
STATUTORY INSTRUMENTS

2000 No. 516

The Community Legal Service (Financial) Regulations 2000

PART III—

THE STATUTORY CHARGE

Calculation of the statutory charge

42. In regulations 43 to 53:

“relevant dispute” means the dispute in connection with which funded services are provided;

“relevant proceedings” means proceedings in connection with which funded services are provided;

“recovered”, in relation to property or money, means property or money recovered or preserved by a client, whether for himself or for any other person;

“statutory charge” means the charge created by section 10(7) of the Act in respect of the amount defined in regulation 43; and

“success fee” is defined in accordance with section 58 of the Courts and Legal Services Act 1990⁽¹⁾.

43.—(1) Subject to paragraphs (3) and (4), where any money or property is recovered for a client in a relevant dispute or proceedings, the amount of the statutory charge shall be the aggregate of the sums referred to in section 10(7)(a) and (b) of the Act.

(2) For the purposes of this regulation:

(a) the sum referred to in section 10(7)(a) shall be defined in accordance with regulation 40(2) to (4), less any contribution paid by the client;

(b) the sum referred to in section 10(7)(b) shall include:

(i) any interest payable under regulation 52; and

(ii) any sum which the client has agreed to pay only in specific circumstances under section 10(2)(c) of the Act, including that proportion of any success fee payable by a client in receipt of Litigation Support which he has agreed should be payable to the Commission under the terms of a conditional fee agreement.

(3) Subject to paragraph (4), the amount of the charge created by section 10(7) of the Act shall not include sums expended by the Commission in funding any of the following services:

(a) Legal Help;

(b) Help at Court;

(c) Family Mediation; or

(d) Help with Mediation.

⁽¹⁾ Section 58 is substituted by section 27 of the Access of Justice Act 1999.

(4) Paragraph (3)(a) and (b) does not apply where the funded services are given in relation to family, clinical negligence or personal injury proceedings or a dispute which may give rise to such proceedings.

Exemptions from the statutory charge

44.—(1) The charge created by section 10(7) of the Act shall not apply to any of the following:

- (a) any periodical payment of maintenance;
- (b) other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, the client’s clothes or household furniture or the tools or implements of his trade;
- (c) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependants) Act 1975 or Part IV of the Family Law Act 1996;
- (d) the first £2,500 of any money or the value of any property recovered by virtue of an order made or deemed to be made under any of the enactments specified in paragraph (2), or an agreement which has the same effect as such an order;
- (e) one-half of any redundancy payment within the meaning of Part XI of the Employment Rights Act 1996(2) recovered by the client;
- (f) any payment of money made in accordance with an order made by the Employment Appeal Tribunal (excluding an order for costs);
- (g) where the statutory charge is in favour of the supplier, the client’s main or only dwelling; or
- (h) any sum, payment or benefit which, by virtue of any provision of or made under an Act of Parliament, cannot be assigned or charged.

(2) The enactments referred to in paragraph (1)(d) are:

- (a) section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or (f), 31(7A) or (7B), or 35 of the Matrimonial Causes Act 1973(3);
- (b) section 2 or 6 of the Inheritance (Provision for Family and Dependants) Act 1975(4);
- (c) section 17 of the Married Women’s Property Act 1882(5);
- (d) section 2(1)(b) or (d), 6(1) or (5), or 20(2) of the Domestic Proceedings and Magistrates’ Courts Act 1978(6); and
- (e) Schedule 1 to the Children Act 1989(7);

(4) In paragraph (1)(a), “maintenance” means money or money’s worth paid towards the support of a former partner, child or any other person for whose support the payer has previously been responsible or has made payments.

45.—(1) Subject to paragraph (2), the statutory charge shall be in favour of the Commission.

(2) Subject to paragraph (3), where it relates to the cost of Legal Help or Help at Court, the statutory charge shall be in favour of the supplier.

(2) 1996 c. 18; amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 11(3) and Schedule 2.

(3) 1973 c. 18.

(4) 1975 c. 63.

(5) 1882 c. 75; amended by the Statute Law (Repeals) Act 1969 (c. 52), Schedule, Part III and the Matrimonial and Family Proceedings Act 1984 (c. 42), section 43.

(6) 1978 c. 22; amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 10.

(7) 1989 c. 41; amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 16 paragraph 10(2); the Maintenance Enforcement Act 1991 (c. 17), section 6; the Child Support Act 1991 (c. 48), section 58(14); the Justices of the Peace Act 1997 (c. 25), Schedule 5 paragraph 27; S.I. 1993/623; and 1994/731.

(3) Where Legal Help or Help at Court has been provided, the statutory charge shall be in favour of the Commission if it attaches to money or property recovered after a certificate has been granted in relation to the same matter.

Supplier's authority to waive statutory charge

46.—(1) This regulation applies only where the statutory charge is in favour of the supplier.

(2) The Commission may grant a supplier authority, either in respect of individual cases or generally, to waive either all or part of the amount of the statutory charge where its enforcement would cause grave hardship or distress to the client or would be unreasonably difficult because of the nature of the property.

Waiver of charge in case of wider public interest

47.—(1) For the purposes of this regulation, “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).

(2) Paragraph (3) applies where:

- (a) the Commission funds Legal Representation or Support Funding in proceedings which it considers have a significant wider public interest; and
- (b) the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation.

(3) Where this paragraph applies, the Commission may, if it considers it equitable to do so, waive some or all of the amount of the statutory charge.

Application of regulations 49 to 53

48. Regulations 49 to 53 apply only in relation to a statutory charge in favour of the Commission.

Operation of statutory charge where certificate revoked or discharged

49.—(1) Where a certificate has been revoked or discharged, section 10(7) of the Act shall apply to any money or property recovered as a result of the client continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings.

(2) In paragraph (1), “client” means the person whose certificate has been revoked or discharged, or, as the case may be, his personal representatives, trustee in bankruptcy or the Official Receiver.

Operation of statutory charge on money in court

50.—(1) Paragraph (2) applies where any money recovered by a client in any proceedings is ordered to be paid into or remain in court and invested for the benefit of the client.

(2) Where this paragraph applies, the statutory charge shall attach only to such part of the money as, in the opinion of the Commission, will be sufficient to safeguard the interests of the Commission, and the Commission shall notify the court in writing of the amount so attached.

Enforcement of statutory charge

51. Subject to regulation 52, the Commission may enforce the statutory charge in any manner which would be available to a chargee in respect of a charge given between parties.

52.—(1) The Commission may postpone the enforcement of the statutory charge where (but only where):

- (a) by order of the court or agreement it relates to property to be used as a home by the client or his dependants, or, where the relevant proceedings were family proceedings, to money to pay for such a home;
- (b) the Commission is satisfied that the property in question will provide such security for the statutory charge as it considers appropriate; and
- (c) as soon as it is possible to do so, the Commission registers a charge under the Land Registration Act 1925⁽⁸⁾ to secure the amount in regulation 43 or, as appropriate, takes equivalent steps (whether in England and Wales or in any other jurisdiction) to protect its interest in the property.

(2) Where the client wishes to purchase a property in substitution for the property over which a charge is registered under paragraph (1)(c), the Commission may release the charge if the conditions in paragraph (1)(b) and (c) are satisfied.

(3) Where the enforcement of the statutory charge is postponed, interest shall accrue for the benefit of the Commission in accordance with regulation 53.

(4) Without prejudice to the provisions of the Land Registration Act 1925 and the Land Charges Act 1972⁽⁹⁾, all conveyances and acts done to defeat, or operating to defeat, any charge shall, except in the case of a bona fide purchaser for value without notice, be void as against the Commission.

Payment and recovery of interest

53.—(1) Where interest is payable by the client under regulation 52, that interest shall continue to accrue until the amount of the statutory charge is paid.

(2) The client may make interim payments of interest or capital in respect of the outstanding amount of the statutory charge, but no interim payment shall be used to reduce the capital outstanding while any interest remains outstanding.

(3) Where interest is payable by the client under regulation 52:

- (a) it shall run from the date when the charge is first registered;
- (b) it shall accrue at the rate of 8% per annum; and
- (c) the capital on which it is calculated shall be either:
 - (i) the amount of the statutory charge outstanding from time to time, less any interest accrued by virtue of regulation 52(3), or
 - (ii) where the value of the client's interest in the property at the time it was recovered was less than the amount of the statutory charge, such lower sum as the Commission considers equitable in the circumstances.

⁽⁸⁾ 1925 c. 21.

⁽⁹⁾ 1972 c. 61.