

Statutory Document No. XX/20XX



Legal Aid Act 1986

LEGAL AID (FINANCIAL RESOURCES)(AMENDMENT) REGULATIONS 2014

Approved by Tynwald:

Coming into Operation:

2014

The Legal Aid Committee makes the following Regulations under sections 3, 4, 16 and 27 of the Legal Aid Act 1986.

1 Title

These Regulations are the Legal Aid (Financial Resources)(Amendment) Regulations 2014.

2 Commencement

- (1) Subject to paragraph (2), these Regulations come into operation on
- (2) Nothing in these Regulations applies to legal aid provided pursuant to an application made before the coming into operation of these Regulations.

3 Charge on property recovered or preserved

(1) The Legal Aid (Financial Resources) Regulations 1997¹ are amended as follows.

(2) After regulation 9 insert —

"9A. Charge on property recovered or preserved

- (1) The sums specified in paragraph (2) shall be a first charge in favour of the Treasury on any property recovered or preserved by an assisted person (whether for that or any other person) in any relevant proceedings or in any compromise or settlement of any relevant dispute.
- (2) The sums referred to in paragraph (1) are —
 - (a) the amount of funding of the legal aid provided; and
 - (b) any interest payable under paragraph 8(3) of Schedule 1A.

¹ SD 101/97

(3) Schedule 1A has effect with respect to the charge created by paragraph (1) and the calculation of the sums referred to in paragraph (2)."

(3) After Schedule 1 insert the provisions set out in the Schedule.

4 Duty of advocate

In regulation 15 of the Legal Aid (General) Regulations 1997², after paragraph (11) insert —

"(12) Where in the course or at the conclusion of a relevant dispute or relevant proceedings any property is recovered or preserved by the assisted person, it shall be the duty of the advocate forthwith to notify the Treasury in writing of the nature, amount and location of the property.

In this paragraph "property", "recovered", "relevant dispute" and "relevant proceedings" have the same meanings as in Schedule 1A to the Legal Aid (Financial Resources) Regulations 1997."

Regulation 3(3).

SCHEDULE

"SCHEDULE 1A

CHARGE ON PROPERTY RECOVERED OR PRESERVED

1 Interpretation

In regulation 9A and this Schedule —

"assisted person" and "property" have the same meanings as in section 4 of the Legal Aid Act 1986;

"charge" means the charge created by regulation 9A in respect of the amount defined in paragraph 2;

"recovered", in relation to property, means property recovered or preserved by the assisted person, whether for that or any other person;

"relevant dispute" means the dispute in connection with which legal aid is provided;

"relevant proceedings" means proceedings in connection with which legal aid is provided;

² SD 0144/97

references to the funding of legal aid and to property recovered or preserved in proceedings shall be construed in accordance with section 4 of the Legal Aid Act 1986.

2 Calculation of the charge

Where any property is recovered for an assisted person in a relevant dispute or proceedings, the amount of the charge shall be the aggregate of the sums referred to in regulation 9A(1)(a) and (b).

3 Exemptions from the charge

- (1) The charge 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 assisted person's clothes or household furniture or the tools or implements of his or her trade;
 - (c) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependents) Act 1982 or Part 5 of the Matrimonial Proceedings Act 2003;
 - (d) the first [£2,500] of the value of any property recovered by virtue of an order described 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 the Redundancy Payments Act 1990) recovered by the assisted person;
 - (f) the assisted person's main or only dwelling; or
 - (g) any sum, payment or benefit which, by virtue of any statutory provision, cannot be assigned or charged.
- (2) The orders referred to in paragraph (1)(d) are —
 - (a) an order for payment of a lump sum made under section 28(1) or (2), 38(3), 60(1), 64(1) or (5) or 69(2) of the Matrimonial Proceedings Act 2003;
 - (b) a property adjustment order made under section 29 of that Act;
 - (c) an order made under section 50 of that Act altering a maintenance agreement;
 - (d) an order under section 128 or 129 (questions as to property) of that Act;

- (e) an order for payment of a lump sum under Schedule 1 to the Children and Young Persons Act 2001;
 - (f) an order under section 2 or 6 of the Inheritance (Provision for Family and Dependents) Act 1982.
- (4) In paragraph (1)(a), "maintenance" means money or money's worth paid towards the support of —
- (a) a spouse or civil partner, former spouse or civil partner, former partner, child or child of the family of the payer, or
 - (b) any other person for whose support the payer has previously been responsible or has made payments.

4 Waiver of charge in case of wider public interest

- (1) For the purposes of this paragraph "wider public interest" means the potential of proceedings to produce real benefits for individuals other than the assisted person (other than any general benefits which normally flow from proceedings of the type in question).
- (2) This paragraph applies where —
- (a) legal aid is granted for proceedings which the Legal Aid Committee considers have a significant wider public interest; and
 - (b) the Treasury 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 Treasury may, if it considers it equitable to do so, waive some or all of the amount of the charge.

5 Operation of charge where certificate revoked or discharged

Where a certificate has been revoked or discharged, regulation 9A shall apply to any property recovered as a result of the assisted person, or his or her personal representatives or trustee in bankruptcy, continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings.

6 Money in court

- (1) This paragraph applies where any money recovered by an assisted person in any proceedings is ordered to be paid into or remain in court and invested for the benefit of the assisted person.

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

7 Enforcement of charge

Subject to paragraph 8, the Treasury may enforce the charge in any manner which would be available to a chargee in respect of a charge given between parties.

8 Postponement of enforcement

- (1) The Treasury may postpone the enforcement of the charge where (but only where) —
 - (a) it appears to the Treasury that it would be unreasonable for the assisted person to repay the amount of the charge;
 - (b) by order of the court or agreement it relates to property to be used as a home by the assisted person or his or her dependants, or, where the relevant proceedings were family proceedings (within the meaning of the Matrimonial Proceedings Act 2003), to money to pay for such a home;
 - (c) the Treasury is satisfied that the property in question will provide such security for the charge as it considers appropriate; and
 - (d) as soon as it is possible to do so, the Commission registers a charge under the Land Registration Act 1982 to secure the amount in paragraph 2 or, as appropriate, takes equivalent steps to protect its interest in the property.
- (2) Where the assisted person wishes to purchase a property in substitution for the property over which a charge is registered under sub-paragraph (1)(c), the Treasury may release the charge if the conditions in sub-paragraph (1)(b) and (c) are satisfied.
- (3) Where the enforcement of the charge is postponed, interest shall accrue for the benefit of the Treasury in accordance with paragraph 10.
- (4) Without prejudice to the provisions of the Registration of Deeds Act 1961 and the Land Registration Act 1982, 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 Treasury.

9 Review of postponement of enforcement

- (1) The Treasury may review any decision to postpone enforcement of the charge at any time.
- (2) If the Treasury reviews such a decision, it shall either —
 - (a) where the conditions in paragraph 8(1)(a) to (d) are satisfied, continue to postpone enforcement of the charge, in which case paragraph 8(3) shall also continue to apply, or
 - (b) otherwise, proceed to enforce the charge; or
- (3) If the Treasury continues to postpone enforcement under sub-paragraph (2)(a) it may do so on such terms or conditions as to repayment of the amount of the charge by way of interim payments of either capital or interest or both, or otherwise, as appear to the Treasury to be appropriate.

10 Payment and recovery of interest

- (1) Where interest is payable by the assisted person under paragraph 8, that interest shall continue to accrue until the amount of the charge is paid.
- (2) The assisted person may make interim payments of interest or capital in respect of the outstanding amount of the 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 assisted person under paragraph 8 —
 - (a) it shall run from the date when the charge is first registered or, as appropriate, equivalent steps are taken to protect the Treasury's interest in the property;
 - (b) the applicable rate shall be 1 per cent. above the Bank of England base rate current on 1st April 2013;
 - (c) subject to (d) below, the applicable rate shall be varied on 1st April of each subsequent year so that it remains at the rate of 1 per cent. above the Bank of England base rate then current;
 - (d) the variation set out in (c) above shall take place only if the application of the new base rate has the effect of varying the base rate previously applicable by 1 per cent. or more; and
 - (e) the capital on which it is calculated shall be the lesser of —
 - (i) the amount of the statutory charge outstanding from time to time, less any interest accrued by virtue of paragraph 8(3), or

- (ii) the value of the property recovered at the time of such recovery, less the amount of any exemption under paragraph 3(1)(d) which would apply were the amount of the charge to be paid."

MADE

2014

Members of the Legal Aid Committee

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision for imposing a charge on money or other property recovered or preserved in legal proceedings so that the cost of legal aid can be repaid out of the property. They make the amount of any legal aid, plus interest in certain cases, a first charge on the property in favour of the Treasury (*regulation 3 and Schedule*), and require the assisted person's advocate to give the Treasury details of the property (*regulation 4*).