
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 201

**The Civil Legal Services (Remuneration)
Order (Northern Ireland) 2015**

Citation, commencement and revocations

1.—(1) This Order may be cited as the Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

(2) Subject to paragraph (3), the instruments set out in Schedule 1 to this Order shall be revoked to the extent shown in that Schedule.

(3) Nothing in the provisions revoked by this Order shall take effect in relation to any of the circumstances to which the Article 3(1)(a) to (d) of the Access to Justice (2003 Order) (Commencement No. 7, Transitional Provisions and Savings) Order (Northern Ireland) 2015(1) applies.

Interpretation

2. In this Order, unless the context otherwise requires—

“advice”, “assistance” and “representation” have the respective meanings given by Article 2(2) of the 2003 Order;

“certificate” means a certificate granted under the General Regulations;

“civil legal services” has the meaning given by Article 10 of the 2003 Order;

“costs” means, in the case of a solicitor, the remuneration and disbursements payable under Article 12(3) of the 2003 Order and, in the case of counsel, the remuneration payable under that provision;

“counsel” means counsel authorised by the Director under regulation 31 of the General Regulations and selected to act for an assisted person;

“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(2);

“disbursements” means travelling and witness expenses and other out of pocket expenses incurred by a solicitor in providing civil legal services;

“fee-earner” means a solicitor or any clerk who regularly does work for which it is appropriate to make a direct charge to the client;

“the Financial Regulations” mean the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015(3);

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

(2) 2014 c. 11 (N.I.)

(3) 2015 S.R. No. 196

“the General Regulations” mean the Civil Legal Services (General) Regulations (Northern Ireland) 2015(4);

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

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

“representative” means a solicitor or counsel.

Application

3. This Order shall apply for the determination of the remuneration payable to representatives in respect of providing civil legal services—

- (a) where the application for advice and assistance under the General Regulations is signed on or after 1st April 2015; or
- (b) where the work is done under a certificate granted under the General Regulations on or after 1st April 2015.

Service of notices and documents

4.—(1) Any document that is required to be sent to the Department under this Order may be sent—

- (a) by post or by personal delivery to an address specified by the Department; or
- (b) by electronic mail.

(2) Any notice or document that is required to be sent to a representative under this Order may be sent—

- (a) by post to the postal address given by the representative as their address for service; or
- (b) by electronic mail.

General

5.—(1) Subject to paragraph (2), the remuneration payable to representatives in respect of work done providing civil legal services to which this Order applies shall be determined by the Department in accordance with this Order and having regard to such directions and guidance as may be issued by the Department.

(2) Paragraph (1) shall not apply to:

- (a) proceedings in the county court, where the costs payable to the representative has been taxed by a district judge;
- (b) proceedings in the High Court or Court of Appeal, where the costs payable to the representative has been taxed by the taxing master;
- (c) proceedings in the Supreme Court, where the costs payable to the representative has been assessed by the Registrar to the Supreme Court.

Interim payments

6.—(1) Paragraphs (1) to (8) of this Article apply only to—

- (a) work which is being funded by way of advice and assistance; or
- (b) proceedings which are being funded by way of representation (lower courts).

(2) A solicitor may submit a claim to the Department for payment of a disbursement for which the solicitor has incurred liability in accordance with the provisions of this Article.

(3) A claim for payment may be made where—

- (a) the disbursement falls within any guidance issued by the Department in respect of advice and assistance or representation (lower courts), or the solicitor has obtained prior authority from the Director under the General Regulations to incur the expenditure;
- (b) the total liability for such disbursement exceeds £500; and
- (c) the solicitor has discharged such liability.

(4) Without prejudice to Article 10(4), a claim under paragraph (2) shall not exceed £2,500 or the maximum fee authorised under the prior authority, whichever is the greater.

(5) A claim for payment under paragraph (2) may be made at any time before the solicitor submits a claim for remuneration under Article 8(2).

(6) A claim under paragraph (2) shall be submitted to the Department in such form and manner as it may direct and shall be accompanied by the authority to incur the expenditure (if applicable) and any invoices or other documents in support of the claim.

(7) The Department shall allow the disbursement, subject to the limit in paragraph (4), if it appears to have been reasonably incurred and discharged in accordance with the guidance or prior authority.

(8) Where the Department allows the disbursement, it shall notify the solicitor and authorise payment to the solicitor accordingly.

(9) Paragraphs (10) and (11) of this Article apply only to a case which is being funded by way of representation (higher courts).

(10) A solicitor acting for an assisted person may apply to the Department for the payment of a sum on account of costs incurred or to be incurred in connection with the proceedings to which the certificate relates.

(11) On considering the application, the Department may authorise an interim payment to the solicitor of the amount applied for or of such other sum as the Department considers appropriate in the circumstances pending the assessment by the Department or, as the case may be, the taxation of such costs.

(12) Articles 13 to 15 (redetermination etc.) shall not apply to a payment under this Article.

Interim disbursements and final determination of costs

7.—(1) On a final determination of costs, Articles 8(2) and (6)(e) and 10 shall apply notwithstanding that a payment has been made under Article 6.

(2) Where the amount found to be due under Article 10 in respect of a disbursement is less than the amount paid under Article 6 (“the interim disbursement”), the Department shall deduct the difference from the sum otherwise payable to the solicitor on the determination of costs, and where the amount due under Article 10 exceeds the interim disbursement, the Department shall add the difference to the amount otherwise payable to the solicitor.

Claims for costs by representatives

8.—(1) Subject to Article 5(2), claims for remuneration by representatives shall be made and determined in accordance with the provisions of this Article and Schedule 2 to 5 to this Order, as applicable.

(2) Claims for disbursements by solicitors shall be made and determined in accordance with the provisions of Article 10.

(3) Where counsel was authorised by the Director under the General Regulations, the claim submitted by a solicitor shall include any fees claimed by counsel.

(4) Subject to Article 17, no claim by a solicitor for costs in respect of work provided by way of civil legal services shall be entertained unless it is submitted within three months from the date on which the advice and assistance was given or, as applicable, the conclusion of the proceedings to which the certificate relates.

(5) Subject to paragraph (6), a claim for costs shall be submitted to the Department in such form and manner as it may direct and shall be accompanied by any receipts or other documents in support of any disbursement claimed.

(6) A claim in respect of a case to which Schedule 4 applies shall—

- (a) summarise, where appropriate, the items of work done by the representative or other fee-earner in respect of which fees are claimed;
- (b) state the dates on which the items of work were done, the time taken where appropriate, the sums claimed and whether the work was done for more than one assisted person;
- (c) specify, where appropriate, the representative or other fee-earner who undertook each of the items of work claimed;
- (d) give particulars of any work done in relation to more than one claim or set of proceedings; and
- (e) specify any disbursements claimed, the circumstances in which they were incurred and the amounts claimed in respect of them.

(7) Where there are any special circumstances which should be drawn to the attention of the Department, the solicitor shall specify them.

(8) The solicitor shall supply such further particulars, information and documents as the Department may require.

Determination of representatives' remuneration

9.—(1) The Department shall consider the claim, any further particulars, information or documents submitted by the solicitor under Article 8 and any other relevant information and shall allow such work as appears to it to have been reasonably undertaken and properly done.

(2) The Department shall allow remuneration for work allowed by it under this Article in accordance with the provisions of Schedule 2 to 5 to this Order, as applicable.

Determination of solicitors' disbursements

10.—(1) Subject to the provisions of this Article, the Department shall allow such disbursements claimed under Article 8 as appear to it to have been actually and reasonably incurred.

(2) No question as to the propriety of any step or act in relation to which prior authority has been obtained under this Order shall be raised on any determination of costs, unless the solicitor knew or ought reasonably to have known that the purpose for which the authority was given had failed or had become irrelevant or unnecessary before the costs were incurred.

(3) Where costs are reasonably incurred in accordance with and subject to the limit imposed by a prior authority given under this Order, no question shall be raised on any determination of costs as to the amount of the payment to be allowed for the step or act in relation to which the authority was given.

(4) Where costs are incurred in taking any steps or doing any act for which authority may be given under this Order, without such authority having been given or in excess of any fee so authorised, payment in respect of those costs may nevertheless be allowed on a determination of costs.

Payment of remuneration

11.—(1) Having determined the remuneration payable to a representative in accordance with this Order, the Department shall notify the representative of the costs payable and, subject to paragraph (2), authorise payment accordingly.

(2) For proceedings falling within Article 5(2)(b) or (c), the sum authorised for payment by the Department shall be the full amount allowed on taxation of the costs on account of disbursements and ninety-five per cent of the amount so allowed in respect of the representative's remuneration.

(3) Where the costs payable under paragraphs (1) or (2) are varied as a result of any review, redetermination or appeal made or brought pursuant to this Order or the relevant court rules, as applicable, then—

- (a) where the costs are increased, the Department shall authorise payment of the increase;
- (b) where the costs are decreased, the representative shall repay the amount of such decrease; and
- (c) where the payment of any costs to the representative is ordered under Article 14(15) or 15(9), the Department shall authorise such payment.

Reasons for Department's decisions

12.—(1) Where a representative is dissatisfied with the calculation of the remuneration payable under Schedules 2 to 5, as applicable, the representative may request the Department to give reasons in writing for its decision and the Department shall comply with any such request.

(2) Subject to Article 17, the request shall be made—

- (a) within 21 days of receiving notification of the costs payable under Article 11; and
- (b) in such form and manner as the Department may direct.

(3) Clerical mistakes or errors arising from any accidental slip or omission, in the calculation of the remuneration under Article 9 or the determination of disbursements under Article 10 may be corrected by the Department without a redetermination under Article 13 or an appeal under Article 14, where applicable.

Redetermination of costs by Department

13.—(1) Where a representative is dissatisfied with the calculation of the remuneration payable under Schedule 2, 3, 4 or 5 as applicable, the representative may apply to the Department to redetermine those costs.

(2) Subject to Article 17, the application shall be made within 21 days of receiving notification of the remuneration payable under Article 11, by giving notice in writing to the Department specifying the matters in respect of which the application is made and the grounds of objection and shall be made in such form and manner as the Department may direct.

(3) The notice of application shall be accompanied by the particulars, information and documents supplied under Article 8.

(4) The applicant shall supply such further particulars, information and documents as the Department may require.

(5) If the Department considers it necessary to receive oral representations, the Department shall inform the applicant of the date of any hearing and, subject to the provisions of this Article, may give directions as to the conduct of the hearing.

(6) The Department shall redetermine the costs, whether by way of confirmation, or increase or decrease in the amount previously determined, in the light of the objections made by, or on behalf of, the applicant and shall notify the applicant of its decision.

(7) The applicant may request the Department to give reasons in writing for its decision and the Department shall comply with any such request.

(8) Subject to Article 17, any request under paragraph (7) shall be made within 21 days of receiving notification of the decision.

Appeals to the taxing master

14.—(1) This Article applies only to claims in respect of proceedings to which Schedule 4 applies and the remuneration payable has been determined by the Department under Article 5(1).

(2) Where the Department has given its reasons for its decision under Article 13, a representative who is dissatisfied with that decision may appeal to the taxing master.

(3) Subject to Article 17, an appeal shall be instituted within 21 days of receiving the Department's reasons, by giving notice in writing to the taxing master.

(4) The appellant shall send a copy of any notice given under paragraph (3) to the Department.

(5) The notice of appeal shall be accompanied by—

(a) a copy of the written representations given under Article 13(2);

(b) the Department's reasons for its decision given under Article 13(7); and

(c) the particulars, information and documents supplied to the Department under Article 13.

(6) The notice of appeal shall:

(a) be in such form as the taxing master may direct;

(b) specify separately each item appealed against, showing (where appropriate) the amount claimed for the item, the amount determined and the grounds of the objection to the determination; and

(c) state whether the appellant wishes to appear or to be represented or whether they will accept a decision given in their absence.

(7) The taxing master may, and if so directed by the Department either generally or in a particular case shall, send to the Department a copy of the notice of appeal together with copies of such other documents as the Department may require.

(8) With a view to ensuring that the public interest is taken into account, the Department may arrange for written or oral representations to be made on its behalf and, if it intends to do so, the Department shall inform the taxing master and the appellant.

(9) Any written representations made on behalf of the Department under paragraph (8) shall be sent to the taxing master and the appellant and, in the case of oral representations, the taxing master and the appellant shall be informed of the grounds on which such representations will be made.

(10) The appellant shall be permitted a reasonable opportunity to make representations in reply.

(11) The taxing master shall inform the appellant (or their representative) and the Department, where representations have been or are to be made on its behalf, of the date of any hearing and, subject to the provisions of this Article, may give directions as to the conduct of the appeal.

(12) The taxing master may consult the trial judge or the Department and may require the appellant to provide any further information required for the purpose of the appeal and, unless the taxing master otherwise directs, no further evidence shall be received on the hearing of the appeal and no ground of objection shall be valid which was not raised under Article 13.

(13) The taxing master shall have the same powers as the Department under this Order and, in the exercise of such powers, may alter the redetermination of the Department in respect of any sum allowed, whether by increase or decrease.

(14) The taxing master shall communicate the decision and the reasons for it in writing to the appellant, the Department and the Legal Services Agency.

(15) Except where the taxing master confirms or decreases the sums redetermined under Article 13, the taxing master may allow the appellant a sum in respect of part or all of any reasonable costs (including any fee payable in respect of an appeal) incurred by the appellant in connection with the appeal.

Appeals to the High Court

15.—(1) This Article applies only to claims in respect of proceedings to which Schedule 4 applies and the remuneration payable has been determined by the Department under Article 5(1).

(2) A representative who is dissatisfied with the decision of the taxing master on an appeal under Article 14 may apply to the taxing master to certify a point of principle of general importance; provided that, if the taxing master refuses such application, the representative may renew the application before a judge of the High Court.

(3) Subject to Article 17, an application under paragraph (2) shall be made within 21 days of receiving notification of the taxing master's decision under Article 14(14).

(4) Where the taxing master or judge certifies a point of principle of general importance, the representative may appeal to the High Court against the decision of the taxing master on an appeal under Article 14, and the Department shall be a respondent to such an appeal.

(5) Subject to Article 17, an appeal under paragraph (4) shall be instituted within 21 days of receiving the certificate under paragraph (2).

(6) Where the Department is dissatisfied with the decision of the taxing master on an appeal under Article 14, it may, if no appeal has been made by the representative under paragraph (4), appeal to the High Court against that decision, and the representative shall be a respondent to the appeal.

(7) Subject to Article 17, an appeal under paragraph (6) shall be instituted within 21 days of receiving notification of the taxing master's decision under Article 14(14).

(8) The decision of the High Court on an appeal under paragraphs (2), (4) or (6) shall be final.

(9) The judge shall have the same powers as the Department and the taxing master under this Order and may reverse, affirm or amend the decision appealed against or make such other order as the judge thinks fit.

Restriction on payment

16. Where a certificate has been granted in respect of any proceedings to which this Order applies, a representative shall not receive or be a party to the making of any payment for work done in connection with those proceedings except such payments as may be made—

(a) by the Department; or

(b) in respect of any expenses or fees incurred in preparing, obtaining or considering any report, opinion or further evidence, whether provided by an expert witness or otherwise, where an application under the General Regulations for an authority to incur such expenses or fees has been refused by the Director.

Time limits

17.—(1) Subject to paragraph (2), the time limit within which any act is required or authorised to be done under this Order may, for good reason, be extended—

(a) in the case of acts required or authorised to be done under Article 14 or 15, by the taxing master or the High Court as the case may be; and

(b) in the case of acts required or authorised to be done by a representative under any other Article, by the Department.

(2) Where a representative without good reason has failed (or, if an extension were not granted, would fail) to comply with a time limit, the Department, the taxing master or the High Court, as the case may be, may, in exceptional circumstances, extend the time limit and shall consider whether it is reasonable in the circumstances to reduce the remuneration, provided that the remuneration shall not be reduced unless the representative has been permitted a reasonable opportunity to show cause orally or in writing why the remuneration should not be reduced.

(3) In carrying out the functions described in this Article, the Department, the taxing master or the High Court, as the case may be, shall have regard to any guidance given by the Department about the carrying out of those functions.

(4) A representative may appeal to the taxing master against a decision made under this Article by the Department and such an appeal shall be instituted within 21 days of receiving notification of the decision by giving notice in writing to the taxing master specifying the grounds of appeal.

Review

18.—(1) The Department shall keep the general operation of this Order under review to ensure that it is consistent with the requirements of Article 47 of the 2003 Order.

(2) Without prejudice to paragraph (1), the Department shall conduct a formal review of the levels of the prescribed remuneration under this Order at least once in every review period.

(3) Where the Department has conducted a review under this Article, it shall publish the result of the review—

- (a) as soon as is reasonably practicable;
- (b) in such form as it considers appropriate; and
- (c) together with any proposals it may have with respect to the matters reviewed.

(4) When conducting a review under this Article, the Department shall have regard, among the matters which are relevant, to—

- (a) any representations made by the Lord Chief Justice, the Attorney General, the Law Society of Northern Ireland, the General Council of the Bar of Northern Ireland and the Director; and
- (b) any other representations which it considers to be relevant.

(5) In paragraph (2) “review period” means the period of three years beginning with the commencement of this Order and each subsequent period of three years.

Interim fees

19.—(1) This Article applies where it appears to the Department that a certificate has been granted, or may be granted, under the General Regulations for certain proceedings falling within civil legal services and the provisions of this Order do not include a fee for those proceedings.

(2) The Department must set an interim fee for those services pending a fee (“the prescribed fee”) being prescribed by the Department under this Order.

(3) If the prescribed fee exceeds the interim fee, the Department shall pay the outstanding balance to any representative who was paid the interim fee set under paragraph (2).

(4) If the prescribed fee is less than the interim fee, the Department shall recover the overpayment from the representative under this Article.

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



David Ford
Minister of Justice