STATUTORY RULES OF NORTHERN IRELAND

2015 No. 197

ACCESS TO JUSTICE

The Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015

Laid before the Assembly in draft

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 20A of the Access to Justice (Northern Ireland) Order 2003(**1**).

In accordance with Article 46(5) of that Order, a draft of this rule has been laid before and approved by a resolution of the Assembly.

PART 1

GENERAL

Citation and commencement

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

Interpretation

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

"appeal panel" means an appeal panel constituted under Part 3;

"appellant" means an individual who brings an appeal to an appeal panel under Part 2;

"applicant" means an individual who applies for civil legal services;

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

"decision notice" has the meaning given by regulation 28;

"the Department" means the Department of Justice;

(**1**) S.I. 2003/435 (N.I. 10). Article 20A was inserted by section 6 of, and paragraph 6(22) of Schedule 2 to, the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014

"the Director" means the Director of Legal Aid Casework designated by the Department under section 2 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014(**2**);

"list" means a list of persons appointed by the Department under regulation 12 or 13;

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

"other member" means a person appointed by the Department to the list of persons to act as other members of the appeal panels under regulation 13;

"out of jurisdiction appeal" means an appeal brought against a decision prescribed in regulation 5 and the Schedule as a decision against which no appeal lies;

"presiding member" means a person appointed by the Department to the list of persons to act as presiding members of the appeal panels under regulation 12;

"relevant decision" means a Director's decision as referred to in regulation 4;

"representation (higher courts)" has the meaning given by regulation 2 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015(**3**);

"secretary to the appeal panels" has the meaning given by regulation 21;

"supplier" means any person or other body who provides civil legal services funded by the Department to an individual.

Service of notices or documents

3.—(1) Any notice or document that is required to be sent to an appellant or applicant, as the case may be, under these Regulations may be sent—

(a) by post to the postal address given by the appellant or applicant as their address for service; or

(b) by electronic mail.

(2) Any document that is required to be sent to the Director under these Regulations may be sent—

(a) by post or by personal delivery to an address specified by the Director; or

(b) by electronic mail.

PART 2

RIGHTS OF APPEAL AND PROCEDURE FOR BRINGING APPEALS

Decisions against which an appeal lies

4.—(1) This regulation applies to decisions made, by or on behalf of the Director, under Article 14(2)(a)(i) of the Order—

(a) as to whether to fund, or continue to fund, civil legal services for an individual by way of representation (higher courts);

(b) as to the level of representation authorised for that individual.

(2) Where an applicant is dissatisfied with the Director's decision, the applicant may appeal that decision to an appeal panel.

(**2**) 2014 c. 11 (N.I.)
(**3**) S.R. 2015 No. 195

Decisions against which no appeal lies

5.—(1) No appeal lies to an appeal panel against a decision, made by or on behalf of the Director, set out in the Schedule to these Regulations.

(2) In paragraph (1) and the Schedule, "decision" includes determinations embodied in or necessary to a decision.

(3) An appeal brought against a decision specified in paragraph (1) may be struck out in accordance with regulation 22.

Notice of decisions against which an appeal lies

6. An individual with a right of appeal under these Regulations against any decision of the Director shall be given—

(a) written notice of the decision against which the appeal lies, together with a written statement of the reasons for that decision; and

(b) written notice of their right of appeal against that decision.

Correction of accidental errors in adjudication decisions

7.—(1) Accidental errors in a relevant decision, or in the record of such a decision, may be corrected by the Director at any time.

(2) A correction made to a relevant decision, or to the record of such a decision, shall be deemed to be part of that decision, or of that record and the Director shall give written notice of the correction to the applicant as soon as practicable.

(3) In calculating the time within which an appeal may be brought under regulation 8(1), there shall be disregarded any day falling before the date on which notice was given of a correction of the decision, or to the record thereof, under paragraph (2).

Time within which an appeal is to be brought

8.—(1) Subject to paragraphs (2) and (3), an appeal which lies from a relevant decision must be received by the Director within one month of the date of notification of that decision.

(2) Where a dispute arises as to whether an appeal was brought within the time limit prescribed in this regulation, the dispute shall be referred to, and determined by, a presiding member selected for that purpose by the Director.

(3) The time limit prescribed in this regulation for bringing an appeal may be extended in accordance with regulation 9.

Late appeals

9.—(1) Subject to paragraphs (2) to (10), the time limit prescribed in regulation 8 may be extended only if the conditions set out in this regulation are satisfied.

(2) No appeal shall be brought more than three months after the expiration of the last day for appealing under regulation 8.

(3) An application for an extension of time within which an appeal may be brought ("an application") shall be determined by a presiding member, selected for that purpose by the Director, except that where the Director is satisfied the conditions in paragraphs (5)(b) to (7) are satisfied the Director may grant the application.

(4) An application shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (7).

(5) An application for an extension of time shall not be granted unless—

(a) the presiding member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; or

(b) the presiding member or, as the case may be, the Director is satisfied that it is in the interests of justice for the application to be granted.

(6) For the purposes of paragraph (5)(b), it is not in the interests of justice to grant the application unless the presiding member or, as the case may be, the Director is satisfied that—

(a) any of the special circumstances specified in paragraph (7) are relevant to the application, or

(b) some other special circumstances exist which are exceptional and relevant to the application,

and, as a result of those special circumstances, it was not practicable for the appeal to be made within the time limit prescribed in regulation 8.

(7) For the purposes of paragraph (6)(a), the special circumstances are—

(a) the applicant has suffered serious illness; or

(b) a partner or dependant of the applicant has died or suffered serious illness.

(8) An application under this regulation which has been refused may not be renewed.

(9) The presiding member who determines an application shall record a summary of the reasons in such written form as has been approved by the Director.

(10) As soon as practicable after the decision is made, a copy of the decision shall be sent to the applicant.

Making of appeals and applications

10.—(1) An appeal or application for an extension of time must—

(a) be in writing on a form approved for the purpose by the Director or in such other format as the Director may accept;

(b) be signed by the appellant or applicant, as the case may be, or the supplier;

(c) be sent, in accordance with regulation 3(2), to the Director;

(d) contain particulars of the grounds on which it is made, together with the written representations relied upon by the appellant or applicant, as the case may be.

(2) In respect of an appeal, subject to paragraph (3), the appellant's written representations must fully address the reasons given by the Director for the decision which is the subject of the appeal.

(3) In any appeal brought under these Regulations, an appellant may not introduce or rely on any documentary material which the appellant did not provide to the Director at the time when the relevant decision was made, unless the Director is satisfied that the appellant could not with reasonable diligence have obtained that material prior to bringing the appeal.

(4) A form which is not completed in accordance with the instructions on the form does not satisfy the requirements of paragraphs (1) and (2), and may be returned by the Director to the appellant or applicant, as the case may be, for completion in accordance with those instructions.

(5) Where a form is returned to an appellant or applicant, as the case may be, in accordance with paragraph (4), it may be completed and resubmitted by the appellant or applicant provided it is received by the Director within the time limit prescribed in regulation 8.

(6) Upon receipt of a form completed in accordance with this regulation, if the Director considers it appropriate to do so, having regard to the written representations made by the appellant, the Director may allow the appeal without it being referred to an appeal panel.

PART 3

CONSTITUTION OF APPEAL PANELS

Persons appointed to the appeal panels

11. For the purposes of Article 20A of the Order, the appeal panels shall consist of presiding members and other members appointed by the Department in accordance with this Part.

Presiding members of appeal panels

12.—(1) Subject to paragraph (2) and regulation 19(1) and (2), the Department shall appoint a list of persons to act as presiding members of the appeal panels.

(2) A person may be appointed as a presiding member only if that person is a barrister or a solicitor of not less than seven years' standing.

Other members of appeal panels

13.—(1) Subject to paragraph (2) and regulation 19(1) and (2), the Department shall appoint a list of persons to act as other members of the appeal panels.

(2) In appointing persons under paragraph (1) the Department shall have regard to the desirability of securing that the list of such persons includes members who (between them) have experience in or knowledge of—

(a) the provision of services which the Department can fund as civil legal services,

(b) the work of the courts and tribunals, and

(c) the provision of expert services or testimony in cases which can be funded by way of civil legal services.

Tenure of appeal panel members

14.—(1) Subject to paragraphs (3) and (4), any person appointed to a list under regulation 12 or 13 shall hold office in accordance with the terms of their appointment.

(2) But a person shall not be appointed by the Department for a period of more than five years.

(3) (a) A person appointed to a list under regulation 12 or 13 may resign by giving notice in writing to the Department.

(b) A person who ceases to be a member of a list shall be eligible for re-appointment.

(4) The Department may terminate the appointment of a person to a list if satisfied that the person —

(a) has become bankrupt or made a composition or arrangement with their creditors,

(b) is unable to carry out their duties as a member of an appeal panel by reason of illness,

(c) has been convicted of a criminal offence,

(d) has been absent from meetings of an appeal panel for a period longer than six consecutive months without the permission of the Department, or

(e) is otherwise unable or unfit to discharge the functions of an appeal panel member.

Composition of appeal panels

15. Subject to regulations 16, 17, 18 and 19(3), an appeal panel shall consist of—