
STATUTORY INSTRUMENTS

1981 No. 228

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

PART II

LEGAL ADVICE AND ASSISTANCE, AND LEGAL AID OTHER THAN FREE LEGAL AID AVAILABLE UNDER PART III

Legal aid

Persons eligible for legal aid

9.—(1) Legal aid to which this Article applies shall, subject to and in accordance with the provisions of this Part, be available for any person whose disposable income does not exceed^[F1]£10,955^[F2]£9,937] a year; but a person may be refused legal aid if—

- (a) his disposable capital exceeds^[F3] £8,560^[F4] £6,750]; and
 - (b) it appears that he can afford to proceed without legal aid.
- (2) Regulations may provide that there shall be substituted—
- (a) for the yearly sum specified in paragraph (1), such other yearly sum as may be prescribed;
 - (b) for the capital sum so specified, such other capital sum as may be prescribed.

F1 Words in art. 9(1) (in connection with proceedings involving a personal injury) substituted (6.4.2009) by Legal Aid (Financial Conditions) Regulations (Northern Ireland) 2009 (S.R. 2009/104), reg. 3(a)

F2 Words in art. 9(1) (in any other case) substituted (6.4.2009) by Legal Aid (Financial Conditions) Regulations (Northern Ireland) 2009 (S.R. 2009/104), reg. 3(b)

F3 in connection with proceedings involving a personal injury, SR 1992/107

F4 in any other case, SR 1992/107

Scope and general conditions of legal aid

10.—(1) Subject to the following provisions of this Article, Article 9 applies to legal aid in connection with such proceedings before courts and tribunals as—

- (a) are proceedings of a description mentioned in Part I of Schedule 1; and
- (b) are not proceedings of a description mentioned in Part II of that Schedule.

(2) The provisions of Schedule 1 may be varied by regulations and the regulations may (without prejudice to the generality of the foregoing) describe the proceedings to be included or excluded by reference to—

- (a) the court or tribunal;
- (b) the issues involved; or

Status: Point in time view as at 06/04/2009.

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(c) the capacity in which a person requiring legal aid is concerned.

(3) Legal aid shall consist of representation, on the terms provided for by this Part, by a solicitor and so far as necessary by counsel, including all such assistance as is usually given by a solicitor or counsel in—

(a) the steps preliminary or incidental to any proceedings; or

(b) in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.

(4) A person shall not be given legal aid in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending or being a party thereto.

(5) A person may be refused legal aid if, in the particular circumstances of the case, it appears—

(a) unreasonable that he should receive it; or

(b) more appropriate that he should receive assistance by way of representation;

and regulations may prescribe the criteria for determining any question arising under sub-paragraph (b).

[^{F5}(5A) Legal aid shall not be available—

(a) to any Health and Social Services Board; or

(b) to any [^{F6}Health and Social Care trust]; or

(c) to any other prescribed body; or

(d) to a guardian ad litem,

for the purposes of any proceedings under the Children (Northern Ireland) Order 1995.

(5B) Regardless of paragraphs (4) and (5) and Articles 9 and 12, legal aid must be granted where a child who is brought before a court under Article 44 of the Children (Northern Ireland) Order 1995 (secure accommodation) is not, but wishes to be, legally represented before the court.

(5C) Subject to paragraph (5A) but regardless of paragraphs (4) and (5) and Articles 9 and 12, legal aid must be granted to the child in respect of whom the application is made, to any parent of such a child and to any person with parental responsibility for him within the meaning of the Children (Northern Ireland) Order 1995 to cover proceedings relating to an application for the following orders under that Order—

(a) an order under Article 50 (a care or supervision order);

(b) an order under Article 62 (a child assessment order);

(c) an order under Article 63 (an emergency protection order); or

(d) an order under Article 64 (extension or discharge of an emergency protection order).

(5D) Subject to paragraphs (4) and (5) but regardless of Articles 9 and 12, legal aid must be granted to cover proceedings relating to an appeal against an order made under Article 50 of the Children (Northern Ireland) Order 1995 to a person who has been granted legal aid by virtue of paragraph (5C).

(5E) Subject to paragraph (5A) and Articles 9 and 12 but regardless of paragraphs (4) and (5), legal aid must be granted where a person applies to be or has been joined as a party to any of the proceedings mentioned in paragraph (5C).]

[^{F7}(5F) Paragraphs (5B), (5C) and (5E) shall not apply to a person where the proceedings mentioned are before a court of summary jurisdiction and in respect of which that person has been granted assistance by way of representation.

(5G) Subject to paragraphs (4) and (5) but regardless of Articles 9 and 12 legal aid must be granted to cover proceedings relating to an appeal against an order made under Article 50 of the

Children (Northern Ireland) Order 1995 to a person who has been granted assistance by way of representation by virtue of regulations made under Article 5(4A).]

Para. (6) rep. by 2005 NI 19

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| F5 | 1995 NI 2 |
| F6 | Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(c) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2 |
| F7 | SR 1996/48 |

[^{F8}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.]

Status: Point in time view as at 06/04/2009.

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F8 2005 NI 19

Financial conditions of legal aid

- 11.—(1) Where a person receives legal aid in connection with any proceedings—
- (a) the expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the solicitor acting for him, shall be so paid except where they are paid direct from the legal aid fund as provided by this Part;
 - (b) his solicitor and counsel shall not take any payment in respect of the legal aid except such payment as is directed by this Part to be made out of the legal aid fund;
 - (c) he may be required to make a contribution to the legal aid fund in respect of the sums payable out of that fund on his account;
 - (d) any sums recovered by virtue of an order or agreement for costs made in his favour with respect to the proceedings shall be paid to the legal aid fund;
 - (e) his liability by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount, if any, which is a reasonable one for him to pay having regard to all the circumstances, including—
 - (i) the means of all the parties; and
 - (ii) the conduct of all the parties in connection with the dispute.
- (2) Regulations shall make provision as to—
- (a) the court, tribunal or person by whom the amount referred to in paragraph (1)(e) is to be determined; and
 - (b) the extent to which any determination of that amount is to be final.
- (3) For the purpose of any inquiry under this Article as to the means of any person against whom an order for costs has been made, his dwelling house and household furniture and the tools and implements of his trade shall be left out of account except in such cases and to such extent as may be prescribed, and except as aforesaid they shall, in all parts of the United Kingdom, be protected from seizure in execution to enforce the order.

Contributions from persons receiving legal aid and charge on property recovered

- 12.—(1) Where a person receives legal aid in connection with any proceedings, his contribution to the legal aid fund in respect of those proceedings may include—
- (a) if his disposable income exceeds^[F9] £3,355] a year, a contribution in respect of income not greater than^[F10] one third of the excess] or such other proportion of the excess or such amount as may be prescribed; and
 - (b) if his disposable capital exceeds^[F11] £3,000], a contribution in respect of capital not greater than the excess or such lesser amount as may be prescribed.
- (2) Regulations may provide that there shall be substituted—
- (a) for the yearly sum specified in paragraph (1), such other yearly sum as may be prescribed;
 - (b) for the capital sum so specified, such other capital sum as may be prescribed.
- (3) A person may be required to make any contribution to the legal aid fund in one sum or by instalments.
- (4) If the total contribution to the legal aid fund made by a person in respect of any proceedings is more than the net liability of that fund on his account, the excess shall be repaid to him.

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(5) Except so far as regulations otherwise provide—

- (a) any sums remaining unpaid on account of a person's contribution to the legal aid fund in respect of any proceedings; and
- (b) if the total contribution is less than the net liability of the legal aid fund on his account, a sum equal to the deficiency;

shall be a first charge for the benefit of the legal aid fund on any property (wherever situate) which is recovered or preserved for him in the proceedings.

(6) The reference in paragraph (5) to property recovered or preserved for any person shall include—

- (a) his rights under any compromise arrived at to avoid or bring an end to the proceedings; and
- (b) any sums recovered by virtue of an order for costs made in his favour in the proceedings (not being sums payable into the legal aid fund under Article 11).

(7) The charge created by paragraph (5) on any damages or costs shall not prevent a court allowing them to be set off against any other damages or costs.

(8) In this Article references to the net liability of the legal aid fund on any person's account in relation to any proceedings are references to the aggregate amount of—

- (a) the sums paid or payable out of that fund on his account in respect of those proceedings to any solicitor or counsel; and
- (b) if he has received any advice or assistance in connection with those proceedings or any matter to which those proceedings relate, any sums paid or payable out of that fund in respect of that advice or assistance to any solicitor,

being sums not recouped to that fund by sums which are recovered by virtue of an order or agreement for costs made in his favour with respect to those proceedings, or by virtue of any right of his to be indemnified against expenses incurred by him in connection with those proceedings.

F9 Words in art. 12(1)(a) substituted (6.4.2009) by [Legal Aid \(Financial Conditions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/104\)](#), reg. 4

F10 SR 1993/121

F11 SR 1988/255

Remuneration of persons giving legal aid

13.—(1) Subject to this Part, a solicitor who has acted for a person receiving legal aid shall be paid for so acting out of the legal aid fund, and any fees paid to counsel for so acting shall also be paid out of the legal aid fund.

(2) Subject to any rules of court made by virtue of^{F12} Article 12(3)(g) of the Family Law (Northern Ireland) Order 1993], the sums payable under paragraph (1) to a solicitor or counsel shall not exceed those allowed under Schedule 2.

(3) Nothing in this Article shall prejudice^{F13} Article 15A(b)], and in particular—

- (a) paragraph (2) shall not affect the sums recoverable by virtue of an order for costs made in favour of a person who had received legal aid or of an agreement for costs so made which provides for taxation; and
- (b) for the purpose of any such order or agreement, the solicitor who acted for the person in whose favour it is made shall be treated as having paid any counsel's fees.

(4) References in this Article to a solicitor acting for a person receiving legal aid shall be construed in accordance with Article 15(4).

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F12 1993 NI 6
F13 2005 NI 19

Status:

Point in time view as at 06/04/2009.

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