STATUTORY RULES OF NORTHERN IRELAND

2015 No. 200

ACCESS TO JUSTICE

The Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015

Made - - - -	*26th March 2015*
Coming into operation	*1st April 2015*

The Department of Justice makes the following Regulations in exercise of the powers conferred by Article 17(7) and (8) of the Access to Justice (Northern Ireland) Order 2003(**1**) and now vested in it(**2**).

PART 1

GENERAL

Citation, commencement and revocations

1.—(1) These Regulations may be cited as the Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

(2) Subject to paragraph (3), the instruments set out in the Schedule to these Regulations shall be revoked to the extent shown in that Schedule.

(3) Nothing in the provisions revoked by these Regulations shall take effect in relation to any of the circumstances to which Article 3(1)(a) to (d) of the Access to Justice (2003 Order) (Commencement No. 7, Transitional Provisions and Savings) Order (Northern Ireland) 2015(**3**) applies.

Interpretation

2. In these Regulations, unless the context requires otherwise—

"advice", "assistance" and "representation" have the respective meanings given by Article 2(2) of the Order;

(**1**) S.I. 2003/435 (N.I. 10)
(**2**) S.I. 2010/976
(**3**) S.R. 2015 No. 194 (C. 13)

"certificate" means a certificate issued under the General Regulations certifying a decision to fund representation for the client;

"civil legal services" has the meaning given by Article 10 of the Order;

"client" means an individual who applies for or receives funded services and, in the case of actual or contemplated proceedings, is a party or prospective party to the proceedings;

"client's costs order" and "client's costs agreement" mean, respectively, an order and an agreement that another party to proceedings or prospective proceedings pay all or part of the costs of a client;

"the Department" means the Department of Justice;

"the Financial Regulations" means the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015(**4**);

"funded services" means services which are provided directly for a client and funded for that client by the Department as part of civil legal services under Articles 10 to 20 of the Order;

"the funded sum" means the amount of remuneration payable by the Department to a supplier for the relevant work under the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015(**5**) or other arrangements that determine that supplier's remuneration;

"the General Regulations" means the Civil Legal Services (General) Regulations (Northern Ireland) 2015(**6**);

"the Order" means the Access to Justice (Northern Ireland) Order 2003;

"partner" means a person with whom the person concerned lives as a couple, and includes a person with whom the person concerned is not currently living but from whom the person concerned is not living separate and apart;

"person concerned" means the person—

(a) whose eligibility is to be assessed; or

(b) whose resources are to be treated as the resources of the client under the Financial Regulations;

"recovered", in relation to property or money, means property or money recovered or preserved by a client, whether for the client or for any other person;

"relevant dispute" means the dispute in connection with which funded services are provided;

"relevant proceedings" means proceedings in connection with which funded services are provided;

"relevant work" means the funded services provided in relation to the dispute or proceedings to which the client's costs order or client's costs agreement relates;

"remuneration" includes fees and disbursements and value added tax on fees and disbursements;

"representation (higher courts)" and "representation (lower courts)" have the respective meanings given by regulation 2 of the General Regulations;

"solicitor" means solicitor of the Court of Judicature;

"statutory charge" means the charge created by Article 17(7) of the Order in respect of the amount defined in regulation 3;

"supplier" means the solicitor or body being requested to provide or providing funded services to the client.

(**4**) S.R. 2015 No. 196
(**5**) S.R. 2015 No. 201
(**6**) S.R. 2015 No. 195

PART 2

OPERATION OF THE STATUTORY CHARGE

Calculation of the statutory charge

3.—(1) Where any money or property is recovered for a client in a relevant dispute or proceedings, the amount of the statutory charge shall be the aggregate of—

(a) any unpaid contributions payable by the client under Part 3 of the Financial Regulations; and

(b) if the total contribution is less than the funded sum, a sum equal to the deficiency

(2) For the purposes of this regulation, the sums referred to in paragraph (1)(b) shall be defined as the net cost of the funded services paid or payable by the Department less any costs recovered by the Department from another party under Part 3 of these Regulations.

(3) Where the client receives representation (higher courts) in connection with a dispute or proceedings for which advice and assistance or representation (lower courts) was also granted, the amount of the statutory charge includes the sums expended by the Department in funding advice and assistance or representation (lower courts), where made available, in connection with the same proceedings or dispute.

Exemptions from the statutory charge

4.—(1) The statutory charge does not apply to any of the following property recovered by a client in relevant proceedings, or in any compromise or settlement of a relevant dispute—

(a) any periodical payment of maintenance, whether recovered under any of the legislative provisions referred to in paragraph (4) or otherwise;

(b) any sum or sums ordered to be paid under—

(i) Articles 27B(4) or 27C of the Matrimonial Causes (Northern Ireland) Order 1978(**7**);

(ii) Article 7 of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979(**8**); or

(iii) the Family Homes and Domestic Violence (Northern Ireland) Order 1998(**9**);

(c) the threshold amount of any money or the value of any property recovered by virtue of an order made or deemed to be made under any of the enactments specified in paragraph (4);

(d) one-half of any redundancy payment within the meaning of Part 12 of the Employment Rights (Northern Ireland) Order 1996(**10**); or

(e) any sum, payment or benefit which, by virtue of any provision of or made under an enactment, cannot be assigned or charged.

(2) In paragraph (1)(a) "maintenance" means money or money's worth paid towards the support of a spouse or former spouse, civil partner or former civil partner, child or any other person for whose support the payer has previously been responsible or has made payments.

(3) In paragraph (1)(c) "the threshold amount" means—

(a) the first £2,500 recovered, where the funded services comprised advice and assistance or representation (lower courts);

(**7**) S.I. 1978/1045 (N.I. 15)
(**8**) S.I. 1979/924 (N.I. 8)
(**9**) S.I. 1998/1071 (N.I. 6)
(**10**) S.I. 1996/1919 (N.I. 16)

(b) the first £3,000 recovered, where the funded services comprised representation (higher courts).

(4) The enactments referred to in paragraph (1)(c) are—

(a) Articles 25(1)(c) or (f), 25(2), 26, 29(6)(c) or (f), or 37 of the Matrimonial Causes (Northern Ireland) Order 1978;

(b) Articles 4 or 8 of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979;

(c) section 17 of the Married Women's Property Act 1882(**11**);

(d) Articles 4(1)(b) or (d), 8(1) or (5) or 22(2) of the Domestic Proceedings (Northern Ireland) Order 1980(**12**); and

(e) Article 15(1) of, together with paragraphs 2, 3, 6, 8 and 11 of Schedule 1 to, the Children (Northern Ireland) Order 1995(**13**).

(5) The statutory charge does not apply to—

(a) a client's personal clothing or household furniture; or

(b) the tools or equipment of their trade,

except where the Department considers there are exceptional circumstances, having regard in particular to the value or quantity of the items concerned.

(6) Where, by virtue of regulation 5, the statutory charge is in favour of a supplier, it does not apply to any dwelling of the client.

Statutory charge in favour of the Department or the supplier

5.—(1) The statutory charge is in favour of the Department except in the circumstances described in paragraph (2).

(2) Where—

(a) the statutory charge relates to advice and assistance or representation (lower courts), and

(b) regulation 3(3) does not apply,

the charge is in favour of the supplier.

Authority to waive the statutory charge

6.—(1) This regulation applies only where the statutory charge is in favour of the supplier.

(2) The Department may grant the supplier authority to waive all or part of the amount of the statutory charge where its enforcement would—

(a) cause grave hardship or distress to the client; or

(b) be unreasonably difficult because of the nature of the property.

Application of regulations 8 and 9

7. Regulations 8 and 9 apply only in relation to a statutory charge in favour of the Department.

(**11**) 1882 c. 75
(**12**) S.I. 1980/563 (N.I. 5)
(**13**) S.I. 1995/755 (N.I. 2)

Operation of the statutory charge where certificate revoked or discharged

8.—(1) Where a certificate has been revoked or discharged under the General Regulations, Article 17(7) of the Order shall apply to any money or property recovered as a result of the client continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings.

(2) In paragraph (1), "client" means the person whose certificate has been revoked or discharged, or, as the case may be, the client's personal representatives, trustee in bankruptcy or the Official Receiver.

Operation of the statutory charge on money in court

9.—(1) Paragraph (2) applies where any money recovered by a client in any proceedings is ordered to be paid into or remain in court and invested for the benefit of the client.

(2) Where this paragraph applies—

(a) the statutory charge applies only to such amount of that money as, in the opinion of the Department, will be necessary to safeguard the Department's interests; and

(b) the Department must notify the court in writing of the amount to which the statutory charge applies.

PART 3

ENFORCEMENT OF THE STATUTORY CHARGE

Application of regulations 11 to 17

10.—(1) Regulations 11 to 17 apply only where funded services have been provided under a certificate.

(2) If the client is no longer being represented by a solicitor, all money to which regulation 11(1) applies shall be paid (or repaid) to the Department, and all references in regulations 11(1) and 12 to the client's solicitor shall be construed as references to the Department.

Money recovered to be paid to solicitor

11.—(1) Subject to the following paragraphs of this regulation, and to regulation 10(2), all money payable to or recovered by a client in connection with a dispute by way of damages, costs or otherwise, whether or not proceedings were begun, and whether under an order of the court or an agreement or otherwise, shall be paid to the client's solicitor, and only the client's solicitor shall be capable of giving a good discharge for that money.

(2) Paragraph (1) shall not apply to—

(a) any periodical payment of maintenance; or

(b) any money recovered by a client in any proceedings which—

(i) has been paid into, or remains in, court, and is invested for the client's benefit; and

(ii) under regulation 9 is not subject to the statutory charge.

(3) Where the client's solicitor has reason to believe that an attempt may be made to circumvent the provisions of paragraph (1), they shall inform the Department immediately.