
STATUTORY RULES OF NORTHERN IRELAND

2010 No.

LEGAL AID AND ADVICE

Legal Aid (General) (Amendment No. 2) Regulations (Northern Ireland) 2010

Made - - - -

Coming into operation - 2010

The Department of Justice makes the following Regulations in exercise of the powers conferred by Articles 12(5), 22 and 27 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(a), and now vested in it(b).

Citation and commencement

1. These Regulations may be cited as the Legal Aid (General) (Amendment No. 2) Regulations (Northern Ireland) 2010 and shall come into operation on [the commencement date].

Application

2. These Regulations apply to cases in which the Commission grants a certificate on or after [the commencement date].

3. The Legal Aid (General) Regulations (Northern Ireland) 1965(c) continue to apply as if these Regulations had not been made in respect of cases in which the Commission grants a certificate before [the commencement date].

Amendments to the Legal Aid (General) Regulations (Northern Ireland) 1965

4. The Legal Aid (General) Regulations (Northern Ireland) 1965 are amended as follows.

5. For regulation 17(9), substitute—

“(9) The provisions of this regulation shall not apply to any of the following:

- (a) any periodical payment of maintenance;
- (b) any sum or sums ordered to be paid under Articles 27B(4) or 27C of the Matrimonial Causes (Northern Ireland) Order 1978(d);
- (c) other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, the assisted person’s clothes or household furniture or the tools or implements of his trade;

(a) S.I. 1981/228 (N.I. 8); Article 27 is an interpretation provision and is recited because of the meaning assigned to the word “regulations”
(b) S.I. 1982/159 and S.I. 2010/...
(c) S.R. & O. (N.I.) 1965 No. 217; relevant amending Regulations are S.R. 1974 No. 126, S.R. 1988 No. 86 and S.R. 2010 No. 93
(d) S.I. 1978/1045 (N.I. 15)

- (d) any sum or sums ordered to be paid under Article 7 of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979^(a) or the Family Homes and Domestic Violence (Northern Ireland) Order 1998^(b);
- (e) the first £3,000 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 (9A), or an agreement which has the same effect as such an order;
- (f) any sum, payment or benefit which, by virtue of any provision of or made under an enactment, cannot be assigned or charged.”.

6. After regulation 17(9), insert—

“(9A) The enactments referred to in paragraph (9)(e) are:

- (a) Article 25(1)(c) or (f), 25(2), 26, 29(6)(c) or (f), or 37 of the Matrimonial Causes (Northern Ireland) Order 1978;
- (b) Article 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^(c);
- (d) Article 4(1)(b) or (d), 8(1) or (5), or 22(2) of the Domestic Proceedings (Northern Ireland) Order 1980^(d); and
- (e) Article 15 of, together with paragraphs 2, 8 or 11 of Schedule 1 to, the Children (Northern Ireland) Order 1995^(e).

(9B) In paragraph (9)(a) “maintenance” means money or money’s worth paid towards the support of a former spouse or former civil partner, child or any other person for whose support the payer has previously been responsible or has made payments.”.

7. For regulation 15(3)(c), substitute—

“(c) to instruct counsel;”

8. Omit regulation 15(4).

9. After regulation 15(14A), insert—

“(14B) Where the Commission waive the provisions of paragraph (14A), it shall consider whether it is reasonable in the circumstances to reduce the costs; provided that the costs shall not be reduced unless the solicitor or counsel, as applicable, has been permitted a reasonable opportunity to show cause orally or in writing why the costs should not be reduced.”.

10. For regulation 19, substitute—

“Interim payment of disbursements

19.—(1) A solicitor may submit a claim to the Commission for payment of a disbursement for which he has incurred liability in accordance with the provisions of this regulation.

(2) A claim for payment may be made where –

(a) S.I. 1979/924 (N.I. 8)
(b) S.I. 1998/1071 (N.I. 6)
(c) 1882 c. 75
(d) S.I. 1980/563 (N.I. 5)
(e) S.I. 1995/755 (N.I. 2)

- (a) the disbursement falls within any guidance issued by the Commission in respect of civil proceedings, or the solicitor has obtained prior authority from the Commission to incur the expenditure;
 - (b) the total liability for such disbursement exceeds £500; and
 - (c) the solicitor has discharged such liability.
- (3) A claim under paragraph (1) shall not exceed £2,500 or the maximum fee authorised under the prior authority, whichever is the greater.
- (4) A claim for payment under paragraph (1) may be made at any time before the solicitor submits a claim for costs under regulation 15(14A).
- (5) A claim under paragraph (1) shall be submitted to the Commission in such form and manner as it may direct and shall be accompanied by the authority to incur the expenditure (if applicable) and any invoices or other documents in support of the claim.
- (6) The Commission shall allow the disbursement, subject to the limit in paragraph (3), if it appears to have been reasonably incurred and discharged in accordance with the guidance or prior authority.
- (7) Where the Commission allows the disbursement, it shall notify the solicitor and authorise payment to him accordingly.”

11. In regulation 22(2)(a), for “other than under the equity jurisdiction of the County Court or remitted to it by the High Court” substitute “other than proceedings remitted to the County Court by the High Court”.

12. In regulation 22(2)(b), for “in relation to proceedings under the equity jurisdiction of the County Court or remitted to it by the High Court” substitute “in relation to proceedings remitted to the County Court by the High Court”.

Sealed with the Official Seal of the Department of Justice on

2010

(L.S.)

A senior officer of the Department of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Legal Aid (General) Regulations (Northern Ireland) 1965 in the following respects:

- the provisions regarding exemptions to the statutory charge for civil legal aid (regulations 5 and 6);
- the requirement to apply to the Northern Ireland Legal Services Commission for authority to instruct counsel (regulations 7 and 8);
- empowering the Commission to reduce the costs payable where a report has been made outside the prescribed time limit (regulation 9);
- removing the provision regarding the making of interim payments on account of costs, and substituting a provision for such payment in respect of disbursements only (regulation 10);
- removing two obsolete references to the former procedure whereby costs in equity cases in the County Court could be taxed (regulations 11 and 12).