

Changes to the Application of the “Statutory Charge” in Legally Aided Proceedings - An overview

Introduction

As part of the ongoing reform in the delivery of public legal services under the Access to Justice (Northern Ireland) Order 2003, the Commission is currently developing new Regulations to replace the existing Legal Aid (General) Regulations (Northern Ireland) 1965.

The development of the new Regulations will be broken down into three phases as described below:-

- Phase 1 – a partial restatement of Regulation 17(9) of the Legal Aid (General) Regulations (Northern Ireland) 1965, (the 1965 Regulations)
- Phase 2 – substantive amendments to Regulation 17(9)
- Phase 3 – replacement of Regulation 17 (Property Recovered or Preserved for and Costs agreed to be paid to or awarded to an assisted person) of the 1965 Regulations with new regulations made under the Access to Justice (Northern Ireland) Order 2003

What is the Statutory Charge?

Article 12 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 defines the Statutory Charge. Briefly, it arises when a client, as a result of receiving legal aid, recovers or preserves monies or property in court or achieves a financial gain in settlement of an action, and there is a shortfall or deficiency in the Legal Aid Fund in that the costs of the case payable to the client’s legal representatives out of the Fund are greater than the aggregate of any costs recovered from the third party and the person’s legal aid contribution, if any. Any such excess is the amount of the statutory charge, and in civil proceedings it cannot be waived.

There are a number of exemptions to the Statutory Charge applicable in civil proceedings which are set out in Regulation 17(9) of the Legal Aid (General) Regulations (Northern Ireland) 1965.

Phase 1 - Restatement of Regulation 17(9)

The Commission has reviewed the operation of the Statutory Charge, its application in legally aided cases under Regulation 17(9) of the 1965 Regulations, and the previous guidance issued to the legal profession (particularly in relation to the exemptions from the Statutory Charge in matrimonial cases).

As the legislation and guidance is dated, the Commission has recently completed an exercise which sets out the exemptions from the charge as they relate to the current legislative position. These changes take effect from 1 April 2010.

This exercise primarily addressed the recovery or preservation of monies in ancillary relief proceedings under the ambit the of Matrimonial Causes (Northern Ireland) Order 1978.

The new statement of the exemptions will apply to legal aid certificates granted on or after 1 April 2010.

Phase 2 - Amendments to Regulation 17(9)

In Phase 2 of the reform of the Statutory Charge the Commission intends to introduce a number of substantive amendments to the 1965 Regulations which, overall, will have the effect of narrowing the exemptions from the charge in ancillary relief proceedings.

The aim of these amendments is to help to bring the existing Statutory Charge regulations into line with the proposed reformed regulations under the Access to Justice (Northern Ireland) Order 2003 (Phase 3). The aim of the reformed regulations is to bring greater focus on the cost of litigation and to deliver savings and revenue streams to the legal aid fund.

The main effect of the proposed amendments, in ancillary relief proceedings, will be to restrict the exemptions from the charge to:

- Any periodical payment of maintenance;
- Sums ordered to be paid under sections 27B (4) or 27C of the Matrimonial Causes (Northern Ireland) Order 1978 (monies deriving from a pensions ear-marking arrangement);
- The assisted person's clothes or household furniture or the tools or implements of his trade;
- "Any sum, payment or benefit which, by virtue of any provision of or made under an Act of Parliament, cannot be assigned or charged". One of the effects of this provision would be to exempt income and

lump sums deriving from a pension sharing arrangement in ancillary relief proceedings.

The Commission is considering a partial exemption of the Statutory Charge in family proceedings with the introduction of a threshold of £3,000 below which the Statutory Charge will not apply.

Phase 3 – New Financial Regulations

New financial regulations will be introduced pursuant to the Access to Justice (Northern Ireland) Order 2003, dealing with financial eligibility, the Statutory Charge and the award of costs.

A full public consultation on the proposed new Regulations will be held later this year.