

1974. No. 126

LEGAL AID

Legal Aid (General) (Amendment) Regulations (Northern Ireland) 1974

Made 17th June 1974

Coming into operation 1st August 1974

To be laid before Parliament

REGULATIONS, DATED 17TH DAY OF JUNE 1974, MADE BY THE SECRETARY OF STATE UNDER SECTION 14 OF THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965.

In pursuance of section 14 of the Legal Aid and Advice Act (Northern Ireland) 1965(a) and in exercise of every other power enabling me in that behalf having obtained the consent of the Supreme Court Rules Committee to so much of the following regulations as applies to the procedure of the Supreme Court and after consultation with the County Court Rules Committee and the Magistrates' Courts Rules Committee as to so much of the said regulations as applies to the procedure of the County Courts or, as the case may be, the Magistrates' Courts, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Legal Aid (General) (Amendment) Regulations (Northern Ireland) 1974 and shall come into operation on 1st August 1974.

Amendment to 1965 General Regulations

2. The provisions of the Legal Aid (General) Regulations (Northern Ireland) 1965(b) specified in the first column of the Schedule are amended to the extent specified in the second column thereof.

Northern Ireland Office.
17th June 1974.

Merlyn Rees,
One of Her Majesty's Principal
Secretaries of State.

The Supreme Court Rules Committee has consented to the making of these Regulations in so far as they relate to the procedure of the Supreme Court as required by section 14(5) of the Legal Aid and Advice Act (Northern Ireland) 1965.

17th June 1974

J. A. L. McLean,
Secretary,
Supreme Court Rules Committee.

(a) 1965. c. 8 (N.I.).

(b) S.R. & O. (N.I.) 1965, No. 217.

SCHEDULE

Amendments to the Principal Regulations

<i>Provision amended</i>	<i>Amendment</i>
General and Regulation 1(2)	<p>In Regulation 1(2) the definition of "the Board" shall be omitted and in the appropriate place according to alphabetical order there shall be added the following words:—</p> <p>““the Commission” means the Supplementary Benefits Commission for Northern Ireland;”</p> <p>and throughout the Regulations for any reference to the Board there shall be substituted a reference to the Commission.</p>
Regulation 1(4)	<p>For Regulation 1(4) there shall be substituted the following paragraph:—</p> <p>“(4) Where the Legal Aid Committee or a certifying committee is required or entitled to perform any function under these Regulations, that function may, subject to the directions of the committee, be performed on behalf of the committee by the secretary; but he may not—</p> <p>(i) approve or refuse an application for a certificate except under Regulation 5(1), 5(3) or 5(5)(a) or Regulation 11(1);</p> <p>(ii) determine an appeal under Regulation 10; or</p> <p>(iii) discharge a certificate under Regulation 12(2)(d), 12(3)(a)(ii), 12(3)(b), or revoke it under Regulation 12(5) and 12(6).”</p>
Regulation 3	<p>After Regulation 3(4) there shall be inserted the following paragraph:—</p> <p>“(4A) Where application for a certificate is made to the appropriate committee the secretary may notify the solicitor acting for the applicant or the applicant, as the case may be, that unless any information and any documents required by the committee are supplied within the period stated in the notice, the application will be treated as withdrawn and upon failure to comply with the notice the committee may disregard the application.”</p>
Regulation 3(5)	<p>In Regulation 3(5) for the words “Northern Ireland” there shall be substituted the words “United Kingdom”.</p>
Regulation 6(4)	<p>In the proviso to Regulation 6(4) for the words from “or decrease” to the end there shall be substituted the words “greater than £52 or any decrease greater than £26 in the amount of his disposable income and any increase greater than £75 in the amount of his disposable capital”.</p>

<i>Provision amended</i>	<i>Amendment</i>
Regulation 6(5)	In sub-paragraph (b) of Regulation 6(5) for the words "twenty-six pounds" there shall be substituted the words "fifty-two pounds".
Regulation 8(1)	In Regulation 8(1) for the word "four" there shall be substituted the word "three".
Regulation 9(1)	<p>In Regulation 9(1) in sub-paragraph (d) after the word "increased" there shall be inserted the words "by an amount greater than £52".</p> <p>In Regulation 9(1) in sub-paragraph (h) for the words from "direct" to the end there shall be substituted the words "consent to the taking of proceedings by the assisted person to enforce or give effect to an order or agreement such as is specified in those provisions".</p>
Regulation 10(3)	In Regulation 10(3) for the word "four" there shall be substituted the word "ten".
Regulation 10(6)	In Regulation 10(6) the words "to the certifying committee" shall be omitted.
Regulation 11(8) and (9)	<p>For Regulation 11(8) and (9) there shall be substituted the following paragraphs:—</p> <p>"(8) Subject to paragraph (9) and Regulation 12, an emergency certificate, including an emergency certificate which has been extended under paragraph (9), shall remain in force for such period as the appropriate committee may allow and on the expiration of such period shall be discharged or revoked.</p> <p>Provided that where a certificate has been issued under paragraph (11) the emergency certificate may not be discharged or revoked.</p> <p>(9) The secretary, whose decision shall be final, may extend the period referred to in paragraph (8), where—</p> <p>(a) the applicant is offered a certificate in respect of the proceedings to which the emergency certificate relates and either fails to signify his acceptance or appeals against the terms of such offer; or</p>

<i>Provision amended</i>	<i>Amendment</i>
	<p>(b) a certifying committee refuses 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 Legal Aid Committee within the time limits laid down by Regulation 10(3) or the time limit for doing so has expired; or</p> <p>(c) there are exceptional circumstances; and thereafter, unless the certificate is further extended, it shall be discharged or revoked.</p> <p>Provided that where the period is extended under sub-paragraph (a) or (b) no further work may be done or steps taken under the certificate.”.</p>
Regulation 11(10)	<p>In Regulation 11(10) after the word “extended” there shall be inserted the words “amended, discharged or” and after the words “has been” there shall be inserted the words “extended, amended, discharged or”.</p>
Regulation 11(11)	<p>In Regulation 11(11) the words “within the period referred to in paragraphs (8) and (9)” shall be omitted.</p>
Regulation 12(1)	<p>In Regulation 12(1) for the word “either” there shall be substituted the word “suspended”.</p> <p>After Regulation 12(1) there shall be inserted the following paragraphs:—</p> <p>“(1A) Where—</p> <p>(a) the assisted person fails to pay any instalment of his contribution on the date on which it is due; or</p> <p>(b) representations are made by any person as to a change in the circumstances of the assisted person;</p> <p>the committee may, after giving the assisted person an opportunity of submitting representations, suspend the certificate and shall so notify the assisted person and his solicitor.</p> <p>(1B) Where a certificate is suspended—</p> <p>(a) without the authority of the Legal Aid Committee the fund shall not, after receipt by the solicitor of the notice of suspension, be liable during the period of suspension for any costs incurred in any proceedings to which the certificate relates or otherwise by the solicitor or counsel, if any, acting on behalf of the holder of the certificate, and</p> <p>(b) the holder of the certificate shall remain liable to pay the contribution hitherto determined as payable by him or as may be redetermined to the extent that it is required to defray the costs payable out of that fund under Regulation 13(3).”.</p>

<i>Provision amended</i>	<i>Amendment</i>
Regulation 12(2)	<p>In sub-paragraph (b) of Regulation 12(2) before the words "where an assisted person" there shall be inserted the words "subject to paragraph (1A)".</p> <p>After Regulation 12(2)(f) there shall be inserted the following sub-paragraph and proviso:—</p> <p>"(g) if they are satisfied that the solicitor has been unable to obtain further instructions or that he can make no further progress.</p> <p>Provided that a certificate shall not be discharged under sub-paragraph (g) until notice has been served on the assisted person that the Legal Aid Committee may do so and that he may show cause why the certificate should not be discharged."</p>
Regulation 12(3)	<p>In Regulation 12(3)(a) after the word "determination" there shall be inserted the words "or redetermination".</p>
Regulation 12(9)	<p>In Regulation 12(9) after the words "the Legal Aid Committee" there shall be inserted the word "suspend"; after the word "discharge" where it firstly occurs there shall be inserted the words "(other than under paragraph (2)(c))"; and after the words "notice of" there shall be inserted the word "suspension".</p>
Regulation 13(2)	<p>In Regulation 13(2) in the proviso after the expression "Regulation 11(8)" there shall be inserted "or (9)".</p>
Regulation 13	<p>After Regulation 13(6) there shall be added the following paragraphs:—</p> <p>"(7) Where the circumstances of an assisted person have altered so that the Supplementary Benefits Commission are required (whether before or after the discharge of the certificate) to redetermine under Regulation 8 of the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1965 that person's maximum contribution according to his disposable income or disposable capital before such discharge, the reference in paragraph (6) to his maximum contribution as determined by the appropriate committee or by the Supplementary Benefits Commission shall be construed as a reference to such contribution as so redetermined.</p> <p>(8) Nothing in paragraph (7) shall derogate from the provisions of Regulation 12(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 fund incurred on behalf of the assisted person."</p>
Regulation 14(3)	<p>In Regulation 14(3) after the word "costs", where it secondly appears, there shall be inserted the words "up to the date of issue of a certificate".</p>

<i>Provision amended</i>	<i>Amendment</i>
Regulation 15(5) and (6)	<p>For Regulation 15(5) and (6) there shall be substituted the following paragraphs:—</p> <p>“(5) The Society may give general authority to solicitors acting for assisted persons in any particular class of case—</p> <ul style="list-style-type: none"> (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); (c) to bespeak transcripts of shorthand notes or tape recordings of any proceedings; <p>and if they do so they shall state the maximum fee payable for any such report, opinion, expert evidence or transcript.</p> <p>(6) Where it appears to an assisted person's solicitor necessary for asserting or disputing the claim or for the proper conduct of the proceedings to do any of the following acts, namely—</p> <ul style="list-style-type: none"> (a) to obtain a report or opinion of an expert or to tender expert evidence in a case of a class not included in any general authority under paragraph (5); or (b) to pay a person, not being an expert witness, a fee to prepare a report and give evidence if required in a case of a class not included in any general authority under paragraph (5); or (c) in a case of a class included in any general authority under paragraph (5), to pay a higher fee than that authorised by the Society or to obtain more reports or opinions or to tender more evidence (expert or otherwise) than has been authorised; or (d) to bespeak any transcripts or shorthand notes or tape recordings of any proceedings not included in any general authority under the foregoing paragraph; <p>he may, unless authority has been given in the certificate, apply to the appropriate area committee for such authority; and if that committee give authority for any purposes mentioned in sub-paragraphs (a), (b) and (c) they shall, if appropriate, state the number of reports or opinions that may be obtained or the number of persons who may be authorised to give expert evidence and the total fee to be paid.”</p>
Regulation 15(15)	<p>After Regulation 15(14) there shall be inserted the following paragraph:—</p> <p>“(14A) A report on the conduct of the claim or proceedings to which the civil aid certificate relates shall be made to the Committee within three months from the date of the conclusion of the proceedings: so, however, that the Committee may, if reasonable cause for the delay is shown, waive the provisions of this paragraph.”</p>

<i>Provision amended</i>	<i>Amendment</i>
Regulation 15(15)	<p>After Regulation 15(15) there shall be inserted the following paragraph:—</p> <p>“(16) Without prejudice to section 2(3)(b) of the Act, where a certificate has been issued in connection with any proceedings, the assisted person’s solicitor or counsel shall not take any payment for work done in those proceedings during the currency of that certificate (whether within the scope of the certificate or otherwise) except such payments as may be made out of the fund.”.</p>
Regulation 16(3)	<p>In Regulation 16(3) after the expression “Regulation 9(1)(a), (b) or (g)” there shall be inserted the word “suspended,”.</p>
Regulation 16(5)	<p>In Regulation 16(5) in sub-paragraph (b) before the word “discharged” there shall be inserted the word “suspended”, and for the words from “within fourteen days” to the end of the paragraph there shall be substituted the words “if proceedings have begun or otherwise on their commencement or thereafter send it by prepaid post to the appropriate court office.”.</p>
Regulation 16(11)(b)	<p>In Regulation 16(11)(b) at the end there shall be added the words “or, where the certificate is issued after such notice is given, shall be lodged in the office of the clerk of the Crown and peace before the hearing of the appeal or at the time of its issue whichever is the earlier.”.</p>
Regulation 17(3)	<p>In Regulation 17(3) for the words from “the assisted person” where they lastly occur to the end there shall be substituted the words “the Society may take any such proceedings in its own name as may be necessary to enforce or give effect to such an order or agreement.”.</p>
Regulation 17(4) and (5)	<p>For Regulation 17(4) and (5) there shall be substituted the following paragraphs:—</p> <p>“(4) An assisted person may, with the consent of the Society, take proceedings which may be taken under section 1 of the Act to give effect to an order or agreement referred to in paragraph (1)(a) of this Regulation.</p> <p>(5) Where the Society takes proceedings it may do so in its own name or in the name of any officer of the Society appointed by the Society for the purpose in writing:—</p> <p>(a) by proceedings or an application under the Judgments (Enforcement) Act (Northern Ireland) 1969; or</p> <p>(b) by instituting proceedings in bankruptcy, or, where the debtor is a company, to wind up the company; or</p>

<i>Provision amended</i>	<i>Amendment</i>
<p>Regulation 17(9)</p>	<p>(c) to enforce or give effect to the order outside the jurisdiction,</p> <p>and for any of those purposes the Society may authorise such person to swear an affidavit; file a proof, receive a dividend or take any other step in the proceedings in the name of the Society; and the costs incurred by the Society in any such proceedings shall be a first charge on any sum recovered.”</p> <p>In Regulation 17(9) after sub-paragraph (c) there shall be inserted the following paragraph:—</p> <p>“(cc) moneys payable under an affiliation agreement in writing or proceedings to enforce such an agreement; or”.</p>
<p>Regulation 18(1)</p>	<p>For Regulation 18(1) there shall be substituted the following paragraphs:—</p> <p>“(1) Where proceedings have been concluded in which an assisted person (including for the purpose of this Regulation, a person who was an assisted person in respect of those proceedings) is liable or would have been liable for costs if he had not been an assisted person, no costs attributable to the period during which his certificate was in force shall be recoverable from him until the court has determined the amount of his liability in accordance with section 2(3)(e) of the Act:</p> <p>Provided that where the assisted person’s certificate does not relate to or has been amended so that it no longer relates to the whole of the proceedings, the court shall nevertheless make a determination in respect of that part of the proceedings to which the certificate relates.</p> <p>(1A) The court may, if it thinks fit—</p> <p>(a) postpone or adjourn the determination for such time and to such place, including chambers, as the court thinks fit, so however that the determination shall, unless otherwise directed, take place before the judge or officer of the Supreme Court before whom the trial or hearing took place; or</p> <p>(b) refer to an officer of the Supreme Court or county court or the clerk of Parliaments or, in the case of an appeal from a decision of a county court or court of summary jurisdiction, to the clerk of the Crown and peace, registrar or clerk of petty sessions, as the case may be, of the court from which the appeal is brought, for investigation, any question of fact relevant to the determination, requiring him to report his finding on that question to the court.”.</p>

<i>Provision amended</i>	<i>Amendment</i>
Regulation 18(3)	<p>After Regulation 18(3)(b) there shall be added the following sub-paragraph:—</p> <p>“, or (c) that payment under the order for costs (whether by instalments or otherwise) be made after completion of any payment of the assisted person’s contribution to the legal aid fund.”.</p>
Regulation 19	<p>In Regulation 19 for the word “disbursements” there shall be substituted the word “costs” and at the end of the paragraph there shall be added the words “pending the taxation or, as the case may be, the assessment by the Legal Aid Committee of such costs.”.</p>
Regulation 21	<p>In Regulation 21(1)(a) for the expression “£40” there shall be substituted the expression “£75”.</p> <p>In Regulation 21(1)(b) the words “(who is not such a person as is referred to in Order XXII, Rule 8 of the Rules of the Supreme Court (Northern Ireland) 1936)” shall be omitted.</p> <p>In Regulation 21(1)(c) for the words “and the unassisted person liable for such costs agrees” there shall be substituted the words “and the amount of such costs has been agreed”.</p>
Regulation 22(2)	<p>In Regulation 22(2) after sub-paragraph (b) there shall be added the following paragraph:—</p> <p>“(c) is agreed to be included in the terms of a settlement of proceedings in the county court containing provision for costs to be paid to the solicitor and counsel (if any) acting for the assisted person and which is to be accepted in full satisfaction of the work done.</p> <p>Provided that where the settlement is one which is required to be approved by the Judge under Order 40 of the County Court Rules (Northern Ireland) 1965, nothing in this Regulation shall be construed as dispensing with such requirement and the terms of the settlement including those relating to costs shall be subject to the approval of the Judge under that Order to the same extent as in the case of an unassisted person.”.</p>

EXPLANATORY NOTE

(This note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations amend the Legal Aid (General) Regulations (Northern Ireland) 1965.

The Regulations contain, amongst other matters, provision as to the period for which an emergency certificate is to remain in force and for the extension, in certain circumstances, of the certificate.

The regulation relating to the discharge of civil aid certificates is amended and provision is made for the suspension, in certain circumstances, of the certificate.

The circumstances in which the Secretary may perform functions on behalf of the Legal Aid Committee or a certifying committee are extended.

The Law Society is authorised to take proceedings to enforce an order or agreement for the recovery or preservation of property for the benefit of, or the payment of costs to, an assisted person, notwithstanding that the assisted person may be in a position to do so himself.