

2015 No. 195

ACCESS TO JUSTICE

**The Civil Legal Services (General) Regulations (Northern
Ireland) 2015**

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Coming into operation - *1st April 2015*

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SCHEDULE — Instruments Revoked

The Department of Justice makes the following Regulations in exercise of the powers conferred by Articles 12(3), 13, 14(6), 15 and 34(1) of the Access to Justice (Northern Ireland) Order 2003(a), and now vested in it(b).

PART 1 GENERAL

Citation, commencement and revocations

1.—(1) These Regulations may be cited as the Civil Legal Services (General) 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(c).

Interpretation

2. In these Regulations, unless the context otherwise requires—

“advice”, “assistance” and “representation” have the respective meanings given by Article 2(2) of the Order;

“the Appeal Regulations” means the Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015(d);

“applicant” means an individual who applies for civil legal services;

“application” means an application to receive funded services made by or on behalf of an individual in accordance with these Regulations;

“assessing authority” means—

(a) in respect of advice and assistance, representation (lower courts) and exceptional funding, the supplier,

(b) in respect of representation (higher courts), a person appointed by the Department for Social Development to make a determination;

“assisted party” means an individual in receipt of advice and assistance, or in respect of whom a certificate, or emergency certificate, is in force;

“certificate” means a certificate issued under regulation 16 certifying a decision to fund representation for an individual, and “emergency certificate” means a certificate issued under regulation 17 certifying a decision to fund representation for an individual in a case of emergency;

“civil legal services” has the meaning given by Article 10 of the Order;

“civil partner” has the meaning given by section 1 of the Civil Partnership Act 2004(e);

“child” has the meaning given by Article 2(2) of the Order;

(a) S.I. 2003/435 (N.I. 10)
(b) S.I. 2010/976
(c) S.R. 2015 No. 194 (C. 13)
(d) S.R. 2015 No. 197
(e) 2004 c. 33

“contribution” means the amount of an individual’s contribution under the Financial Regulations;

“costs” means, in the case of a solicitor, the remuneration and disbursements payable under the Remuneration Order and, in the case of counsel, the remuneration payable under that provision;

“the Costs Regulations” means the Civil Legal Services (Costs) Regulations (Northern Ireland) 2015(a);

“the court” includes the Supreme Court of the United Kingdom, the Court of Judicature, the county court, the magistrates’ court and any tribunal in Northern Ireland;

“counsel” means a barrister called to the Bar of Northern Ireland, holding a current practising certificate;

“the Department” means the Department of Justice;

“the Director” means the Director of Legal Aid Casework designated by the Department under section 2 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014(b);

“the Financial Regulations” means the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015(c);

“in writing” includes a reference to an electronic communication;

“the Mental Health Review Tribunal” means the Mental Health Review Tribunal for Northern Ireland constituted under Article 70 of, and Schedule 3 to, the Mental Health (Northern Ireland) Order 1986(d);

“next friend” and “guardian ad litem” have the respective meanings given by—

- (a) Part 2 of Order 3 of the County Court Rules (Northern Ireland) 1981(e), in relation to proceedings brought in the county court, and
- (b) Order 80 of the Court of Judicature Rules (Northern Ireland) 1980(f), in relation to proceedings brought in the High Court;

“the Order” means the Access to Justice (Northern Ireland) Order 2003(g);

“patient” has the meaning given by Article 2 of the Mental Health (Northern Ireland) Order 1986;

“the Remuneration Order” means the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015(h);

“representation (higher courts)” means representation in proceedings—

- (a) in the county court, the High Court, the Court of Appeal or the Supreme Court;
- (b) before any person to whom a case is referred (in whole or in part) in any proceedings within paragraph (a);
- (c) in the Crown Court to the extent specified in paragraph 2(ba), (bb) or (c) of Schedule 2 to the Order;
- (d) before the Proscribed Organisations Appeal Commission, the Lands Tribunal for Northern Ireland or the Special Immigration Appeals Commission;
- (e) before the First-Tier Tribunal to the extent specified in paragraph 2(ia) of Schedule 2 to the Order;
- (f) before the Upper Tribunal to the extent specified in paragraph 2(ib) of Schedule 2 to the Order; or

(a) S.R. 2015 No. 198

(b) 2014.c. 11 (N.I.)

(c) S.R. 2015 No. 196

(d) S.I. 1986/595 (N.I. 1)

(e) S.R. 1981 No. 225

(f) S.R. 1980 No. 346

(g) S.I. 2003/344 (N.I. 10)

(h) S.R. 2015 No. 201

(g) in the Enforcement of Judgments Office to the extent specified in paragraph 2(j) of Schedule 2 to the Order;

“representation (lower courts)” means representation in proceedings—

(a) in a court of summary jurisdiction to the extent specified in paragraph 2(d) and (hh) of Schedule 2 to the Order; or

(b) before the Mental Health Review Tribunal;

“the Statutory Charge Regulations” means the Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015(a);

“supplier” means the solicitor or counsel, where applicable, being requested to provide funded services to an individual;

“vexatious litigant” means an individual in respect of whom an order has been made by the Court of Judicature under section 32 of the Judicature (Northern Ireland) Act 1978(b).

PART 2

COMMON PROVISIONS

Civil Legal Services

3. Civil legal services shall be available to any individual—

(a) who is eligible under these Regulations and the Financial Regulations to receive advice and assistance; or

(b) to whom a certificate has been issued in accordance with these Regulations.

Notification

4.—(1) Where these Regulations provide for notice to be given, one or more of the following methods of delivery must be used—

(a) personal service;

(b) post;

(c) electronic mail;

(d) if served together with any process of a court, by any mode of service authorised by rules of court for service of that process; or

(e) any method authorised in writing by the Director.

(2) Where the notice is required by these Regulations to be provided to a supplier, such notice must be delivered to the business address of the supplier.

(3) Where the intended recipient is not a supplier, notice must be delivered to that individual’s usual or last known residence or business address.

Applications for Civil Legal Services

5.—(1) An application must be made in a form specified by the Department.

(2) The Department may specify different forms for different civil legal services.

(3) An application for a certificate under Part 4, 5 or 6 must be made by a supplier.

(a) S.R. 2015 No. 200

(b) 1978 c. 23

Attendance on behalf of an applicant

6.—(1) Where, for good reason, an applicant cannot attend upon a supplier in order to make an application the applicant may authorise another individual to attend on the applicant's behalf.

(2) The other individual referred to in paragraph (1) shall furnish the supplier with the information referred to in regulations 31(3), 35(3), 41(3) or 49(2), as applicable, in a form approved by the Department.

Applicants resident outside Northern Ireland

7.—(1) Where an applicant resides outside Northern Ireland the Director may give a supplier prior authority to accept a postal application if satisfied that it is reasonable in the circumstances to do so.

(2) Subject to paragraph (4) an application under paragraph (1) shall be in English.

(3) Subject to paragraph (4), an application under paragraph (1) shall be accompanied by a statement in writing, signed by a responsible person who has knowledge of the facts, certifying that part of the application which relates to the applicant's income and capital, if required under these Regulations or the Financial Regulations, and shall be sworn before—

- (a) a Consular Officer (or any person authorised to exercise the functions of such consular officer) in the service of Her Majesty's Government in the United Kingdom; or
- (b) any person for the time being authorised by law in the place where the oath is to be administered, to administer such oath for any judicial or other legal purpose.

(4) The requirements of paragraphs (2) and (3) may be waived by the Director where compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the provisions of regulations 31(3), 35(3), 41(3) or 49(2), as applicable.

Children and patients

8.—(1) Subject to paragraphs (2) and (3), as applicable, a supplier shall not accept an application from a child or patient unless the supplier has been authorised to do so by the Director, who shall withhold such authority unless satisfied that it is reasonable in the circumstances that the child or patient should receive civil legal services.

(2) A supplier may accept an application for advice and assistance from a child who—

- (a) is arrested and held at a police station or other premises; or
- (b) is being interviewed by police in relation to an offence as a detained person, or as a volunteer, where the supplier is satisfied that the application cannot reasonably be made by any of the individuals specified in paragraph (3)(a), (c) or (d).

(3) A supplier may accept an application on behalf of a child or patient from—

- (a) in the case of a child, the child's parent, guardian or other individual in whose care the child is;
- (b) in the case of a patient, the patient's spouse or civil partner, or committee appointed under Part 5 of the Mental Health (Northern Ireland) Order 1986(a), or nearest relative or guardian within the meaning of Part 2 of that Order;
- (c) in the case of a child or a patient, an individual acting for the purposes of any proceedings as the child or patient's next friend or guardian ad litem; or
- (d) in the case of a child or a patient, any other individual where the Director is satisfied that it is reasonable in the circumstances and has given prior authority for the civil legal services to be given to such other individual on behalf of the child or patient.

(4) Where this regulation applies, the Director shall not issue a certificate unless the individual proposing to act on behalf of the child or patient has signed an undertaking to pay (if called upon

(a) S.I. 1986/595 (N.I. 4)

to do so) any contribution which, by virtue of any provision of the Order or Part 2 of the Financial Regulations, the Director may require an assisted party of full age and capacity to pay upon the issue or during the currency or upon suspension, discharge or revocation of the certificate.

(5) Any certificate issued by virtue of this regulation shall be in the name of the child or patient, as applicable, stating the name of the individual by whom the application was made.

(6) The individual by whom a child or patient has applied for a certificate shall be treated as the agent of the child or patient for all purposes.

(7) The Director may waive any or all of the requirements of this regulation where the Director is satisfied that it is reasonable in the circumstances to do so.

Civil Legal Services from more than one supplier

9.—(1) Subject to paragraph (2), an individual shall not be given civil legal services for the same matter by more than one supplier without the prior authority of the Director, and such authority may be given on such terms and conditions as the Director may consider appropriate in the circumstances of the application.

(2) Where regulations 34 or 40 apply, an individual may be given civil legal services for the same matter by more than one supplier without the prior authority of the Director, provided that the cost shall not exceed that which would have been incurred by one supplier.

Refusal to accept instructions or continue to act

10.—(1) A supplier shall be entitled, for reasonable cause, to refuse to accept an application, or (having accepted an application) to refuse to provide civil legal services.

(2) A supplier may decline to disclose to an applicant or assisted party the reasons for refusing to accept instructions or to provide civil legal services under paragraph (1).

(3) Notwithstanding paragraph (2), the supplier shall give the Director such information about that refusal as the Director may require for the purpose of performing the Director's functions under the Order.

(4) Without prejudice to the right of suppliers to give up a case for reasonable cause, any supplier may give up a case if, in the opinion of the supplier, the assisted party has—

- (a) required the case to be conducted unreasonably so as to incur an unjustifiable expense to the Department;
- (b) required unreasonably that the case be continued; or
- (c) wilfully failed to comply with any regulation as to the information to be furnished, or in furnishing such information has knowingly made a false statement or false representation.

(5) The supplier shall make a report to the Department of the circumstances in which the supplier exercises the right to give up a case under paragraph (4).

(6) Where the Director, upon receiving a report under paragraph (5), does not discharge or revoke the certificate, the Director shall require the assisted party to select another supplier to act and shall certify in writing that the first supplier has ceased to act for the assisted party.

(7) On any application made under rules of court for an order to the effect that a supplier has ceased to be the supplier for the assisted party, a certificate issued under paragraph (6) shall be evidence of the facts stated therein.

Counsel

11.—(1) Where it appears to a supplier that the proper conduct of civil legal services requires the instruction of counsel, the supplier shall apply to the Director for authorisation to instruct counsel under this regulation.

(2) If the Director considers that the proper conduct of the civil legal services requires counsel, the Director may grant authorisation to instruct counsel on such conditions as the Director considers appropriate.

Power to require information

12.—(1) The Director may require a supplier to furnish to any person authorised by the Director to request it, such information as the Director may from time to time require for the purpose of discharging the Director’s functions under the Order.

(2) The relationship between or rights of the supplier and the individual, or any privilege arising out of such relationship, does not preclude the supplier from disclosing information or documentation, where—

- (a) it is required in accordance with paragraph (1); and
- (b) it relates to any service provided to an individual who is or was in receipt of services funded by the Department.

(3) For the purpose of providing information in order to enable the Director to discharge any functions imposed or conferred on the Director by or under Articles 12A to 20A of the Order, any party may disclose to any person authorised by the Director to receive them, communications in relation to the proceedings concerned sent to or by the supplier, whether or not they are expressed to be “without prejudice”.

(4) A supplier who has acted or is acting for an assisted party shall, as soon as practicable, make a report to the Director in circumstances in which—

- (a) the assisted party has died;
- (b) the assisted party has been adjudicated bankrupt or an order has been made in relation to the assisted party under Article 226 of the Insolvency (Northern Ireland) Order 1989(a); or
- (c) the assisted party has been declared by the Court of Judicature to be a vexatious litigant.

Entrusting functions to others

13. Nothing in these Regulations shall prevent a supplier from entrusting any function under these Regulations to—

- (a) a partner of the supplier; or
- (b) a competent and responsible representative, employed in the supplier’s office or otherwise under the supplier’s immediate supervision.

Review of decisions and determinations

14.—(1) Within twenty eight days of receipt of notification of a decision or determination relating to civil legal services, an applicant, assisted party or supplier may—

- (a) apply to the Director in a form specified by the Department for a review of the decision or determination; and
- (b) include written representations supporting the request for review.

(2) Upon receipt of a request for a review under this regulation, the Director shall—

- (a) consider the request and any written representations provided;
- (b) affirm, amend or substitute the decision or determination; and
- (c) notify the applicant, assisted party or supplier, as applicable, of the decision or determination following the review.

(3) If, in the circumstances, the Director considers it appropriate to do so, the Director may review, affirm, amend or substitute a decision or determination without a request by an applicant, assisted party or supplier.

(a) S.I. 1989/2405 (N.I. 19)

Certificates

15.—(1) Any document purporting to be a certificate issued in accordance with these Regulations shall, until the contrary is proved, be deemed to be a valid certificate issued to the individual named on the certificate.

(2) The Director may grant an application for a certificate in whole or in part and may impose such conditions or limitations as to the conduct of proceedings as the Director considers appropriate.

(3) A certificate issued in accordance with these Regulations shall specify any limitation or condition to which the certificate is subject.

(4) Where an individual applies for a certificate in a representative, fiduciary or official capacity and it appears to the Director that in the circumstances the court would, if proceedings were to be brought, order the costs of the proceedings to be paid out of any property, estate or fund, the Director shall not grant the application, unless it appears that the property, estate or fund would be so diminished or exhausted by that order as to cause hardship to any individual beneficially interested.

(5) Where an application is made by or on behalf of an individual in connection with proceedings in which numerous individuals have the same interest and in which one or more individuals may sue or be sued, or may be authorised by a court to defend any such proceedings on behalf of or for the benefit of all individuals so interested, the Director shall refuse the application if satisfied—

- (a) that such refusal would not seriously prejudice the rights of the applicant; or
- (b) that it would be reasonable and proper for the other individuals having the same interest in the matter as the applicant to defray so much of the costs as would be payable by the Department in respect of the proceedings if a certificate were issued.

(6) The Director shall not refuse an application under paragraph (5) until the applicant has been permitted to make written representations as to why the application should not be refused.

(7) Where an application is made by or on behalf of an individual who has the right to be joined in one action as plaintiff with others in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, because, if those individuals brought separate proceedings, a common question of law or fact would arise, the Director may issue a certificate limited to such proceedings as may be necessary to preserve the applicant's right to relief.

(8) No certificate shall relate to proceedings (other than interlocutory appeals) both in a court of first instance and in an appellate court or to proceedings in more than one appellate court.

(9) Each certificate shall relate to only one set of proceedings except where—

- (a) the certificate relates to family proceedings; or
- (b) the Director considers that two or more sets of proceedings are so closely related that they should be covered under a single certificate.

(10) Without prejudice to regulation 19 of the Financial Regulations, the Director shall not require an assessing authority to re-determine an applicant's disposable income or capital in circumstances in which an application for a certificate is made relating to proceedings—

- (a) (other than interlocutory proceedings) in an appellate court in any proceedings in which the applicant was an assisted party in the court below; or
- (b) by way of a new trial ordered by an appellate court before whom the applicant was an assisted party.

(11) In this regulation, "family proceedings" means proceedings which arise out of family relationships, including proceedings in which the welfare of children is determined, other than judicial review or quasi criminal proceedings.

Issue of Certificates

16.—(1) If the Director approves an application for a certificate under Part 5 of these Regulations, the Director shall notify the applicant and the supplier—

- (a) of the terms upon which a certificate will be issued; and
- (b) if contribution is required, the amount of such contribution.

(2) An applicant who desires that a certificate under Part 5 should be issued on the terms notified shall, within twenty eight days of being so notified, or within such other period as the Director may allow—

- (a) signify acceptance of those terms on a form approved by the Department; and
- (b) if those terms require a contribution to be paid, sign a form approved by the Department and lodge with the Department an undertaking to pay the contribution by the method stated in the terms and, if the contribution or part of it is required to be paid before the certificate is issued, make such payment accordingly.

(3) When an applicant has complied with any requirements under paragraph (2) the Director shall issue a certificate in such form as may be approved by the Department to the supplier.

(4) If the Director approves an application for a certificate under Part 4 or Part 6 of these Regulations, the Director shall issue a certificate to the supplier in such form as may be approved by the Department.

Emergency Certificates

17.—(1) An application for a certificate may be made as a matter of urgency.

(2) An application under this regulation shall be made on a form approved by the Department, or in such manner as the Director may accept in the circumstances of the application.

(3) An application under this regulation shall contain such information and documentary evidence as may be required to enable the Director to determine whether—

- (a) the applicant is likely to fulfil the conditions under which civil legal services may be granted under the Financial Regulations and regulations 37(1), 43(1) or 49(2)(b), as applicable; and
- (b) it is in the interests of justice that the applicant should be granted a certificate as a matter of urgency.

(4) The Director may grant an emergency certificate with the condition that such information and documentation referred to in paragraph (3) is subsequently provided, if it appears to the Director that the applicant cannot at the time of the application reasonably furnish such information or documentation.

(5) Notwithstanding regulation 3, a certificate issued under this regulation may, at the discretion of the Director, specify that the certificate is to be treated as having effect from such date as the Director considers appropriate.

(6) If the Director considers it appropriate to do so, the Director may issue an emergency certificate without reference to an assessing authority.

(7) An emergency certificate shall have the same effect in all respects as a certificate issued under regulation 16 and any individual holding an emergency certificate shall, while it is in force, be deemed for the purposes of Part 2 of the Financial Regulations to have a disposable income of an amount which makes civil legal services available to that individual.

(8) An emergency certificate shall remain in force for such period as the Director may permit and on the expiration of such period shall be discharged or revoked, unless a certificate is issued under regulation 16 in respect of the same proceedings.

(9) A certificate issued under regulation 16 in respect of proceedings for which an emergency certificate was previously issued, shall take effect from the date upon which the emergency certificate was issued and shall state—

- (a) the reference and date of issue of the emergency certificate; and

(b) that the emergency certificate has been continuously in force from that date until the date of the certificate.

(10) Subject to paragraph (11) the Director may extend the period referred to in paragraph (8), where—

- (a) the applicant is offered a certificate in respect of the proceedings to which the emergency certificate relates and either fails to signify acceptance or appeals against the terms of such offer;
- (b) the applicant is refused an application for a certificate in respect of proceedings to which an emergency certificate relates and either notice of appeal has been given to the Director within the time limits laid down by Part 2 of the Appeal Regulations or the time limit for doing so has expired; or
- (c) there are exceptional circumstances.

(11) Where, under paragraph (10)(a) or (b), the Director extends the period referred to in paragraph (8), no further work may be done or steps taken under the emergency certificate.

(12) Upon an emergency certificate being extended, amended, suspended, discharged or revoked, the Director shall issue a notice to that effect to the supplier and to the assisted party.

(13) It shall be the duty of the supplier to notify, as soon as practicable, any instructed counsel that the certificate has been extended, amended, discharged or revoked.

(14) Where a certificate under this regulation has been issued and the assisted party is (or becomes) a party to proceedings, the supplier shall, as soon as practicable, notify any other party to the proceedings and the court in which the proceedings are pending.

(15) Where a certificate issued under this regulation is suspended, discharged or revoked, the supplier shall, as soon as practicable, notify any other party to the proceedings and the court in which the proceedings are pending.

Amendments of certificates

18.—(1) The Director may amend a certificate following an application to do so by a supplier, or otherwise as considered appropriate by the Director in the circumstances of the proceedings.

(2) Where the Director amends a certificate under paragraph (1), the Director shall issue an amended certificate in accordance with regulation 16 or 17, as applicable.

(3) Subject to paragraph (4), an amendment to a certificate shall take effect from the date upon which an amended certificate is issued by the Director.

(4) Where the Director amends a certificate so as to—

- (a) correct some mistake in the certificate; or
- (b) record a change of solicitor or any change of address on the certificate,

the amendment shall take effect from such date, which may be before or after the date of the decision to amend, as the Director may specify.

(5) Subject to regulation 14, the decision of the Director on any question relating to the amendment of a certificate shall be final.

Suspension of Certificates by the Director

19.—(1) The Director may suspend a certificate—

- (a) subject to paragraph (2), where an assisted party's assessed contribution is not paid on the day on which it is required;
- (b) subject to paragraph (2), as a result of written representations made by any person as to a change in the circumstances of the assisted party;
- (c) if the Director has cause to suspect that an assisted party has (either in making an application for a certificate or following the granting of a certificate) wilfully failed to

comply with these Regulations by not furnishing any material information concerning anything other than their financial resources to the Department;

- (d) if the Director has cause to suspect that an assisted party knowingly made an untrue statement in furnishing such information as referred to in sub-paragraph (c);
- (e) if the Director has cause to suspect that an assisted party (either in making an application for a certificate or following the granting of a certificate) made an untrue statement as to their financial resources or has failed to disclose any material fact concerning them;
- (f) if the Director has cause to believe that the assisted party has failed to attend for an interview or provide information when so required under regulations 35(4), 41(4) or 49(3), as applicable;
- (g) if the Director has cause to believe that the assisted party has died;
- (h) if the Director has cause to believe that the assisted party has been adjudicated bankrupt or an order has been made in relation to the assisted party under Article 226 of the Insolvency (Northern Ireland) Order 1989(a); or
- (i) if the Director has cause to believe that the assisted party has been declared by the Court of Judicature to be a vexatious litigant.

(2) A certificate may not be suspended under paragraph (1) (a) or (b) until notice has been served on the assisted party and the supplier that the certificate may be suspended, and the assisted party has been given a reasonable opportunity to make written representations as to why the certificate should not be suspended.

(3) If a certificate is suspended under this regulation, the Director shall notify the supplier and the assisted party in writing and shall include the reasons for such suspension.

(4) It shall be the duty of the supplier to notify, as soon as practicable, instructed counsel in proceedings to which the certificate relates that the certificate has been suspended.

Effect of suspension of certificate

20.—(1) Where a certificate is suspended, the Department shall not be liable during the period of suspension for any costs incurred in proceedings to which the certificate relates.

(2) The holder of a certificate which has been suspended shall remain liable to pay any contribution previously assessed as payable, or which has been assessed as payable on any re-determination.

Reinstatement of suspended certificate

21.—(1) Subject to paragraph (2), the Director may reinstate a suspended certificate if satisfied that the decision to suspend it was made—

- (a) on grounds which no longer exist;
- (b) without taking into consideration a relevant matter; or
- (c) on the basis of an administrative error.

(2) Where the Director reinstates a certificate, written notification shall be given to the assisted party and to the supplier.

Discharge of certificates by the Director

22.—(1) Subject to paragraphs (2) and (3), the Director may discharge a certificate—

- (a) at any time at the request of the individual to whom it is issued;
- (b) if satisfied, after considering any report of the supplier, that the proceedings to which the certificate relates have been disposed of;

(a) S.I. 1989/2405 (N.I. 19)

- (c) where an assisted party's assessed contribution is more than twenty one days in arrears;
- (d) as a result of written representations made by any person as to a change in the circumstances of the assisted party;
- (e) if satisfied that an assisted party has (following the granting of a certificate) wilfully failed to comply with these Regulations by not furnishing any material information concerning anything other than their financial resources to the Department;
- (f) if satisfied that an assisted party knowingly made an untrue statement in furnishing such information as referred to in sub-paragraph (e);
- (g) if satisfied that an assisted party failed to attend for an interview or to provide information when so required under regulations 35(4), 41(4) or 49(3), as applicable;
- (h) if satisfied that an assisted party has (following the granting of a certificate) made an untrue statement as to their resources or has failed to disclose any material fact concerning them;
- (i) where the supplier has given up the case and the Director is satisfied that the assisted party has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Department or has required unreasonably that the proceedings be continued;
- (j) if satisfied that the supplier has been unable to obtain further instructions or that the supplier can make no further progress in the proceedings to which the certificate relates;
- (k) if satisfied that the assisted party has died;
- (l) if satisfied that the assisted party has been adjudicated bankrupt or an order has been made in relation to the assisted party under Article 226 of the Insolvency (Northern Ireland) Order 1989(a); or
- (m) if satisfied that the assisted party has been declared by the Court of Judicature to be a vexatious litigant.

(2) A certificate may not be discharged under paragraph (1)(c), (e) to (j), (l) and (m) until notice has been served on the assisted party and the supplier that the certificate may be discharged and the assisted party has been given a reasonable opportunity to make written representations as to why the certificate should not be discharged.

(3) A certificate may not be discharged under paragraph (1)(e), (f) or (h) if the assisted party or the supplier satisfies the Director that the assisted party used due care and diligence to avoid such misstatement or failure.

(4) Subject to paragraph (5), the Director shall discharge a certificate if—

- (a) as a result of a determination or redetermination by an assessing authority it appears that the disposable income of the assisted party exceeds the maximum amount which makes the particular civil legal services available to an applicant under the Financial Regulations;
- (b) as a result of a determination or redetermination by an assessing authority, it appears that the disposable capital of the assisted party is of an amount which renders the assisted party liable to be refused civil legal services under the Financial regulations;
- (c) it appears that the assisted party can afford to proceed without a certificate, and the probable costs which might reasonably be incurred by the assisted party in continuing the proceedings, otherwise than as an assisted party, would not exceed the maximum contribution payable under the determination; or
- (d) as a result of any information coming to the knowledge of the Director causing the Director to consider that the assisted party—
 - (i) no longer has reasonable grounds for taking, defending or being a party to the proceedings; or

(a) S.I. 1989/2405 (N.I. 19)

- (ii) that it is unreasonable in the particular circumstances for the assisted party to continue to receive civil legal services.

(5) A certificate may not be discharged under paragraph (4) until notice has been served on the assisted party and the supplier that the certificate may be discharged and the assisted party has been given a reasonable opportunity to make written representations as to why the certificate should not be discharged.

(6) If a certificate is discharged under this regulation, the Director shall notify the supplier and the assisted party in writing and shall include the reasons for such discharge.

(7) It shall be the duty of the supplier to notify, as soon as practicable, instructed counsel in proceedings to which the certificate relates, that the certificate has been discharged.

Discharge of certificate by the court

23.—(1) Subject to paragraphs (2) and (3), the court may discharge a certificate (from such date as it considers appropriate) at any time during the hearing of any proceedings to which an assisted party is a party of its own motion, or upon application by any other party to the proceedings or by the Department—

- (a) if satisfied that an assisted party has (following the granting of a certificate) made an untrue statement as to their financial resources or has failed to disclose any material fact concerning them;
- (b) if satisfied that an assisted party has wilfully failed to comply with these Regulations by not furnishing to the Department, any material information concerning anything other than their financial resources; or
- (c) if satisfied that the assisted party has made an untrue statement in furnishing such information as referred to in sub-paragraph (b).

(2) A certificate may not be discharged under paragraph (1) unless the assisted party and the supplier have been given a reasonable opportunity to make representations as to why the certificate should not be discharged.

(3) A certificate may not be discharged under paragraph (1) if the assisted party or the supplier satisfies the court that the assisted party used due care and diligence to avoid such misstatement or failure.

(4) Where an application under paragraph (1) is made by the Department, the court may order the Department to be made a party to the proceedings for the purposes of the application.

(5) When a court makes an order discharging an assisted party's certificate, the supplier shall, as soon as practicable, inform the Director.

(6) It shall be the duty of the supplier to notify, as soon as practicable, instructed counsel in proceedings to which the certificate relates that the certificate has been discharged.

Effect of discharge of a certificate

24.—(1) Subject to the provisions of this regulation, an individual whose certificate is discharged shall be deemed not to be an assisted party in relation to the proceedings to which the certificate related from the date upon which notification of such discharge is received by the assisted party or the supplier.

(2) Upon receipt of notice of discharge of a certificate by the Director or upon discharge of a certificate by the court, the retainer of any supplier acting on behalf of the assisted party in the proceedings to which the certificate relates shall terminate.

(3) Upon termination of a retainer under this regulation—

- (a) the costs of the proceedings to which the certificate related, incurred by or on behalf of the individual to whom it was issued, shall, as soon as practicable thereafter be taxed or assessed, as applicable; and
- (b) the Department shall remain liable for the payment of any costs so taxed or assessed.

(4) Where a certificate has been discharged, the provisions of the Statutory Charge Regulations which provide for a charge upon property recovered or preserved for an assisted party shall apply to any property recovered or preserved as a result of the individual whose certificate has been discharged continuing to take, defend or be a party to the proceedings to which the certificate related.

(5) For the purpose of paragraph (4), reference to an individual whose certificate has been discharged shall include the individual's personal representative, trustee, trustee in bankruptcy or the Official Receiver, as appropriate.

(6) Where a certificate has been discharged, the individual to whom the certificate was issued shall remain liable for the payment of the individual's maximum contribution, previously assessed as payable, or which has been assessed as payable on any re-determination, up to the amount paid or payable by the Department under paragraph (3)(b).

(7) Where a certificate has been discharged and the individual continues to take, defend or be a party to the proceedings to which the certificate related—

- (a) regulation 8 of Statutory Charge Regulations shall apply; and
- (b) the provisions of Part 2 of the Costs Regulations shall apply in so far as the costs were incurred while the individual was an assisted party.

(8) Nothing in paragraph (6) shall derogate from the provisions of regulation 22(3)(a) and, where those provisions apply, the reference to the maximum contribution in paragraph (6) shall be construed as the net liability of the Department incurred on behalf of the assisted party.

Reinstatement of discharged certificate

25.—(1) Subject to paragraph (2), the Director may reinstate a certificate, which has been discharged under regulation 22, if satisfied that the decision to discharge it was made—

- (a) on grounds which no longer exist;
- (b) without taking into consideration a relevant matter; or
- (c) on the basis of an administrative error.

(2) The Director may not reinstate a certificate under paragraph (1) if any costs of the proceedings to which the certificate related incurred by or on behalf of the assisted party have been taxed or assessed, as applicable, under the Remuneration Order.

(3) Where the Director reinstates a certificate notification shall be given to the assisted party and to the supplier.

Revocation of certificates by the Director

26.—(1) Subject to paragraph (2), the Director may revoke a certificate—

- (a) if satisfied that an assisted party has (either in making an application for a certificate or following the granting of a certificate) wilfully failed to comply with these Regulations by not furnishing any material information concerning anything other than their financial resources to the Department;
- (b) if satisfied that the assisted party has made an untrue statement in furnishing such information as referred to in sub-paragraph (a);
- (c) if satisfied that an assisted party has (either in making an application for a certificate or following the granting of a certificate) made an untrue statement as to their financial resources or has failed to disclose any material fact concerning them; or
- (d) if satisfied that the assisted party failed to attend for an interview or to provide information when so required under regulations 35(4), 41(4) or 49(3), as applicable.

(2) A certificate may not be revoked under paragraph (1) until notice has been served on the assisted party and the supplier that the certificate may be revoked and the assisted party has been given a reasonable opportunity to make written representations as to why the certificate should not be revoked.

(3) A certificate may not be revoked under paragraph (1) (a) to (c) if the assisted party or the supplier satisfies the Director that the assisted party used due care and diligence to avoid such misstatement or failure.

Revocation of certificate by the court

27.—(1) The court may revoke a certificate at any time during the hearing of any proceedings to which an assisted party is a party, upon application by any other party to the proceedings or by the Department—

- (a) if satisfied that an assisted party has (either in making an application for a certificate or following the granting of a certificate) made an untrue statement as to their financial resources or has failed to disclose any material fact concerning them;
- (b) if satisfied that an assisted party has wilfully failed to comply with these Regulations by not furnishing to the Department, any material information concerning anything other than their financial resources; or
- (c) if satisfied that the assisted party has made an untrue statement in furnishing such information as referred to in sub-paragraph (b).

(2) A certificate may not be revoked under paragraph (1) unless the assisted party and the supplier have been given a reasonable opportunity to make representations as to why the certificate should not be revoked.

(3) A certificate may not be revoked under paragraph (1) if the assisted party or the supplier satisfies the court that the assisted party used due care and diligence to avoid such misstatement or failure.

(4) Where an application under paragraph (1) is made by the Department, the court may order the Department to be made a party to the proceedings for the purpose of the application.

(5) When a court makes an order revoking an assisted party's certificate, the supplier shall, as soon as practicable, inform the Director.

(6) It shall be the duty of the supplier to notify, as soon as practicable, instructed counsel in proceedings to which the certificate relates, that the certificate has been revoked.

Effect of revocation of certificate

28.—(1) Subject to the provisions of this regulation, an individual whose certificate is revoked shall be deemed never to have been an assisted party in relation to the proceedings to which the certificate related.

(2) Upon receipt of notice of revocation of a certificate, the retainer of any supplier acting on behalf of the assisted party in the proceedings to which the certificate relates shall terminate.

(3) Upon termination of a retainer under this regulation—

- (a) the costs of the proceedings to which the certificate related, incurred by or on behalf of the individual to whom it was issued, shall, as soon as practicable, thereafter be taxed or assessed, as applicable, under the Remuneration Order; and
- (b) the Department shall remain liable for the payment of any costs so taxed or assessed.

(4) Where a certificate has been revoked, the provisions of the Statutory Charge Regulations which provide for a charge upon property recovered or preserved for an assisted party shall apply to any property recovered or preserved as a result of the individual whose certificate has been revoked continuing to take, defend or be a party to the proceedings to which the certificate related.

(5) For the purpose of paragraph (4), reference to an individual whose certificate has been revoked shall include the individual's personal representative, trustee, trustee in bankruptcy or the Official Receiver, as appropriate.

(6) Where a certificate has been revoked—

- (a) the Department shall have the right to recover from the individual to whom the certificate was issued the costs paid or payable under paragraph (3)(b) less any amount received by way of contribution; and
- (b) the supplier who has acted under the certificate shall have the right to recover from that individual the difference between the amount paid or payable by the Department and the full amount of the supplier and own client costs.

Reinstatement of revoked certificate

29.—(1) Subject to paragraph (2), the Director may reinstate a certificate, which has been revoked under regulation 26 if satisfied that the decision to revoke it was made—

- (a) on grounds which no longer exist;
- (b) without taking into consideration a relevant matter; or
- (c) on the basis of an administrative error.

(2) The Director may not reinstate a certificate under paragraph (1) if—

- (a) any costs of the proceedings to which the certificate related incurred by or on behalf of the assisted party have been taxed or assessed, as applicable, under the Remuneration Order; or
- (b) any costs have been recovered under regulation 28(6).

(3) Where the Director reinstates a certificate, notification shall be given to the assisted party and to the supplier.

Prohibitory Directions

30.—(1) The Director may make a prohibitory direction—

- (a) if an individual has applied for and been refused a certificate in the same proceedings on three or more occasions; and
- (b) the Director is satisfied that the individual’s conduct has amounted to an abuse of the facilities provided by the Order.

(2) In considering whether to make a prohibitory direction under paragraph (1), the Director shall—

- (a) make such enquiries as appear to the Director to be necessary; and
- (b) give the individual in respect of whom the prohibitory direction may be made (either personally or by the individual’s supplier) a reasonable opportunity to make written representations as to why a prohibitory direction should not be made.

(3) The Director may—

- (a) include within the terms of a prohibitory direction any assignee, next friend, guardian ad litem or controller applying for a certificate on behalf of the individual referred to in the prohibitory direction; and
- (b) at any time vary or revoke a prohibitory direction in whole or in part.

(4) Where the Director makes a prohibitory direction, the Director shall—

- (a) give written notification to the individual in respect of whom the direction is made; and
- (b) detail the reasons for making such a direction.

(5) The effect of a prohibitory direction is that no consideration shall be given, for a period not exceeding three years, to any future application by an individual for a certificate with regard to any particular matter.

(6) An individual in respect of whom a prohibitory direction has been made or such individual’s supplier may apply in writing for the direction to be varied or revoked.

(7) On receipt of an application under paragraph (6), the Director shall consider whether to vary or revoke the prohibitory direction; and shall inform the individual in writing of the decision as to whether to vary or revoke the decision.

PART 3

ADVICE AND ASSISTANCE

Applications for advice and assistance

31.—(1) Subject to regulations 6, 7 and 34, an application for advice and assistance shall be made by an applicant in person to the supplier from whom the advice and assistance is sought.

(2) Where more than one separate matter is involved each matter shall be the subject of a separate application for advice and assistance except where—

- (a) the matters are connected with or arising from proceedings for divorce or judicial separation, whether actual or prospective between the applicant and the applicant's spouse or civil partner; or
- (b) the Director considers that two or more matters are so closely related that they should be covered under one application.

(3) The applicant shall, except where regulation 34 or an exemption under regulation 4 of the Financial Regulations applies, furnish the supplier with the information necessary to enable the supplier to determine—

- (a) the applicant's disposable capital;
- (b) where appropriate, whether the applicant is in receipt of any benefit or allowance referred to in regulation 5 of the Financial Regulations; and
- (c) the applicant's disposable income.

(4) The information required by this regulation shall be furnished on a form or forms approved by the Department or such other manner as the Director may accept as sufficient in the circumstances of the application.

(5) Where, prior to receiving advice and assistance, an assisted party has wilfully failed to comply with the provisions of these Regulations as to the information to be furnished or, in furnishing such information, has knowingly made a false statement or false representation, the Director may declare that the advice so given was not given under the Order and these Regulations.

(6) Where the Director makes a declaration under paragraph (5), the Director shall notify the assisted party and the supplier.

(7) Where the Director makes a declaration under paragraph (5) and complies with the requirements of paragraph (6), the Department shall be entitled to recover from the assisted party any sums paid by the Department in respect of the advice and assistance given.

Extensions

32.—(1) Subject to paragraph (2), where it appears to the supplier that the cost of giving advice and assistance is likely to exceed £88.00, the supplier shall apply to the Director for an extension and shall furnish such information as may enable the Director to consider and determine that application.

(2) No extension shall be required under paragraph (1) if the advice and assistance relates to matters of such a kind, and its cost will not exceed such an amount, as may be specified in any notice given by the Director, granting a general authority to suppliers to exceed the said limit in the classes of case mentioned in the notice.

(3) The Director shall approve an extension under paragraph (1) if satisfied that—

- (a) it is reasonable for the advice and assistance to be given; and

- (b) the estimated amount of the costs to be incurred in giving advice and assistance is fair and reasonable.
- (4) If the Director approves an extension under paragraph (1) the Director—
 - (a) shall notify the supplier and prescribe such higher limit as the Director considers appropriate; and
 - (b) may limit the advice and assistance to such subject matter as the Director considers appropriate.
- (5) In this regulation, “an extension” means the grant of prior authority to exceed the limit applicable under paragraph (1).

Determination of financial eligibility to receive advice and assistance and contribution payable

33.—(1) Unless an exemption applies under regulation 4 of the Financial Regulations, the supplier to whom an application for advice and assistance is made shall—

- (a) assess the disposable income and disposable capital of the applicant and, where appropriate, of any person whose financial resources may be treated as those of the applicant, in accordance with the provisions of Part 2 of the Financial Regulations; and
- (b) determine and collect the maximum contribution, if any, payable by the applicant in accordance with the provisions of the Financial Regulations.

(2) Unless an exemption applies under these Regulations or regulation 4 of the Financial Regulations, a supplier shall not give advice and assistance to any individual until either the form referred to in regulation 31(4) has been signed by the applicant or, where appropriate, the form referred to, in regulation 6(2) has been signed on behalf of the applicant and in any case until the supplier has determined the matters referred to in paragraph (1).

Provision of advice and assistance at police stations

34.—(1) An application for advice and assistance may be made to a supplier by telephone, by an individual who is—

- (a) arrested and held in custody at a police station or other premises;
- (b) being interviewed in connection with a serious service offence; or
- (c) a volunteer.

(2) In this regulation “serious service offence” means any offence under the Army Act 1955(a), the Air Force Act 1955(b) or the Naval Discipline Act 1957(c) which cannot be dealt with summarily or which appears to an interviewing service police officer to be serious.

(3) In this regulation, “volunteer” means an individual who, for the purpose of assisting with an investigation, attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested.

(a) 1955 c. 18
 (b) 1955 c. 19
 (c) 1957 c. 53

PART 4

REPRESENTATION (LOWER COURTS)

Applications for certificates

35.—(1) Where it appears to the supplier that an individual requires representation in respect of any of those proceedings listed in paragraph 2(d), (g) or (hh) of Schedule 2 to the Order, an application for a certificate under this Part may be submitted to the Director.

(2) Subject to regulations 6 and 7, an application for a certificate under this Part shall be made by an applicant in person to the supplier from whom the representation is sought.

(3) The applicant shall furnish the supplier with the information and supporting documentary evidence necessary to enable the Director to determine—

- (a) the nature of the proceedings in relation to which the certificate is sought and the circumstances in which representation is required; and
- (b) whether the requirements of regulation 37(1) are met.

(4) The applicant shall, if required by the Director, attend for an interview or supply such further information or documents as may be required.

(5) Subject to paragraph (6), where the applicant has failed to comply with a requirement under paragraph (4), the Director may treat the application as withdrawn.

(6) An application may not be treated as withdrawn under paragraph (5) unless the Director has notified the applicant and the supplier that the application may be treated as withdrawn unless the applicant complies with a requirement under paragraph (4) within a specified period.

(7) Unless an exemption applies under regulation 4 of the Financial Regulations, the applicant shall furnish the supplier with the information necessary to enable the supplier to determine—

- (a) the applicant's disposable income;
- (b) the applicant's disposable capital;
- (c) whether the applicant is in receipt of any benefit or allowance referred to in regulation 5 of the Financial Regulations; and
- (d) the applicant's maximum contribution.

(8) The information required by this regulation shall be furnished on a form or forms approved by the Department or such other manner as the Director may accept as sufficient in the circumstances of the case.

Determination of financial eligibility and contributions

36.—(1) Unless an exemption applies under regulation 4 of the Financial Regulations, the supplier to whom an application for a certificate under this Part is made shall—

- (a) assess the disposable income and disposable capital of the applicant and, where appropriate, of any individual whose financial resources may be treated as those of the applicant, in accordance with the Financial Regulations; and
- (b) determine and collect the maximum contribution, if any, payable by the applicant in accordance with the provisions of the Financial Regulations.

(2) Unless an exemption applies under these Regulations or regulation 4 of the Financial Regulations, a supplier shall not provide representation under this Part to any individual until either the form or forms referred to in regulation 35(8) has been signed by the applicant or, where appropriate, the form or forms referred to, in regulation 6(2) has been signed on behalf of the applicant and in any case until the supplier has determined the matters referred to in paragraph (1).

Determination of applications for certificates and authorities

37.—(1) Subject to paragraph (2), an application for a certificate under this Part shall not be granted unless—

- (a) it is made in respect of the proceedings referred to in regulation 35(1); and
- (b) it is shown that there are reasonable grounds for taking, defending or being a party to the proceedings to which the application relates.

(2) A certificate under this Part may be refused if, in the particular circumstances of the case, it appears to the Director—

- (a) to be unreasonable that a certificate should be granted; or
- (b) that only a trivial advantage would be gained by the applicant in taking, defending or being a party to the proceedings to which the application relates, or, owing to the simple nature of the proceedings, a supplier would not ordinarily be employed.

(3) Subject to paragraph (4), it shall be a condition of every certificate issued under this Part that the prior authority of the Director shall be required—

- (a) to obtain a report or opinion of an expert;
- (b) to tender expert evidence;
- (c) to obtain a report or an opinion of a person (other than an expert);
- (d) to tender such evidence as is referred to in sub-paragraph (c);
- (e) to obtain a transcript or recordings of any proceedings; or
- (f) to perform an act which is either unusual in its nature or involves unusually large expenditure.

(4) The Director may give general authority (subject to a maximum fee payable) to suppliers in any particular class of case, including—

- (a) to obtain a report or opinion of one or more experts or to tender expert evidence;
- (b) to employ a person to provide a report or opinion (other than as an expert); or
- (c) to obtain a transcript or recordings of any proceedings.

Refusal of a certificate or authority

38.—(1) If the Director refuses an application for a certificate under this Part, the Director shall notify the applicant and the supplier, and shall state the reasons for such refusal.

(2) If the Director refuses an application for an authorisation under regulation 37(3), the Director shall notify the supplier, and shall state the reasons for such refusal.

(3) Where notification is given under paragraph (1) or (2), the Director shall inform the applicant and the supplier, or supplier only, as applicable, of the right of review under regulation 14.

Notification of issue of certificate

39.—(1) Where a certificate under this Part has been issued and the assisted party is (or becomes) a party to proceedings, the supplier shall, as soon as practicable, notify any other party to the proceedings and the court in which the proceedings are pending.

(2) Where a certificate issued under this Part is suspended, discharged or revoked, the supplier shall notify any other party to the proceedings and the court in which the proceedings are pending.

Representation at request of, or agreement with, the court

40.—(1) Subject to paragraph (2), a certificate under this Part shall not be required to receive such representation given by a supplier to any party to proceedings (whether criminal or civil) before a magistrates' court, where the representation is given in compliance with a request which

is made to the supplier by the court or given in accordance with a proposal which is made by the supplier and approved by the court and which (in either case)—

- (a) is so made or approved at a time (whether at or after the beginning of the proceedings) when the supplier is present within the precincts of the court; but
- (b) is not made or approved at a time when the party to proceedings is in receipt of a certificate issued under these Regulations or a certificate issued under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(a) in respect of the same proceedings.

(2) Representation without a certificate under this regulation may only be given, provided that the cost of such representation does not exceed the limit prescribed under regulation 32.

PART 5

REPRESENTATION (HIGHER COURTS)

Applications for certificates

41.—(1) Where it appears to the supplier that an individual requires representation in respect of any proceedings listed in paragraph 2 of Schedule 2 to the Order, an application for a certificate under this Part may be submitted to the Director.

(2) Subject to regulations 6 and 7, an application for a certificate under this Part shall be made by an applicant in person to the supplier from whom the representation is sought.

(3) The applicant shall furnish the supplier with the information and supporting documentary evidence necessary to enable the Director or an assessing authority to determine—

- (a) the nature of the proceedings in relation to which a certificate under this Part is sought and the circumstances in which representation is required;
- (b) whether the requirements of regulation 43(1) are met; and
- (c) unless an exemption applies under regulation 4 of the Financial Regulations—
 - (i) the applicant's disposable income;
 - (ii) the applicant's disposable capital;
 - (iii) whether the applicant is in receipt of any benefit or allowance referred to in regulation 5 of the Financial Regulations; and
 - (iv) the applicant's maximum contribution.

(4) The applicant shall, if required by the Director or an assessing authority, attend for an interview or supply such further information or documents as may be required.

(5) Subject to paragraph (6), where the applicant has failed to comply with a requirement under paragraph (4), the Director may treat the application as withdrawn.

(6) An application may not be treated as withdrawn under paragraph (5) unless the Director has notified the applicant and the supplier that the application may be treated as withdrawn unless the applicant complies with a requirement under paragraph (3) within a specified period.

(7) The information required by this regulation shall be furnished on a form or forms approved by the Department or such other manner as the Director may accept as sufficient in the circumstances of the case.

Determination of financial eligibility and contributions

42.—(1) Unless the Director has previously refused the application (and there has been no change in circumstances) or an exemption applies under regulation 4 of the Financial Regulations,

(a) S.I. 1981/228 (N.I. 8)

the Director shall submit so much of the application as is relevant to an assessing authority to assess the applicant's disposable income and disposable capital.

(2) The Director shall fix the method by which any contribution shall be paid in accordance with regulation 63 of the Financial Regulations.

Determination of applications for certificates

43.—(1) Subject to paragraph (2), an application for a certificate under this Part shall not be granted unless—

- (a) it is shown that there are reasonable grounds for taking, defending or being a party to the proceedings to which the application relates; and
- (b) the applicant has signed an undertaking to pay any required contribution.

(2) An application for a certificate under this Part may be refused if, in the circumstances of the case, it appears to the Director—

- (a) to be unreasonable that a certificate should be granted;
- (b) to be more appropriate that an application for a certificate should be made under Part 4; or
- (c) that only a trivial advantage would be gained by the applicant in taking, defending or being a party to the proceedings to which the application relates, or, owing to the simple nature of the proceedings, a supplier would not ordinarily be employed.

Conduct of proceedings and authorities

44.—(1) Subject to paragraph (2), it shall be a condition of every certificate issued under this Part that the prior authority of the Director shall be required—

- (a) to apply to the court for leave to add any further party to the proceedings;
- (b) to apply to the court for leave to lodge any interlocutory appeal; or
- (c) to apply to the court to set up or set off any right or claim having the same effect as a cross action (other than a counterclaim or set off arising out of the same transaction and capable of being pleaded as a defence), or to reply to any right or claim so set up or so set off by any other party;
- (d) to obtain a report or an opinion of an expert;
- (e) to tender expert evidence;
- (f) to obtain a report or an opinion of a person (other than an expert);
- (g) to tender such evidence as referred to in sub-paragraph (f);
- (h) to obtain a transcript or recordings of any proceedings; or
- (i) to perform an act which is either unusual in its nature or involves unusually large expenditure.

(2) The Director may give general authority (subject to a maximum fee payable) to suppliers in any particular class of case, including—

- (a) to obtain a report or opinion of one or more experts or to tender expert evidence;
- (b) to employ a person to provide a report or opinion (other than as an expert); or
- (c) to obtain a transcript or recordings of any proceedings.

(3) Where it appears to the supplier necessary for the proper conduct of proceedings funded under this Part for any act to be done which is unusual in nature or involves unusually large expenditure, the supplier shall apply to the Director for authority to take any such step, and no payment for any such step shall be made in the absence of such authority.

Notification of issue of certificate

45.—(1) Where a certificate under this Part has been issued and the assisted party is (or becomes) a party to proceedings, the supplier shall, as soon as practicable, notify any other party to the proceedings and the court in which the proceedings are pending.

(2) Where a certificate issued under this Part is suspended, discharged or revoked, the supplier shall notify any other party to the proceedings and the court in which the proceedings are pending.

Refusal of a certificate or authority

46.—(1) If the Director refuses an application for a certificate under this Part, the Director shall notify the applicant and the supplier and shall state the reasons for such refusal.

(2) If the Director refuses an application for authority under regulation 44, the Director shall notify the supplier, and shall state the reasons for such refusal.

(3) Where notification is given under paragraph (1) or (2), the Director shall inform the applicant and the supplier, or supplier only, as applicable, of the right of the right of review under regulation 14 and any right of appeal under Part 2 of the Appeal Regulations.

Representation at request of, or agreement with, the court

47.—(1) Subject to paragraph (2), a certificate under this Part shall not be required to receive such representation given by a supplier to any party to proceedings (whether criminal or civil) before a county court, where the representation is given in compliance with a request which is made to the supplier by the court or given in accordance with a proposal which is made by the supplier and approved by the court and which (in either case)—

- (a) is so made or approved at a time (whether at or after the beginning of the proceedings) when the supplier is present within the precincts of the court; but
- (b) is not made or approved at a time when the party to proceedings is in receipt of a certificate issued under these Regulations or a certificate issued under Part 3 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981^(a) in respect of the same proceedings.

(2) Representation without a certificate under this regulation may only be given provided that the cost of such representation does not exceed the limit prescribed under regulation 32.

PART 6

EXCEPTIONAL FUNDING

Exceptional funding

48.—(1) Where it appears to a supplier that an applicant's case meets the criteria under Article 12A(2) or 12A(4) of the Order, an application may be submitted to the Director for a certificate under this Part.

(2) The Director may issue a certificate under this Part in respect of any proceedings other than those specified in paragraph 2 of Schedule 2 to the Order.

Applications for certificates and authorities

49.—(1) Subject to regulations 6 and 7, an application for a certificate under this Part shall be made by an applicant in person to the supplier from whom the representation is sought.

(a) S.I. 1981/228 (N.I. 8)

(2) The applicant shall furnish the supplier with the information and supporting documentary evidence necessary to enable the Director or an assessing authority to determine—

- (a) the nature of the proceedings in relation to which a grant of exceptional funding is sought and the circumstances in which representation is required;
- (b) whether the criteria as set out in Article 12A of the Order are satisfied; and
- (c) the disposable income, disposable capital and maximum contribution of the applicant.

(3) The applicant shall, if required by the Director or an assessing authority, attend for an interview or supply such further information or documents as may be required.

(4) Subject to paragraph (5), where the applicant has failed to comply with a requirement under paragraph (3), the Director may treat the application as withdrawn.

(5) An application may not be treated as withdrawn under paragraph (4) unless the Director has notified the applicant and the supplier that the application may be treated as withdrawn unless the applicant complies with a requirement under paragraph (3) within a specified period.

(6) The information required by this regulation shall be furnished on a form or forms approved by the Department, or such other manner as the Director may accept as sufficient in the circumstances of the application.

(7) It shall be a condition of every certificate issued under this Part that the prior authority of the Director shall be required—

- (a) to obtain a report or opinion of an expert;
- (b) to tender expert evidence;
- (c) to obtain a report or an opinion of a person (other than an expert);
- (d) to tender such evidence as referred to in sub-paragraph (c); or
- (e) to perform an act which is either unusual in its nature or involves unusually large expenditure.

Determination of financial eligibility and contributions

50.—(1) Unless the Director has previously refused the application (and there has been no change in circumstances), the Director shall submit so much of the application as is relevant to an assessing authority to assess the applicant's disposable income and disposable capital.

(2) Subject to paragraph (3), the supplier shall collect the maximum contribution, if any, payable by the applicant in accordance with the provisions of the Financial Regulations.

(3) The Director may waive (in whole or in part) any requirement that a contribution may be paid in respect of a certificate under this Part.

Determination of applications for certificates

51.—(1) Where the Director makes—

- (a) an exceptional case determination under Article 12A(2) of the Order; or
- (b) a wider public interest determination under Article 12A(4) of the Order,

the Director shall provide written reasons for the determination.

(2) Notwithstanding regulation 3, a certificate under this Part may, at the discretion of the Director, specify that the certificate is to be treated as having effect from such date as the Director considers appropriate.

Refusal of a certificate or authority

52.—(1) If the Director refuses an application for a certificate under this Part, the Director shall notify the applicant and the supplier and shall state the reasons for such refusal.

(2) If the Director refuses an application for authority to take any step under a certificate under regulation 49, the Director shall notify the supplier and shall state the reasons for such refusal.

(3) Where notification is given under paragraph (1) or (2), the Director shall inform the applicant and the supplier, or supplier only, as applicable, of the right of review under regulation 14.

Notification of issue of certificate

53.—(1) Where a certificate under this Part has been issued and the assisted party is (or becomes) a party to proceedings, the supplier shall, as soon as practicable, notify any other party to the proceedings and the court in which the proceedings are pending.

(2) Where a certificate issued under this Part is suspended, discharged or revoked, the supplier shall notify any other party to the proceedings and the court in which the proceedings are pending.

Sealed with the Official Seal of the Department of Justice on 31st March 2015



David Ford
Minister of Justice

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 1 to 3, 4, 5(1), (3) to (7), (9) and (11) to (13), 6(1) to (4), (7), (8) and (10) to (13), 7 to 13A, 15, 16, 21A(1) to (3), 21B and 28
The Legal Advice and Assistance Regulations (Northern Ireland) 1981	No. 366	Regulations 1, 2, 5, 6, 7A(2), 8, 8A(2) to (5), 9 to 16, 17(3)(a), (b)(i) to (iii) and (4) to (6), 19, 20, 21 and 28, together with Schedule 3

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the making and withdrawal of determinations that an individual qualifies for civil legal services under Articles 12(3), 13, 14(6), 15 and 34(1) of the Access to Justice (Northern Ireland) Order 2003.

Part 1 defines expressions used in the Regulations (including the different forms of civil legal services which are available).

Part 2 makes provisions which are common to all civil legal services. Regulation 4 makes provision about notification. Regulations 5 to 8 make provisions relating to applications for civil legal services. Regulation 11 makes provision for applications for authority to instruct counsel to be made. Regulation 12 makes provision for the Director to require information to be provided by a supplier, notwithstanding privilege between a supplier and client, and notwithstanding correspondence having been marked “without prejudice”. Regulation 14 describes the circumstances in which the Director may review decisions and determinations. Regulations 15 to 29 make general provisions for certificates to be issued, amended, suspended, discharged, revoked and reinstated. Regulation 30 makes provision for prohibitory directions to be made, and prescribes the effect of such a direction.

Part 3 sets out the procedure for applications for Advice and Assistance under civil legal services. Regulation 32 prescribes the maximum amount payable under this Part and the procedure for applying for an extension. It also makes provision for the Department to grant a general authority for Advice and Assistance in particular classes of cases. Regulation 34 makes provision for Advice and Assistance to be given at police stations.

Part 4 sets out the procedure for applications for Representation (Lower Courts) under civil legal services. Regulation 37 makes provision for the determination, by the Director, of applications under this Part.

Part 5 sets out the procedure for applications for Representation (Higher Courts) under civil legal services. Regulation 43 makes provision for the determination, by the Director, of applications under this Part. Regulation 44 makes provision for certain aspects of the conduct of proceedings. It also makes provision for the Department to grant a general authority for particular matters in particular classes of cases.

Part 6 sets out the procedure for applications for exceptional funding under civil legal services. Regulation 51 makes provision for the determination, by the Director, of applications under this Part.

These Regulations come into operation on 1st April 2015.

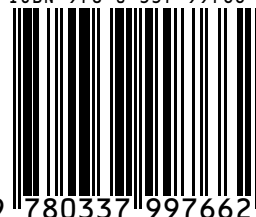
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