

*These notes refer to the Justice Act (Northern Ireland)
2011 (c.24) which received Royal Assent on 4 May 2011*

Justice Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Legal Aid, etc.

This Part allows rules/regulations to be made to introduce a new means test for the grant of criminal legal aid in Northern Ireland and to make further amendments to Legal Aid legislation. These include powers to enable the courts to make recovery of defence costs orders; repeal of a provision which prevents the Northern Ireland Legal Services Commission from establishing or funding services under a Litigation Funding Agreement; and a number of miscellaneous amendments to legal aid legislation mainly relating to the scope of civil legal services.

Section 80: Eligibility for criminal legal aid

This section allows the introduction of a new means test for the grant of criminal legal aid in Northern Ireland. This is an enabling power to make rules. The rules will prescribe the financial eligibility limits. The first rules under this section shall not be made unless a draft of the rules has been laid before, and approved by a resolution of, the Assembly.

Section 81: Order to recover costs of legal aid

This section allows courts to make recovery of defence costs orders against legally aided defendants if the court considers that the defendant has sufficient funds to pay all, or a proportion of, the costs of his defence. The section is for an enabling power which allows rules to be made. The rules would subsequently include the detail of how these orders would operate in practice.

Section 82: Eligibility of persons in receipt of guarantee credit

This section amends the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to include applicants in receipt of the guarantee credit element of State Pension Credit as automatically meeting, in certain circumstances, the financial test for civil legal aid.

Section 83: Legal aid for certain bail applications

This section ensures that an accused person who has been granted a criminal aid certificate for proceedings before the magistrates' court will continue to get free legal aid not only for any bail application heard in the magistrates' court but also for a repeat bail application made in the Crown Court. For an accused person who has been granted a criminal aid certificate for proceedings before the Crown Court, this certificate will now include free legal aid not only for any bail application in the Crown Court but also for any compassionate bail application made in the magistrates' court.

Section 84: Financial eligibility for grant of right to representation

The section amends the Access to Justice (Northern Ireland) Order 2003 and provides that the power of the court or the Northern Ireland Legal Services Commission to grant criminal legal aid may only be exercised following an assessment of the applicant's means.

Section 85: Litigation funding agreements

This section removes the restriction on the Northern Ireland Legal Services Commission from establishing or funding services under a Litigation Funding Agreement (LFA). LFAs are a type of agreement that allows litigants to pursue money damages cases, including personal injury litigation, on the basis that they would not be liable for their legal costs if their case was unsuccessful. If a client, funded by way of an LFA, was successful then either a success fee obtained from the losing side, or a portion of the clients' award (or both) would be paid into a fund. This fund would then help meet the cost of legal fees in unsuccessful cases.

Section 86: Civil legal services: scope

This section ensures that civil legal services are available for applications in the Crown Court or in a court of summary jurisdiction to vary or discharge a witness anonymity order or an order under the Protection from Harassment (Northern Ireland) Order 1997. In a court of summary jurisdiction, civil legal services will also be available for applications for a foreign travel restriction order or to vary, renew or discharge a foreign travel restriction order; for applications to discharge an investigation anonymity order; or for applications to release property subject to a confiscation order under the Proceeds of Crime Act 2002.

Section 87: Enhanced legal aid fees for certain solicitors

This section brings in Schedule 5 which provides the power to allow legal aid regulations to be made in order to remunerate at an enhanced rate solicitors who exercise rights of audience in the lower courts and certain tribunals where they have undergone the requisite advocacy training specified by the Law Society and have complied with certain duties.