

2012 No. 419

LEGAL AID AND ADVICE

**The Legal Advice and Assistance (Amendment) Regulations
(Northern Ireland) 2012**

Made - - - - - *22nd November 2012*

Coming into operation - *1st January 2013*

The Department of Justice makes the following Regulations in exercise of the powers conferred by Articles 4, 5, 22 and 27 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(a), and now vested in it(b).

Citation and commencement

1. These Regulations may be cited as the Legal Advice and Assistance (Amendment) Regulations (Northern Ireland) 2012 and shall come into operation on 1st January 2013.

Interpretation

2. In these Regulations—

“the Commission” means the Northern Ireland Legal Services Commission established under Article 3 of the Access to Justice (Northern Ireland) Order 2003(c);

“the principal regulations” means the Legal Advice and Assistance Regulations (Northern Ireland) 1981(d).

Amendments to the principal regulations

3. The principal regulations are amended as follows.

4. In regulation 3—

(a) after the definition of “board of visitors”, insert—

““the Care Tribunal” means the Tribunal established under Article 44 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(e);”;

(b) after the definition of “client”, insert—

(a) S.I. 1981/228 (N.I. 8); Article 27 is an interpretation provision and is recited because of the meaning assigned to the word “regulations”
(b) S.I. 1982/159 and S.I. 2010/976
(c) S.I. 2003/435 (N.I. 10)
(d) S.R. 1981 No. 366; to which the most recent relevant amendments were made by S.R. 1989 No. 469, S.R. 2004 No. 180 and S.R. 2010 No. 10
(e) S.I. 2003/431 (N.I. 9)

““the Commission” means the Northern Ireland Legal Services Commission established under Article 3 of the Access to Justice (Northern Ireland) Order 2003(a);”;

(c) after the definition of “Legal Aid Committee”, insert—

““the Mental Health Review Tribunal” means the Mental Health Review Tribunal for Northern Ireland constituted under Article 70 of, and Schedule 3 to, the Mental Health (Northern Ireland) Order 1986(b);”.

5. After regulation 7A, insert—

“7B. A person who seeks advice and assistance from a solicitor in respect of proceedings, or potential proceedings, before the Mental Health Review Tribunal shall not be required to pay a contribution under Article 7(2) of the Order towards any charges or fees incurred in respect of the advice and assistance.”.

6. In regulation 17(3)(b)—

(a) in head (i), for the words “Mental Health Act (Northern Ireland) 1961 by a solicitor acting on behalf of the person whose application to the Tribunal is or is to be the subject of those proceedings” substitute “Mental Health (Northern Ireland) Order 1986 by a solicitor acting on behalf of the person whose case is or is to be the subject of those proceedings”;

(b) omit head (ii);

(c) after the words ““the Prison and Young Offender Centre Rules (Northern Ireland) 1995,” in head (vi), there shall be added “or”;

(d) after head (vi), insert—

“(vii) in respect of proceedings before the Care Tribunal under Article 11, 12, 42 or 43 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(c) or regulation 10 of the Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007(d);”.

7. After regulation 17(3), insert—

“(3A) A person given assistance by way of representation in the circumstances specified in paragraph (3)(b)(i) shall not be required to pay a contribution under Article 7(2) of the Order towards any charges or fees incurred in respect of the assistance by way of representation.”.

8. After regulation 22, insert—

“Interim payment of disbursements

22A.—(1) A solicitor may submit a claim to the Commission for payment of a disbursement for which he has incurred liability in accordance with the provisions of this regulation.

(2) A claim for payment may be made where—

(a) the disbursement falls within any guidance issued by the Commission in respect of advice and assistance or assistance by way of representation, or the solicitor has obtained prior authority from the Commission to incur the expenditure;

(b) the total liability for such disbursement exceeds £500; and

(c) the solicitor has discharged such liability.

(a) S.I. 2003/435 (N.I. 10)

(b) S.I. 1986/595 (N.I. 4)

(c) S.I. 2003/417 (N.I. 4)

(d) S.R. 2007 No. 288

(3) A claim under paragraph (1) shall not exceed £2,500 or the maximum fee authorised under the prior authority, whichever is the greater.

(4) A claim for payment under paragraph (1) may be made at any time before the solicitor submits a claim for costs under regulation 23.

(5) A claim under paragraph (1) shall be submitted to the Commission in such form and manner as it may direct and shall be accompanied by the authority to incur the expenditure (if applicable) and any invoices or other documents in support of the claim.

(6) The Commission shall allow the disbursement, subject to the limit in paragraph (3), if it appears to have been reasonably incurred and discharged in accordance with the guidance or prior authority.

(7) Where the Commission allows the disbursement, it shall notify the solicitor and authorise payment to him accordingly.”.

9.—(1) In Schedule 2, number the paragraph before the table, “**1.**”.

(2) In Schedule 2, after the table, insert—

“**2.**—(1) This paragraph applies to applications for assistance by way of representation in proceedings for, or in relation to, a non-molestation order under Article 20 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**a**) made by the person applying for the order or on whose application the order is made.

(2) In such applications—

(a) where the disposable income of the client exceeds £234 a week, the contribution payable shall be the excess plus £134; and

(b) where the disposable capital of the client exceeds £3,000, the contribution payable shall be £100.

3. The contribution payable by a client under paragraph 2 may be in respect of disposable income or disposable capital, or in respect of both.”.

10. In paragraph 2 of Schedule 3, after sub-paragraph (l), insert—

“(m)under Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(**b**).”.

Sealed with the Official Seal of the Department of Justice on 22 November 2012



David Ford
Minister of Justice

(a) S.I. 1998/1071 (N.I. 6)

(b) S.I. 1989/677 (N.I. 4)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Advice and Assistance Regulations (Northern Ireland) 1981 by inserting new provisions to:

- abolish the means test and contributions conditions which would otherwise apply in respect of applications for advice and assistance and assistance by way of representation for persons regarding proceedings before the Mental Health Review Tribunal (regulations 5 and 6(a));
- extend assistance by way of representation to certain proceedings before the Care Tribunal, and proceedings under Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (regulations 6(c) and 10);
- provide a facility for the making of interim payments to solicitors in respect of disbursements (regulation 8); and
- amend the provision regarding the contribution payable by a person applying for a non-molestation order under the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (regulation 9).

© Crown copyright 2012

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£4.00

N5639 11/2012 425639T 19585

ISBN 978-0-337-98964-3



9 780337 989643