

Draft Regulations laid before the Assembly under Article 46(5) of the Access to Justice (Northern Ireland) Order 2003, for approval

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2015 No.

ACCESS TO JUSTICE

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

Made - - - - 2015
Coming into operation April 2015

The Department of Justice makes the following Regulations in exercise of the powers conferred by Article 20A of the Access to Justice (Northern Ireland) Order 2003⁽¹⁾.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015 and shall come into operation on... April 2015.

Interpretation

2. In these Regulations, unless the context otherwise requires—
- “appeal panel” means an appeal panel constituted under Part 3;
 - “appellant” means a person who brings an appeal to an appeal panel under Part 2;
 - “applicant” means an individual who applies for civil legal services;
 - “civil legal services” has the meaning given by Article 10 of the Order;
 - “decision notice” has the meaning given by regulation 28;
 - “the Department” means the Department of Justice;

(1) [S.I. 2003/435 \(N.I. 10\)](#). Article 20A was inserted by section 6 of, and paragraph 6(22) of Schedule 2 to, the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014

“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);

“list” means a list of persons appointed by the Department under regulation 12 or 13;

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

“other member” means a person appointed by the Department to the list of persons to act as other members of the appeal panels under regulation 13;

“out of jurisdiction appeal” means an appeal brought against a decision prescribed in regulation 5 and the Schedule as a decision against which no appeal lies;

“presiding member” means a person appointed by the Department to the list of persons to act as presiding members of the appeal panels under regulation 12;

“relevant decision” means a Director’s decision as referred to in regulation 4.

Service of notices or documents

3.—(1) Any notice or document that is required to be sent to an appellant or applicant, as the case may be, under these Regulations may be sent—

(a) by post to the postal address given by the appellant or applicant as his address for service; or

(b) by electronic mail.

(2) Any document that is required to be sent to the Director under these Regulations may be sent—

(a) by post or by personal delivery to an address specified by the Director; or

(b) by electronic mail.

PART 2

RIGHTS OF APPEAL AND PROCEDURE FOR BRINGING APPEALS

Decisions against which an appeal lies

4.—(1) This regulation applies to decisions made, by or on behalf of the Director, under Article 14(2)(a)(i) of the Order—

(a) as to whether to fund, or continue to fund, civil legal services for an individual by way of representation;

(b) as to the level of representation authorised for that individual.

(2) Where an applicant is dissatisfied with the Director’s decision, the applicant may appeal that decision to an appeal panel.

Decisions against which no appeal lies

5.—(1) No appeal lies to an appeal panel against a decision, made by or on behalf of the Director, set out in the Schedule to these Regulations.

(2) In paragraph (1) and the Schedule, “decision” includes determinations embodied in or necessary to a decision.

(3) An appeal brought against a decision specified in paragraph (1) may be struck out in accordance with regulation 22.

Notice of decisions against which an appeal lies

6.—(1) A person with a right of appeal under these Regulations against any decision of the Director shall be given—

- (a) written notice of the decision against which the appeal lies, together with a written statement of the reasons for that decision; and
- (b) written notice of his right of appeal against that decision.

Correction of accidental errors in adjudication decisions

7.—(1) Accidental errors in a relevant decision, or in the record of such a decision, may be corrected by the Director at any time.

(2) A correction made to a relevant decision, or to the record of such a decision, shall be deemed to be part of that decision, or of that record, and the Director shall give written notice of the correction to the applicant as soon as practicable.

(3) In calculating the time within which an appeal may be brought under regulation 8(1), there shall be disregarded any day falling before the date on which notice was given of a correction of the decision, or to the record thereof, under paragraph (2).

Time within which an appeal is to be brought

8.—(1) Subject to paragraphs (2) and (3), an appeal which lies from a relevant decision must be received by the Director within one month of the date of notification of that decision.

(2) Where a dispute arises as to whether an appeal was brought within the time limit prescribed in this regulation, the dispute shall be referred to, and determined by, a presiding member selected for that purpose by the Director.

(3) The time limit prescribed in this regulation for bringing an appeal may be extended in accordance with regulation 9.

Late appeals

9.—(1) Subject to paragraphs (2) to (10), the time limit prescribed in regulation 8 may be extended only if the conditions set out in this regulation are satisfied.

(2) No appeal shall be brought more than three months after the expiration of the last day for appealing under regulation 8.

(3) An application for an extension of time within which an appeal may be brought (“an application”) shall be determined by a presiding member, selected for that purpose by the Director, except that where the Director is satisfied the conditions in paragraphs (5)(b) to (7) are satisfied the Director may grant the application.

(4) An application shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (7).

(5) An application for an extension of time shall not be granted unless—

- (a) the presiding member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; and
- (b) the presiding member or, as the case may be, the Director is satisfied that it is in the interests of justice for the application to be granted.

(6) For the purposes of paragraph (5)(b), it is not in the interests of justice to grant the application unless the presiding member or, as the case may be, the Director is satisfied that—

- (a) any of the special circumstances specified in paragraph (7) are relevant to the application, or
- (b) some other special circumstances exist which are exceptional and relevant to the application,

and, as a result of those special circumstances, it was not practicable for the appeal to be made within the time limit prescribed in regulation 8.

(7) For the purposes of paragraph (6)(a), the special circumstances are—

- (a) the applicant has suffered serious illness; or
- (b) a partner or dependant of the applicant has died or suffered serious illness.

(8) An application under this regulation which has been refused may not be renewed.

(9) The presiding member who determines an application shall record a summary of his reasons in such written form as has been approved by the Director.

(10) As soon as practicable after the decision is made, a copy of the decision shall be sent to the applicant.

Making of appeals and applications

10.—(1) An appeal or application for an extension of time must—

- (a) be in writing on a form approved for the purpose by the Director or in such other format as the Director may accept;
- (b) be signed by the appellant or applicant, as the case may be, or his solicitor;
- (c) be sent, in accordance with regulation 3(2), to the Director;
- (d) contain particulars of the grounds on which it is made, together with the written representations relied upon by the appellant or applicant, as the case may be.

(2) In respect of an appeal, subject to paragraph (3), the appellant's written representations must fully address the reasons given by the Director for the decision which is the subject of the appeal.

(3) In any appeal brought under these Regulations, an appellant may not introduce or rely on any documentary material which the appellant did not provide to the Director at the time when the relevant decision was made, unless the Director is satisfied that the appellant could not with reasonable diligence have obtained that material prior to bringing the appeal.

(4) A form which is not completed in accordance with the instructions on the form does not satisfy the requirements of paragraphs (1) and (2), and may be returned by the Director to the appellant or applicant, as the case may be, for completion in accordance with those instructions.

(5) Where a form is returned to an appellant or applicant, as the case may be, in accordance with paragraph (4), it may be completed and resubmitted by the appellant or applicant provided it is received by the Director within the time limit prescribed in regulation 8.

(6) Upon receipt of a form completed in accordance with this regulation, if the Director considers it appropriate to do so, having regard to the written representations made by the appellant, the Director may allow the appeal without it being referred to an appeal panel.

PART 3

CONSTITUTION OF APPEAL PANELS

Persons appointed to the appeal panels

11. For the purposes of Article 20A of the Order, the appeal panels shall consist of presiding members and other members appointed by the Department in accordance with this Part.

Presiding members of appeal panels

12.—(1) Subject to paragraph (2) and regulation 19(1) and (2), the Department shall appoint a list of persons to act as presiding members of the appeal panels.

(2) A person may be appointed as a presiding member only if that person is a barrister or a solicitor of not less than seven years' standing.

Other members of appeal panels

13.—(1) Subject to paragraph (2) and regulation 19(1) and (2), the Department shall appoint a list of persons to act as other members of the appeal panels.

(2) In appointing persons under paragraph (1) the Department shall have regard to the desirability of securing that the list of such persons includes members who (between them) have experience in or knowledge of—

- (a) the provision of services which the Department can fund as civil legal services,
- (b) the work of the courts and tribunals, and
- (c) the provision of expert services or testimony in cases which can be funded by way of civil legal services.

Tenure of appeal panel members

14.—(1) Subject to paragraphs (3) and (4), any person appointed to a list under regulation 12 or 13 shall hold office in accordance with the terms of his appointment.

(2) But a person shall not be appointed by the Department for a period of more than five years.

- (a) (3) (a) A person appointed to a list under regulation 12 or 13 may resign by giving notice in writing to the Department.
- (b) A person who ceases to be a member of a list shall be eligible for re-appointment.

(4) The Department may terminate the appointment of a person to a list if satisfied that—

- (a) he has become bankrupt or made a composition or arrangement with his creditors,
- (b) he is unable to carry out his duties as a member of an appeal panel by reason of illness,
- (c) he has been convicted of a criminal offence,
- (d) he has been absent from meetings of an appeal panel for a period longer than six consecutive months without the permission of the Department, or
- (e) he is otherwise unable or unfit to discharge the functions of an appeal panel member.

Composition of appeal panels

15. Subject to regulations 16, 17, 18 and 19(3), an appeal panel shall consist of—

- (a) a presiding member, selected by the Director in accordance with regulation 16 from the list of persons appointed by the Department under regulation 12; and

- (b) two other members, selected by the Director in accordance with regulation 16 from the list of persons appointed by the Department under regulation 13.

Selection of members of an appeal panel

16. In selecting the members of an appeal panel under regulation 15, the Director shall have regard to the desirability of securing that the panel members (between them) have sufficient experience in or knowledge of the types of cases which are liable to be brought by way of appeals under Part 2.

Urgent appeals

17.—(1) This regulation applies where an appeal has been brought in connection with proceedings (or proposed proceedings) which are to be heard imminently, and the Director considers that it is not reasonably practicable to convene a full appeal panel in accordance with regulation 15 to determine the appeal.

(2) The Director may arrange for that appeal to be considered by a presiding member selected for that purpose by the Director from the list of persons appointed under regulation 12, and that presiding member sitting alone shall have the powers of an appeal panel to determine the appeal.

Unavailability of panel member

18.—(1) Where one of the persons selected for an appeal panel in accordance with this Part is not available, the panel may consist of the two other persons selected and those other persons may discharge the business before the panel where they are in agreement, but in the absence of agreement the matter in question shall be referred to a panel of three persons.

(2) Where the presiding member selected for an appeal panel in accordance with this Part is not available, the Director shall either—

- (a) select one of the other panel members to be the acting presiding member for that panel, provided that panel member is either a solicitor or a barrister; or
- (b) select another presiding member from the list of persons appointed by the Department under regulation 12 to be the acting presiding member for that panel.

Disqualification for membership of an appeal panel – generally

19.—(1) A solicitor who is for the time being prohibited from providing civil legal services by an order under Article 51B(1) or (3) of the Solicitors (Northern Ireland) Order 1976⁽³⁾ shall be disqualified for membership of an appeal panel.

(2) A barrister who is for the time being prohibited from providing civil legal services by any determination of the General Council of the Bar of Northern Ireland, or by any determination of any such committee as may be established by that Council to determine charges preferred against barristers, shall be disqualified for membership of an appeal panel.

(3) A solicitor who is under investigation by the Law Society, or a barrister who is under investigation by the General Council of the Bar of Northern Ireland, for alleged professional misconduct shall notify the Director forthwith and shall be disqualified for membership of an appeal panel pending the outcome of that investigation.

(3) S.I. 1976/582 (N.I. 12), as amended by S.I. 1989/1343 (N.I. 14)

Disqualification for membership of an appeal panel – individual appeals

20.—(1) Without prejudice to regulation 19, a person shall be disqualified for membership of an appeal panel in relation to its determination of any individual appeal if that person (or, in the case of a solicitor, that person’s firm) has at any time advised or prepared a report in respect of—

- (a) the appellant;
- (b) any other person who is (or is liable to be) a party to the relevant proceedings; or
- (c) any other person who is liable to be called as a witness in those proceedings.

(2) Where the subject-matter of an appeal relates to proceedings (or proposed proceedings) which are to challenge a decision of an appeal panel made under these Regulations, a person who was a member of that panel shall be disqualified for membership of any panel which may be convened to determine an appeal brought in relation to an application for funding in respect of those proceedings (or proposed proceedings).

Secretary to the appeal panels

21. The Director shall assign a member of staff as secretary to the appeal panels and the person so assigned shall be responsible for summoning the persons selected by the Director to constitute an appeal panel in accordance with regulations 15 to 17.

PART 4

PROCEDURE OF APPEAL PANELS

Appeals which may be struck out

22.—(1) Subject to paragraphs (2) and (3), an appeal may be struck out by the secretary to the appeal panels where—

- (a) it is an out of jurisdiction appeal and the appellant has been notified by the Director that an appeal brought against such a decision may be struck out; or
- (b) it is not brought within the time limit prescribed in regulation 8.

(2) Where the secretary to the appeal panels strikes out an appeal, he shall notify the appellant that the appeal has been struck out and of the procedure for reinstatement of the appeal as specified in regulation 23.

(3) The secretary to the appeal panels may refer any matter for determination under this regulation to a presiding member, selected for that purpose by the Director, for decision by that presiding member rather than the secretary.

Reinstatement of struck out appeals

23. A presiding member, selected for that purpose by the Director, may reinstate an appeal which has been struck out in accordance with regulation 22 where—

- (a) the appellant has made representations or, as the case may be, further representations in support of his appeal with reasons why he considers that his appeal should not have been struck out by the secretary to the appeal panels, in writing within one month of the order to strike out the appeal having issued, and the presiding member is satisfied in the light of those representations that there are reasonable grounds for reinstating the appeal; or
- (b) the presiding member is satisfied that the appeal is not an appeal which may be struck out under regulation 22.

Consideration and determination of appeals

24.—(1) All matters relating to the procedure of an appeal panel shall, subject to regulation 10(3) and the following provisions of this Part, be such as the presiding member shall determine.

(2) In this Part “the presiding member” includes an acting presiding member as referred to in regulation 18(2).

Panels to sit in private

25.—(1) Subject to paragraphs (2) and (3), appeal panels shall sit in private.

(2) Where it is necessary or expedient for the efficient and effective working of the panels, the secretary to the appeal panels may also be present during the hearing of any appeal.

(3) Where oral representations are being allowed under regulation 26, the appellant and his representative shall also be entitled to be present during the hearing of the appeal.

Determination without oral hearing

26.—(1) An appeal panel shall take its decision on an appeal without hearing oral representations, except as provided for in paragraphs (2) and (3).

(2) The presiding member shall direct an oral hearing if, and only if, he considers it necessary to receive oral representations in accordance with paragraph (3).

(3) Before allowing an oral hearing of an appeal under paragraph (2), the presiding member must be satisfied that the case which is the subject-matter of the appeal—

- (a) would establish or uphold and develop new and important legal principles;
- (b) would have an unprecedented impact in its consequences for the appellant and be of direct benefit to society at large; or
- (c) is, in terms of its complexity and expected duration, distinct from other cases.

(4) In this regulation, “decision” includes determinations embodied in or necessary to a decision.

Powers of an appeal panel

27.—(1) An appeal panel shall have the same powers as the Director under Article 14(2)(a)(i) of the Order and, without prejudice to the generality of the foregoing, may—

- (a) dismiss the appeal;
- (b) direct the Director to issue or amend a certificate subject to such terms and conditions as the panel think fit; or
- (c) refer the matter or any part of it back to the Director for his determination or report.

(2) It shall be the duty of the Director to have regard to all such decisions and to obey all such directions, if any, as may be given by the appeal panel pursuant to paragraph (1).

(3) Subject to regulation 29, the decision of an appeal panel shall be final.

Decisions of appeal panels

28.—(1) Every decision of an appeal panel (including any decision by the presiding member to allow oral representations) shall be recorded by the presiding member, together with the reasons for that decision, and shall be referred to as a decision notice.

(2) The decision notice specified in paragraph (1) shall be in such written form as shall have been approved by the Director and shall be signed by the presiding member.

(3) As soon as practicable after an appeal has been decided by an appeal panel, a copy of the decision notice shall be sent to the appellant and given to the Director.

Correction of accidental errors in appeal decisions

29.—(1) The secretary to the appeal panels or the presiding member may at any time correct accidental errors in the notice of any decision of an appeal panel.

(2) A correction to a decision notice shall be deemed to be part of the decision notice, and written notice of it shall be sent to the appellant and given to the Director as soon as practicable.

(3) There shall be no appeal against a correction made under this regulation or a refusal to make such a correction.

Sealed with the Official Seal of the Department of Justice on 2015



Minister of Justice

SCHEDULE

Regulation 5

DECISIONS AGAINST WHICH NO APPEAL LIES

1. A decision on an application for an extension of funding by way of advice and assistance under the Civil Legal Services (Procedure) Regulations (Northern Ireland) 2015.
2. A decision to refuse an application for funding for emergency representation under the Civil Legal Services (Procedure) Regulations (Northern Ireland) 2015.
3. A decision on the application of the financial eligibility tests prescribed under the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015, including the assessment of any contributions payable by the applicant and the exercise of any discretion granted under those Regulations in respect of the application of the financial eligibility tests.
4. A decision on an application for authorisation to instruct an expert witness or to obtain an expert report under the Civil Legal Services (Procedure) Regulations (Northern Ireland) 2015.
5. A decision not to make an exceptional case determination under Article 12A(2)(b) of the Order, or a decision to withdraw such a determination.
6. A decision under Article 12A(7) of the Order to make an exceptional case determination and to apply (with or without modification) any of the provisions in Articles 14 to 20 of the Order to any civil legal services funded.
7. A decision not to make a wider public interest determination under Article 12A(4)(b) of the Order, or a decision to withdraw such a determination.
8. A decision under Article 12A(7) of the Order to make a wider public interest determination and to apply (with or without modification) any of the provisions in Articles 14 to 20 of the Order to any civil legal services funded.
9. A decision on the application or enforcement of the statutory charge under the Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015.
10. Subject to regulation 4, any other decision taken in the exercise of functions conferred or imposed on the Director by or under Articles 12A to 20 of the Order.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the constitution and procedure of appeal panels, and for appeals to such a panel against prescribed decisions. A person applying for funding under the Access to Justice (Northern Ireland) Order 2003 can appeal decisions made by the Director of Legal Aid Casework as to whether to fund, or continue to fund, representation by way of civil legal services under that Order. A person applying for funding can also appeal decisions as to the level of representation authorised.

Part 1 contains provisions relating to the citation, commencement and interpretation of the Regulations, and for the service of notices or documents.

Part 2 concerns rights of appeal and the procedure for bringing appeals. It provides for decisions where there is a right of appeal, and for those decisions where there is no right of appeal. It also provides procedural rules for bringing appeals.

Part 3 provides for the constitution of appeal panels. It provides for the Department of Justice to appoint persons to act as presiding members and other members of the appeal panels. It also provides for the composition of an appeal panel, with the Director of Legal Aid Casework to select a presiding member and two other members. Provision is also made for disqualification for membership of an appeal panel.

Part 4 of the Regulations provides for the procedure of appeal panels.

These Regulations come into operation on ... April 2015.