

*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the
Northern Ireland Act 2000, for approval by resolution of each House of Parliament*

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Legal Aid (Northern Ireland) Order 2005

*Made - - - - 2005
Coming into operation in accordance with Article 1(2)
and (3)*

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title, commencement and interpretation

1.—(1) This Order may be cited as the Legal Aid (Northern Ireland) Order 2005.

(2) Except as provided by paragraph (3), this Order comes into operation on the day after the day on which it is made.

(3) Paragraph 8 of Schedule 1, and Article 3(1) so far as relating to it, come into operation on the day appointed under Article 1(2) of the Access to Justice (Northern Ireland) Order 2003 for the coming into operation of Article 12(5) of that Order.

(4) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

Exceptional legal aid

2. After Article 10 of the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(NI 8\)](#) insert—

“Exceptional legal aid

10A.—(1) The Lord Chancellor may by direction require that legal aid is to be available in connection with excluded proceedings in circumstances specified in the direction.

(2) If the Commission requests him to do so, the Lord Chancellor may authorise legal aid to be available in connection with any proceedings (whether excluded proceedings or not) —

- (a) in circumstances specified in the authorisation; or
- (b) in an individual case so specified.

(3) For the purposes of this Article “excluded proceedings” means proceedings before a court or tribunal which are not—

- (a) proceedings of a description mentioned in Part I of Schedule 1;
- (b) proceedings for the purposes of which free legal aid may be given under Part III; or
- (c) proceedings in relation to which assistance by way of representation may be approved under Article 5.

(4) Legal aid under a direction or authorisation under this Article shall consist of such representation, on terms provided for by the direction or authorisation, by a solicitor or by counsel (or by both) as is specified in the direction or authorisation.

(5) In paragraph (4) “representation” includes all such assistance as is usually given by a solicitor or counsel in—

- (a) the steps preliminary or incidental to proceedings; or
- (b) arriving at or giving effect to a compromise to avoid or bring an end to proceedings.

(6) A direction or authorisation under this Article may make provision about financial matters relating to legal aid under the direction (including, in particular, provision about eligibility, contributions, charges, remuneration and costs).

(7) Articles 10(3) to (5A), 11, 12, 13, 16 and 17 and Schedule 2 do not apply to legal aid under a direction or authorisation under this Article, unless they are applied (with or without modification) by the provisions of the direction or authorisation.

(8) A direction or authorisation under this Article may be varied or revoked.

(9) The Lord Chancellor must publish, or require the Commission to publish,

- (a) directions under paragraph (1) and directions varying or revoking such directions; and
- (b) authorisations under paragraph (2)(a) and authorisations varying or revoking such authorisations.

(10) The Lord Chancellor or the Commission may publish an authorisation under paragraph (2)(b), or an authorisation varying or revoking such an authorisation, if the Lord Chancellor or the Commission considers it appropriate to do so.

(11) In this Article “the Commission” means the Northern Ireland Legal Services Commission.”.

Amendments and repeals

3.—(1) Schedule 1 (minor and consequential amendments) has effect.

(2) Schedule 2 (repeals) has effect.

A.K.Galloway
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 3

MINOR AND CONSEQUENTIAL AMENDMENTS

The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8)

1. In Article 4(2) after sub-paragraph (a) insert—
 - “(aa) at a time when—
 - (i) the Northern Ireland Legal Services Commission has informed him that legal aid is available to him in connection with those proceedings under a direction given under Article 10A(1) or an authorisation given under Article 10A(2)(a); or
 - (ii) the Lord Chancellor has informed him that legal aid is available to him in connection with those proceedings under an authorisation given under Article 10A(2)(b),and he has not been informed by the Commission or the Lord Chancellor that such legal aid has ceased to be so available; or”.
2. In Article 13(3) for “Article 10(6)(b)” substitute “Article 15A(b)”.
3. After Article 15 insert—

“Legal aid not to affect normal rules

- 15A. Except as expressly provided by this Part or by regulations made under it—
 - (a) the fact that the services of counsel or a solicitor are given by way of legal aid does not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of such a relationship; and
 - (b) the rights conferred by or under this Part on a person receiving legal aid are not to affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.”.
4. In Article 26(3) after “12” insert “or a direction or authorisation under Article 10A”.
5. In Article 33(1) for “Department of Health and Social Services” substitute “Department for Social Development”.
6. In the heading of Schedule 1 for “PART II OF THIS ORDER” substitute “ARTICLE 9”.

The Access to Justice (Northern Ireland) Order 2003 (NI 10)

7. Article 12(8) to (11) shall cease to have effect.
8. After Article 12 insert—

“Exceptional funding

- 12A.—(1) 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.

(2) A direction or authorisation under paragraph (1) 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.

(3) Articles 13 to 20 do not apply to civil legal services funded under a direction or authorisation under paragraph (1) unless they are applied (with or without modifications) by the provisions of the direction or authorisation.

(4) The Lord Chancellor shall either—

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

any authorisation under paragraph (1)(b), unless it relates to an individual case (in which case he or the Commission may publish it if appropriate).”

SCHEDULE 2

Article 3

REPEALS

| Short Title | Extent of repeal |
|---|--|
| The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) | In Article 4(2) the word “or” following paragraph (a), Article 10(6). |
| The Access to Justice (Northern Ireland) Order 2003 (NI 10) | Article 12(8) to (11). |

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the grant of legal aid in exceptional circumstances.