

## STATUTORY INSTRUMENTS

# 1981 No. 228

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

### [<sup>F1</sup>PART II

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

#### [<sup>F1</sup>Miscellaneous and supplementary

**F1** Pt. 2 (to the extent that it remains in operation) repealed (1.4.2015) by [Access to Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/435\)](#), arts. 1(2), 49(5), [Sch. 5](#) (with transitional provisions and savings in art. 48, Sch. 3); S.R. 2015/194, art. 2, [Sch.](#) (with transitional provisions and savings in art. 3)

### Regulations

**22.**—(1) The [<sup>F2</sup> Lord Chancellor] may make such regulations as appear to him necessary or desirable for giving effect to this Part or for preventing abuses thereof by persons seeking or receiving legal aid, advice or assistance and regulations may make different provision in relation to advice and assistance and in relation to legal aid respectively.

(2) Without prejudice to paragraph (1) or any other provision of this Order authorising the making of regulations, regulations may—

- (a) make provision as to the proceedings which are or are not to be treated as separate proceedings for the purpose of legal aid, advice or assistance, and as to the apportionment of sums recoverable or recovered by virtue of any order for costs made generally with respect to proceedings treated as separate;
- (b) regulate the procedure of any court or tribunal in relation to legal aid, advice or assistance, and in particular make provision—
  - (i) as to the taxation of costs incurred in connection with proceedings not actually begun; and
  - (ii) as to the cases in which and the extent to which a person receiving legal aid, advice or assistance may be required to give security for costs, and the manner in which that security may be given;
- (c) make provision as to the information to be furnished by a person seeking or receiving legal aid, advice or assistance;
- (d) make provision as to the cases in which a person may be refused legal aid, advice or assistance by reason of his conduct when seeking or receiving legal aid, advice or assistance (whether in the same or in a different matter);

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- (e) make provision for the recovery of sums due to the legal aid fund and for making effective the charge created by this Part on property recovered or preserved for a person receiving legal aid, advice or assistance including provision—
- (i) for the enforcement for the benefit of the legal aid fund of any order or agreement for costs made in favour of a person who has received legal aid, advice or assistance; and
  - (ii) for making a solicitor's right to payment out of the legal aid fund wholly or partly dependent on his performance of any duties imposed on him by regulations made for the purposes of this sub-paragraph.
- (3) Regulations may also modify any provision of this Part so far as appears to the<sup>[F2]</sup> Lord Chancellor] necessary to meet the special circumstances where—
- (a) a person seeking or receiving legal aid, advice or assistance—
    - (i) is not resident in Northern Ireland; or
    - (ii) is concerned in a representative, fiduciary or official capacity; or
    - (iii) is concerned jointly with or has the same interest as other persons, whether receiving legal aid, advice or assistance or not; or
    - (iv) has available to him rights or facilities making it unnecessary for him to take advantage of this Part or has a reasonable expectation of receiving financial or other help from a body of which he is a member;
  - (b) a person seeks legal aid, advice or assistance in a matter of special urgency;
  - (c) a person begins to receive legal aid, advice or assistance after having consulted a solicitor in the ordinary way with respect to the same matter, or ceases to receive legal aid, advice or assistance before the matter in question is finally settled;
  - (d) there is any relevant change of circumstances while a person is receiving legal aid, advice or assistance.
- (4) Without prejudice to paragraph (3)(a) regulations may also modify the provisions of this Part in any manner for the purposes of the application of those provisions to advice or assistance—
- (a) sought or received by a person who is under such age (not exceeding the age of eighteen years) as may be specified in the regulations; or
  - (b) sought or received on behalf of any such person by his parents or guardian or other person under whose care he is, or by a person acting for the purposes of any proceedings in Northern Ireland as his next friend or guardian.
- <sup>[F3]</sup>(4A) Without prejudice to the preceding provisions of this Article or any other provision of this Part authorising the making of regulations, regulations may also modify the provisions of, or of any instrument having effect under, this Part (including so much of any of those provisions as specifies a sum of money) for the purposes of the application of those provisions—
- (a) in cases where their modification appears to the Lord Chancellor necessary for the purpose of fulfilling any obligation imposed on the United Kingdom or Her Majesty's government therein by any international agreement; or
  - (b) in relation to proceedings for securing the recognition or enforcement in Northern Ireland of judgments given outside the United Kingdom for whose recognition or enforcement in the United Kingdom provision is made by any international agreement.]
- (5) The<sup>[F2]</sup> Lord Chancellor] shall, before making regulations as to the procedure—
- (a) of the<sup>[F4]</sup> Court of Judicature],<sup>[F2]</sup> consult] the<sup>[F4]</sup> Court of Judicature] Rules Committee;
  - (b) of county courts, consult the County Court Rules Committee;
  - (c) of magistrates' courts, consult the Magistrates' Courts Rules Committee;

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- (d) of any tribunal, consult any rules committee or similar body by whom or on whose advice rules of procedure for the tribunal may be made apart from this Part, or whose consent or concurrence is required for any rules so made.
- (6) Regulations shall be subject to [<sup>F5</sup>negative resolution].

<b>F2</b>	SI 1982/159
<b>F3</b>	1982 c. 27
<b>F4</b>	Words in art. 22(5)(a) substituted (1.10.2009) by <a href="#">Constitutional Reform Act 2005 (c. 4), ss. 59(5), 148(1), Sch. 11 para. 6; S.I. 2009/1604, art. 2(d)</a>
<b>F5</b>	Words in art. 22(6) substituted (12.4.2010) by <a href="#">Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 130(2) (with arts. 28-31); S.I. 2010/977, art. 1(2)</a>

### Advisory committees

23. <sup>F6</sup> .....

<b>F6</b>	<a href="#">Art. 23</a> repealed (20.3.2006) by <a href="#">Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), arts. 1(2), 49(2), Sch. 5</a> (with transitional provisions and savings in <a href="#">art. 48(2), Sch. 3</a> ); <a href="#">S.R. 2006/27, arts. 1, 3</a>
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### Secrecy

24.—(1) Subject to paragraph (2), information furnished for the purposes of this Part to the Law Society, or to any committee or person on their behalf, in connection with the case of a person seeking or receiving legal aid, advice or assistance shall not be disclosed otherwise than—

- (a) for the purpose of facilitating the proper performance by any committee, court, tribunal or other person or body of persons of functions under this Part; or
- (b) for the purpose of any criminal proceedings for an offence thereunder or of any report of such proceedings[<sup>F7</sup> or]
- [<sup>F7</sup>(c) for the purpose of facilitating the proper performance by the Solicitors Disciplinary Tribunal of its functions under the Solicitors (Northern Ireland) Order 1976 in respect of a complaint made to it under Article 44(1)(g) of that Order or in connection with the making of an order under Article 51B(1) or (3) of that Order.]

(2) Paragraph (1) shall not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case the information was furnished and, where he did not furnish the information himself, with that of the person or body of persons who did furnish the information.

(3) A person who, in contravention of this Article, discloses any information obtained by him when employed by or acting on behalf of the Law Society shall be guilty of an offence and be liable on summary conviction to a fine not exceeding[<sup>F8</sup> level 5 on the standard scale].

(4) Proceedings for an offence under this Article shall not be brought except by or with the consent of the Attorney General.

(5) For the avoidance of doubt it is hereby declared that information furnished to counsel or a solicitor as such by or on behalf of a person seeking or receiving legal aid, advice or assistance is not information furnished to the Law Society or a person on their behalf.

<b>F7</b>	1989 NI 14
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**F8** 1984 NI 3

### **Proceedings for misrepresentation etc.**

**25.**—(1) If any person seeking or receiving legal aid, advice or assistance—

- (a) wilfully fails to comply with any regulations as to the information to be furnished by him; or
- (b) in furnishing any information required by the regulations knowingly makes any false statement or false representation;

he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding<sup>[F9]</sup> level 5 on the standard scale] or to imprisonment for a term not exceeding three months or to both.

(2) Notwithstanding any statutory provision prescribing the period within which summary proceedings may be commenced, proceedings for an offence under paragraph (1) may be commenced at any time within the period of six months from the date on which evidence, sufficient in the opinion of the Attorney General to justify a prosecution for the offence, comes to the knowledge of the Attorney General, or within the period of twelve months after the commission of the offence, whichever period last expires.

(3) For the purposes of paragraph (2) a certificate, purporting to be signed by the Attorney General as to the date on which such evidence has as aforesaid come to the knowledge of the Attorney General, shall be conclusive evidence thereof.

(4) A county court notwithstanding any limitation imposed on the jurisdiction of a county court under any other statutory provision shall have jurisdiction to hear and determine any action brought to recover the loss sustained by the legal aid fund by reason of—

- (a) the failure of a person seeking or receiving legal aid, advice or assistance to comply with any such regulations as aforesaid; or
- (b) a false statement or false representation made by such a person in furnishing information for the purposes of this Part.

**F9** 1984 NI 3

### **Adaptation for purposes of Part II of rights to indemnity**

**26.**—(1) This Article shall have effect for the purposes of adapting in relation to this Part any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of this Part shall be disregarded.

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives legal aid, advice or assistance in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contribution, if any, under Article 7 or 12<sup>[F10]</sup> or a direction or authorization under Article 10A]) the right shall inure also for the benefit of the legal aid fund as if the expenses incurred by that fund on behalf of the said person in connection with the legal aid, advice or assistance had been incurred by him.

(4) Where—

- (a) a person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of an agreement and is subject to any express condition conferring on those liable thereunder any right with respect to the bringing or conduct of the proceedings; and

(b) those liable to have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity;

the right to be indemnified shall be treated for the purposes of paragraph (3) as not being subject to that condition.

(5) Nothing in paragraphs (3) and (4) shall be taken as depriving any person or body of persons of the protection of any statutory provision or, save as provided in paragraph (4), as conferring any larger right to recover money for the benefit of the legal aid fund in respect of any expenses than the person receiving legal aid, advice or assistance would have had if the expenses had been incurred by him.

**F10** 2005 NI 19

## Interpretation of Part II and Schedules 1 and 2

27. In this Part and Schedules 1 and 2—

“advice” and “assistance” mean respectively advice and assistance under this Part;

“assistance by way of representation” has the meaning assigned to it by Article 5(1);

“Law Society” means the Incorporated Law Society of Northern Ireland;

“legal aid” means legal aid under this Part;

“order for costs” includes any judgment, order, decree, award or direction for the payment of the costs of one party to any proceedings by another party, whether given or made in those proceedings or not;

“person” does not include a body of persons corporate or unincorporate which is not concerned in a representative, fiduciary or official capacity so as to authorise legal aid, advice or assistance to be given to such a body;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the<sup>F11</sup> Lord Chancellor] under this Part;

“solicitor” means a solicitor of the<sup>F12</sup> Court of Judicature];

“statutory inquiry” means an inquiry or hearing held or to be held in pursuance of a duty imposed by any statutory provision;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 ;

“tribunal” includes an inquiry or proceedings before an arbitrator or umpire, however appointed, whether such inquiry or proceedings take place under a reference by consent or otherwise.]

**F11** SI 1982/159

**F12** Words in art. 27 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59\(5\), 148\(1\), Sch. 11 para. 6; S.I. 2009/1604, art. 2\(d\)](#)

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- Order power to amend conferred by [2011 c. 24 \(N.I.\) Sch. 5 para. 5\(a\)](#)
- Act rev.in pt. by [1996 c. 25 s.79Sch.4 paras.19\(2\)36](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 28(7)(c) inserted by [2011 c. 24 \(N.I.\) s. 83\(2\)\(a\)](#)
- art. 29(2A) inserted by [2015 c. 9 \(N.I.\) Sch. 2 para. 3](#)
- art. 29(2A) words substituted in earlier affecting provision 2015 c. 9 (N.I.), Sch. 2 para. 3 by [2022 c. 4 \(N.I.\) s. 4\(9\)\(c\)](#)