



2011 CHAPTER 24

PART 7

LEGAL AID, ETC.

**Eligibility for criminal legal aid**

**80.**—(1) The [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(NI 8\)](#) is amended as follows.

(2) For Article 31 substitute—

**“Decisions as to eligibility for free legal aid**

**31.**—(1) If on a question of granting a person free legal aid under Article 28, 28A, 29 or 30 there is a doubt whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.

(2) For the purposes of Articles 28, 28A, 29 and 30 the question whether the means of a person are insufficient to enable him to obtain legal aid is to be determined in accordance with rules made for that purpose under Article 36.

(3) Those rules may make provision for, and in connection with, the determination of that question and may in particular—

- (a) provide that the means of a person are to be taken to be insufficient to enable him to obtain legal aid if—
  - (i) his income does not exceed a prescribed sum; or
  - (ii) his disposable income does not exceed a prescribed sum;
- (b) provide for the calculation for the purposes of sub-paragraph (a) of the income and disposable income of a person;

- (c) provide for the manner in which, and person by whom, the means of a person are to be assessed for the purposes of making that determination;
- (d) provide for the review of that determination in prescribed circumstances;
- (e) make such other provision as appears to the Department of Justice necessary or expedient.”.

(3) In Article 33(1) (enquiries as to means of applicant for free legal aid) for the words from “the Department for Social Development to arrange” to the end substitute “enquiries to be made into the means of that person, and a report made to the court, in accordance with rules under Article 36.”.

(4) In Article 36 (rules as to legal aid in criminal cases) for paragraph (4) substitute—

“(4) Except as provided by paragraph (5), rules under this Article are subject to negative resolution.

(5) The rules to which paragraph (6) applies shall not be made unless a draft of the rules has been laid before, and approved by a resolution of, the Assembly.

(6) This paragraph applies to the first rules under this Article which—

- (a) are made after the coming into operation of section 80 of the Justice Act (Northern Ireland) 2011; and
- (b) contain any provision made by virtue of Article 31, as substituted by that section.”.

### **Order to recover costs of legal aid**

**81.**—(1) The [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(NI 8\)](#) is amended as follows.

(2) After Article 33 insert—

#### **“Order to recover costs of legal aid**

**33A.**—(1) Where a person has been granted a criminal aid certificate the court may, subject to rules made under Article 36, make an order requiring him to pay some or all of the cost of legal aid incurred to the date of the order unless he is already subject to an action under Article 33(3) to recover that cost.

(2) Rules made under Article 36 may make provision about—

- (a) the descriptions of courts by which, and individuals against whom, an order under paragraph (1) may be made,

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*Status: This is the original version (as it was originally enacted).*

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- (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 persons who may apply to the court for such an order to be made and the circumstances and manner in which that application may be made,
  - (d) the determination of the cost of legal aid incurred for the purposes of the making of such an order,
  - (e) the manner in which, and persons by whom, an investigation into the means of any person may be carried out for the purposes of making such an order,
  - (f) the furnishing of information and evidence to the court or the Northern Ireland Legal Services Commission for the purpose of enabling the court to decide whether to make such an order and (if so) the amount to be paid,
  - (g) prohibiting persons 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 as to the amount to be paid, has been made,
  - (h) rights of appeal against such an order,
  - (i) 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,
  - (j) the enforcement of such an order (including provision for the imposition of charges in respect of unpaid amounts), and
  - (k) such other matters as the Department of Justice considers necessary or appropriate.”.
- (3) In Article 33 (report on means of applicant) at the end insert—
- “(4) Paragraph (3) does not apply in relation to a person who is already subject to an order under Article 33A(1) in respect of the cost of legal aid incurred.”.

### **Eligibility of persons in receipt of guarantee credit**

**82.—**(1) The [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(NI 8\)](#) is amended as follows.

- (2) In Article 3(1) (eligibility)—
- (a) after sub-paragraph (b) insert “or
  - (c) he is in receipt of a guarantee credit under the State Pension Credit Act (Northern Ireland) 2002,”,

(b) for “in either case” substitute “in any case”.

(3) In Article 7(2) (contributions) after “1995” insert “or a guarantee credit under the State Pension Credit Act (Northern Ireland) 2002”.

(4) In Article 14(5) (assessment of capital and income) at the end add “or a guarantee credit under the State Pension Credit Act (Northern Ireland) 2002”.

### **Legal aid for certain bail applications**

**83.**—(1) Part 3 of the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(NI 8\)](#) (criminal proceedings) is amended as follows.

(2) In Article 28(7) (legal aid in the magistrates’ court)—

(a) after sub-paragraph (b) insert—

“(c) applying to the Crown Court for bail under section 92 of the Justice Act (Northern Ireland) 2011;”;

(b) after “being work done” insert “, in a case falling within sub-paragraph (a) or (b),”.

(3) In Article 29(4) (legal aid in the Crown Court) at the end add “and

(c) applying to a magistrates’ court for bail under section 91 of the Justice Act (Northern Ireland) 2011.”.

### **Financial eligibility for grant of right to representation**

**84.**—(1) The [Access to Justice \(Northern Ireland\) Order 2003 \(NI 10\)](#) is amended as follows.

(2) After Article 27 insert—

#### **“Financial eligibility for grant of right to representation**

**27A.**—(1) Power under Article 26 or 27 to grant a right to representation may only be exercised in relation to an individual whose financial resources appear to the court or (as the case may be) the Commission to be such that, under regulations, he is eligible to be granted such a right.

(2) Power under Article 26(9) or 27(1) to withdraw a right to representation shall be exercised in relation to an individual if it appears to the court or Commission—

(a) that his financial resources are not such that, under regulations, he is eligible to be granted such a right, or

(b) that he has failed, in relation to the right, to comply with regulations under this Article about the furnishing of information.

(3) Regulations may make provision for exceptions from paragraph (1) or (2).

- (4) Regulations under this Article may include—
- (a) provision requiring the furnishing of information;
  - (b) provision for the notification of decisions about the application of—
    - (i) paragraph (1) or (2), or
    - (ii) regulations under paragraph (3);
  - (c) provision for the review of such decisions.

(5) The provision which may be made under paragraph (4)(c) includes provision prescribing circumstances in which the person or body reviewing a decision may refer a question to the High Court for its decision.

(6) Section 35 of the Judicature (Northern Ireland) Act 1978 (c. 23) (appeals to the Court of Appeal from the High Court) shall not apply to decisions of the High Court on a reference under regulations under this Article.”.

- (3) In Article 29 (criteria for grant of right to representation)—
- (a) in paragraph (1) for the words from “a right to representation” to “varied or removed” substitute “power to grant a right to representation should be exercised”,
  - (b) for paragraph (4) substitute—
    - “(4) Regulations may prescribe circumstances in which the grant of a right to representation shall be taken to be in the interests of justice.”.
- (4) After Article 46(5) (orders, regulations and directions) insert—
- “(5A) The first regulations under Article 27A shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

### **Litigation funding agreements**

**85.** Article 41 of the [Access to Justice \(Northern Ireland\) Order 2003 \(NI 10\)](#) (prohibition on Commission funding services under litigation funding agreements) is repealed.

### **Civil legal services: scope**

**86.—**(1) In Schedule 2 to the [Access to Justice \(Northern Ireland\) Order 2003 \(NI 10\)](#) (civil legal services) paragraph 2 is amended as follows.

- (2) After sub-paragraph (b) insert—
- “(ba) proceedings in the Crown Court for the variation or discharge of an order under Article 7 or 7A of the Protection from Harassment (Northern Ireland) Order 1997;

- (bb) proceedings in the Crown Court for the variation or discharge of a witness anonymity order under section 91 or 92 of the Coroners and Justice Act 2009;”.
- (3) In sub-paragraph (d)(xii) after the words “under section” insert “215A,”.
- (4) After sub-paragraph (d)(xv) insert—
  - “(xvi) for the variation or discharge of an order under Article 7 or 7A of the Protection from Harassment (Northern Ireland) Order 1997,
  - (xvii) for an order or the variation, renewal or discharge of an order under paragraph 5 or 10 of Schedule 5 to the Counter-Terrorism Act 2008,
  - (xviii) for the discharge of an investigation anonymity order under section 80 of the Coroners and Justice Act 2009,
  - (xix) for the variation or discharge of a witness anonymity order under section 91 or 92 of the Coroners and Justice Act 2009;”.
- (5) In sub-paragraph (i) omit “the Asylum and Immigration Tribunal or”.
- (6) After sub-paragraph (i) insert—
  - “(ia) proceedings before the First-tier Tribunal under—
    - (i) Schedule 2 to the Immigration Act 1971;
    - (ii) section 40A of the British Nationality Act 1981;
    - (iii) Part 5 of the Nationality, Immigration and Asylum Act 2002; or
    - (iv) regulation 26 of the Immigration (European Economic Area) Regulations 2006,
  - (ib) proceedings before the Upper Tribunal arising out of proceedings within sub-paragraph (ia),”.

### **Enhanced legal aid fees for certain solicitors**

**87.** Schedule 5 (which makes provision for enhanced legal aid fees for certain solicitors) has effect.