STATUTORY RULES OF NORTHERN IRELAND

2015 No. 198

ACCESS TO JUSTICE

The Civil Legal Services (Costs) 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 Articles 18(2), 20(1), 20(2)(a), (c), (e) and (g) and 34(1), (6) and (7) 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 (Costs) 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 otherwise requires—

"affidavit of resources" means—

(a) an affidavit, sworn by a party to proceedings, setting out—

(**1**) S.I. 2003/435 (N.I. 10). Articles 18, 20 and 34 of the 2003 Order were amended by section 6 of, and paragraph 6(19), (21) and (33) of Schedule 2 to, the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 – 2014 c. 11 (N.I.)

(**2**) S.I. 2010/976

(**3**) S.R. 2015 No. 194 (C. 13)

(i) the party's income and capital and financial commitments during the previous year and, if applicable, those of the party's partner;

(ii) the party's estimated future financial resources and expectations and, if applicable, those of the party's partner;

(iii) a declaration stating whether the party, and if applicable the party's partner, has deliberately foregone or deprived themselves of any resources or expectations, together (if applicable and as far as is practical) with details of those resources or expectations and the manner in which they have been foregone or deprived;

(iv) particulars of any application for funding made by the party in connection with the proceedings; and

(v) any other facts relevant to the determination of the party's resources; or

(b) an affidavit, sworn by a client receiving funded services, setting out the information provided by the client under Chapter 2 of Part 2 of the Financial Regulations, and stating that there has been no significant change in the client's financial circumstances since the date on which the information was provided or, as the case may be, details of any such change;

"an Article 18 costs order" means a costs order, made under Article 18(1) of the Order, against a client where cost protection applies;

"an Article 19 costs order" means a costs order, made under Article 19 of the Order, against the Department;

"the awarded sum" means the amount of costs to be paid in accordance with a client's costs order or a client's costs agreement;

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

"child" means a person under 18;

"client" means an individual who receives funded services;

"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;

"costs order" means an order that a party pay all or part of the costs of proceedings;

"cost protection" means the limit on costs awarded against a client set out in Article 18(1) of the Order;

"court" includes any tribunal having the power to award costs in favour of, or against, a party;

"the Department" means the Department of Justice;

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

"full costs" means, where an Article 18 costs order is made against a client, the amount of costs which that client would, but for Article 18(1) of the Order, have been ordered to pay;

"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 a contract or any other arrangements that determine that supplier's remuneration;

(**4**) S.R. 2015 No. 196

"the General Regulations" mean the Civil Legal Services (General) Regulations (Northern Ireland) 2015(**5**);

"next friend" and "guardian ad litem" have the respective meanings given by—

(a) Part 2 of Order 3 of the County Court Rules (Northern Ireland) 1981(**6**), in relation to proceedings brought in the county court, and

(b) Order 80 of the Court of Judicature Rules (Northern Ireland) 1980(**7**), in relation to proceedings brought in the High Court;

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

"partner" in relation to a party to proceedings, means a person with whom that party lives as a couple, and includes a person with whom the party is not currently living but from whom the party is not living separate and apart;

"patient" means a person who by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986(**8**) is incapable of managing and administering their own affairs;

"proceedings" include proceedings in any tribunal which is a court, as defined, in this regulation;

"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;

"supplier" means any person or body providing funded services to the client, including counsel engaged by the client's solicitor to act in proceedings;

"taxing master" means the Master (Taxing Office);

"unassisted party" has the meaning given by Article 19(1)(b) of the Order.

Effect of these Regulations

3. Nothing in these Regulations shall be construed, in relation to proceedings where one or more parties are receiving, or have received, funded services, as requiring a court to make a costs order where it would not otherwise have made a costs order.

Termination of retainer where funding is withdrawn

4.—(1) The following paragraphs of this regulation apply where funding is withdrawn by revoking or discharging the client's certificate.

(2) Subject to paragraphs (3) and (4), on the revocation or discharge of the client's certificate, the retainer of any supplier acting under that certificate shall terminate immediately.

(3) Termination of retainers under paragraph (2) shall not take effect unless and until any procedures under the General Regulations for appeal of the decision to withdraw the client's funding are concluded, and confirm the decision to withdraw funding.

(4) The supplier's retainer shall not terminate until the supplier has complied with any procedures under the General Regulations that require the supplier to send or serve notices.

(**5**) S.R. 2015 No. 195
(**6**) S.R. 1981 No. 225
(**7**) S.R. 1980 No. 346
(**8**) S.I. 1986/595 (N.I. 4)

PART 2

COSTS ORDERS AGAINST CLIENT AND AGAINST DEPARTMENT

Application of regulations 6 to 12

5. Regulations 6 to 12 apply only where cost protection applies.

Security for costs

6. Where in any proceedings a client is required to give security for costs, the amount of that security shall not exceed the amount (if any) which is reasonable having regard to all the circumstances, including the client's financial resources and their conduct in relation to the dispute to which the proceedings relate.

Assessment of resources

7.—(1) The value of the client's interest in the main or only dwelling in which they reside shall not be taken into account in having regard to the client's resources for the purposes of Article 18(1) of the Order.

(2) Where, but only to the extent that, the court considers that the circumstances are exceptional, having regard in particular to the quantity or value of the items concerned, the court may take into account the value of the client's clothes and household furniture, or the tools and implements of the client's trade, in having regard to the client's resources for the purposes of Article 18(1) of the Order.

(3) Subject to paragraph (4), in having regard to the resources of a party for the purposes of Article 18(1) of the Order, the resources of the party's partner shall be treated as that party's resources.

(4) The resources of a party's partner shall not be treated as that party's resources if the partner has a contrary interest in the dispute in respect of which the funded services are provided.

(5) Where a party is acting in a representative, fiduciary or official capacity, the court shall not take the personal resources of the party into account for the purposes of Article 18(1) of the Order, but shall have regard to the value of any property or estate, or the amount of any fund out of which that party is entitled to be indemnified, and may also have regard to the resources of the persons, if any, including that party where appropriate, who are beneficially interested in that property, estate or fund.

(6) For the purposes of Article 18(1) of the Order, where a party is acting as a next friend or guardian ad litem to a client who is a child or a patient, the court shall not take the personal resources of the next friend or guardian ad litem into account in assessing the resources of the client.

Affidavits of resources

8.—(1) An unassisted party to proceedings in which another party is a client may make an affidavit of resources, and file it with the court.

(2) An unassisted party making and filing an affidavit of resources under paragraph (1) shall serve a copy of it on the client and, where the unassisted party intends to apply for an Article 19 costs order, on the Department.

(3) Where a copy of an affidavit of resources is to be served under paragraph (2)—

(a) it shall be served not less than fourteen days before the date fixed for the hearing at which an Article 18 costs order and, where applicable, an Article 19 costs order may be made; and