



**Consultation Document**

**The Legal Aid (General) Regulations (Northern Ireland) 1965**

**Miscellaneous Amendments**

**March 2010**



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## **About the Consultation Exercise**

This consultation exercise is being conducted in keeping with HM Government's Code of Practice on Consultation. The consultation criteria being adhered to are set out at **Annex A**.

A list of the consultees to this exercise is provided at **Annex B**.

## **How to respond**

When responding to this consultation document please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where appropriate, how the views of the members were assembled.

Please submit your response to this consultation by post, fax or email to:

The Consultation Co-ordinator  
Northern Ireland Legal Services Commission  
2<sup>nd</sup> Floor, Waterfront Plaza  
8 Laganbank Road, Mays Meadow  
Belfast BT1 3BN

Email [jillherron@nilsc.org.uk](mailto:jillherron@nilsc.org.uk)

Facsimile 028 9040 8995

## **Closing date**

Responses must be received by **11 June 2010**.

## **Miscellaneous**

Additional copies of this consultation document may be made without seeking permission from the Northern Ireland Legal Services Commission. Printed copies may be obtained by contacting the Consultation Co-ordinator. An electronic version is available on the Northern Ireland Legal Services Commission's website [www.nilsc.org.uk](http://www.nilsc.org.uk). This document will also be made available in a wide range of alternative formats. Requests for alternative formats should again be made to the Consultation Co-ordinator.

Please tell us if you know of others who would be interested in receiving this consultation document.

## **Confidentiality and complaints**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the information access legislation (that is, Freedom of Information Act 2001 [FOI] and the Data Protection Act [DPA]). If you want information that you provide to be treated as confidential please be aware that, under FOI, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, obligations of confidence.

In view of this, it would be helpful if you would explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system, or included as a general statement in your fax cover sheet will not, in itself, be regarded as binding on the Northern Ireland Legal Services Commission and will be taken to apply, therefore, only to information in your response for which confidentiality has been requested.

The Northern Ireland Legal Services Commission will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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Director of Policy and Civil Reform  
Northern Ireland Legal Services Commission  
2<sup>nd</sup> Floor, Waterfront Plaza  
8 Laganbank Road, Mays Meadow  
Belfast BT1 3BN

## Introduction

1. The Northern Ireland Legal Services Commission (the Commission) has published a consultation paper on reforms to the application of the statutory charge for individuals who secure money or property with the support of civil legal aid. That consultation paper is also available on the Commission's website at [www.nilsc.org.uk](http://www.nilsc.org.uk).
2. As the proposed changes to the statutory charge will involve amendments to the Legal Aid (General) Regulations (Northern Ireland) 1965 (the 1965 Regulations), the Commission is taking this opportunity to launch a parallel consultation exercise to seek views on a small number of further amendments to the 1965 Regulations.
3. A number of the proposed further changes are largely cosmetic, as they are intended to update the 1965 Regulations to reflect other legislative changes or are administrative in nature. Some are more substantive and these are the main subject-matter of this consultation.
4. A set of draft regulations accompany the consultation paper on the reform of the statutory charge. The same draft regulations accompany this consultation as they cover the proposals in both papers.
5. A Draft Equality Impact Assessment (EQIA) on the proposed amendments has not been prepared as the majority of the changes are technical and have no impact on individual applicants or providers of legal aid. The Commission is conscious that the two substantive proposals, set out at paragraphs 12-21 of this consultation paper, will be subjected to an EQIA if they are proceeded following this consultation exercise.
6. Responses are sought to this consultation generally. Views on individual elements of the proposals are welcome.

## Proposed Changes

### Instructing Counsel

7. Regulation 15(3) of the 1965 Regulations requires a solicitor for a person in receipt of legal aid to seek the authority of the Commission for a number of steps, including instructing more than one counsel (unless the Commission in issuing the certificate has already authorised that step and it is so stated in the certificate). Regulation 15(3)(c) refers.
8. The Commission proposes to amend this requirement so that, in future, a solicitor has to seek the Commission's authority to instruct counsel in all cases funded by way of civil legal aid (unless already authorised on the face of the certificate). This will move away from the longstanding practice of the legal aid fund effectively funding at least one counsel in every civil case, including proceedings in the Magistrates' Court funded under paragraph 3 of Part 1 in Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. It is envisaged that in future, when a solicitor seeks funding on behalf of his client in such cases and wishes to instruct counsel, the application will expressly seek such authorisation. The accompanying draft regulations propose this change at regulation 7.
9. In a corresponding change the draft regulations, at regulation 8, propose to omit the existing regulation 15(4) which is an obsolete, transitional provision dating back to the introduction of the 1965 Regulations. The basis of decisions as to the authorisation of funding for more than one counsel in any individual case is no longer dependant on the practice prevailing before the introduction of the 1965 Regulations.

10. **The Commission seeks views on the proposed amendments dealing with the authorisation of funding for counsel, including more than one counsel.**

Reduction in Costs for Late Reports

11. Regulation 15(14A) of the 1965 Regulations requires solicitors to submit a report on cases funded by civil legal aid within three months of the conclusion of the proceedings. This provision also enables the Commission to waive the three month requirement if there is reasonable cause for the delay in submitting the case report. However, the provision is largely academic as the only real sanction open to the Commission is to refuse to waive the time limit which would effectively mean refusing to pay for any work done in such a case.
12. The draft regulations, at regulation 9, propose to insert a new provision, regulation 15(14B), into the 1965 Regulations. The proposed regulation would require the Commission, in cases in which it is content to waive the requirement to report on a case within three months of the conclusion of proceedings, to consider whether it would be appropriate to reduce the costs payable as a sanction on the late submission of the report.
13. The proposed reform seeks to create a more appropriate balance in that it recognises that the late submission of a report on case may be allowed, but at the same time it creates the possibility of a penalty to dissuade unnecessary delay. The proposal also includes appropriate safeguards that no deduction of costs can be applied without a legal representative being afforded the opportunity to argue that a cost reduction is inappropriate in the circumstances.
14. Following consultation on this proposal, the Commission will seek views on a framework for reductions. Legal practitioners are familiar with this concept as deductions on the late submission of bills have

been a feature of the remuneration arrangements in other areas of legal aid work<sup>1</sup>.

15. **The Commission seeks views on the proposed amendment dealing with the power to reduce costs when reports on cases are submitted late.**

#### Payment of Sums on Account

16. The 1965 Regulations include a provision, at regulation 19, for the payment on account of costs to solicitors. Historically, the regulation provided for payments on account to enable solicitors to pay disbursements incurred in the course of a case, including experts' fees, but not in respect of their own professional costs. However, in 1974 regulation 19 was amended to allow solicitors' costs to be included in a payment on account.
17. The current operation of this provision is unsatisfactory as the regulation envisages the individual assessment of an application for such a payment, whereas a practice has been established of allowing standard payments on account. In reality some practitioners make extensive use of this provision, while others make few if any claims. However, the general trend has been for a significant increase in the number of claims made under this provision which distracts staff in the Commission from processing final bills upon submission at the end of a case.
18. The draft regulations propose, at regulation 10, to substitute a new provision at regulation 19 of the 1965 Regulations. The proposal is to establish a mechanism for the interim payment of disbursements only, that is, the non-professional costs incurred by solicitors. The proposed

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<sup>1</sup> See the corresponding provisions in rule 16 of the Legal Aid in Criminal Proceedings (Costs) Rules (Northern Ireland) 1992, rule 19 of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005 and rule 15 of the Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009

provision reflects the arrangements established in 2005 in respect of Crown Court cases<sup>2</sup>.

19. The Commission also propose to insert a similar provision for the interim payment of disbursements in cases funded by way of ABWOR under the Legal Advice and Assistance Regulations (Northern Ireland) 1981. Currently, there is no provision for any interim payments in cases funded under those regulations.
20. **The Commission seeks views on the proposed amendment to the payment on account provision, and specifically seeks views on whether this should be extended to cover cases funded by way of ABWOR under the Legal Advice and Assistance Regulations (Northern Ireland) 1981.**

#### Obsolete References

21. The 1965 regulations currently contain two obsolete references, at regulation 22(2)(a) and 22(2)(b), which reflect a former procedure whereby costs in equity cases in the County Court could be taxed.
22. The draft regulations propose, at regulations 11 and 12, amendments to the 1965 Regulations to ensure that the respective provisions reflect the current statutory position<sup>3</sup>.

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<sup>2</sup> See rules 5 and 6 of the Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005

<sup>3</sup> See rule 9 (taxation of costs) in Order 55 of the County Court Rules (Northern Ireland) 1981

### **Question for Consultees**

The Commission seeks views on the proposed amendments dealing with authorising funding for counsel, including more than one counsel. [Para 11]

The Commission seeks views on the proposed amendment dealing with the power to reduce costs when reports on cases are submitted late. [Para 16]

The Commission seeks views on the proposed amendment to the payment on account provision, and specifically seeks views on whether this should be extended to cover cases funded by way of ABWOR under the Legal Advice and Assistance Regulations (Northern Ireland) 1981. [Para 21]

## **Consultation Criteria**

### **When to Consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

### **Duration of Consultation Exercise**

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

### **Clarity of Scope and Impact**

Consultation documents should be clear about the consultation process, what is being proposed, the scope of influence and the expected costs and benefits of the proposals.

### **Accessibility of Consultation Exercises**

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

### **The Burden of Consultation**

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

### **Responsiveness of Consultation Exercises**

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

### **Capacity to Consult**

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

**HM Government Code of Practice on Consultation, July 2008**

**List of Consultees**

Action against Medical Accidents  
Advice NI  
Advice Services Alliance  
Age Concern/Help the Aged  
Agnew Andress Higgins  
Alliance Party  
Amalgamated Workers and General Transport Union  
An Munia Tober Traveller Support Group  
Antrim and Ballymena Solicitors Association  
Antrim Library  
Armagh Library  
Armagh Solicitors Association  
Association of Personal Injury Lawyers  
Bahai Office for Northern Ireland  
Ballymena Library  
Banbridge Library  
Bangor Carnegie Library  
Bangor Solicitors Association  
Baptist Church  
Bar Council of Northern Ireland  
Barnardos Northern Ireland  
Belfast Central Library  
Belfast City Council Youth Forum  
Belfast Education and Library Board  
Belfast Health and Social Care Trust  
Belfast Hebrew Congregation  
Belfast Islamic Centre  
Belfast Solicitors Association  
Blind Centre for Northern Ireland/RNIB  
British Deaf Association(NI)  
British/Irish Rights Watch  
Business Services Organisation Headquarters  
Carafriend  
Carers Northern Ireland  
Chief Executives Forum  
Children and Young People's Unit, OFMDFM  
Children in Northern Ireland  
Children's Law Centre  
Children's Order Advisory Committee  
Chinese Welfare Association  
Church of Ireland  
Citizens Advice Bureau Regional Office  
Cloona Child Contact Services and Family Support  
CO3  
Coalisland & Dungannon Solicitors Association  
Coalition on Sexual Orientation (CoSO)

Coleraine and Ballymoney Solicitors Association  
Coleraine Library  
Commission for Victims and Survivors Northern Ireland  
Committee on the Administration of Justice  
Communication Workers Union  
Community Foundation for Northern Ireland  
Community Relations Council  
Cookstown Solicitors Association  
Council for the Homeless (Northern Ireland)  
Council of District Judges (Magistrates' Court) in Northern Ireland  
Criminal Justice Inspectorate Northern Ireland  
Crown Solicitor's Office  
Deaf Association of Northern Ireland  
Democratic Unionist Party  
Department for Social Development  
Department of Agriculture and Rural Development  
Department of Culture, Arts and Leisure  
Department of Education  
Department of Employment and Learning  
Department of Enterprise, Trade and Investment  
Department of Environment  
Department of Finance and Personnel  
Department of Health, Social Services and Public Safety  
Department of Justice, Equality and Law Reform  
Departmental Solicitors Office  
Deputy District Judges (Magistrates' Courts) Association  
Derry Central Library  
Directorate of Legal Services  
Disability Action  
District Judges Association  
Down & District Solicitors Association  
Downpatrick Library  
Dungannon Library  
East Belfast Community Development Agency  
Enniskillen Library  
Equality Commission for Northern Ireland  
Family Mediation Northern Ireland  
Federation of Small Businesses Regional Office  
Fermanagh Solicitors Association  
Forum of Insurance Lawyers  
Foyle Solicitors Association  
G4S Plc  
Gay and Lesbian Youth Northern Ireland  
General Consumer Council for Northern Ireland  
Gingerbread Northern Ireland  
Graduate School of Professional Legal Education  
Green Party  
Greer Hamilton & Gailey  
Health and Social Care Board

HM Council of County Court Judges  
Housing Rights Service  
Independent Health Coalition  
Indian Community Centre  
Institute of Child Care Research  
Institute of Directors (NI Division)  
Institute of Professional Legal Studies  
James H Rodgers & Co  
John J Rice Solicitors  
Labour Relations Agency  
Land Registers of Northern Ireland  
Law Centre (NI)  
Law Society of Northern Ireland  
Legal Aid Board, Ireland  
Legal Services Commission, England & Wales  
Libraries NI Headquarters  
Limavady Solicitors Association  
Lisburn City Library  
Lisburn Solicitors Association  
MaCaulay & Ritchie  
MacElhatton & Co  
Magherafelt Solicitors Association  
Men to men  
MENCAP Northern Ireland  
Mens Project  
Methodist Church in Ireland  
Mid-Ulster Womens Network  
Mr A Forbes  
Mr A M Brown  
Mr J McNulty  
Ms A Kelly  
Multi-Cultural Resource Centre  
Newry & Banbridge Solicitors Association  
Newry Library  
Newtownabbey Solicitors Association  
NIACRO  
NICVA  
North Eastern Education and Library Board  
North West Community Network  
North West Forum of People with Disabilities  
Northern Health and Social Care Trust  
Northern Ireland African Cultural Centre  
Northern Ireland Anti-Poverty Network  
Northern Ireland Assembly  
Northern Ireland Association for Mental Health  
Northern Ireland Childminding Association  
Northern Ireland Commissioner for Children and Young People  
Northern Ireland Committee, Irish Congress of Trade Unions  
Northern Ireland Council for Ethnic Minorities

Northern Ireland Court Service  
Northern Ireland Gay Rights Association  
Northern Ireland Guardian Ad Litem Agency  
Northern Ireland Housing Executive  
Northern Ireland Human Rights Commission  
Northern Ireland Law Commission  
Northern Ireland Local Government Association  
Northern Ireland Office  
Northern Ireland Office of the Information Commissioner  
Northern Ireland Ombudsman's Office  
Northern Ireland Peers  
Northern Ireland Policing Board  
Northern Ireland Prison Service  
Northern Ireland Public Service Alliance (NIPSA)  
Northern Ireland Sikh Cultural and Community Centre  
Northern Ireland Lay Magistrates Association  
NSPCC  
Office of the First Minister and Deputy First Minister  
(Northern Ireland)  
Old Persons Advocate  
Omagh Library  
Omagh Solicitors Association  
O'Reilly Stewart  
P A Duffy & Co  
Parents Advice Centre  
Participation Network  
POBAL  
Police Service of Northern Ireland  
Portadown Library  
Portadown Solicitors Association  
Presbyterian Church in Ireland  
Probation Board Northern Ireland  
Progressive Unionist Party  
Public Health Agency Headquarters  
Public Prosecution Service for Northern Ireland  
Relate  
Roman Catholic Church in Ireland  
Rural Development Council  
Save the Children  
Scottish Legal Aid Board  
Simon Community Northern Ireland  
Sinn Fein  
SLS Legal Publications  
Social Democratic Labour Party  
Social Security Agency  
Social Services Inspectorate  
Society of Masters  
Solace  
South Eastern Education and Library Board  
South Eastern Health and Social Care Trust

Southern Education and Library Board  
Southern Health and Social Care Trust  
Stephen Scott & Company Solicitors  
Strabane Library  
Strabane Solicitors Association  
The Cedar Foundation  
The Patient Client Council  
Thomas Taggart & Sons  
Traditional Unionist Voice  
TV Licensing  
Ulster Peoples College  
Ulster Scots Heritage Council  
Ulster Unionist Party  
UNISON  
Victim Support NI  
Voluntary and Community Unit - DSD  
West Belfast Economic Forum  
Western Education and Library Board  
Western Health and Social Care Trust  
Women's Aid Federation Northern Ireland  
Women's Forum Northern Ireland  
Woodlands Juvenile Justice Centre  
Youth Council for Northern Ireland  
Youth Justice Agency

Should you require any further information about the Northern Ireland Legal Services Commission please visit our website at [www.nilsc.org.uk](http://www.nilsc.org.uk) or alternatively contact us at the below address.

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