
DRAFT STATUTORY INSTRUMENTS

2003 No.

Access to Justice (Northern Ireland) Order 2003

PART II

NORTHERN IRELAND LEGAL SERVICES COMMISSION

Criminal defence services

Criminal defence services

21.—(1) The Commission shall establish and maintain a fund from which it shall fund—

- (a) advice and assistance in accordance with Article 23, and
- (b) representation in accordance with Articles 24 and 30,

and in this Order services which can be so funded are referred to as “criminal defence services”.

(2) The Lord Chancellor shall pay to the Commission such sums as are required to meet the costs of any criminal defence services funded by the Commission.

(3) The Lord Chancellor may—

- (a) determine the manner in which and times at which the sums referred to in paragraph (2) shall be paid to the Commission, and
- (b) impose conditions on the payment of the sums.

(4) In funding criminal defence services the Commission shall aim to obtain the best possible value for money.

(5) 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 an order by a court under Article 31,
- (c) sums received by the Commission by virtue of an order by a court under section 4 or 6 of the Costs in Criminal Cases Act (Northern Ireland) 1968⁽¹⁾, and
- (d) such other receipts of the Commission as the Lord Chancellor may, with the concurrence of the Treasury, determine.

(6) 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.

⁽¹⁾ 1968 c. 10. (N.I.)

Criminal defence services: code of conduct

22.—(1) The Commission shall prepare a code of conduct to be observed by employees of the Commission, and employees of any body established and maintained by the Commission, in the provision of criminal defence services.

(2) The code shall include—

- (a) duties imposed in accordance with any scheme made by the Commission under Schedule 9 to the Northern Ireland Act 1998⁽²⁾ (equality schemes),
- (b) duties to protect the interests of the individuals for whom criminal defence services are provided,
- (c) duties to the court,
- (d) duties to avoid conflicts of interest, and
- (e) duties of confidentiality,

and duties on employees who are members of a professional body to comply with the rules of the body.

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

(4) Before preparing or revising the code the Commission shall consult the Law Society and the General Council of the Bar of Northern Ireland and such other bodies or persons as it considers appropriate.

(5) After preparing the code or a revised version of the code the Commission shall send a copy to the Lord Chancellor.

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

(7) 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.

(8) The code, and any revised version of the code, shall not come into force until it has been approved by a resolution of each House of Parliament.

Advice and assistance

23.—(1) The Commission shall fund such advice and assistance as it considers appropriate—

- (a) for individuals who are arrested and held in custody at a police station or other premises, and
- (b) in prescribed circumstances, for individuals who—
 - (i) are not within sub-paragraph (a) but are involved in investigations which may lead to relevant proceedings,
 - (ii) are before a court or other body in such proceedings, or
 - (iii) have been the subject of such proceedings.

(2) The Commission may comply with the duty imposed by paragraph (1) by—

- (a) entering into contracts with persons or bodies for the provision of advice or assistance by them,
- (b) making payments to persons or bodies in respect of the provision of advice or assistance by them,

(2) 1998 c. 47.

- (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, advice or assistance,
 - (d) establishing and maintaining bodies to provide, or facilitate the provision of, advice or assistance,
 - (e) making grants to individuals to enable them to obtain advice or assistance,
 - (f) employing persons to provide advice or assistance, or
 - (g) doing anything else which it considers appropriate for funding advice and assistance.
- (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 advice and assistance by different means—
- (a) in different areas in Northern Ireland, and
 - (b) in relation to different descriptions of cases.

Representation

24.—(1) The Commission shall fund representation to which an individual has been granted a right in accordance with Articles 25 to 29.

(2) Subject to the following provisions, the Commission may comply with the duty imposed by paragraph (1) by—

- (a) entering into contracts with persons or bodies for the provision of representation by them,
- (b) making payments to persons or bodies in respect of the provision of representation by them,
- (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, representation,
- (d) establishing and maintaining bodies to provide, or facilitate the provision of, representation,
- (e) making grants to individuals to enable them to obtain representation,
- (f) employing persons to provide representation, or
- (g) doing anything else which it considers appropriate for funding representation.

(3) The Lord Chancellor—

- (a) shall by order make provision about the payments which may be made by the Commission in respect of any representation provided by non-contracted private practitioners, and
- (b) may by order make any other provision requiring the Commission to discharge the function in paragraph (2) in accordance with the order.

(4) For the purposes of paragraph (3)(a) representation is provided by a non-contracted private practitioner if it is provided, otherwise than pursuant to a contract entered into by the Commission, by a person or body which is neither—

- (a) a person or body in receipt of grants or loans made by the Commission under paragraph (2), nor
- (b) the Commission itself or a body established or maintained by the Commission.

(5) The provision which the Lord Chancellor is required to make by order under paragraph (3)(a) includes provision for reviews of, or appeals against, determinations for the purposes of the order.

(6) The Commission may fund representation by different means—

- (a) in different areas in Northern Ireland, and

- (b) in relation to different descriptions of cases.

Individuals to whom right to representation may be granted

25.—(1) A right to representation may be granted—

- (a) for the purposes of any kind of proceedings specified in paragraph (2), to an individual such as is mentioned in that paragraph in relation to that kind of proceedings;
- (b) to an individual for the purposes of enabling him to resist an appeal in proceedings specified in paragraph (2) otherwise than in an official capacity;
- (c) for the purposes of a diversionary youth conference, to a child with respect to whom the conference has been, or is to be, convened,
- (d) to an individual for the purposes of proceedings concerning him which are of such a kind, and are before such court or other body, as may be prescribed,

and in this Order proceedings mentioned in paragraphs (a) to (d) are referred to as “relevant proceedings”.

(2) The proceedings referred to in paragraph (1)(a) and (b) are—

- (a) proceedings before any court for dealing with an individual accused of an offence,
- (b) proceedings before—
 - (i) any court, or
 - (ii) the Life Sentence Review Commissioners,
 for dealing with an individual convicted of an offence (including proceedings in respect of a sentence or order),
- (c) proceedings for dealing with an individual under section 9 of, or paragraph 6 of Schedule 1 to, the Extradition Act 1989⁽³⁾ or under section 2 of the Backing of Warrants (Republic of Ireland) Act 1965⁽⁴⁾,
- (d) proceedings for binding an individual over to keep the peace or to be of good behaviour under Article 127 of the Magistrates' Courts (Northern Ireland) Order 1981, and for dealing with an individual who fails to comply with an order under that Article,
- (e) proceedings on an appeal brought by an individual under section 47A of the Criminal Appeal (Northern Ireland) Act 1980⁽⁵⁾,
- (f) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and
- (g) proceedings for dealing with an individual in respect of whom an application has been made under—
 - (i) Article 44 or 45 of the Police and Criminal Evidence (Northern Ireland) Order 1989⁽⁶⁾, or
 - (ii) paragraph 29 or 36 of Schedule 8 to the Terrorism Act 2000⁽⁷⁾,
 but do not include any proceedings for a writ of habeas corpus or other prerogative remedy.

⁽³⁾ 1989 c. 33.

⁽⁴⁾ 1965 c. 45.

⁽⁵⁾ 1980 c. 47.

⁽⁶⁾ 1989 N.I. 12.

⁽⁷⁾ 2000 c. 11.

Grant of right to representation by court

26.—(1) A court before which any relevant proceedings take place, or are to take place, has power to grant a right to representation in respect of those proceedings except in such circumstances as may be prescribed.

(2) Where a right to representation is granted for the purposes of relevant proceedings then, subject to paragraph (5)—

(a) it includes the right to representation for the purposes of any related bail proceedings, any related court-ordered youth conference, and any preliminary or incidental proceedings; and regulations may make provision specifying whether any proceedings are or are not to be regarded as preliminary or incidental; and

(b) it includes the right to such advice and assistance, as to any appeal, as may be prescribed.

(3) A court also has power to grant a right to representation for the purposes of relevant proceedings before another court in such circumstances as may be prescribed.

(4) A magistrates' court also has power to grant a right to representation for the purposes of a diversionary youth conference.

(5) A court has power to grant representation for a limited period, for the purposes of specified proceedings only or for the purposes of limited aspects of proceedings, and to vary or remove any limitation imposed on representation.

(6) Regulations may make provision—

(a) as to the form of any application for a grant of a right to representation under this Article;

(b) as to the information which must be supplied with any such application;

(c) as to the form of any grant of a right to representation under this Article;

(d) requiring the court granting a right to representation under this Article to indicate the grounds on which the right was granted.

(7) Before making any regulations under paragraph (6) the Lord Chancellor shall consult the Lord Chief Justice.

(8) The refusal of a right to representation before a hearing shall not prevent the applicant being granted a right to representation at the hearing.

(9) A right to representation in respect of proceedings may be withdrawn—

(a) by any court before which the proceedings take place, or

(b) in the case of a diversionary youth conference, by a magistrates' court;

and a court must consider whether to withdraw a right to representation in such circumstances as may be prescribed.

(10) In this Article “court” includes any body before which relevant proceedings take place.

Grant of right to representation by Commission

27.—(1) Regulations may provide that the Commission shall have power to grant rights to representation in respect of any one or more of the descriptions of proceedings prescribed under Article 25(1)(d), and to withdraw any rights to representation granted by it.

(2) Regulations under paragraph (1) may provide that the Commission shall have power to grant representation for a limited period or for the purposes of specified proceedings only or for the purposes of limited aspects of proceedings, and to vary or remove any limitation imposed on representation.

(3) Regulations under paragraph (1) may make provision—

- (a) as to the form of any application for a grant of a right to representation under those regulations;
- (b) as to the information which must be supplied with any such application;
- (c) as to the form of any grant of a right to representation under those regulations;
- (d) requiring the Commission to indicate the grounds on which any right to representation is granted under those regulations.

Appeals

28. Except where regulations otherwise provide, an appeal shall lie to such court or other person or body as may be prescribed against a decision—

- (a) to refuse a right to representation in respect of relevant proceedings;
- (b) to impose or vary a limitation on such a right;
- (c) not to extend such a right; or
- (d) to withdraw such a right.

Criteria for grant of right to representation

29.—(1) Any question as to whether a right to representation should be granted or extended, or whether a limitation on representation should be imposed, varied or removed, shall be determined according to the interests of justice.

(2) In deciding what the interests of justice consist of in relation to any individual, the following factors must be taken into account—

- (a) whether the individual would, if any matter arising in the proceedings is decided against him, be likely to lose his liberty or livelihood or suffer serious damage to his reputation,
- (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law,
- (c) whether the individual may be unable to understand the proceedings or to state his own case,
- (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual, and
- (e) whether it is in the interests of another person that the individual be represented.

(3) The Lord Chancellor may by order amend paragraph (2) by adding new factors or varying any factor.

(4) A right to representation shall always be granted in such circumstances as may be prescribed.

Selection of representative

30.—(1) An individual who has been granted a right to representation in accordance with Articles 25 to 29 may, subject to Article 35, select any representative or representatives willing to act for him; and, where he does so, the Commission is to comply with the duty imposed by Article 24 by funding representation by the selected representative or representatives.

(2) Regulations may provide that in prescribed circumstances—

- (a) the right conferred by paragraph (1) is not to apply in cases of prescribed descriptions,
- (b) an individual who has been provided with advice or assistance funded by the Commission under Article 23 by a person whom he chose to provide it for him is to be taken to have selected that person as his representative pursuant to that right,

- (c) that right is not to include a right to select a representative of a prescribed description,
 - (d) that right is to select only a registered person within the meaning of Article 36, or only a representative of a prescribed description,
 - (e) that right is to select not more than a prescribed number of representatives to act at any one time,
 - (f) that right is not to include a right to select a representative in place of a representative previously selected.
- (3) Regulations under paragraph (2)(b) may prescribe circumstances in which an individual is to be taken to have chosen a person to provide advice or assistance for him.
- (4) Regulations under paragraph (2) may not provide that only a person employed by the Commission, or by a body established and maintained by the Commission, may be selected.
- (5) Regulations may provide that in prescribed circumstances the Commission is not required to fund, or to continue to fund, representation for an individual by a particular representative (but such provision shall not prejudice any right of the individual to select another representative).
- (6) The circumstances which may be prescribed by regulations under paragraph (2) or (5) include that a determination has been made by a prescribed body or person.
- (7) A representative who has been selected to act for an individual under this paragraph may select another person to act for that individual, as the agent of the representative, if that other person is of such a description that nothing in Article 35 would prohibit the individual selecting him as his representative.

Terms of provision of funded services

- 31.**—(1) An individual for whom criminal defence services are funded by the Commission shall not be required to make any payment in respect of the services except where paragraph (2) applies.
- (2) Where representation for an individual in respect of relevant proceedings in any court is funded by the Commission under Article 24, the court may, subject to regulations under paragraph (3), make an order requiring him to pay some or all of the cost of any representation so funded for him (in proceedings in that or any other court, or in any related court-ordered youth conference).
- (3) Regulations may make provision about—
- (a) the descriptions of courts by which, and individuals against whom, an order under paragraph (2) may be made,
 - (b) the circumstances in which such an order may be made and the principles to be applied in deciding whether to make such an order and the amount to be paid,
 - (c) the determination of the cost of representation for the purposes of the making of such an order,
 - (d) the furnishing of information and evidence to the court or the Commission for the purpose of enabling the court to decide whether to make such an order and (if so) the amount to be paid,
 - (e) prohibiting individuals who are required to furnish information or evidence from dealing with property until they have furnished the information or evidence or until a decision whether to make an order, or the amount to be paid, has been made,
 - (f) rights of appeal against such an order,
 - (g) the person or body to which, and manner in which, payments required by such an order must be made and what that person or body is to do with them, and

- (h) the enforcement of such an order (including provision for the imposition of charges in respect of unpaid amounts).