

2015 No. 196

ACCESS TO JUSTICE

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

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ARRANGEMENT OF REGULATIONS

**PART 1
GENERAL**

1. Citation, commencement and revocations
2. Interpretation

PART 2

DETERMINATIONS IN RESPECT OF AN INDIVIDUAL'S FINANCIAL RESOURCES

CHAPTER 1

FINANCIAL ELIGIBILITY LIMITS AND WAIVERS

3. Determination in respect of an individual's financial resources
4. Exceptions from requirement to make a determination in respect of an individual's financial resources
5. Individuals in receipt of certain benefits, allowances etc.
6. Financial eligibility limits – disposable income and disposable capital
7. Waiver of eligibility limits and contributions in multi-party actions of significant wider public interest
8. Waiver of eligibility limits and contributions in certain inquests
9. Waiver of eligibility limits and contributions in cross-border disputes
10. Waiver of eligibility limits in proceedings relating to domestic violence or forced marriage

CHAPTER 2

MAKING A DETERMINATION IN RESPECT OF AN INDIVIDUAL'S FINANCIAL RESOURCES

11. Provision of information
12. Calculations
13. Over-capital cases
14. Assessment of resources prior to provision of services
15. Guidance given by the Department
16. Application in representative, fiduciary or official capacity
17. Resources of other persons

18. Deprivation or conversion of resources
19. Duty to report change in financial circumstances
20. Amendment of assessment due to error or receipt of new information
21. Further assessments

CHAPTER 3

CALCULATION OF INCOME AND CAPITAL – ADVICE AND ASSISTANCE AND REPRESENTATION (LOWER COURTS)

22. Application of regulations 23 to 32
23. Calculation of income and capital
24. Disregard of financial resources which are the subject matter of any claim
25. Disregards from income – certain welfare and other allowances, payments etc.
26. Deductions from income – income tax and national insurance contributions
27. Deductions from income – maintenance of partner and dependants
28. Deductions from income – maintenance of former partner and dependants outside the household
29. Main dwelling, household furniture and effects, personal clothing, and tools and equipment
30. Disregard from capital – income support
31. Disregard from capital – arrears of payments
32. Deductions from capital – maintenance of partner and dependants

CHAPTER 4

CALCULATION OF INCOME – REPRESENTATION (HIGHER COURTS)

33. Application of regulations 34 to 43
34. Calculation of income
35. Disregard of financial resources which are the subject matter of the dispute
36. Disregard of certain welfare and other allowances, payments etc.
37. Income from a trade, business or gainful occupation, other than wage or salary
38. Deductions – income tax and national insurance contributions
39. Deductions – maintenance of partner and dependants
40. Deductions – maintenance of former partner and dependants outside the household
41. Deductions – work-related expenses, including childcare payments
42. Deductions – housing costs
43. General discretion to disregard income

CHAPTER 5

CALCULATION OF CAPITAL – REPRESENTATION (HIGHER COURTS)

44. Application of regulations 45 to 57
45. Calculation of capital
46. Disregard of financial resources which are the subject matter of the dispute
47. Equitable value of any interest in land
48. Household furniture and effects, personal clothing, and tools and equipment
49. Disregard of certain welfare and other payments
50. Additional disregard where client or person concerned is of pensionable age
51. Disregard of interim court payments etc.
52. Value of money due to the person concerned
53. Value of a capital resource other than money
54. Resources owned jointly or in common with other persons
55. Value of a business or other property interest
56. Value of any life insurance or endowment policy

57. General discretion to disregard capital

PART 3 CONTRIBUTIONS

58. Application of regulations 59 and 60
59. Determination of contributions – advice and assistance and representation (lower courts)
60. Collection of contributions and repayment of excess contributions
61. Application of regulations 62 and 63
62. Determination of contributions – representation (higher courts)
63. Collection of contributions and repayment of excess contributions
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SCHEDULE — Instruments Revoked

The Department of Justice makes the following Regulations in exercise of the powers conferred by Articles 13 and 17(1), (2)(b), (3), (5) and (6) 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 (Financial) 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) applies.

Interpretation

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

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

“application” means an application to receive funded services, made by or on behalf of a client in accordance with the General Regulations;

“assessing authority” means—

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

(a) S.I. 2003/435 (N.I. 10)

(b) S.I. 2010/976

(c) S.R. 2015 No. 194 (C. 13)

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

“capital” means the amount or value of every resource of a capital nature;

“certificate” means a certificate issued under the General Regulations certifying a decision to fund representation for the client;

“child” means an individual under the age of 18;

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

“client” means an individual who applies for or receives funded services and, in the case of actual or contemplated proceedings, is a party or prospective party to the proceedings;

“the Department” means the Department of Justice;

“determination” has the meaning given by regulation 3;

“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(a);

“disposable income” and “disposable capital” mean, respectively, the income and capital of the person concerned, calculated in accordance with Chapters 3 to 5 of Part 2, as applicable;

“funded services” means services which are provided directly for a client and funded for that client by the Department as part of civil legal services under Articles 10 to 20 of the Order;

“the General Regulations” means the Civil Legal Services (General) Regulations (Northern Ireland) 2015(b);

“income” includes benefits and privileges, and the income of the person concerned includes any sum payable to that person for the purpose of the maintenance of a child including any sum so payable under the order of a court or under any instrument;

“Independent Living Fund (2006)” means the Trust of that name established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part;

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

“partner” except in the expression “partner in a business” means a person with whom the person concerned lives as a couple, and includes a person from whom the individual is not separated due to a breakdown in the relationship which is likely to be permanent;

“person concerned” means the person—

(a) whose eligibility is to be assessed; or

(b) whose resources are to be treated as the resources of the client under these Regulations;

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

“representation (higher courts)” and “representation (lower courts)” have the respective meanings given by regulation 2 of the General Regulations;

“solicitor” means solicitor of the Court of Judicature;

“supplier” means the solicitor or body being requested to provide or providing funded services to the client.

(a) 2014 c. 11 (N.I.)
(b) S.R. 2015 No. 195
(c) S.R. 2015 No. 201

PART 2
DETERMINATIONS IN RESPECT OF AN INDIVIDUAL'S FINANCIAL RESOURCES
CHAPTER 1
FINANCIAL ELIGIBILITY LIMITS AND WAIVERS

Determination in respect of an individual's financial resources

3.—(1) This Part applies for the purposes of determining whether an individual qualifies for civil legal services under Part 2 of the Order in accordance with Article 13(1).

(2) Subject to regulations 4 and 5, the assessing authority must determine whether the individual's financial resources are such that the individual is eligible for civil legal services in accordance with these Regulations.

Exceptions from requirement to make a determination in respect of an individual's financial resources

4.—(1) The following services shall be available without reference to the client's financial resources—

- (a) services consisting of such amount of advice and assistance as is authorised under a contract to be provided without reference to the client's financial resources;
- (b) advice and assistance applied for by—
 - (i) a parent of a child, or a person with parental responsibility for a child within the meaning of the 1995 Order, in respect of whom a Health and Social Care Trust has given notice of potential proceedings under Article 50 of that Order, or
 - (ii) in the case of an unborn child in respect of whom a Health and Social Care Trust has given notice of potential proceedings under Article 50 of the 1995 Order, any person who, following birth of the child—
 - (aa) will be the parent of the child, and
 - (bb) will have parental responsibility for the child within the meaning of that Order;
- (c) advice and assistance in potential proceedings or representation in proceedings or potential proceedings before the Mental Health Review Tribunal for Northern Ireland under the Mental Health (Northern Ireland) Order 1986^(a), where the client's case or application to the Tribunal is, or is to be, the subject of the proceedings;
- (d) representation in proceedings under the 1995 Order, applied for by or on behalf of—
 - (i) a child in respect of whom an application is made for an order under—
 - (aa) Article 50 (a care or supervision order);
 - (bb) Article 62 (a child assessment order);
 - (cc) Article 63 (an emergency protection order); or
 - (dd) Article 64 (extension or discharge of an emergency protection order);
 - (ii) a parent of such a child, or a person with parental responsibility for such a child within the meaning of the 1995 Order; or
 - (iii) a child who is brought before a court under Article 44 (secure accommodation) who is not, but wishes to be, legally represented before the court;

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

- (e) representation in proceedings relating to an appeal against an order made under Article 50 of the 1995 Order, applied for by or on behalf of a person who has been granted representation by virtue of sub-paragraph (d);
- (f) representation (higher courts) in proceedings under the Adoption (Northern Ireland) Order 1987(a) applied for by or on behalf of—
 - (i) a child in respect of whom an application is made for an order under—
 - (aa) Article 17 (freeing child for adoption with parental agreement); or
 - (bb) Article 18 (freeing child for adoption without parental agreement); or
 - (ii) a parent of such a child, or a person with parental responsibility for such a child within the meaning of the 1995 Order;
- (g) representation by a solicitor in Northern Ireland of a person whose application under the Hague Convention or the European Convention has been submitted to the Central Authority in Northern Ireland under section 3(2) or 14(2) of the Child Abduction and Custody Act 1985(b);
- (h) representation of a person who—
 - (i) appeals to a magistrates' court against the registration of, or the refusal to register, a maintenance order made in a Hague Convention country under the Maintenance Orders (Reciprocal Enforcement) Act 1972(c);
 - (ii) applies for the registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982(d);
 - (iii) applies for the registration of a judgment under Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; or
 - (iv) applies for either the registration of or the registration and enforcement of a judgment under Council Regulation (EC) No. 2201/2003 of 27th November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, and who benefited from complete or partial assistance with, or exemption from, costs or expenses in the country in which the maintenance order was made or the judgment was given;
- (i) such services as are funded through grants under Article 12(2)(c) of the Order, except where the terms of the grant provide otherwise;
- (j) civil legal services to the extent that the services consist of—
 - (i) advice and assistance or representation for an individual who is the subject of an application for permission under section 6 of the 2011 Act, in respect of such an application;
 - (ii) advice and assistance in connection with a TPIM notice for an individual who is subject to that notice;
 - (iii) advice and assistance for an individual who is subject to a TPIM notice, in respect of an application—
 - (aa) to vary measures specified in that notice under section 12(2) of the 2011 Act;
 - (bb) for revocation of that notice in accordance with section 13(3) of the 2011 Act;
 - (cc) for permission under Schedule 1 to the 2011 Act; or
 - (iv) representation in respect of TPIM proceedings for an individual who is subject to a TPIM notice;

(a) S.I. 1987/2203 (N.I. 22)
 (b) 1985 c. 60
 (c) 1972 c. 18
 (d) 1982 c. 27

(k) advice and assistance in the circumstances provided for in paragraph (2).

(2) Funded services may be provided where a client—

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

and seeks advice and assistance from a solicitor.

(3) In this regulation—

“the 1995 Order” means the Children (Northern Ireland) Order 1995(a);

“the 2011 Act” means the Terrorism Prevention and Investigation Measures Act 2011(b);

“Central Authority” has the same meaning as in sections 3 and 14 of the Child Abduction and Custody Act 1985;

“European Convention” means the convention defined in section 12(1) of the Child Abduction and Custody Act 1985;

“Hague Convention” means the convention defined in section 1(1) of the Child Abduction and Custody Act 1985;

“Hague Convention country” has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993(c);

“the Maintenance Orders (Reciprocal Enforcement) Act 1972” means that Act as applied with such exceptions, adaptations and modifications as are specified in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993;

“serious service offence” means any offence under the Army Act 1955(d), the Air Force Act 1955(e) or the Naval Discipline Act 1957(f) which cannot be dealt with summarily or which appears to an interviewing service policeman to be serious;

“a TPIM notice” means a notice under section 2(1) of the 2011 Act;

“TPIM proceedings” are the proceedings listed at (b) to (g) of the definition of “TPIM proceedings” given in section 30(1) of the 2011 Act;

“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.

Individuals in receipt of certain benefits, allowances etc.

5.—(1) Where the assessing authority is satisfied that the client is in receipt, directly or indirectly, of—

- (a) income support paid under section 123 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(g);
- (b) income-based jobseeker’s allowance paid under Part 2 of the Jobseekers (Northern Ireland) Order 1995(h);
- (c) income-related employment and support allowance paid under Part 1 of the Welfare Reform Act (Northern Ireland) 2007(i); or

(a) S.I. 1995/755 (N.I. 2)

(b) 2011 c. 23

(c) S.I. 1993/593

(d) 1955 c. 18

(e) 1955 c. 19

(f) 1957 c. 53

(g) 1992 c. 7

(h) S.I. 1995/2705 (N.I. 15)

(i) 2007 c. 2 (N.I.)

(d) the guarantee credit element of state pension credit paid under section 1(3)(a) of the State Pension Credit Act (Northern Ireland) 2002(a),
the client shall, subject to paragraph (2), be eligible for all forms of civil legal services without making (where applicable) any contribution.

(2) In respect of capital, the client's eligibility for advice and assistance is subject to regulation 6(2), and for representation (lower courts) it is subject to regulation 6(3).

Financial eligibility limits – disposable income and disposable capital

6.—(1) This regulation has effect subject to regulations 4 and 5.

(2) Where a client's weekly disposable income does not exceed £234 and their disposable capital does not exceed £1,000, they shall be eligible for advice and assistance.

(3) Where a client's weekly disposable income does not exceed £234 and their disposable capital does not exceed £3,000, they shall be eligible for representation (lower courts).

(4) Subject to paragraph (5), a client shall be eligible for representation (higher courts) where their yearly disposable income does not exceed—

- (a) £10,955, if the representation is sought in connection with taking, defending or being a party to proceedings which include a claim in respect of personal injuries; or
- (b) £9,937, in any other case.

(5) The client shall be refused representation (higher courts) where—

- (a) their disposable capital exceeds—
 - (i) £8,560, if the representation is sought in connection with taking, defending or being a party to proceedings which include a claim in respect of personal injuries; or
 - (ii) £6,750, in any other case; and
- (b) it appears they can afford to proceed without representation (higher courts) in accordance with regulation 13(2).

Waiver of eligibility limits and contributions in multi-party actions of significant wider public interest

7.—(1) Where an application is made for representation in a multi-party action which the Director considers has a significant wider public interest, the Director may, if the Director considers it equitable to do so, do one or both of the following—

- (a) disapply the eligibility limits in regulation 6 in respect of those services in relation to specific issues within the multi-party action; and
- (b) waive all or part of any contribution payable under Part 3.

(2) In this regulation—

“multi-party action” means any action or actions, in which a number of clients have causes of action, which involve common issues of fact or law arising out of the same cause or event;

“wider public interest” means the potential of proceedings to produce real benefits for individuals other than the client (other than any general benefits which normally flow from proceedings of the type in question).

Waiver of eligibility limits and contributions in certain inquests

8.—(1) Where an application is made for a relevant determination, the Director may, if the Director considers it equitable to do so, do one or both of the following—

- (a) disapply the eligibility limits in regulation 6 in respect of the application; and

(a) 2002 c. 14 (N.I.)

(b) waive all or part of any contribution payable under Part 3.

(2) In considering whether to disapply the eligibility limits under paragraph (1), the Director must have regard in particular to any applicable rights under Article 2 of the Human Rights Convention.

(3) In this regulation—

“the Human Rights Convention” has the meaning given to “the Convention” by section 21(1) of the Human Rights Act 1998(a); and

“relevant determination” is a determination under—

(a) Article 12A(2)(a) of the Order; or

(b) Article 12A(4)(c) of the Order, to the extent that it relates to services consisting of representation in proceedings at an inquest under the Coroners (Northern Ireland) Act 1959(b) into the death of a member of the family of the individual who has made the application.

Waiver of eligibility limits and contributions in cross-border disputes

9.—(1) This regulation applies to an application by a client domiciled or habitually resident in another Member State for the funding of services in relation to a cross-border dispute.

(2) Where this regulation applies, the Commission must—

(a) disapply the relevant eligibility limits in regulation 6 if the client proves that they are unable to pay the cost of proceedings in Northern Ireland in relation to the dispute as a result of differences in the cost of living between the client’s Member State of domicile or habitual residence and Northern Ireland; and

(b) waive all or part of any contribution payable under Part 3, if and to such extent as the client proves that they are unable to pay the contribution as a result of such differences in the cost of living.

(3) In this regulation—

“cross-border dispute” means a dispute where a client is domiciled or habitually resident in a Member State other than the Member State where the court is sitting or where the decision is to be enforced;

“Member State” means a member state of the European Union except Denmark.

(4) For the purposes of this regulation the Member State in which a client is domiciled shall be determined in accordance with Article 59 of Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Waiver of eligibility limits in proceedings relating to domestic violence or forced marriage

10.—(1) This regulation applies to an application by a client for the funding of—

(a) representation (lower courts) in proceedings for, or in relation to, a non-molestation order under Article 20 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(c) made by the individual applying for the order or on whose application the order is made; and

(b) advice and assistance or representation (higher courts) in proceedings for a forced marriage protection order under the Forced Marriage (Civil Protection) Act 2007(d).

(a) 1998 c. 42

(b) 1959 c. 15 (N.I.)

(c) S.I. 1998/1071 (N.I. 6)

(d) 2007 c. 20

(2) Where this regulation applies the Director may, if the Director considers it equitable to do so, disapply the eligibility limits in regulation 6.

(3) In such applications—

- (a) where the weekly disposable income of the client exceeds £234, the contribution payable shall be the excess plus £134; and
- (b) where the disposable capital of the client exceeds £3,000, the contribution payable shall be £100.

(4) The contribution payable by a client under paragraph (3) may be in respect of disposable income or disposable capital, or in respect of both.

CHAPTER 2

MAKING A DETERMINATION IN RESPECT OF AN INDIVIDUAL'S FINANCIAL RESOURCES

Provision of information

11. Where an application, or a further assessment under regulation 21, is made, the client must provide the assessing authority with the information necessary to enable the authority to—

- (a) determine whether they satisfy the conditions set out in regulation 5; and
- (b) calculate, where relevant, their disposable income and disposable capital and those of any other person concerned.

Calculations

12.—(1) The assessing authority shall, subject to regulation 5—

- (a) calculate the disposable income and disposable capital of the person concerned in accordance with Chapters 3 to 5, as applicable;
- (b) calculate any contribution payable in accordance with Part 3; and
- (c) where the application is for representation (higher courts), call attention to any special circumstances affecting the manner in which any contribution is to be made under Part 3.

(2) When calculating disposable income for the purposes of regulation 6(2) or (3), the period of calculation shall be one week and, for this purpose, “income” means the total income from all sources which the person concerned received or became entitled to during or in respect of the seven days up to and including the date of their application.

(3) When calculating disposable income for the purposes of regulation 6(4), the period of calculation shall be the period of 12 months next ensuing from the date of the application for a certificate, or such other period of 12 months as the assessing authority may consider to be appropriate in the circumstances of the case.

(4) Where the assessing authority calculates that a client has disposable income or disposable capital of an amount which makes the client ineligible to receive funded services—

- (a) the supplier, in respect of advice and assistance or representation (lower courts);
- (b) the Director, in respect of representation (higher courts), and subject to regulation 13,

shall refuse the application.

Over-capital cases

13.—(1) This regulation applies where the application is for representation (higher courts) and the assessing authority has determined the client concerned, having a disposable income which makes that service available to the client, has a disposable capital exceeding the amount prescribed in regulation 6(5).

(2) The Director may approve the application where the Director estimates that the costs which might reasonably be incurred by the client in taking, defending or being a party to any proceedings in respect of which the application was made would exceed the maximum contribution payable by the client under Part 3.

Assessment of resources prior to provision of services

14. The supplier shall not provide any funded services to the client prior to the assessment of resources in accordance with regulations 12 and 13.

Guidance given by the Department

15. Where the assessing authority is the supplier, in deciding any question under these Regulations the supplier must have regard to any guidance which may from time to time be given by the Department as to the application of the Regulations.

Application in representative, fiduciary or official capacity

16. Where the client is acting only in a representative, fiduciary or official capacity, the assessing authority shall, in calculating their disposable income and disposable capital, and the amount of any contribution to be made—

- (a) assess the value of any property or estate or the amount of any fund out of which the client is entitled to be indemnified, and the disposable income and disposable capital and maximum contribution of any persons (including the client if appropriate) who might benefit from the outcome of the proceedings; and
- (b) unless the authority considers that the client might benefit from the proceedings, disregard their personal resources.

Resources of other persons

17.—(1) Subject to paragraph (2), in calculating the disposable income and disposable capital of the client, the resources of their partner shall be treated as the client's resources.

(2) The resources of the client's partner shall not be treated as the client's resources if their partner has a contrary interest in—

- (a) the matter in respect of which the client is seeking advice and assistance, or
- (b) the dispute in respect of which the application is made.

(3) Paragraph (4) applies where an application is made for advice and assistance or representation (lower courts).

(4) Where the client is a child the resources of a parent, guardian or any other person who is responsible for maintaining the child, or who usually contributes substantially to the child's maintenance, shall be treated as the child's resources, unless having regard to all the circumstances, including the age and resources of the child and any conflict of interest, it appears inequitable to do so.

Deprivation or conversion of resources

18.—(1) Paragraph (2) applies where the client applies for advice and assistance or representation (lower courts).

(2) If it appears to the assessing authority that the person concerned has, with intent to reduce the amount of their disposable income or disposable capital, whether for the purpose of making the client eligible to receive funded services, reducing their liability to pay a contribution or otherwise—

- (a) directly or indirectly deprived themselves of any resources, or

- (b) converted any part of their resources into resources which under these Regulations are to be wholly or partly disregarded,

those resources shall be treated as part of their resources, or as not so converted, as the case may be.

(3) Paragraph (4) applies where the client applies for representation (higher courts).

(4) If it appears to the assessing authority that the person concerned has, with intent to reduce the amount of their disposable income or disposable capital, whether for the purpose of making the client eligible to receive funded services, reducing their liability to pay a contribution or otherwise—

- (a) directly or indirectly deprived themselves of any resources,
- (b) transferred any resources to another person, or
- (c) converted any part of their resources into resources which under these Regulations are to be wholly or partly disregarded,

those resources shall be treated as part of their resources, or as not so converted, as the case may be.

Duty to report change in financial circumstances

19.—(1) This regulation applies where the client applies for representation (higher courts).

(2) The client must immediately inform the Department of any change in their financial circumstances (or those of any person whose resources are to be treated as the client's resources under regulation 17)—

- (a) of which the client is, or should reasonably be, aware;
- (b) which has occurred since any assessment of their resources; and
- (c) which might affect the terms on which the client was assessed as eligible to receive funded services.

Amendment of assessment due to error or receipt of new information

20.—(1) Paragraph (2) applies where the client applies for advice and assistance or representation (lower courts).

(2) Where it appears to the supplier that there has been some error or mistake in the determination of the disposable income, disposable capital or maximum contribution of the person concerned, the supplier may redetermine the disposable income or disposable capital or maximum contribution or, as the case may be, amend the determination and in the latter case the amended determination shall for all purposes be substituted for the original determination.

(3) Paragraph (4) applies where the client applies for representation (higher courts).

(4) Where—

- (a) it appears to the assessing authority that there has been an error in the assessment of the resources of the person concerned or the amount of any contribution payable, or in any calculation or estimate upon which such assessment was based; or
- (b) new information which is relevant to the assessment has come to light,

the assessing authority may, with the consent of the Director, make an amended assessment, and may take such steps as appear equitable to give effect to the amended assessment in relation to any period during which funded services have already been provided.

Further assessments

21.—(1) This regulation applies where the client applies for representation (higher courts).

(2) Where the eligibility of the client was assessed under regulation 6 and it appears that the circumstances of the person concerned may have altered so that—

- (a) their normal disposable income may have increased by an amount greater than £750 or decreased by an amount greater than £300, or
- (b) their disposable capital may have increased by an amount greater than £750,

the assessing authority shall, if so required by the Director and subject to paragraph (8), make a further assessment of that person's resources, and the contribution (if any) payable, in accordance with these Regulations.

(3) Where—

- (a) the client was assessed as being eligible for funded services under regulation 5, and
- (b) it appears to the assessing authority that the client is no longer in receipt, directly or indirectly, of a benefit or allowance referred to in that regulation,

the assessing authority shall, if so required by the Director and subject to paragraph (8), make a further assessment of that person's resources, and the contribution (if any) payable, in accordance with these Regulations.

(4) For the purposes of the further assessment, the period of calculation shall be the period of one year following the date of the change of circumstances or such other period of one year as the assessing authority considers to be appropriate.

(5) Where a further assessment is made, the amount or value of every resource of a capital nature acquired since the date of the original application shall be ascertained as on the date of the request by the Director.

(6) Any capital contribution which becomes payable as a result of a further assessment shall be payable in respect of the cost of the funded services, including costs already incurred.

(7) Where a certificate is discharged under regulation 22(4)(b) of the General Regulations as a result of a further assessment of capital, the Director may require a contribution to be paid in respect of costs already incurred.

(8) The Director may decide not to request a further assessment under paragraph (2) or (3) if the Director considers such a further assessment inappropriate, having regard in particular to the period during which funded services are likely to continue to be provided to the client.

CHAPTER 3

CALCULATION OF INCOME AND CAPITAL – ADVICE AND ASSISTANCE AND REPRESENTATION (LOWER COURTS)

Application of regulations 23 to 32

22. Regulations 23 to 32 apply only for the purposes of determining the client's eligibility for—

- (a) advice and assistance; and
- (b) representation (lower courts).

Calculation of income and capital

23. The disposable income and disposable capital of the person concerned shall be the income and capital as determined by the supplier after deducting any sums which are to be left out of account or for which an allowance is to be made under the provisions of this Chapter.

Disregard of financial resources which are the subject matter of any claim

24. In calculating the income and capital of the person concerned, there shall be left out of account the value of the subject matter of any claim in respect of which the client is seeking advice and assistance or representation (lower courts).

Disregards from income – certain welfare and other allowances, payments etc.

25. In calculating the disposable income of the person concerned, the following payments shall be disregarded—

- (a) disability living allowance paid under section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“the 1992 Act”)(a);
- (b) attendance allowance paid under section 64 of, or paragraph 4(2)(b) of Schedule 8 to, the 1992 Act;
- (c) constant attendance allowance paid under section 104 of the 1992 Act as an increase to a disablement pension;
- (d) any payment made out of the social fund under Part 8 of the 1992 Act;
- (e) carer’s allowance paid under section 70 of the 1992 Act;
- (f) any direct payment made under regulations made under section 8(1) of the Carers and Direct Payments Act (Northern Ireland) 2002(b);
- (g) any extra-statutory job grant paid by the Department for Social Development;
- (h) severe disablement allowance paid under section 68 of the 1992 Act;
- (i) exceptionally severe disablement allowance paid under Article 15 of the Personal Injuries (Civilian) Scheme 1983(c);
- (j) any pensions paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(d);
- (k) any armed forces independence payment made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(e);
- (l) to the extent that it exceeds the relevant figure referred to in regulation 27(1)(b), any financial support paid under any agreement for the care of a foster child;
- (m) any payment made out of the Independent Living Fund (2006).

Deductions from income – income tax and national insurance contributions

26. In calculating the disposable income of the person concerned, the following payments shall be deducted—

- (a) any income tax paid or payable on income treated under the provisions of this Chapter as their income;
- (b) contributions estimated to have been paid under Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 or any scheme made under that Act during or in respect of the seven days up to and including the date of the application for advice and assistance or representation (lower courts).

Deductions from income – maintenance of partner and dependants

27.—(1) In calculating the disposable income of the person concerned there shall be a deduction at or equivalent to the following rates, as they applied at the beginning of the period of calculation referred to in regulation 12(2)—

- (a) in respect of the maintenance of their partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of paragraph 1(3)(d) of Part I of the Schedule) and the allowance for a single person aged

(a) 1992 c. 7
(b) 2002 c. 6 (N.I.)
(c) S.I. 1983/686
(d) S.I. 2006/606
(e) S.I. 2011/517

not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of that Part of the Schedule); and

- (b) in respect of the maintenance of any dependant child or dependant relative, where such persons are members of their household—
 - (i) in the case of a dependant child or a dependant relative aged 18 or under, at a rate equivalent to the amount specified for the time being in paragraph 2 of Part 1 of the Schedule appropriate to the age of the child or relative; and
 - (ii) in the case of a dependant child or a dependant relative aged 19 or over, at a rate equivalent to the amount which would have been specified for the time being in accordance with head (i) immediately before they attained the age of 19.

(2) For the purposes of this regulation, “the Schedule” means Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(a).

Deductions from income – maintenance of former partner and dependants outside the household

28. In calculating the disposable income of the person concerned, where that person is making and, throughout such period as the supplier considers adequate, has regularly made payments for the maintenance of—

- (a) a former partner;
- (b) a child; or
- (c) a relative,

who is not a member of the household of the person concerned, a reasonable amount shall be deducted in respect of such payments.

Main dwelling, household furniture and effects, personal clothing, and tools and equipment

29. In calculating the disposable capital of the person concerned—

- (a) there shall be left out of account the value of the main or only dwelling in which that person resides and the value of their household furniture and effects, their articles of personal clothing, and the tools and equipment of their trade;
- (b) where the person concerned resides in more than one dwelling in which they have an interest, there shall be taken into account in respect of the value to them of any interest in a dwelling which is not the main dwelling any sum which may be obtained by borrowing money on the security thereof.

Disregard from capital – income support

30.—(1) This regulation applies where the client is seeking representation (lower courts).

(2) In calculating the disposable capital of the person concerned, where that person is (directly or indirectly) in receipt of income support, there shall be left out of account any sum which for the time being exceeds the sum specified in regulation 6(3).

Disregard from capital – arrears of payments

31. In calculating the disposable capital of the person concerned, there shall be left out of account any arrears of direct payments made under regulations made under section 8(1) of the Carers and Direct Payments Act (Northern Ireland) 2002.

(a) S.R. 1987 No. 459

Deductions from capital – maintenance of partner and dependants

32. In calculating the capital of the person concerned, where that person has living with them one or more of the following persons—

- (a) a partner whose resources are required to be aggregated with theirs under regulation 17;
- (b) a dependant child; or
- (c) a dependant relative wholly or substantially maintained by them,

a deduction shall be made of £335 in respect of the first person, £200 in respect of the second person and £100 in respect of each further person.

CHAPTER 4

CALCULATION OF INCOME – REPRESENTATION (HIGHER COURTS)

Application of regulations 34 to 43

33. Regulations 34 to 43 apply only for the purposes of determining the client’s disposable income in relation to eligibility for representation (higher courts).

Calculation of income

34.—(1) The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive, in cash or in kind, during the period of calculation, but in calculating such income the assessing authority may have regard to their average income during such other period as it considers appropriate.

(2) For the purposes of this regulation, “the period of calculation” has the meaning given in regulation 12(3).

Disregard of financial resources which are the subject matter of the dispute

35. In calculating the disposable income of the person concerned, the amount or value of the subject matter of the dispute to which the application relates shall be disregarded.

Disregard of certain welfare and other allowances, payments etc.

36. In calculating the disposable income of the person concerned, the following payments shall be disregarded—

- (a) disability living allowance paid under section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“the 1992 Act”)(a);
- (b) attendance allowance paid under section 64 of, or paragraph 4(2)(b) of Schedule 8 to, the 1992 Act;
- (c) constant attendance allowance paid under section 104 of the 1992 Act as an increase to a disablement pension;
- (d) any payment made out of the social fund under Part 8 of the 1992 Act;
- (e) carer’s allowance paid under section 70 of the 1992 Act;
- (f) any direct payment made under regulations made under section 8(1) of the Carers and Direct Payments Act (Northern Ireland) 2002(b);
- (g) any extra-statutory job grant paid by the Department for Social Development;
- (h) severe disablement allowance paid under section 68 of the 1992 Act;

(a) 1992 c. 7

(b) 2002 c. 6 (N.I.)

- (i) exceptionally severe disablement allowance paid under Article 15 of the Personal Injuries (Civilian) Scheme 1983(a);
- (j) any pensions paid under the Naval, Military and Air Force Etc. (Disablement and Death) Service Pensions Order 2006(b);
- (k) any armed forces independence payment made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(c);
- (l) to the extent that it exceeds the relevant figure referred to in regulation 39(1)(b), any financial support paid under any agreement for the care of a foster child;
- (m) any payment made out of the Independent Living Fund (2006).

Income from a trade, business or gainful occupation, other than wage or salary

37.—(1) The income from a trade, business or gainful occupation other than an occupation at a wage or salary shall be deemed to be whichever of the following the assessing authority considers more appropriate and practicable—

- (a) the profits which have accrued or will accrue to the person concerned in respect of the period of calculation referred to in regulation 12(3); or
 - (b) the drawings of the person concerned.
- (2) In calculating the profits under paragraph (1)(a)—
- (a) the assessing authority may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and
 - (b) there shall be deducted all sums necessarily expended to earn those profits, but no deduction shall be made in respect of the living expenses of the person concerned or any member of their family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of their remuneration.

Deductions – income tax and national insurance contributions

38.—(1) In calculating the disposable income of the person concerned, any income tax and national insurance contributions paid, or payable, on that income in respect of the period of calculation referred to in regulation 12(3) shall be deducted.

(2) For the purposes of this regulation, “national insurance contributions” means contributions under Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Deductions – maintenance of partner and dependants

39.—(1) Subject to paragraph (2), in calculating the disposable income of the person concerned there shall be a deduction at or equivalent to the following rates, as they applied at the beginning of the period of calculation referred to in regulation 12(3)—

- (a) in respect of the maintenance of their partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of paragraph 1(3)(d) of Part 1 of the Schedule) and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of that Part of the Schedule); and
- (b) in respect of the maintenance of any dependant child or dependant relative, where such persons are members of their household—

(a) S.I. 1983/686
 (b) S.I. 2006/606
 (c) S.I. 2011/517

- (i) in the case of a dependant child or a dependant relative aged 18 or under, at a rate equivalent to the amount specified for the time being in paragraph 2 of Part 1 of the Schedule appropriate to the age of the child or relative; and
- (ii) in the case of a dependant child or a dependant relative aged 19 or over, at a rate equivalent to the amount which would have been specified for the time being in accordance with head (i) immediately before they attained the age of 19.

(2) The assessing authority may reduce any rate provided by virtue of paragraph (1) by taking into account the income and other resources of the dependant child or dependant relative to such extent as appears to the assessing authority to be equitable.

(3) In ascertaining whether a child is a dependant child or whether a person is a dependant relative for the purposes of this regulation, regard shall be had to their income and other resources.

(4) For the purposes of this regulation, “the Schedule” means Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987(a).

Deductions – maintenance of former partner and dependants outside the household

40. Where the person concerned is making and, throughout such period as the assessing authority considers adequate, has regularly made payments for the maintenance of—

- (a) a former partner;
- (b) a child; or
- (c) a relative,

who is not a member of their household, a reasonable amount shall be deducted in respect of such payments.

Deductions – work-related expenses, including childcare payments

41.—(1) Where the income of the person concerned consists, wholly or in part, of a wage or salary from employment, there shall be deducted—

- (a) the reasonable expenses of travelling to and from their place of employment;
- (b) the amount of any payments reasonably made for membership of a trade union or professional organisation;
- (c) where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home by reason of their employment; and
- (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme or personal pension scheme within the meaning of the Pension Schemes (Northern Ireland) Act 1993(b).

(2) Where the income of the person concerned consists, wholly or in part, of income from a trade, business or gainful occupation other than an occupation at a wage or salary, there shall be deducted, where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home while they are engaged in that trade, business or gainful occupation.

Deductions – housing costs

42.—(1) Paragraphs (2) and (3) apply only if the person concerned is a householder.

(2) In calculating the disposable income of the person concerned—

(a) S.R. 1987 No. 459
(b) 1993 c. 49

- (a) the net rent payable by them in respect of their main or only dwelling, or such part of it as is reasonable in the circumstances, shall be deducted; and
 - (b) where the person concerned resides in more than one dwelling, the assessing authority shall decide which is the main dwelling.
- (3) In calculating the amount of net rent payable, there shall be deducted—
- (a) any housing benefit paid under the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
 - (b) any rates rebate paid under section 126 of the Social Security Administration (Northern Ireland) Act 1992(a);
 - (c) any proceeds of sub-letting any part of the premises; and
 - (d) an amount reasonably attributable to any person other than the person concerned, their partner or any dependant who is accommodated in the premises otherwise than as a sub-tenant.
- (4) If the person concerned is not a householder, a reasonable amount in respect of the cost of their living accommodation shall be deducted.
- (5) For the purposes of paragraph (4), if the person concerned cannot or does not differentiate between the cost of their living accommodation and the cost of their keep, the assessing authority shall make a deduction of fifty per cent of the cost of their living accommodation or such other percentage as the assessing authority considers reasonable in the circumstances.
- (6) In this regulation—
- “keep” means the provision of food, heat, electricity and other daily essentials;
 - “net rent” means—
- (a) any annual rent payable;
 - (b) any annual instalment (whether of interest or capital) in respect of a debt secured by a mortgage or charge on the property;
 - (c) a sum in respect of any rates payable; and
 - (d) a reasonable allowance towards any necessary expenditure on repairs and insurance.

General discretion to disregard income

43. In calculating the disposable income of the person concerned from any source, there shall be disregarded such amount (if any) as the assessing authority considers reasonable, having regard to the nature of the income or to any other circumstances of the case.

CHAPTER 5

CALCULATION OF CAPITAL – REPRESENTATION (HIGHER COURTS)

Application of regulations 45 to 57

44. Regulations 45 to 57 apply only for the purposes of determining the client’s disposable capital in relation to eligibility for representation (higher courts).

Calculation of capital

45. Subject to the provisions of these Regulations, in calculating the disposable capital of the person concerned, the amount or value of every resource of a capital nature belonging to them on the date on which the application is made shall be included.

(a) 1992 c. 8

Disregard of financial resources which are the subject matter of the dispute

46. In calculating the disposable capital of the person concerned, the amount or value of the subject matter of the dispute to which the application relates shall be disregarded.

Equitable value of any interest in land

47.—(1) In calculating the disposable capital of the person concerned, the value of any interest in the main or only dwelling in which they reside shall be wholly disregarded.

(2) Where the person concerned resides in more than one dwelling in which they have an interest, the assessing authority shall decide which is the main dwelling and shall take into account in respect of the value to them of any interest in a dwelling which is not the main dwelling any sum which might be obtained by borrowing money on the security thereof.

Household furniture and effects, personal clothing, and tools and equipment

48. Other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, nothing shall be included in the disposable capital of the person concerned in respect of—

- (a) the household furniture and effects of the main or only dwelling house occupied by them;
- (b) articles of personal clothing; and
- (c) the tools and equipment of their trade, unless they form part of the plant or equipment of a business to which the provisions of regulation 55 apply.

Disregard of certain welfare and other payments

49. In calculating the disposable capital of the person concerned, there shall be disregarded—

- (a) any extra-statutory job grant paid by the Department for Social Development;
- (b) any payment made out of the social fund under Part 8 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a); and
- (c) any arrears of direct payments made under regulations made under section 8(1) of the Carers and Direct Payments Act (Northern Ireland) 2002(b).

Additional disregard where client or person concerned is of pensionable age

50.—(1) In calculating the disposable capital of the person concerned, where—

- (a) the client or any other person concerned has attained pensionable age; and
- (b) the total annual disposable income (excluding any net income derived from capital) of the client and any other person concerned is less than £3,355,

the amount of capital shown in the following table shall be disregarded—

<i>Annual disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
Up to £370	£35,000
£371 – £670	£30,000
£671 – £970	£25,000
£971 – £1,270	£20,000
£1,271 – £1,570	£15,000
£1,571 – £1,870	£10,000

(a) 1992 c. 7

(b) 2002 c. 6 (N.I.)

(2) In this regulation, “pensionable age” means the age of 60.

Disregard of interim court payments etc.

51. In calculating the disposable capital of the person concerned, any payment of capital received from any source which is made in connection with the incident in respect of which the application has been made shall be wholly disregarded.

Value of money due to the person concerned

52. Where money is due to the person concerned—

- (a) whether it is payable immediately or otherwise; and
- (b) whether payment is secured or not,

its value shall be taken to be its present value.

Value of a capital resource other than money

53. In so far as any resource of a capital nature does not consist of money, its value shall be taken to be—

- (a) the amount which that resource would realise if sold; or
- (b) the value assessed in such other manner as appears to the assessing authority to be equitable.

Resources owned jointly or in common with other persons

54. Subject to regulation 55, in calculating the value of the interest of the person concerned in any resource of a capital nature which they own jointly or in common with any other person, the assessing authority may treat that resource as being owned—

- (a) in equal shares; or
- (b) in such other proportions as appear to the assessing authority to be equitable.

Value of a business or other property interest

55.—(1) Where the person concerned is the sole owner of or partner in a business, the value of the business to them shall be taken to be the greater of—

- (a) such sum, or their share of such sum, as could be withdrawn from the assets of the business without substantially impairing its profits or normal development; and
- (b) such sum as that person could borrow on the security of their interest in the business without substantially injuring its commercial credit.

(2) Where the person concerned stands in relation to a company in a position analogous to that of a sole owner of or partner in a business, the assessing authority may, instead of ascertaining the value of their stocks, shares, bonds or debentures in that company, treat that person as if they were a sole owner of or partner in a business and calculate the amount of their capital in respect of that resource in accordance with paragraph (1).

(3) Where the person concerned owns solely, jointly or in common with other persons, any interest on the termination of a prior estate—

- (a) whether
 - (i) legal or equitable;
 - (ii) vested or contingent; or
 - (iii) in reversion or remainder; and

(b) whether in real or personal property or in a trust or other fund,

the value of such interest shall be calculated in such manner as appears to the assessing authority to be both equitable and practicable.

Value of any life insurance or endowment policy

56. The value to the person concerned of any life insurance or endowment policy shall be taken to be the amount which they could readily borrow on the security of that policy.

General discretion to disregard capital

57. In calculating the disposable capital of the person concerned, there shall be disregarded such amount (if any) as the assessing authority considers reasonable in the circumstances of the case.

PART 3 CONTRIBUTIONS

Application of regulations 59 and 60

58. Regulations 59 and 60 apply only in relation to the contribution payable by a client for—

- (a) advice and assistance; and
- (b) representation (lower courts).

Determination of contributions – advice and assistance and representation (lower courts)

59.—(1) The supplier shall, except where paragraph (2) applies, determine the maximum contribution, if any, payable to the supplier by the client under Article 17 of the Order in accordance with paragraph (3).

(2) A client who receives advice and assistance under regulation 4(2) shall not be required to pay a contribution towards any remuneration payable under the Remuneration Order in respect of the advice and assistance.

(3) The contribution payable by a client under Article 17 of the Order, where their disposable income falls within a range specified in the first column of the following table, is the amount specified in relation to that range in the second column of that table.

<i>Disposable Income Range</i>	<i>Maximum Contribution</i>
Exceeding £100 but not exceeding £107 a week	£7
Exceeding £107 but not exceeding £114 a week	£14
Exceeding £114 but not exceeding £121 a week	£21
Exceeding £121 but not exceeding £128 a week	£28
Exceeding £128 but not exceeding £135 a week	£35
Exceeding £135 but not exceeding £142 a week	£42
Exceeding £142 but not exceeding £149 a week	£49
Exceeding £149 but not exceeding £156 a week	£56
Exceeding £156 but not exceeding £163 a week	£63
Exceeding £163 but not exceeding £170 a week	£70
Exceeding £170 but not exceeding £177 a week	£77
Exceeding £177 but not exceeding £184 a week	£84
Exceeding £184 but not exceeding £191 a week	£91
Exceeding £191 but not exceeding £198 a week	£98
Exceeding £198 but not exceeding £205 a week	£105

Exceeding £205 but not exceeding £212 a week	£112
Exceeding £212 but not exceeding £219 a week	£119
Exceeding £219 but not exceeding £226 a week	£126
Exceeding £226 but not exceeding £234 a week	£134

Collection of contributions and repayment of excess contributions

60.—(1) Where a client is required to make a contribution towards the remuneration payable under the Remuneration Order in respect of the advice and assistance or representation (lower courts)—

- (a) the supplier may collect that contribution by such periodical payments as may be agreed between the supplier and the client; and
- (b) where the total contribution is likely to exceed the remuneration payable under the Remuneration Order in respect of providing the advice and assistance or representation (lower courts), as applicable, the supplier shall not require the client to pay an amount higher than would be expected to defray the supplier’s remuneration.

(2) Where the remuneration properly chargeable for the advice and assistance or representation (lower courts) under the Remuneration Order is less than any contribution made by the client, the supplier shall repay the excess to the client.

Application of regulations 62 and 63

61. Regulations 62 and 63 apply only in relation to the contribution payable by a client for representation (higher courts).

Determination of contributions – representation (higher courts)

62.—(1) The assessing authority shall determine the maximum contribution, if any, payable to the Department by the client under Article 17 of the Order in accordance with paragraph (2).

(2) Where a client receives representation (higher courts) in connection with any proceedings, their contribution to the Department in respect of those proceedings may include—

- (a) if their disposable income exceeds £3,355 per year, a contribution in respect of income not greater than one third of the excess; and
- (b) if their disposable capital exceeds £3,000, a contribution in respect of capital not greater than the excess.

Collection of contributions and repayment of excess contributions

63.—(1) In fixing the method by which any contribution shall be paid by the client, the Director shall—

- (a) require any contribution payable out of capital to be paid immediately if the sum is readily available or, if it is not, within such time as seems reasonable to the Director in all the circumstances; and
- (b) require any contribution payable out of income to be paid by periodical payments at a rate which would, if the maximum contribution from income was required, secure that that maximum amount would be paid within the next ensuing twelve months.

(2) If the total contribution to the Department made by a client in respect of any proceedings is more than their liability to the Department under the Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015(a), the excess shall be repaid to the client.

(a) S.R. 2015 No. 200

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 3A, 3B, 5(2), (8) and (10), and 6(5), (6) and (9), together with the Schedule
The Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1981	No. 189	The whole instrument
The Legal Advice and Assistance Regulations (Northern Ireland) 1981	No. 366	Regulations 7, 7A(1), 7B, 17(3A) and 22, together with Schedules 1 and 2

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the financial aspects of the provision of services funded by the Department of Justice in civil matters.

Part 1 sets out general interpretation matters.

Chapter 1 of Part 2 sets out the general rules for making a determination about an individual's financial resources. It also provides for the exceptions to the rule that the assessing authority must determine whether an individual's financial resources are such that the individual is eligible for civil legal services. The Chapter prescribes the eligibility limits for disposable income and disposable capital, and the cases in which it is possible to waive those limits.

Chapter 2 of Part 2 sets out the process for making a determination in respect of an individual's financial resources, including the requirement for the individual whose eligibility is being determined to provide information, the calculations which the assessing authority must undertake, and the powers to amend determinations or make further determinations in the light of new information.

Chapter 3 of Part 2 sets out the rules for calculating income and capital for the purposes of determining an individual's eligibility for advice and assistance and representation (lower courts).

Chapters 4 and 5 of Part 2 set out the rules for calculating income and capital for the purposes of determining an individual's eligibility for representation (higher courts).

Part 3 sets out the requirements for paying a contribution towards the cost of civil legal services.

The Regulations also revoke the provisions regarding financial eligibility and contributions made under, or treated as made under, the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (regulation 1(2), together with the Schedule).

The Regulations come into operation on 1st April 2015.

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