

**18.**—(1) Except in prescribed circumstances, costs ordered against an individual in relation to any proceedings or part of proceedings funded for him shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including—

- (a) the financial resources of all parties to the proceedings, and
- (b) their conduct in connection with the dispute to which the proceedings relate;

and for this purpose proceedings, or a part of proceedings, are funded for an individual if civil legal services relating to the proceedings or part are funded for him by the Commission.

(2) In assessing for the purposes of paragraph (1) the financial resources of an individual for whom civil legal services are funded by the Commission, his clothes and household furniture and the tools and implements of his trade shall not be taken into account, except so far as may be prescribed.

### **Costs of successful unassisted parties**

**19.**—(1) This Article applies to proceedings—

- (a) to which an individual, for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission, is a party, and
- (b) which are finally decided in favour of a party for whom such services are not so funded (“the unassisted party”).

(2) In any proceedings to which this Article applies the court by which the proceedings were so decided may, subject to paragraphs (3) and (4), make an order for the payment by the Commission to the unassisted party of the whole or any part of the costs incurred by him in the proceedings.

(3) Before making an order under this Article, the court shall consider what orders should be made for costs against the party for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission and for determining his liability in respect of such costs.

(4) An order under this Article in respect of any costs may only be made if—

- (a) an order for costs would be made in the proceedings apart from this Order;
- (b) as respects the costs incurred in a court of first instance, those proceedings were instituted by the party for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission and the court is satisfied that the unassisted party will suffer financial hardship unless the order is made; and
- (c) in any case, the court is satisfied that it is just and equitable in all the circumstances of the case that provision for the costs should be made out of public funds.

(5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under this Article, or against 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, and includes the costs of applying for an order under this Article.

(7) For the purposes of this Article 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 make an order for the repayment by the unassisted party to the Commission of the whole or any part of any sum previously paid to him under this Article in respect of those proceedings.

(8) Where a court decides any proceedings in favour of the unassisted party and an appeal lies (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under this Article forthwith, but if an order is made forthwith it 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.

(9) Where a party begins to receive civil legal services after the proceedings have been instituted, or ceases to receive such services before they are finally decided, or otherwise receives such services in connection with part only of the proceedings, the reference in paragraph (2) to the costs incurred by the unassisted party in the proceedings shall be construed as a reference to so much of those costs as is attributable to that part.



(10) For the purposes of this Article “court” includes a tribunal.

### **Regulations about costs in funded cases**

**20.**—(1) Subject to Articles 18 and 19, regulations may make provision about costs in relation to proceedings in relation to which, or to a part of which, civil legal services are funded for any of the parties by the Commission.

(2) The regulations may, in particular, make provision—

- (a) specifying the principles to be applied in determining the amount of any costs which may be awarded against a party for whom civil legal services are funded by the Commission,
- (b) limiting the circumstances in which, or the extent to which, an order for costs may be enforced against such a party,
- (c) as to the cases in which, and extent to which, such a party may be required to give security for costs and the manner in which it is to be given,
- (d) requiring the payment by the Commission of the whole or part of any costs incurred by a party for whom civil legal services are not funded by the Commission,
- (e) specifying the principles to be applied in determining the amount of any costs which may be awarded to a party for whom civil legal services are funded by the Commission,
- (f) requiring the payment to the Commission, or the person or body by which the services were provided, of the whole or part of any sum awarded by way of costs to such a party, and
- (g) as to the court, tribunal or other person or body by whom the amount of any costs is to be determined and the extent to which any determination of that amount is to be final.