STATUTORY RULES OF NORTHERN IRELAND

2015 No. 195

ACCESS TO JUSTICE

The Civil Legal Services (General) 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 12(3), 13, 14(6), 15 and 34(1) of the Access to Justice (Northern Ireland) Order 2003 [F1], and now vested in it [F2].

Annotations:
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 (General) 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].

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

Interpretation

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

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

"the Appeal Regulations" means the Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015 [F4];

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

"application" means an application to receive funded services made by or on behalf of an individual in accordance with these Regulations;

[[F5]"assessing authority" means—

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

(b) in respect of representation (higher courts) and exceptional funding, the Director;**]**

"assisted party" means an individual in receipt of advice and assistance, or in respect of whom a certificate, or emergency certificate, is in force;

"certificate" means a certificate issued under regulation 16 certifying a decision to fund representation for an individual, and "emergency certificate" means a certificate issued under regulation 17 certifying a decision to fund representation for an individual in a case of emergency;

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

"civil partner" has the meaning given by section 1 of the Civil Partnership Act 2004 [F6];

"child" has the meaning given by Article 2(2) of the Order;

"contribution" means the amount of an individual's contribution under the Financial Regulations;

"costs" means, in the case of a solicitor, the remuneration and disbursements payable under the Remuneration Order and, in the case of counsel, the remuneration payable under that provision;

"the Costs Regulations" means the Civil Legal Services (Costs) Regulations (Northern Ireland) 2015 [F7];

"the court" includes the Supreme Court of the United Kingdom, the Court of Judicature, the county court, the magistrates' court and any tribunal in Northern Ireland;

"counsel" means a barrister called to the Bar of Northern Ireland, holding a current practising certificate;

"the Department" means the Department of Justice;

"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 [F8];

"the Financial Regulations" means the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 [F9];

"in writing" includes a reference to an electronic communication;

"the Mental Health Review Tribunal" means the Mental Health Review Tribunal for Northern Ireland constituted under Article 70 of, and Schedule 3 to, the Mental Health (Northern Ireland) Order 1986 [F10];

"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 [F11], in relation to proceedings brought in the county court, and

(b) Order 80 of the Court of Judicature Rules (Northern Ireland) 1980 [F12], in relation to proceedings brought in the High Court;

"the Order" means the Access to Justice (Northern Ireland) Order 2003 [F13];

"patient" has the meaning given by Article 2 of the Mental Health (Northern Ireland) Order 1986;

"the Remuneration Order" means the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 [F14];

"representation (higher courts)" means representation in proceedings—

(a) in the county court, the High Court, the Court of Appeal or the Supreme Court;

(b) before any person to whom a case is referred (in whole or in part) in any proceedings within paragraph (a);

(c) in the Crown Court to the extent specified in paragraph 2(ba), (bb) or (c) of Schedule 2 to the Order;

(d) before the Proscribed Organisations Appeal Commission, the Lands Tribunal for Northern Ireland or the Special Immigration Appeals Commission;

(e) before the First-Tier Tribunal to the extent specified in paragraph 2(ia) of Schedule 2 to the Order;

(f) before the Upper Tribunal to the extent specified in paragraph 2(ib) of Schedule 2 to the Order; or

(g) in the Enforcement of Judgments Office to the extent specified in paragraph 2(j) of Schedule 2 to the Order;

"representation (lower courts)" means representation in proceedings—

(a) in a court of summary jurisdiction to the extent specified in paragraph 2(d) and (hh) of Schedule 2 to the Order; or

(b) before the Mental Health Review Tribunal;

"the Statutory Charge Regulations" means the Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015 [F15];

"supplier" means the solicitor or counsel, where applicable, being requested to provide funded services to an individual;

"vexatious litigant" means an individual in respect of whom an order has been made by the Court of Judicature under section 32 of the Judicature (Northern Ireland) Act 1978 [F16].

Annotations:

F4 S.R. 2015 No. 197

F5 Words in reg. 2 substituted (4.3.2019) by The Civil Legal Services (General) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/13), regs. 1, **3**

F6 2004 c. 33

F7 S.R. 2015 No. 198

F8 2014.c. 11 (N.I.)

F9 S.R. 2015 No. 196

F10 S.I. 1986/595 (N.I. 1)

F11 S.R. 1981 No. 225

F12 S.R. 1980 No. 346

F13 S.I. 2003/344 (N.I. 10)

F14 S.R. 2015 No. 201

F15 S.R. 2015 No. 200

F16 1978 c. 23

PART 2

COMMON PROVISIONS

Civil Legal Services

3. Civil legal services shall be available to any individual—

(a) who is eligible under these Regulations and the Financial Regulations to receive advice and assistance; or

(b) to whom a certificate has been issued in accordance with these Regulations.

Notification

4.—(1) Where these Regulations provide for notice to be given, one or more of the following methods of delivery must be used—

(a) personal service;

(b) post;

(c) electronic mail;

(d) if served together with any process of a court, by any mode of service authorised by rules of court for service of that process; or

(e) any method authorised in writing by the Director.

(2) Where the notice is required by these Regulations to be provided to a supplier, such notice must be delivered to the business address of the supplier.

(3) Where the intended recipient is not a supplier, notice must be delivered to that individual's usual or last known residence or business address.

Applications for Civil Legal Services

5.—(1) An application must be made in a form specified by the Department.

(2) The Department may specify different forms for different civil legal services.

(3) An application for a certificate under Part 4, 5 or 6 must be made by a supplier.

Attendance on behalf of an applicant

6.—(1) Where, for good reason, an applicant cannot attend upon a supplier in order to make an application the applicant may authorise another individual to attend on the applicant's behalf.

(2) The other individual referred to in paragraph (1) shall furnish the supplier with the information referred to in regulations 31(3), 35(3), 41(3) or 49(2), as applicable, in a form approved by the Department.

Applicants resident outside Northern Ireland

7.—(1) Where an applicant resides outside Northern Ireland the Director may give a supplier prior authority to accept a postal application if satisfied that it is reasonable in the circumstances to do so.

(2) Subject to paragraph (4) an application under paragraph (1) shall be in English.

(3) Subject to paragraph (4), an application under paragraph (1) shall be accompanied by a statement in writing, signed by a responsible person who has knowledge of the facts, certifying that

part of the application which relates to the applicant's income and capital, if required under these Regulations or the Financial Regulations, and shall be sworn before—

(a) a Consular Officer (or any person authorised to exercise the functions of such consular officer) in the service of Her Majesty's Government in the United Kingdom; or

(b) any person for the time being authorised by law in the place where the oath is to be administered, to administer such oath for any judicial or other legal purpose.

(4) The requirements of paragraphs (2) and (3) may be waived by the Director where compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the provisions of regulations 31(3), 35(3), 41(3) or 49(2), as applicable.

Children and patients

8.—(1) Subject to paragraphs (2) and (3), as applicable, a supplier shall not accept an application from a child or patient unless the supplier has been authorised to do so by the Director, who shall withhold such authority unless satisfied that it is reasonable in the circumstances that the child or patient should receive civil legal services.

(2) A supplier may accept an application for advice and assistance from a child who—

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

(b) is being interviewed by police in relation to an offence as a detained person, or as a volunteer, where the supplier is satisfied that the application cannot reasonably be made by any of the individuals specified in paragraph (3)(a), (c) or (d).

(3) A supplier may accept an application on behalf of a child or patient from—

(a) in the case of a child, the child's parent, guardian or other individual in whose care the child is;

(b) in the case of a patient, the patient's spouse or civil partner, or committee appointed under Part 5 of the Mental Health (Northern Ireland) Order 1986 [F17], or nearest relative or guardian within the meaning of Part 2 of that Order;

(c) in the case of a child or a patient, an individual acting for the purposes of any proceedings as the child or patient's next friend or guardian ad litem; or

(d) in the case of a child or a patient, any other individual where the Director is satisfied that it is reasonable in the circumstances and has given prior authority for the civil legal services to be given to such other individual on behalf of the child or patient.

(4) Where this regulation applies, the Director shall not issue a certificate unless the individual proposing to act on behalf of the child or patient has signed an undertaking to pay (if called upon to do so) any contribution which, by virtue of any provision of the Order or Part 2 of the Financial Regulations, the Director may require an assisted party of full age and capacity to pay upon the issue or during the currency or upon suspension, discharge or revocation of the certificate.

(5) Any certificate issued by virtue of this regulation shall be in the name of the child or patient, as applicable, stating the name of the individual by whom the application was made.

(6) The individual by whom a child or patient has applied for a certificate shall be treated as the agent of the child or patient for all purposes.

(7) The Director may waive any or all of the requirements of this regulation where the Director is satisfied that it is reasonable in the circumstances to do so.

Annotations:
F17 S.I. 1986/595 (N.I. 4)