Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Civil Legal Services (Financial) Regulations (Northern Ireland) 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

2015 No. 196

ACCESS TO JUSTICE

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

Made - - - - *31st March 2015*

Coming into operation *1st April 2015*

The Department of Justice makes the following Regulations in exercise of the powers conferred by Articles 13 and 17(1), (2)(b), (3), (5) and (6) of the Access to Justice (Northern Ireland) Order 2003 [F1] and now vested in it [F2].

F1 S.I. 2003/435 (N.I. 10)
F2 S.I. 2010/976

PART 1

GENERAL

Citation, commencement and revocations

1.—(1) These Regulations may be cited as the Civil Legal Services (Financial) 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 [F3] applies.

F3 S.R. 2015 No. 194 (C. 13)

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;

"application" means an application to receive funded services, made by or on behalf of a client in accordance with the General Regulations;

"assessing authority" means—

(a) in respect of advice and assistance and representation (lower courts), the supplier,

(b) **[**F4in respect of representation (higher courts), the Director;**]**

"capital" means the amount or value of every resource of a capital nature;

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

"child" means an individual under the age of 18;

"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;

"the Department" means the Department of Justice;

"determination" has the meaning given by regulation 3;

"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 F5;

"disposable income" and "disposable capital" mean, respectively, the income and capital of the person concerned, calculated in accordance with Chapters 3 to 5 of Part 2, as applicable;

"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 General Regulations" means the Civil Legal Services (General) Regulations (Northern Ireland) 2015 F6;

"income" includes benefits and privileges, and the income of the person concerned includes any sum payable to that person for the purpose of the maintenance of a child including any sum so payable under the order of a court or under any instrument;

"Independent Living Fund (2006)" means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;

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

"partner" except in the expression "partner in a business" means a person with whom the person concerned lives as a couple, and includes a person from whom the individual is not separated due to a breakdown in the relationship which is likely to be permanent;

"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 these Regulations;

"the Remuneration Order" means the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 F7;

"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;

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

F4 Word in reg. 2 substituted (4.3.2019) by The Civil Legal Services (Financial) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/14), regs. 1, **3**
F5 2014 c. 11 (N.I.)
F6 S.R. 2015 No. 195
F7 S.R. 2015 No. 201

PART 2

DETERMINATIONS IN RESPECT OF AN INDIVIDUAL'S FINANCIAL RESOURCES

CHAPTER 1

FINANCIAL ELIGIBILITY LIMITS AND WAIVERS

Determination in respect of an individual's financial resources

3.—(1) This Part applies for the purposes of determining whether an individual qualifies for civil legal services under Part 2 of the Order in accordance with Article 13(1).

(2) Subject to regulations 4 and 5, the assessing authority must determine whether the individual's financial resources are such that the individual is eligible for civil legal services in accordance with these Regulations.

Exceptions from requirement to make a determination in respect of an individual's financial resources

4.—(1) The following services shall be available without reference to the client's financial resources—

(a) services consisting of such amount of advice and assistance as is authorised under a contract to be provided without reference to the client's financial resources;

(b) advice and assistance applied for by—

(i) a parent of a child, or a person with parental responsibility for a child within the meaning of the 1995 Order, in respect of whom a Health and Social Care Trust has given notice of potential proceedings under Article 50 of that Order, or

(ii) in the case of an unborn child in respect of whom a Health and Social Care Trust has given notice of potential proceedings under Article 50 of the 1995 Order, any person who, following birth of the child—

(aa) will be the parent of the child, and

(bb) will have parental responsibility for the child within the meaning of that Order;

[F8(c) advice and assistance in potential proceedings or representation in proceedings or potential proceedings before the Review Tribunal under—

(i) the Mental Health (Northern Ireland) Order 1986F9; or

(ii) sections 45, 47 or 48 of the Mental Capacity Act (Northern Ireland) 2016 in relation to an authorisation of detention amounting to a deprivation of liberty;

where the client's case or application to the Tribunal is, or is to be, the subject of the proceedings;

(ca) advice and assistance in potential proceedings or representation in proceedings or potential proceedings before the Review Tribunal under the Mental Capacity Act (Northern Ireland) 2016 under—

(i) Section 80 where the client is the person to whom the application relates; and

(ii) Section 83(2) where the client's case or application to the Tribunal is, or is to be, subject of the proceedings;**]**

(d) representation in proceedings under the 1995 Order, applied for by or on behalf of—

(i) a child in respect of whom an application is made for an order under—

(aa) Article 50 (a care or supervision order);

(bb) Article 62 (a child assessment order);

(cc) Article 63 (an emergency protection order); or

(dd) Article 64 (extension or discharge of an emergency protection order);

(ii) a parent of such a child, or a person with parental responsibility for such a child within the meaning of the 1995 Order; or

(iii) a child who is brought before a court under Article 44 (secure accommodation) who is not, but wishes to be, legally represented before the court;

(e) representation in proceedings relating to an appeal against an order made under Article 50 of the 1995 Order, applied for by or on behalf of a person who has been granted representation by virtue of sub-paragraph (d);

(f) representation (higher courts) in proceedings under the Adoption (Northern Ireland) Order 1987 **F10** applied for by or on behalf of—

(i) a child in respect of whom an application is made for an order under—

(aa) Article 17 (freeing child for adoption with parental agreement); or

(bb) Article 18 (freeing child for adoption without parental agreement); or

(ii) a parent of such a child, or a person with parental responsibility for such a child within the meaning of the 1995 Order;

(g) representation by a solicitor in Northern Ireland of a person whose application under the Hague Convention or the European Convention has been submitted to the Central Authority in Northern Ireland under section 3(2) or 14(2) of the Child Abduction and Custody Act 1985 **F11**;

(h) representation of a person who—

(i) appeals to a magistrates' court against the registration of, or the refusal to register, a maintenance order made in a Hague Convention country under the Maintenance Orders (Reciprocal Enforcement) Act 1972 **F12**;

(ii) applies for the registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982 **F13**;

(iii) applies for the registration of a judgment under Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; or

(iv) applies for either the registration of or the registration and enforcement of a judgment under Council Regulation (EC) No. 2201/2003 of 27th November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility,

and who benefited from complete or partial assistance with, or exemption from, costs or expenses in the country in which the maintenance order was made or the judgment was given;

(i) such services as are funded through grants under Article 12(2)(c) of the Order, except where the terms of the grant provide otherwise;

(j) civil legal services to the extent that the services consist of—

(i) advice and assistance or representation for an individual who is the subject of an application for permission under section 6 of the 2011 Act, in respect of such an application;

(ii) advice and assistance in connection with a TPIM notice for an individual who is subject to that notice;

(iii) advice and assistance for an individual who is subject to a TPIM notice, in respect of an application—

(aa) to vary measures specified in that notice under section 12(2) of the 2011 Act;

(bb) for revocation of that notice in accordance with section 13(3) of the 2011 Act;

(cc) for permission under Schedule 1 to the 2011 Act; or

(iv) representation in respect of TPIM proceedings for an individual who is subject to a TPIM notice;

(k) advice and assistance in the circumstances provided for in paragraph (2) **[**F14;**]**

[F15(l) representation of a client who is the subject of proceedings under Article 44 or 45 of the Police and Criminal Evidence (Northern Ireland) Order 1989;

(m) representation of a client who is the subject of proceedings under paragraph 29 or 36 of Schedule 8 to the Terrorism 2000 Act.**]**

(2) Funded services may be provided where a client—

(a) is arrested and held in custody at a police station or other premises;

[F16(aa) is detained under Schedule 7 to the Terrorism Act 2000 or under Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019;**]**

(b) is being interviewed in connection with a serious service offence; or

(c) is a volunteer,

and seeks advice and assistance from a solicitor.

(3) In this regulation—

"the 1995 Order" means the Children (Northern Ireland) Order 1995 F17;

"the 2011 Act" means the Terrorism Prevention and Investigation Measures Act 2011 F18;

"Central Authority" has the same meaning as in sections 3 and 14 of the Child Abduction and Custody Act 1985;

"European Convention" means the convention defined in section 12(1) of the Child Abduction and Custody Act 1985;

"Hague Convention" means the convention defined in section 1(1) of the Child Abduction and Custody Act 1985;

"Hague Convention country" has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993 F19;