
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 Dependents) (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.

Notice to third parties

12.—(1) Where money is payable under regulation 11, and that money is payable by a trustee in bankruptcy, a trustee or assignee of a deed of arrangement, a liquidator of a company in liquidation, a trustee of a pension fund or any other third party (“the third party”), the client’s solicitor shall send to the third party notice that funded services have been funded for the client by the Department.

(2) Notice under paragraph (1) shall operate as a request by the client that money payable under regulation 11 be paid to their solicitor, and shall be a sufficient authority for that purpose.

Solicitor to pay money recovered to Department

13.—(1) The client’s solicitor shall forthwith—

- (a) inform the Department of any money or other property recovered, and send the Department a copy of the order or agreement by virtue of which the property was recovered;
- (b) subject to the following paragraphs of this regulation, pay to the Department all money or other property received by the solicitor under regulation 11.

(2) Paragraph (1)(b) shall not apply to any money or other property which is not subject to the statutory charge by virtue of regulation 4.

(3) The Department may direct the client’s solicitor to—

- (a) pay to the Department under paragraph (1)(b) only such sums as, in the Department’s opinion, should be retained by the Department in order to safeguard its interests; and
- (b) pay any other money to the client.

(4) Where the solicitor pays money to the Department in accordance with this regulation, the solicitor shall identify what sums relate respectively to—

- (a) costs;
- (b) damages;
- (c) interest on costs; and
- (d) interest on damages.

Retention and payment out of money by the Department

14.—(1) The Department shall deal with the money paid to it under this Part in accordance with this regulation.

(2) The Department shall retain—

- (a) an amount equal to the costs incurred in taking steps under regulation 15;
- (b) an amount equal to that part of the funded sum already paid to the supplier in respect of the relevant work; and
- (c) where costs are paid to the Department together with interest, an amount equal to that interest, less the amount of any interest payable to the supplier under paragraph (3)(b)(ii).

(3) The Department shall pay to the supplier—

- (a) any outstanding amount of the funded sum payable to them in respect of the relevant work;
- (b) where costs are ordered or agreed to be paid to the client, and those costs are received by the Department, and those costs (less any amount retained under paragraph (2)(a) or payable under paragraph (5)) exceed the funded sum—
 - (i) an amount equal to the amount of the excess; and
 - (ii) where those costs are paid to the Department together with interest, an amount equal to the interest attributable to the excess referred to in head (i).

(4) Paragraph (5) applies where a solicitor has acted on behalf of the client in proceedings before that client receives funded services in respect of the same proceedings, or has a lien on any documents necessary to proceedings to which a client is a party, and has handed them over subject to the lien, but applies only so far as is consistent with the express terms of any contract between the Department and the solicitor.

(5) Where the solicitor referred to in paragraph (4) gives the Department written notice that this paragraph applies, the Department shall pay to that solicitor the costs to which that solicitor would have been entitled if those costs had been assessed on an indemnity basis.

(6) Where the amount of costs payable under paragraph (5) has not been assessed by the court, they may instead be assessed by the Department.

(7) Where the amount received by the Department, less any amount retained under paragraph (2) (a), is insufficient to meet the funded sum and any sum payable under paragraph (5), the Department shall apportion the amount received proportionately between the two.

(8) The Department shall pay all the money paid to it under this Part, which is not paid or retained under paragraphs (2) to (5), to the client.

(9) The Department may defer payment of the funded sum to the client's supplier until they have given effect to any provisions in these Regulations.

Enforcement of orders etc. in favour of client

15.—(1) Where, in relation to any dispute to which a client is a party, whether or not proceedings are begun—

- (a) an order or agreement is made providing for the recovery or preservation of property by the client (whether for the client or any other person); or
- (b) there is a client's costs order or client's costs agreement,

the Department may take any steps, including proceedings in its own name, as may be necessary to enforce or give effect to that order or agreement.

(2) A client may, with the consent of the Department, take proceedings to give effect to an order or agreement under which they are entitled to recover or preserve money or other property.

(3) Subject to paragraph (4), the client's solicitor may take proceedings for the recovery of costs where a client's costs order or a client's costs agreement has been made.

(4) Where the client's costs order or client's costs agreement relates wholly or partly to costs incurred in carrying out work which is remunerated, or to be remunerated, in the funded sum, but those costs have not been reimbursed by payment from any other party in favour of the client, the solicitor shall require the consent of the Department before taking proceedings to which paragraph (3) refers.

(5) Where the Department takes proceedings, it may authorise any person to take any step in the proceedings in its name.

(6) The costs incurred by the Department in taking any step to enforce an order or agreement where paragraph (1) applies shall be a first charge on any property or sum so recovered.

Enforcement of the statutory charge

16.—(1) This regulation applies only in relation to a statutory charge in favour of the Department.

(2) The Department may enforce the statutory charge in any manner which would be available to a chargee in respect of a charge given between parties to proceedings.

(3) All conveyances and acts done to defeat, or operating to defeat, the statutory charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void against the Department.

Interest on damages

17.—(1) Where the Department receives damages paid in favour of a client it shall, subject to the following paragraphs, pay to the client a sum representing the net interest earned while the damages are being held by the Department.

(2) Without prejudice to its other powers to invest money, the Department shall maintain and may deposit damages to which this regulation refers in individual accounts at a deposit taker.

(3) The rate of interest payable to the client under this regulation shall be the rate payable on damages deposited in the individual account.

(4) Subject to paragraph (5), interest shall be payable for the period beginning on the second business day after the date on which damages are received by the Department to and including the date on which the Department determines the amount to be paid under regulation 14(8).

(5) If the damages are received by the Department by way of cheque, interest shall only become payable once the cheque has cleared with the deposit taker and the damages monies have been applied to the Department's account.

(6) In this regulation —

“business day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday, a bank holiday under the Banking and Financial Dealings Act 1971(14) or a day when the Department is not open for business; or any other day when the deposit taker providing banking services to the Department is not open for business.

“deposit taker” means the bank which is providing banking services to the Department, or the branch, situated in Northern Ireland of either —

- (a) a person with permission under Part 4 of the Financial Services and Markets Act 2000(15) to accept deposits, or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits;

“individual account” means an interest bearing account opened in the name of the Department designated in the name of the client to enable the Department to hold funds on behalf of a client.

(7) The definition of “deposit taker” in paragraph (6) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 22 to that Act.

Unclaimed damages

18.—(1) On or before 31st March in each year the Department shall carry over any unclaimed damages to an account of unclaimed balances (“the account”).

(2) On or before 1st June in each year the Department shall prepare a list of the names of the individuals who received funded services in respect of whom damages have been carried over to the account in accordance with paragraph (1), which shall be filed in the Department.

(14) 1971 c. 80

(15) 2000 c. 8

(3) A copy of the list referred to in paragraph (2) may be inspected at the office of the Department to which an application for civil legal services would ordinarily be made, upon prior written request, by a person claiming that they have a beneficial interest.

(4) On receipt of a written request for information concerning any damages carried over to the account in respect of which the person making the request claims to have a beneficial interest, the Department may supply such information relating to that request as it considers appropriate.

(5) For the purposes of this regulation, damages shall be treated as unclaimed if—

- (i) they stand to the credit of an individual who received funded services, upon which there has been no claim for payment by any person asserting a beneficial or other interest for a continuous period of 6 years immediately before the last preceding 1st March; and
- (ii) the Department is satisfied that all appropriate steps have been taken to effect payment to the person entitled to the damages.

Sealed with the Official Seal of the Department of Justice on 26th March 2015



David Ford
Minister of Justice

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Regulation 1(2)

Instruments Revoked

<i>Title</i>	<i>Registered Number</i>	<i>Regulations Revoked</i>
The Legal Aid (General) Regulations (Northern Ireland) 1965	No. 217	Regulations 14, 17 and 26
The Legal Advice and Assistance Regulations (Northern Ireland) 1981	No. 366	Regulations 24, 25 and 26, together with Schedule 4

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the statutory charge which arises over money and other property recovered or preserved by an assisted party in civil proceedings and over costs payable to the assisted party by another party to the proceedings (“the charge”). The charge arises under Article 17(7) of the Access to Justice (Northern Ireland) Order 2003.

Part 2 of the Regulations makes provision about the calculation and operation of the charge and makes exceptions to it (regulations 3, 4, 8 and 9). Regulation 5 determines when the charge is in favour of the Department of Justice and the supplier of civil legal services, respectively. Regulation 6 makes provision about when the charge may be waived.

Part 3 of the Regulations makes provision about the enforcement of the charge, including obligations on suppliers and the Department in relation to the transfer, retention and payment of money (including costs) which is subject to the charge (regulations 10 to 14). Regulations 15 and 16 provide for the enforcement of the charge by the assisted person and the Department. Regulation 17 provides for the payment of interest on damages held by the Department. Regulation 18 provides for the Department dealing with unclaimed damages.

The Regulations also revoke the provisions regarding the charge made under, or treated as made under, the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (regulation 1(2), together with the Schedule).

The Regulations come into operation on 1st April 2015.