



Guidance on the Domestic Abuse Waiver in Legal Aid applications

1. I am issuing this Guidance to the Director of Legal Aid Casework (“the Director”) under section 3 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014.
2. This Guidance relates to the implementation of regulation 10 of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 as amended by section 28 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (“DACPA”) (Annex A).
3. Section 28 amends regulation 10 of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (“the financial regulations”) (Annex B) so that the financial eligibility test that would usually apply to an application for legal aid for representation may be subject to a discretionary waiver in certain specific circumstances. Those circumstances are:
 - Where the person applying for legal aid is, or appears to be, a victim of domestic abuse;
 - Where the person applying for legal aid is seeking to be represented as a respondent in proceedings relating to an Order under Article 8 of the Children (Northern Ireland) Order 1995; and
 - Where the domestic abuse committed against the person applying for legal aid was committed by the person now bringing the legal proceedings against them.
4. Article 8 of the Children Order is the provision under which ‘residence’, ‘contact’, ‘prohibited steps’ and ‘specific issue’ orders may be made by a court in relation to the care of a child.
5. It is for the Director to determine whether or not to deploy the domestic abuse waiver. In doing so he has to be satisfied that the applicant for legal aid is, or appears to be, a victim of domestic abuse, and the person bringing the legal proceedings against them was the perpetrator of such abuse.

Evidential Test

6. In considering whether to deploy the discretionary waiver, the Director will wish to consider evidence which the applicant for legal aid will present to support their application. The following items of evidence may be considered by the Director in considering whether to deploy the discretionary waiver:
 - Evidence of a conviction or caution for domestic abuse or a crime aggravated by domestic abuse by the applicant in the Article 8 proceedings against the respondent in those proceedings;
 - Evidence of a conviction or caution for a crime of violent behaviour, which includes crimes of sexual violence and physical violence by the applicant in the Article 8 proceedings against the respondent in those proceedings;
 - Evidence of an inter-partes non-molestation order or occupation order which has been considered and granted by a judge;
 - Evidence provided by the PSNI that the respondent in the Article 8 proceedings has been a reported victim of domestic abuse by the applicant in those proceedings;
 - Other evidence providing an equivalent level of assurance that the applicant is eligible for the waiver.

7. The offence of domestic abuse, or a crime aggravated by domestic abuse, will come into effect on 21 February 2022, see Sections 1 and 2 of DACPA (Annex C). Section 2(4)(a) of the Act provides that domestic abuse includes a crime of violent behaviour, which includes crimes of sexual violence and physical violence. The Director may consider evidence of crimes of violent behaviour where the offence was committed prior to the introduction of the domestic abuse offence.

Sources of Evidence

8. Sources of evidence include:
 - A certificate of conviction from the Courts and Tribunals Service (NI) or a certificate of conviction from another jurisdiction in the UK, Republic of Ireland or abroad for equivalent offences on letter headed paper;
 - A non-molestation order or occupation order under the Family Homes and Domestic Violence Order;
 - A letter from the Public Prosecution Service (NI) or a letter from an equivalent body in another jurisdiction in the UK, Republic of Ireland or abroad on letter headed paper;
 - A caution issued by the Police Service of Northern Ireland or a police service in another jurisdiction in the UK, Republic of Ireland or abroad;
 - A letter from the Police Service of Northern Ireland or a letter from another police service in another jurisdiction in the UK, Republic of Ireland or abroad on letter headed paper; and
 - Evidence from other sources that provide an equivalent level of assurance that the applicant is eligible for the waiver.

Discontinued Criminal Proceedings

9. Once the waiver has been deployed, it should continue to the conclusion of the proceedings, unless the Director considers the application to have been fraudulent. While the allegation of abuse may not result in a conviction, or charges may not proceed to a criminal trial, this is not proof that the abuse did not take place. There are many reasons why cases of abuse do not result in a conviction, including fear on the part of the victim to continue with the criminal complaint, or the victim not wishing to pursue the case as it is re-traumatising the victim.

Contributions Payable in the Lower Courts

10. The contributions payable for representation in the lower courts shall be in accordance with regulation 10(3) of the financial regulations.

Calculation for Financial Eligibility and Contributions Payable in the Higher Courts

Calculating Financial Eligibility

11. Financial eligibility is to be determined in the first instance by reference to Chapters 4 and 5 of the financial regulations which apply for representation in the higher courts.

Calculating Contributions

12. If a contribution is payable, the assessment of that contribution shall be determined by the Agency under regulation 10(3) by converting the annual disposable income to a weekly disposable income.

Publication of Guidance

13. This Guidance will be published on the Department of Justice website.

**NAOMI LONG MLA
MINISTER OF JUSTICE
FEBRUARY 2022**

Annex A

Section 28 of the Domestic Abuse and Civil Proceedings Act 2011

28.—(1) In the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015, in regulation 10 (waiver of eligibility limits in proceedings relating to domestic violence or forced marriage)—

(a) after paragraph (1) insert—

“(1A) This regulation applies to an application by a client for the funding of representation in proceedings for an order that is an Article 8 order within the meaning of the Children (Northern Ireland) Order 1995 if—

(a) the client is the respondent in the proceedings, and

(b) the Director is satisfied that—

(i) the client is or appears to be the victim of abusive behaviour perpetrated or apparently perpetrated by the applicant seeking the order, and

(ii) the applicant seeking the order is someone to whom the client is personally connected.”,

(b) after paragraph (4) insert—

“(5) The following apply for the purposes of paragraph (1A) as they apply for the purposes of Chapter 1 of Part 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (to give meanings to certain expressions)—

(a) section 2 (as read with section 3(2)) of that Act,

(b) sections 4 and 5 of that Act.”.

(2) Guidance under section 3 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014 must describe the basis, particularly as regards applicable information about the commission or alleged commission of an offence involving domestic abuse, on which the Director may be satisfied as mentioned in regulation 10(1A) of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015.

(3) An offence involving domestic abuse is—

(a) an offence under section 1, or

(b) an offence of any kind that is aggravated as provided for in section 15.

(4) The Director is as defined in the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015.

(5) This section is without prejudice to—

(a) any power to make regulations under the Access to Justice (Northern Ireland) Order 2003,

(b) the power to give guidance under section 3 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014.

Annex B

Eligibility of Victims of Domestic Abuse for Civil Legal Services

Regulation 10 of the CLS (Financial) Regulations (NI) 2015 as revised by the Act

Waiver of eligibility limits in proceedings relating to domestic violence or forced marriage

10.—(1) This regulation applies to an application by a client for the funding of—

(a) representation (lower courts) 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 **F1** made by the individual applying for the order or on whose application the order is made; and

(b) advice and assistance or representation (higher courts) in proceedings for a forced marriage protection order under the Forced Marriage (Civil Protection) Act 2007 **F2**.

“(1A) This regulation applies to an application by a client for the funding of representation in proceedings for an order that is an Article 8 order within the meaning of the Children (Northern Ireland) Order 1995 if—

(a) the client is the respondent in the proceedings, and

(b) the Director is satisfied that—

(i) the client is or appears to be the victim of abusive behaviour perpetrated or apparently perpetrated by the applicant seeking the order, and

(ii) the applicant seeking the order is someone to whom the client is personally connected.”,

(2) Where this regulation applies the Director may, if the Director considers it equitable to do so, disapply the eligibility limits in regulation 6.

(3) In such applications—

(a) where the weekly disposable income of the client exceeds £234, 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.

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

(5) The following apply for the purposes of paragraph (1A) as they apply for the purposes of Chapter 1 of Part 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (to give meanings to certain expressions)—

(a) section 2 (as read with section 3(2)) of that Act,

(b) sections 4 and 5 of that Act

Annex C

Extract from the Domestic Abuse and Civil Proceedings Act 2021 Defining Domestic Abuse

The domestic abuse offence

1.—(1) A person (“A”) commits an offence if—

- (a) A engages in a course of behaviour that is abusive of another person (“B”),
- (b) A and B are personally connected to each other at the time, and
- (c) both of the further conditions are met.

(2) The further conditions are—

(a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm, and

(b) that A—

(i) intends the course of behaviour to cause B to suffer physical or psychological harm, or

(ii) is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3) The references in this section to psychological harm include fear, alarm and distress.

(4) The offence under this section is to be known as the domestic abuse offence.

What amounts to abusive behaviour

2.—(1) This section contains provision for determining for the purposes of this Chapter when behaviour of a person (“A”) is abusive of another person (“B”).

(2) Behaviour that is abusive of B includes (in particular)—

(a) behaviour directed at B that is violent,

(b) behaviour directed at B that is threatening,

(c) behaviour directed at B, at a child of B or at someone else that—

(i) has as its purpose (or among its purposes) one or more of the relevant effects, or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects.

(3) The relevant effects are of—

- (a) making B dependent on, or subordinate to, A,
- (b) isolating B from friends, family members or other sources of social interaction or support,
- (c) controlling, regulating or monitoring B's day-to-day activities,
- (d) depriving B of, or restricting B's, freedom of action,
- (e) making B feel frightened, humiliated, degraded, punished or intimidated.

(4) In subsection (2)—

- (a) the reference in paragraph (a) to violent behaviour includes both sexual violence and physical violence,
- (b) in paragraph (c), "child" means a person under 18 years of age.

(5) None of the paragraphs of subsection (2) or (as the case may be) (3) is to be taken to limit the meaning of any of the other paragraphs of that subsection.