

Initial Regulatory Impact Assessment:

Amendments to the Statutory Charge provisions contained in Regulation 17(9) of the Legal Aid (General) Regulations (Northern Ireland) 1965

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Introduction

1. This document provides an initial Regulatory Impact Assessment undertaken in relation to proposed amendments to the Statutory Charge provisions contained in Regulation 17(9) of the Legal Aid (General) Regulations (Northern Ireland) 1965.

An Equality Impact Assessment is also available on the Commission's website:

http://www.nilsc.org.uk/uploads/consultation/documents/DraftEQIA_160310.pdf

Conclusion of this initial RIA

2. The Commission's initial assessment suggests that the reform proposals set out in the consultation document are unlikely to have a direct or indirect impact on business, charities, social economy enterprises or the voluntary sector. We would invite your comments on this assessment. Please submit your response by post, fax or email to:

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Background to the statutory charge

3. The “statutory charge” arises in circumstances where a legally assisted person has kept or won money or property in legal proceedings, but where their legal aid contributions (if any), or any costs they have recovered from the other side are not enough to cover their total costs payable out of the legal aid fund. In these circumstances the Northern Ireland legal Services Commission is entitled to a charge over the money or property gained by the assisted person for the amount payable from the legal aid fund.
4. The purpose of the statutory charge is to ensure that a legally assisted person seeks to achieve the most economical resolution possible to their legal dispute; and to ensure at the conclusion of proceedings that they pay what they can reasonably afford towards the costs of their case.
5. There are a number of exemptions to the application of the statutory charge which are set out in Regulation 17(9) of the Legal Aid (General) Regulations (Northern Ireland) 1965
6. The most significant exemption from the statutory charge is that money recovered money recovered under the aegis of Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 is exempt from charge (property recovered under Article 26 is subject to the charge)).

The Proposed Reforms to the Operation of the Statutory Charge

7. This initial RIA should be read in conjunction with the consultation document “Substantive changes to the operation of the Statutory Charge as defined in the Legal Aid (General) Regulations (Northern Ireland) 1965”, which contains full details of the proposed reforms, and which can be found on the Commission’s website:

8. http://www.nilsc.org.uk/uploads/consultation/documents/Statutory%20Charge%20Consultation_070410.pdf

Options

Option 1: Do Nothing.

9. This option is not feasible as, under existing regulations, the statutory charge does not consistently apply where an assisted person has recovered money / and or property in matrimonial proceedings.

Option 2: Reform the existing exemptions from the statutory charge.

10. The core element of the proposed reform is the removal of the existing exemption for lump sum payments recovered under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978.
11. In practice this will significantly narrow the exemptions from the statutory charge. However, it is also proposed that legally assisted persons who recover money or property in “family” type proceedings will benefit from a threshold of £3,000, below which the statutory charge will not apply.
12. There are a number of other proposed amendments to the existing statutory charge exemptions, and these are set out in full in the consultation document:
13. http://www.nilsc.org.uk/uploads/consultation/documents/Statutory%20Charge%20Consultation_070410.pdf

Benefits

Option 1: Do Nothing

14. There is no benefit in doing nothing as current regulations are not consistent in the way they treat money and property recovered in matrimonial proceedings.

Option 2: Reform the existing exemptions from the statutory charge.

15. The core element of the proposed amendments is to delete the exemption from the statutory charge for lump sum payments obtained in matrimonial proceedings. This will reduce the current scope of the exemptions, and will therefore, in many cases, re-distribute a degree of responsibility for meeting legal costs from the legal aid fund to the legally assisted person.
16. The economic benefit is that public money which is required to provide access to justice for the less well-off, and which would otherwise be lost to the legal aid fund, can be recycled and re-directed towards other areas of unmet legal need, and other priority areas of legal aid spending.
17. To the extent that this happens, legal aid will be regarded more as a loan rather than a gift, and this will have the effect of encouraging quicker and less expensive resolution of legal disputes (private client realism).

Costs

Option 1: Do Nothing

No further costs.

Option 2: Reform the existing exemptions from the statutory charge.

The Commission obtained an economic appraisal on the effect of proposed reforms¹ which indicates that savings and income for the legal aid fund will exceed the cost to the Commission of administering the proposed reforms to the statutory charge.

¹ Tony Dignan – “Financial Economic & Policy Appraisal of Reforming the Application of the Statutory Charge in Northern Ireland”. August 2008