

*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament*

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DRAFT STATUTORY INSTRUMENTS

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**2003 No. (N.I.)**

**NORTHERN IRELAND**

**Access to Justice (Northern Ireland) Order 2003**

*Made - - - -  
Coming into operation in accordance with Article 1(2)  
and (3)*

At the Court at , the day of 2003  
Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by resolution of each House of Parliament:

Now therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000(1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**PART I**

**CITATION, COMMENCEMENT AND INTERPRETATION**

**Citation and commencement**

1.—(1) This Order may be cited as the Access to Justice (Northern Ireland) Order 2003.

(2) Except as provided by paragraph (3), this Order shall come into operation on such day or days as the Lord Chancellor may by order appoint.

(3) The following provisions come into operation on the expiration of one month from the date on which this Order is made—

- (a) this Part,
- (b) Article 45,
- (c) Article 46(4) to (6), and

(d) Article 48(1).

## Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(2)</sup> shall apply to Article 1 and the following provisions of this Order as it applies to an Act of the Northern Ireland Assembly.

(2) In this Order—

“advice” means any oral or written advice—

- (a) on the application of the law to any particular circumstances that have arisen in relation to the individual seeking the advice; and
- (b) as to any steps which that person might appropriately take, having regard to the application of the law to those circumstances;

“assistance” means any assistance (other than advocacy) to any individual in taking any of the steps which an individual might take, including steps with respect to proceedings, having regard to the application of the law to any particular circumstances that have arisen in relation to him, whether the assistance is given by taking such steps on his behalf or by assisting him in taking them on his own behalf;

“child” has the meaning given by Article 2(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998<sup>(3)</sup>;

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

“the Commission” means the Northern Ireland Legal Services Commission;

“court-ordered youth conference” has the meaning given by Article 33A(5) of the Criminal Justice (Children) (Northern Ireland) Order 1998;

“criminal defence services” has the meaning given by Article 21(1);

“diversionary youth conference” has the meaning given by Article 10A(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998;

“the Law Society” means the Law Society of Northern Ireland;

“magistrates' court” has the meaning assigned to that expression by Article 2(2)(b) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(4)</sup>;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Lord Chancellor;

“relevant proceedings” has the meaning given by Article 25;

“representation” means representation for the purposes of proceedings and includes—

- (a) all such assistance as is usually given by a solicitor or counsel in the steps preliminary or incidental to any proceedings;
- (b) in the case of civil proceedings, all such assistance as is usually so given in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings;

“solicitor” means a solicitor of the Supreme Court;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954<sup>(5)</sup>;

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(2) 1954 c. 33 (N.I.)

(3) 1998 N.I. 9.

(4) 1981 N.I. 26.

(5) 1954 c. 33 (N.I.)

“tribunal” includes an inquiry or proceedings before an arbitrator or umpire, however appointed, whether such inquiry or proceedings take place under a reference by consent or otherwise.

(3) References to counsel and solicitors shall be construed in accordance with Article 10 of the European Communities (Services of Lawyers) Order 1978<sup>(6)</sup> and regulation 14 of the European Communities (Lawyer’s Practice) Regulations 2000<sup>(7)</sup>.

## PART II

### NORTHERN IRELAND LEGAL SERVICES COMMISSION

#### Northern Ireland Legal Services Commission

**3.—**(1) There shall be a body known as the Northern Ireland Legal Services Commission (in this Order referred to as “the Commission”).

(2) The Commission shall have such functions as are conferred or imposed on it by the provisions of this Order or any other statutory provision.

(3) The Commission shall exercise its functions for the purpose of—

- (a) securing (within the resources made available, and priorities set, in accordance with this Part) that individuals have access to civil legal services that effectively meet their needs, and promoting the availability to individuals of such services, and
- (b) securing that individuals involved in criminal investigations or relevant proceedings have access to such criminal defence services as the interests of justice require.

(4) Schedule 1 (which makes further provision about the Commission) has effect.

#### Membership of the Commission

**4.—**(1) The Commission shall consist of—

- (a) a member who is to chair it, and
- (b) not fewer than six, nor more than ten, other members,

but the Lord Chancellor may by order substitute for either or both of the numbers for the time being specified in sub-paragraph (b) such other number or numbers as he thinks appropriate.

(2) Both the member who is to chair the Commission, and the other members, shall be appointed by the Lord Chancellor.

(3) In appointing persons to be members of the Commission the Lord Chancellor shall have regard to the desirability of securing that the Commission includes members who (between them) have experience in or knowledge of—

- (a) the provision of services which the Commission can fund as civil legal services or criminal defence services,
- (b) the work of the courts,
- (c) consumer affairs,
- (d) social conditions, and
- (e) management.

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<sup>(6)</sup> S.I. 1978/1910.

<sup>(7)</sup> S.I. 2000/1119.

(4) The Lord Chancellor may by order amend paragraph (3) by adding, omitting or substituting areas of experience or knowledge.

(5) In making appointments under this Article, the Lord Chancellor shall as far as practicable secure that the members of the Commission, as a group, are representative of the community in Northern Ireland.

#### **Power to replace Commission with two bodies**

5.—(1) The Lord Chancellor may by order establish in place of the Commission two bodies—

- (a) one to have functions relating to civil legal services, and
- (b) the other to have functions relating to criminal defence services.

(2) An order under paragraph (1) shall include amendments of—

- (a) any provisions of, or amended by, this Order which refer to the Commission, and
- (b) any other statutory provisions which so refer,

to replace references to the Commission with references to either or both of the bodies established by the order.

#### **Planning**

6.—(1) The Commission shall inform itself about—

- (a) the need for, and the provision of, civil legal services and criminal defence services, and
- (b) the quality of the services provided.

(2) The Commission shall plan what can be done towards meeting that need by the performance by the Commission of its functions.

(3) The Commission may co-operate with such authorities and other bodies and persons as it considers appropriate in facilitating the planning of what can be done by them to meet that need by the use of any resources available to them.

(4) The Commission shall notify the Lord Chancellor of what it has done under this Article.

(5) The Lord Chancellor may by order require the Commission to discharge the functions in paragraphs (1) to (4) in accordance with the order.

#### **Powers of Commission**

7.—(1) Subject to the provisions of this Part and Article 41, the Commission may do anything which it considers—

- (a) is necessary or appropriate for, or for facilitating, the discharge of its functions, or
- (b) is incidental or conducive to the discharge of its functions.

(2) In particular, the Commission shall have power—

- (a) to enter into any contract,
- (b) to make grants (with or without conditions),
- (c) to make loans,
- (d) to invest money,
- (e) to promote or assist in the promotion of publicity relating to its functions,
- (f) to undertake any inquiry or investigation which it may consider appropriate in relation to the discharge of any of its functions, and

- (g) to give to the Lord Chancellor any advice which it may consider appropriate in relation to matters concerning any of its functions.
- (3) Paragraphs (1) and (2) do not confer on the Commission power to borrow money.
- (4) The Commission may make such arrangements as it considers appropriate for the discharge of its functions, including the delegation of any of its functions.
- (5) The Lord Chancellor may by order require the Commission—
  - (a) to delegate any function specified in the order or to delegate any function so specified to a person (or person of a description) so specified,
  - (b) not to delegate any function so specified or not to delegate any function so specified to a person (or person of a description) so specified, or
  - (c) to make arrangements such as are specified in the order in relation to the delegation of any function so specified.
- (6) In considering any question as to the remuneration of persons or bodies providing civil legal services or criminal defence services (whether in individual cases, or by reference to the provision of such services in specified numbers of cases), the Commission shall have regard, among the matters which are relevant, to—
  - (a) the time and skill which the provision of services of the description to which the question relates requires;
  - (b) the number and general level of competence of persons providing those services;
  - (c) the cost to public funds of the remuneration of persons or bodies providing those services; and
  - (d) the need to secure value for money.
- (7) Where the Commission sets fees which are to be paid to persons or bodies in respect of the provision of services by them, nothing in paragraph (6) requires it to have regard to any fee payable, otherwise than in accordance with this Order, in respect of the provision of such services.

### **Guidance**

- 8.—**(1) The Lord Chancellor may give guidance to the Commission as to the manner in which he considers it should discharge its functions.
- (2) The Commission shall take into account any such guidance when considering the manner in which it is to discharge its functions.
- (3) Guidance may not be given under this Article in relation to individual cases.
- (4) The Lord Chancellor shall either—
  - (a) publish, or
  - (b) require the Commission to publish,any guidance given under this Article.

### **Northern Ireland law and foreign law**

- 9.—**(1) The Commission may not fund—
  - (a) civil legal services, or
  - (b) criminal defence services,relating to any law other than that of Northern Ireland, unless any such law is relevant for determining any issue relating to the law of Northern Ireland.

(2) But the Lord Chancellor may, if it appears to him necessary to do so for the purpose of fulfilling any obligation imposed on the United Kingdom by any international agreement, by order specify that such civil legal services or criminal defence services as are specified in the order, relating to the application of such other law as may be so specified, may be funded by the Commission.

(3) For the purposes of the application of paragraph (2) in the case of an obligation to provide for the transmission to other countries of applications for public funding of legal services under their laws, the reference to civil legal services or criminal defence services relating to the application of other laws includes a reference to advice or assistance for the purposes of making and transmitting such an application.

### *Civil legal services*

#### **Civil legal services**

**10.—**(1) For the purposes of this Order “civil legal services” means advice, assistance and representation, other than advice, assistance or representation which the Commission is required to fund as criminal defence services.

(2) The Lord Chancellor may by order provide that “civil legal services” is to include services (other than advice, assistance and representation) which—

- (a) are specified in the order,
- (b) fall within any of the descriptions specified in paragraph (3), and
- (c) are not services which the Commission is required to fund as criminal defence services.

(3) The descriptions of services referred to in paragraph (2) are—

- (a) the provision of general information about the law and legal system and the availability of legal services,
- (b) the provision of help by the giving of advice as to how the law applies in particular circumstances,
- (c) the provision of help in preventing, or settling or otherwise resolving, disputes about legal rights and duties,
- (d) the provision of help in enforcing decisions by which such disputes are resolved, and
- (e) the provision of help in relation to legal proceedings not relating to disputes.

(4) An order under paragraph (2) may make provision, including provision amending this Order—

- (a) about financial matters relating to services specified in the order (including, in particular, provision about eligibility, contributions, charges, remuneration and costs);
- (b) modifying the application of Articles 11 to 20 in relation to such services.

(5) Every person who exercises any function relating to civil legal services shall have regard to the desirability of exercising it, so far as is reasonably practicable, so as to—

- (a) promote improvements in the quality of those services and in the ways in which they are made accessible to those who need them,
- (b) secure that the services provided in relation to any matter are appropriate having regard to its nature and importance, and
- (c) achieve the swift and fair resolution of disputes without unnecessary or unduly protracted proceedings in court.

## **Funding of services**

**11.**—(1) The Commission shall establish and maintain a fund from which it shall fund civil legal services.

(2) The Lord Chancellor—

- (a) shall pay to the Commission the sums which he determines are appropriate for the funding of civil legal services by the Commission, and
- (b) may determine the manner in which and times at which the sums are to be paid to the Commission and may impose conditions on the payment of the sums.

(3) In making any determination under paragraph (2) the Lord Chancellor shall take into account (in addition to such other factors as he considers relevant) the need for civil legal services as notified to him by the Commission under Article 6(4).

(4) The Lord Chancellor shall lay before each House of Parliament a copy of every determination under paragraph (2)(a).

(5) In funding civil legal services the Commission shall aim to obtain the best possible value for money.

(6) Subject to regulations, the Commission shall pay into the fund established under paragraph (1)

- (a) sums received from the Lord Chancellor under paragraph (2),
- (b) sums received by the Commission by virtue of regulations under Articles 17 and 20,
- (c) sums received by the Commission by virtue of an order by a court under Article 19(7), and
- (d) such other receipts of the Commission as the Lord Chancellor may, with the concurrence of the Treasury, determine.

(7) The Commission shall pay out of the fund established under paragraph (1) any costs payable under a court order under Article 19(2) or under regulations under Article 20(2)(d).

(8) Where the Commission considers that the amount in the fund established under paragraph (1) significantly exceeds the amount which will be paid out before the next payment by the Lord Chancellor under paragraph (2), it shall—

- (a) inform the Lord Chancellor, and
- (b) if he so directs, pay to the Lord Chancellor so much of the excess as is specified in the direction.

(9) The Lord Chancellor—

- (a) may by direction impose requirements on the Commission as to the descriptions of services to be funded from any specified amount paid into the fund established under paragraph (1);
- (b) may by order require the Commission to establish and maintain two funds in place of the fund established under paragraph (1), being—
  - (i) a fund from which the Commission shall fund civil legal services in connection with any such matter as is specified in the order, and
  - (ii) a fund from which the Commission shall fund other civil legal services.

(10) An order under paragraph (9)(b) may make such amendments to this Order as the Lord Chancellor considers appropriate in consequence of the establishment of two funds in place of the fund established under paragraph (1).

## Services which may be funded

12.—(1) The Commission shall set priorities in its funding of civil legal services, and the priorities shall be set—

- (a) in accordance with any directions given by the Lord Chancellor, and
- (b) after taking into account the need for such services.

(2) The Commission may fund civil legal services by—

- (a) entering into contracts with persons or bodies for the provision of services by them,
- (b) making payments to persons or bodies in respect of the provision of services by them,
- (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, services,
- (d) establishing and maintaining bodies to provide, or facilitate the provision of, services,
- (e) making grants or loans to individuals to enable them to obtain services,
- (f) itself providing services, or
- (g) doing anything else which it considers appropriate for funding services,

but this paragraph is subject to Article 41.

(3) The Lord Chancellor may by order require the Commission to discharge the function in paragraph (2) in accordance with the order.

(4) The Commission may fund different civil legal services, or civil legal services provided by different means—

- (a) in relation to different areas in Northern Ireland, and
- (b) in relation to different descriptions of cases.

(5) The Commission may not fund as civil legal services any of the services specified in Schedule 2.

(6) Regulations may amend Schedule 2 by adding new services or omitting or varying any services; and regulations under this paragraph may, in particular, describe the services which are not to be funded as civil legal services by reference to—

- (a) the court or tribunal before which proceedings are to take place,
- (b) the issues involved, or
- (c) the capacity in which a person seeking a service is concerned.

(7) If the effect of regulations amending Schedule 2 under paragraph (6) is that no advice or assistance of any description is to be funded as regards any area, then, so long as Schedule 2 so provides, Article 14(2)(b), 3(b), (6) and (7), and the words “advice, assistance and” in Article 10(1), shall not have effect.

(8) The Lord Chancellor—

- (a) may by direction require the Commission to fund the provision of any of the services specified in Schedule 2 in circumstances specified in the direction, and
- (b) may authorise the Commission to fund the provision of any of those services in circumstances specified in the authorisation or, if the Commission requests him to do so, in an individual case so specified.

(9) A direction or authorisation under paragraph (8) may impose limitations on the funding of a service specified in Schedule 2, and may, in particular, require or authorise the Commission to fund the service for a limited period, for the purposes of specified proceedings only, or for the purposes of limited aspects of proceedings.



(10) Articles 13 to 20 do not apply to civil legal services funded under a direction or authorisation under paragraph (8) unless they are applied (with or without modifications) by the provisions of the direction or authorisation.

(11) The Lord Chancellor shall either—

- (a) publish, or
- (b) require the Commission to publish,

any authorisation under paragraph (8)(b), unless it relates to an individual case (in which case he or the Commission may publish it if appropriate).

### **Individuals for whom services may be funded**

**13.**—(1) The Commission may only fund civil legal services for an individual if his financial resources are such that, under regulations, he is an individual for whom the services may be funded by the Commission.

(2) Regulations may provide that, in prescribed circumstances and subject to any prescribed conditions, services of a prescribed description may be funded by the Commission for individuals without reference to their financial resources.

(3) Regulations under this Article may include provision requiring the furnishing of information.

### **Decisions about provision of funded services**

**14.**—(1) The services which the Commission may fund as civil legal services are those which the Commission considers appropriate (subject to Article 12(5) and the priorities set under Article 12(1)).

(2) Any decision as to whether to fund civil legal services for an individual shall—

- (a) in the case of representation, be taken—
  - (i) by the Commission, or
  - (ii) in prescribed circumstances, by such person as may be prescribed;
- (b) in the case of advice and assistance, be taken by the person from whom the advice or assistance is sought.

(3) The grant of representation for the purposes of proceedings includes any such advice and assistance as to an appeal—

- (a) as may be specified by the Commission, or
- (b) as may be prescribed in relation to representation granted by virtue of paragraph (2)(a)(ii).

(4) The Commission may fund representation for an individual for a limited period, for the purposes of specified proceedings only, or for the purposes of limited aspects of proceedings, and may amend, withdraw or revoke the representation, or vary or remove any limitation imposed on the representation.

(5) Without prejudice to the generality of paragraph (4), the grant of representation may be limited under that paragraph as regards the persons who may represent the individual to representation only in pursuance of a contract made with the Commission.

(6) Regulations may—

- (a) prohibit the giving of advice or assistance without the approval of the Commission to the extent that the costs of giving it exceed such limit as may be prescribed;
- (b) prohibit the funding of advice or assistance by the Commission except where it is provided by a person in pursuance of a contract made with the Commission.

(7) No decision may be taken under this Article to fund advice and assistance for an individual in connection with any proceedings at a time when he has been granted a right to representation in respect of those proceedings under any provision of this Part (but this does not affect paragraph (3) or any assistance included in representation).

### **Funding code**

**15.**—(1) The Commission shall prepare a code setting out the criteria according to which any decision is to be taken as to—

- (a) whether to fund (or continue to fund) civil legal services for an individual for whom they may be funded by the Commission, and
- (b) if so, what services are to be funded for him.

(2) In settling the criteria to be set out in the code the Commission shall consider the extent to which they ought to reflect the following factors—

- (a) the likely cost of funding the services and the benefit which may be obtained by their being provided,
- (b) the availability of sums in the fund established under Article 11(1) for funding civil legal services and (having regard to present and likely future demands on that fund) the appropriateness of applying them to fund the services,
- (c) the importance of the matters in relation to which the services would be provided for the individual,
- (d) the availability to the individual of services not funded by the Commission and the likelihood of his being able to avail himself of them,
- (e) if the services are sought by the individual in relation to a dispute, the prospects of his success in the dispute,
- (f) the conduct of the individual in connection with civil legal services funded by the Commission (or an application for funding) or in, or in connection with, any proceedings,
- (g) the public interest, and
- (h) such other factors as the Lord Chancellor may by order require the Commission to consider.

(3) The code shall seek to secure that, where more than one description of service is available, the service funded is that which (in all the circumstances) is the most appropriate having regard to the criteria set out in the code.

(4) The code shall also specify procedures for the making of decisions about the funding of civil legal services by the Commission, including—

- (a) provision about the form and content of applications for funding,
- (b) provision imposing conditions which must be satisfied by an individual applying for funding,
- (c) provision requiring applicants to be informed of the reasons for any decision to refuse an application,
- (d) provision for the giving of information to individuals whose applications are refused about alternative ways of obtaining or funding services, and
- (e) provision establishing procedures for reviews of decisions about funding and for the giving of information about those procedures.

(5) The Commission may from time to time prepare a revised version of the code.

(6) Before preparing the code the Commission shall undertake such consultation as appears to it to be appropriate; and before revising the code the Commission shall undertake such consultation as appears to it to be appropriate unless it considers that it is desirable for the revised version to come into force without delay.

(7) The Lord Chancellor may by order require the Commission to discharge its functions relating to the code in accordance with the order.

### **Procedure relating to funding code**

**16.**—(1) After preparing the code or a revised version of the code, the Commission shall send a copy to the Lord Chancellor.

(2) If he approves it he shall lay it before each House of Parliament.

(3) The Commission shall publish—

(a) the code as first approved by the Lord Chancellor, and

(b) where he approves a revised version, either the revisions or the revised code as appropriate.

(4) The code as first approved by the Lord Chancellor shall not come into force until it has been approved by a resolution of each House of Parliament.

(5) A revised version of the code which does not contain changes in the criteria set out in the code shall not come into force until it has been laid before each House of Parliament.

(6) Subject as follows, a revised version of the code which does contain such changes shall not come into force until it has been approved by a resolution of each House of Parliament.

(7) Where the Lord Chancellor considers that it is desirable for a revised version of the code containing such changes to come into force without delay, he may (when laying the revised version before Parliament) also lay before each House a statement of his reasons for so considering.

(8) In that event the revised version of the code—

(a) shall not come into force until it has been laid before each House of Parliament, and

(b) shall cease to have effect at the end of the period of 120 days beginning with the day on which it comes into force unless a resolution approving it has been made by each House (but without that affecting anything previously done in accordance with it).

### **Terms of provision of funded services**

**17.**—(1) An individual for whom civil legal services are funded by the Commission shall not be required to make any payment in respect of the services except where regulations otherwise provide.

(2) Regulations may provide that, in prescribed circumstances, an individual for whom civil legal services are so funded shall—

(a) pay a fee of such amount as is fixed by or determined under the regulations,

(b) if his financial resources are, or relevant conduct is, such as to make him liable to do so under the regulations, pay the cost of the services or make a contribution in respect of the cost of the services of such amount as is so fixed or determined, or

(c) if the services relate to a dispute and he has agreed to make a payment (which may exceed the cost of the services) only in specified circumstances, make in those circumstances a payment of the amount agreed, or determined in the manner agreed, by him;

and in sub-paragraph (b) “relevant conduct” means conduct in connection with the services (or any application for their funding) or in, or in connection with, any proceedings in relation to which they are provided.

(3) The regulations may include provision for any amount payable in accordance with the regulations to be payable by periodical payments or one or more capital sums, or both.

(4) The regulations may also include provision for the payment by an individual of interest (on such terms as may be prescribed) in respect of—

- (a) any loan made to him by the Commission in connection with civil legal services,
- (b) any payment in respect of the cost of services required by the regulations to be made by him later than the time when the services are provided, or
- (c) so much of any payment required by the regulations to be made by him which remains unpaid after the time when it is required to be paid.

(5) The regulations shall include provision for the repayment to an individual of any payment made by him in excess of his liability under the regulations.

(6) The regulations may—

- (a) include provision requiring the furnishing of information, and
- (b) make provision for the determination of the cost of services for the purposes of the regulations.

(7) Except so far as regulations otherwise provide, where civil legal services have been funded by the Commission for an individual, sums expended by the Commission in funding the services (except to the extent that they are recovered under Articles 18 to 20), and other sums payable by the individual by virtue of regulations under this Article, shall constitute a first charge—

- (a) on any costs which (whether by virtue of a judgment or order of a court or an agreement or otherwise) are payable to him in respect of the matter in connection with which the services are provided, and
- (b) on any property (of whatever nature and wherever situated) which is recovered or preserved by him (whether for himself or any other person) in connection with that matter, including any property recovered or preserved in any proceedings and his rights under any compromise or settlement arrived at to avoid or bring to an end any proceedings.

(8) Regulations may make provision about the charge, including—

- (a) provision as to whether it is in favour of the Commission or the body or person by whom the services were provided, and
- (b) provision about its enforcement.

### **Costs orders against assisted parties**

**18.**—(1) Except in prescribed circumstances, costs ordered against an individual in relation to any proceedings or part of proceedings funded for him shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including—

- (a) the financial resources of all parties to the proceedings, and
- (b) their conduct in connection with the dispute to which the proceedings relate;

and for this purpose proceedings, or a part of proceedings, are funded for an individual if civil legal services relating to the proceedings or part are funded for him by the Commission.

(2) In assessing for the purposes of paragraph (1) the financial resources of an individual for whom civil legal services are funded by the Commission, his clothes and household furniture and the tools and implements of his trade shall not be taken into account, except so far as may be prescribed.

### **Costs of successful unassisted parties**

**19.**—(1) This Article applies to proceedings—

- (a) to which an individual, for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission, is a party, and
- (b) which are finally decided in favour of a party for whom such services are not so funded (“the unassisted party”).

(2) In any proceedings to which this Article applies the court by which the proceedings were so decided may, subject to paragraphs (3) and (4), make an order for the payment by the Commission to the unassisted party of the whole or any part of the costs incurred by him in the proceedings.

(3) Before making an order under this Article, the court shall consider what orders should be made for costs against the party for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission and for determining his liability in respect of such costs.

(4) An order under this Article in respect of any costs may only be made if—

- (a) an order for costs would be made in the proceedings apart from this Order;
- (b) as respects the costs incurred in a court of first instance, those proceedings were instituted by the party for whom civil legal services relating to the proceedings, or to a part of the proceedings, are funded by the Commission and the court is satisfied that the unassisted party will suffer financial hardship unless the order is made; and
- (c) in any case, the court is satisfied that it is just and equitable in all the circumstances of the case that provision for the costs should be made out of public funds.

(5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under this Article, or against a refusal to make such an order, except on a point of law.

(6) In this Article “costs” means costs as between party and party, and includes the costs of applying for an order under this Article.

(7) For the purposes of this Article proceedings shall be treated as finally decided in favour of the unassisted party—

- (a) if no appeal lies against the decision in his favour,
- (b) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted, or
- (c) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal,

and where an appeal against the decision is brought out of time the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the unassisted party to the Commission of the whole or any part of any sum previously paid to him under this Article in respect of those proceedings.

(8) Where a court decides any proceedings in favour of the unassisted party and an appeal lies (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under this Article forthwith, but if an order is made forthwith it shall not take effect—

- (a) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;
- (b) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.

(9) Where a party begins to receive civil legal services after the proceedings have been instituted, or ceases to receive such services before they are finally decided, or otherwise receives such services in connection with part only of the proceedings, the reference in paragraph (2) to the costs incurred by the unassisted party in the proceedings shall be construed as a reference to so much of those costs as is attributable to that part.

(10) For the purposes of this Article “court” includes a tribunal.

### **Regulations about costs in funded cases**

**20.**—(1) Subject to Articles 18 and 19, regulations may make provision about costs in relation to proceedings in relation to which, or to a part of which, civil legal services are funded for any of the parties by the Commission.

(2) The regulations may, in particular, make provision—

- (a) specifying the principles to be applied in determining the amount of any costs which may be awarded against a party for whom civil legal services are funded by the Commission,
- (b) limiting the circumstances in which, or the extent to which, an order for costs may be enforced against such a party,
- (c) as to the cases in which, and extent to which, such a party may be required to give security for costs and the manner in which it is to be given,
- (d) requiring the payment by the Commission of the whole or part of any costs incurred by a party for whom civil legal services are not funded by the Commission,
- (e) specifying the principles to be applied in determining the amount of any costs which may be awarded to a party for whom civil legal services are funded by the Commission,
- (f) requiring the payment to the Commission, or the person or body by which the services were provided, of the whole or part of any sum awarded by way of costs to such a party, and
- (g) as to the court, tribunal or other person or body by whom the amount of any costs is to be determined and the extent to which any determination of that amount is to be final.

### *Criminal defence services*

### **Criminal defence services**

**21.**—(1) The Commission shall establish and maintain a fund from which it shall fund—

- (a) advice and assistance in accordance with Article 23, and
- (b) representation in accordance with Articles 24 and 30,

and in this Order services which can be so funded are referred to as “criminal defence services”.

(2) The Lord Chancellor shall pay to the Commission such sums as are required to meet the costs of any criminal defence services funded by the Commission.

(3) The Lord Chancellor may—

- (a) determine the manner in which and times at which the sums referred to in paragraph (2) shall be paid to the Commission, and
- (b) impose conditions on the payment of the sums.

(4) In funding criminal defence services the Commission shall aim to obtain the best possible value for money.

(5) The Commission shall pay into the fund established under paragraph (1)—

- (a) sums received from the Lord Chancellor under paragraph (2),
- (b) sums received by the Commission by virtue of an order by a court under Article 31,
- (c) sums received by the Commission by virtue of an order by a court under section 4 or 6 of the Costs in Criminal Cases Act (Northern Ireland) 1968<sup>(8)</sup>, and

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(8) 1968 c. 10. (N.I.)

(d) such other receipts of the Commission as the Lord Chancellor may, with the concurrence of the Treasury, determine.

(6) Where the Commission considers that the amount in the fund established under paragraph (1) significantly exceeds the amount which will be paid out before the next payment by the Lord Chancellor under paragraph (2), it shall—

- (a) inform the Lord Chancellor, and
- (b) if he so directs, pay to the Lord Chancellor so much of the excess as is specified in the direction.

### **Criminal defence services: code of conduct**

**22.**—(1) The Commission shall prepare a code of conduct to be observed by employees of the Commission, and employees of any body established and maintained by the Commission, in the provision of criminal defence services.

(2) The code shall include—

- (a) duties imposed in accordance with any scheme made by the Commission under Schedule 9 to the Northern Ireland Act 1998<sup>(9)</sup> (equality schemes),
- (b) duties to protect the interests of the individuals for whom criminal defence services are provided,
- (c) duties to the court,
- (d) duties to avoid conflicts of interest, and
- (e) duties of confidentiality,

and duties on employees who are members of a professional body to comply with the rules of the body.

(3) The Commission may from time to time prepare a revised version of the code.

(4) Before preparing or revising the code the Commission shall consult the Law Society and the General Council of the Bar of Northern Ireland and such other bodies or persons as it considers appropriate.

(5) After preparing the code or a revised version of the code the Commission shall send a copy to the Lord Chancellor.

(6) If he approves it he shall lay it before each House of Parliament.

(7) The Commission shall publish—

- (a) the code as first approved by the Lord Chancellor, and
- (b) where he approves a revised version, either the revisions or the revised code as appropriate.

(8) The code, and any revised version of the code, shall not come into force until it has been approved by a resolution of each House of Parliament.

### **Advice and assistance**

**23.**—(1) The Commission shall fund such advice and assistance as it considers appropriate—

- (a) for individuals who are arrested and held in custody at a police station or other premises, and
- (b) in prescribed circumstances, for individuals who—

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(9) 1998 c. 47.

- (i) are not within sub-paragraph (a) but are involved in investigations which may lead to relevant proceedings,
  - (ii) are before a court or other body in such proceedings, or
  - (iii) have been the subject of such proceedings.
- (2) The Commission may comply with the duty imposed by paragraph (1) by—
- (a) entering into contracts with persons or bodies for the provision of advice or assistance by them,
  - (b) making payments to persons or bodies in respect of the provision of advice or assistance by them,
  - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, advice or assistance,
  - (d) establishing and maintaining bodies to provide, or facilitate the provision of, advice or assistance,
  - (e) making grants to individuals to enable them to obtain advice or assistance,
  - (f) employing persons to provide advice or assistance, or
  - (g) doing anything else which it considers appropriate for funding advice and assistance.
- (3) The Lord Chancellor may by order require the Commission to discharge the function in paragraph (2) in accordance with the order.
- (4) The Commission may fund advice and assistance by different means—
- (a) in different areas in Northern Ireland, and
  - (b) in relation to different descriptions of cases.

## **Representation**

**24.**—(1) The Commission shall fund representation to which an individual has been granted a right in accordance with Articles 25 to 29.

- (2) Subject to the following provisions, the Commission may comply with the duty imposed by paragraph (1) by—
- (a) entering into contracts with persons or bodies for the provision of representation by them,
  - (b) making payments to persons or bodies in respect of the provision of representation by them,
  - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, representation,
  - (d) establishing and maintaining bodies to provide, or facilitate the provision of, representation,
  - (e) making grants to individuals to enable them to obtain representation,
  - (f) employing persons to provide representation, or
  - (g) doing anything else which it considers appropriate for funding representation.
- (3) The Lord Chancellor—
- (a) shall by order make provision about the payments which may be made by the Commission in respect of any representation provided by non-contracted private practitioners, and
  - (b) may by order make any other provision requiring the Commission to discharge the function in paragraph (2) in accordance with the order.



(4) For the purposes of paragraph (3)(a) representation is provided by a non-contracted private practitioner if it is provided, otherwise than pursuant to a contract entered into by the Commission, by a person or body which is neither—

- (a) a person or body in receipt of grants or loans made by the Commission under paragraph (2), nor
- (b) the Commission itself or a body established or maintained by the Commission.

(5) The provision which the Lord Chancellor is required to make by order under paragraph (3)(a) includes provision for reviews of, or appeals against, determinations for the purposes of the order.

(6) The Commission may fund representation by different means—

- (a) in different areas in Northern Ireland, and
- (b) in relation to different descriptions of cases.

### **Individuals to whom right to representation may be granted**

**25.**—(1) A right to representation may be granted—

- (a) for the purposes of any kind of proceedings specified in paragraph (2), to an individual such as is mentioned in that paragraph in relation to that kind of proceedings;
- (b) to an individual for the purposes of enabling him to resist an appeal in proceedings specified in paragraph (2) otherwise than in an official capacity;
- (c) for the purposes of a diversionary youth conference, to a child with respect to whom the conference has been, or is to be, convened,
- (d) to an individual for the purposes of proceedings concerning him which are of such a kind, and are before such court or other body, as may be prescribed,

and in this Order proceedings mentioned in paragraphs (a) to (d) are referred to as “relevant proceedings”.

(2) The proceedings referred to in paragraph (1)(a) and (b) are—

- (a) proceedings before any court for dealing with an individual accused of an offence,
- (b) proceedings before—
  - (i) any court, or
  - (ii) the Life Sentence Review Commissioners,for dealing with an individual convicted of an offence (including proceedings in respect of a sentence or order),
- (c) proceedings for dealing with an individual under section 9 of, or paragraph 6 of Schedule 1 to, the Extradition Act 1989<sup>(10)</sup> or under section 2 of the Backing of Warrants (Republic of Ireland) Act 1965<sup>(11)</sup>,
- (d) proceedings for binding an individual over to keep the peace or to be of good behaviour under Article 127 of the Magistrates' Courts (Northern Ireland) Order 1981, and for dealing with an individual who fails to comply with an order under that Article,
- (e) proceedings on an appeal brought by an individual under section 47A of the Criminal Appeal (Northern Ireland) Act 1980<sup>(12)</sup>,
- (f) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and

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<sup>(10)</sup> 1989 c. 33.

<sup>(11)</sup> 1965 c. 45.

<sup>(12)</sup> 1980 c. 47.

- (g) proceedings for dealing with an individual in respect of whom an application has been made under—
- (i) Article 44 or 45 of the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(13)</sup>, or
  - (ii) paragraph 29 or 36 of Schedule 8 to the Terrorism Act 2000<sup>(14)</sup>,
- but do not include any proceedings for a writ of habeas corpus or other prerogative remedy.

### **Grant of right to representation by court**

**26.**—(1) A court before which any relevant proceedings take place, or are to take place, has power to grant a right to representation in respect of those proceedings except in such circumstances as may be prescribed.

(2) Where a right to representation is granted for the purposes of relevant proceedings then, subject to paragraph (5)—

- (a) it includes the right to representation for the purposes of any related bail proceedings, any related court-ordered youth conference, and any preliminary or incidental proceedings; and regulations may make provision specifying whether any proceedings are or are not to be regarded as preliminary or incidental; and
- (b) it includes the right to such advice and assistance, as to any appeal, as may be prescribed.

(3) A court also has power to grant a right to representation for the purposes of relevant proceedings before another court in such circumstances as may be prescribed.

(4) A magistrates' court also has power to grant a right to representation for the purposes of a diversionary youth conference.

(5) A court has power to grant representation for a limited period, for the purposes of specified proceedings only or for the purposes of limited aspects of proceedings, and to vary or remove any limitation imposed on representation.

(6) Regulations may make provision—

- (a) as to the form of any application for a grant of a right to representation under this Article;
- (b) as to the information which must be supplied with any such application;
- (c) as to the form of any grant of a right to representation under this Article;
- (d) requiring the court granting a right to representation under this Article to indicate the grounds on which the right was granted.

(7) Before making any regulations under paragraph (6) the Lord Chancellor shall consult the Lord Chief Justice.

(8) The refusal of a right to representation before a hearing shall not prevent the applicant being granted a right to representation at the hearing.

(9) A right to representation in respect of proceedings may be withdrawn—

- (a) by any court before which the proceedings take place, or
- (b) in the case of a diversionary youth conference, by a magistrates' court;

and a court must consider whether to withdraw a right to representation in such circumstances as may be prescribed.

(10) In this Article “court” includes any body before which relevant proceedings take place.

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<sup>(13)</sup> 1989 N.I. 12.

<sup>(14)</sup> 2000 c. 11.

### **Grant of right to representation by Commission**

27.—(1) Regulations may provide that the Commission shall have power to grant rights to representation in respect of any one or more of the descriptions of proceedings prescribed under Article 25(1)(d), and to withdraw any rights to representation granted by it.

(2) Regulations under paragraph (1) may provide that the Commission shall have power to grant representation for a limited period or for the purposes of specified proceedings only or for the purposes of limited aspects of proceedings, and to vary or remove any limitation imposed on representation.

(3) Regulations under paragraph (1) may make provision—

- (a) as to the form of any application for a grant of a right to representation under those regulations;
- (b) as to the information which must be supplied with any such application;
- (c) as to the form of any grant of a right to representation under those regulations;
- (d) requiring the Commission to indicate the grounds on which any right to representation is granted under those regulations.

### **Appeals**

28. Except where regulations otherwise provide, an appeal shall lie to such court or other person or body as may be prescribed against a decision—

- (a) to refuse a right to representation in respect of relevant proceedings;
- (b) to impose or vary a limitation on such a right;
- (c) not to extend such a right; or
- (d) to withdraw such a right.

### **Criteria for grant of right to representation**

29.—(1) Any question as to whether a right to representation should be granted or extended, or whether a limitation on representation should be imposed, varied or removed, shall be determined according to the interests of justice.

(2) In deciding what the interests of justice consist of in relation to any individual, the following factors must be taken into account—

- (a) whether the individual would, if any matter arising in the proceedings is decided against him, be likely to lose his liberty or livelihood or suffer serious damage to his reputation,
- (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law,
- (c) whether the individual may be unable to understand the proceedings or to state his own case,
- (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual, and
- (e) whether it is in the interests of another person that the individual be represented.

(3) The Lord Chancellor may by order amend paragraph (2) by adding new factors or varying any factor.

(4) A right to representation shall always be granted in such circumstances as may be prescribed.

### **Selection of representative**

**30.**—(1) An individual who has been granted a right to representation in accordance with Articles 25 to 29 may, subject to Article 35, select any representative or representatives willing to act for him; and, where he does so, the Commission is to comply with the duty imposed by Article 24 by funding representation by the selected representative or representatives.

(2) Regulations may provide that in prescribed circumstances—

- (a) the right conferred by paragraph (1) is not to apply in cases of prescribed descriptions,
- (b) an individual who has been provided with advice or assistance funded by the Commission under Article 23 by a person whom he chose to provide it for him is to be taken to have selected that person as his representative pursuant to that right,
- (c) that right is not to include a right to select a representative of a prescribed description,
- (d) that right is to select only a registered person within the meaning of Article 36, or only a representative of a prescribed description,
- (e) that right is to select not more than a prescribed number of representatives to act at any one time,
- (f) that right is not to include a right to select a representative in place of a representative previously selected.

(3) Regulations under paragraph (2)(b) may prescribe circumstances in which an individual is to be taken to have chosen a person to provide advice or assistance for him.

(4) Regulations under paragraph (2) may not provide that only a person employed by the Commission, or by a body established and maintained by the Commission, may be selected.

(5) Regulations may provide that in prescribed circumstances the Commission is not required to fund, or to continue to fund, representation for an individual by a particular representative (but such provision shall not prejudice any right of the individual to select another representative).

(6) The circumstances which may be prescribed by regulations under paragraph (2) or (5) include that a determination has been made by a prescribed body or person.

(7) A representative who has been selected to act for an individual under this paragraph may select another person to act for that individual, as the agent of the representative, if that other person is of such a description that nothing in Article 35 would prohibit the individual selecting him as his representative.

### **Terms of provision of funded services**

**31.**—(1) An individual for whom criminal defence services are funded by the Commission shall not be required to make any payment in respect of the services except where paragraph (2) applies.

(2) Where representation for an individual in respect of relevant proceedings in any court is funded by the Commission under Article 24, the court may, subject to regulations under paragraph (3), make an order requiring him to pay some or all of the cost of any representation so funded for him (in proceedings in that or any other court, or in any related court-ordered youth conference).

(3) Regulations may make provision about—

- (a) the descriptions of courts by which, and individuals against whom, an order under paragraph (2) may be made,
- (b) the circumstances in which such an order may be made and the principles to be applied in deciding whether to make such an order and the amount to be paid,
- (c) the determination of the cost of representation for the purposes of the making of such an order,

- (d) the furnishing of information and evidence to the court or the Commission for the purpose of enabling the court to decide whether to make such an order and (if so) the amount to be paid,
- (e) prohibiting individuals who are required to furnish information or evidence from dealing with property until they have furnished the information or evidence or until a decision whether to make an order, or the amount to be paid, has been made,
- (f) rights of appeal against such an order,
- (g) the person or body to which, and manner in which, payments required by such an order must be made and what that person or body is to do with them, and
- (h) the enforcement of such an order (including provision for the imposition of charges in respect of unpaid amounts).

### *Supplementary*

#### **Restriction of disclosure of information**

**32.**—(1) Information which is furnished—

- (a) to the Commission or any court, tribunal or other person or body on whom functions are imposed or conferred by or under this Part, and
- (b) in connection with the case of an individual seeking or receiving civil legal services or criminal defence services funded by the Commission,

shall not be disclosed except as permitted by regulations.

(2) Paragraph (1) does not limit the disclosure of—

- (a) information in the form of a summary or collection of information so framed as not to enable information relating to any individual to be ascertained from it, or
- (b) information about the amount of any grant, loan or other payment made to any person or body by the Commission.

(3) Paragraph (1) does not prevent the disclosure of information for any purpose with the consent of the individual in connection with whose case it was furnished and, where he did not furnish it himself, with that of the person or body who did.

(4) A person who discloses any information in contravention of this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Proceedings for an offence under this Article shall not be brought except by or with the consent of the Attorney General.

(6) Nothing in this Article applies to information furnished to a person providing civil legal services or criminal defence services funded by the Commission by or on behalf of an individual seeking or receiving such services.

#### **Misrepresentation etc.**

**33.**—(1) Any person who—

- (a) intentionally fails to comply with any requirement imposed by virtue of this Part as to the information to be furnished by him, or
- (b) in furnishing any information required by virtue of this Part makes any statement or representation which he knows or believes to be false,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to—

- (a) a fine not exceeding level 4 on the standard scale, or
- (b) imprisonment for a term not exceeding three months,

or to both.

(3) Notwithstanding any statutory provision prescribing the period within which summary proceedings may be commenced, proceedings in respect of an offence under paragraph (1) may be commenced at any time within the period of six months beginning with the date on which evidence, sufficient in the opinion of the Attorney General to justify a prosecution for the offence, comes to his knowledge.

(4) But paragraph (3) does not authorise the commencement of proceedings for an offence at a time more than two years after the date on which the offence was committed.

(5) For the purposes of paragraph (3) a certificate purporting to be signed by the Attorney General as to the date on which evidence such as is mentioned in that paragraph has come to his knowledge, shall be conclusive evidence thereof.

(6) A county court shall, notwithstanding any limitation imposed on the jurisdiction of a county court under any other statutory provision, have jurisdiction to hear and determine any action brought by the Commission to recover loss sustained by reason of—

- (a) the failure of any person to comply with any requirement imposed by virtue of this Part as to the information to be furnished by him, or
- (b) a false statement or false representation made by any person in furnishing any information required by virtue of this Part.

#### **Position of service providers and other parties etc.**

**34.**—(1) Except as expressly provided by regulations, the fact that civil legal services or criminal defence services provided for an individual are or could be funded by the Commission, shall not affect—

- (a) the relationship between that individual and the person by whom they are provided or any privilege arising out of that relationship, or
- (b) any right which that individual may have to be indemnified, in respect of expenses incurred by him, by any other person.

(2) A person who provides civil legal services or criminal defence services funded by the Commission shall not take any payment in respect of the services apart from—

- (a) that made by way of that funding, and
- (b) any authorised by the Commission to be taken.

(3) Where civil legal services funded by the Commission are provided in connection with any proceedings, any expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the person providing the services, shall be so paid except where they are paid by the Commission.

(4) The withdrawal of a right to representation previously granted to an individual shall not affect the right of any person who has provided to him civil legal services or criminal defence services funded by the Commission to remuneration for work done before the date of the withdrawal.

(5) Except as expressly provided by regulations, any rights conferred by or by virtue of this Part on an individual for whom civil legal services or criminal defence services are funded by the Commission in relation to any proceedings shall not affect—

- (a) the rights or liabilities of other parties to the proceedings, or
- (b) the principles on which the discretion of any court or tribunal is normally exercised.

(6) Regulations may make provision about the procedure of any court or tribunal in relation to civil legal services or criminal defence services funded by the Commission.

(7) Regulations made under paragraph (6) may in particular authorise the exercise of the functions of any court or tribunal by any member or officer of that or any other court or tribunal.

### **Solicitors and barristers**

**35.**—(1) The Commission shall not fund any civil legal services or criminal defence services provided by a solicitor who is for the time being prohibited from providing such services by an order under Article 51B(1) or (3) of the Solicitors (Northern Ireland) Order 1976<sup>(15)</sup>.

(2) The Commission shall not fund any civil legal services or criminal defence services provided by a barrister who is for the time being prohibited from providing such 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.

(3) The Commission—

- (a) may make a complaint to the Law Society about the provision of civil legal services or criminal defence services by a solicitor;
- (b) may refer to the Law Society any complaint which is made to the Commission about the provision of such services by a solicitor;
- (c) may make a complaint to the General Council of the Bar of Northern Ireland about the provision of civil legal services or criminal defence services by a barrister; and
- (d) may refer to the General Council of the Bar of Northern Ireland any complaint which is made to the Commission about the provision of such services by a barrister.

(4) Any right conferred on an individual by virtue of this Part to select a person to provide civil legal services or criminal defence services for him shall not prejudice the law and practice relating to the conduct of proceedings by a solicitor or barrister or the circumstances in which a solicitor or counsel may refuse or give up a case or entrust it to another.

### **Register of persons providing services**

**36.**—(1) Regulations may—

- (a) make provision for the registration by the Commission of persons who are eligible to provide civil legal services or criminal defence services funded by the Commission;
- (b) provide that only those persons who are registered (“registered persons”) may provide such services; and
- (c) require registration of firms or organisations with which registered persons are connected.

(2) Regulations may require the Commission to prepare a code of practice in relation to—

- (a) the conditions to be complied with in order to qualify for registration, and
- (b) the carrying out by registered persons, and any firm or organisation which is registered in connection with a registered person, of their functions with regard to civil legal services or criminal defence services funded by the Commission.

(3) Regulations—

- (a) may require registered persons, and any firm or organisation which is registered in connection with a registered person, to comply with any such code of practice;
- (b) require the Commission or persons authorised by the Commission to monitor compliance with any such code of practice; and

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(15) 1976 N.I. 12.

- (c) may make provision about procedures for cases in which—
- (i) it appears to the Commission or a person authorised by the Commission that a registered person, or any firm or organisation which is registered in connection with a registered person, may not be complying with any such code of practice, or
  - (ii) a person who holds any judicial office asks the Commission to investigate whether a registered person, or any firm or organisation which is registered in connection with a registered person, is complying with any such code of practice,
- and the sanctions which may be imposed under this sub-paragraph may include provision for a person, firm or organisation to cease to be registered.
- (4) Regulations under this Article—
- (a) may make provision imposing charges;
  - (b) may make provision with respect to the powers of investigation which may be exercised by the Commission, or by persons authorised by the Commission, for the purpose of monitoring compliance with any code of practice prepared under the regulations;
  - (c) may make provision for obstruction of the exercise of powers conferred by virtue of sub-paragraph (b) to be certified to the High Court in prescribed circumstances, and for any power of the court in relation to contempt of court to be exercisable in relation to such obstruction.
- (5) Before making any regulations under this Article the Lord Chancellor—
- (a) shall consult the Lord Chief Justice, the Law Society and the General Council of the Bar of Northern Ireland, and
  - (b) may undertake such other consultation as appears to him to be appropriate.

## PART III

### OTHER FUNDING OF LEGAL SERVICES

#### *Conditional fee and litigation funding agreements*

#### **Interpretation of Part III**

**37.—(1)** In this Part—

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“a conditional fee agreement” is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances;

“a litigation funding agreement” is an agreement under which—

- (a) a person (“the funder”) agrees to fund (in whole or in part) the provision of advocacy or litigation services (by someone other than the funder) to another person (“the litigant”); and
- (b) the litigant agrees to pay, in addition to any fee payable on the making of the agreement, a sum to the funder in specified circumstances;



“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide;

“proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated;

“a right of audience” means the right to appear before and address a court including the right to call and examine witnesses;

“a right to conduct litigation” means the right—

- (c) to issue proceedings before any court, and
- (d) to perform any ancillary functions in relation to proceedings (such as entering appearances to actions).

(2) For the purposes of this Part, a conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances.

### **Conditional fee agreements**

**38.**—(1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this Article shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to paragraph (4)) any other conditional fee agreement shall be unenforceable.

(2) The following conditions are applicable to every conditional fee agreement—

- (a) it must be in writing;
- (b) it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement; and
- (c) it must comply with such requirements (if any) as may be prescribed.

(3) The following further conditions are applicable to a conditional fee agreement which provides for a success fee—

- (a) it must relate to proceedings of a description specified by order made by the Lord Chancellor;
- (b) it must state the percentage by which the amount of fees which would be payable if it were not a conditional fee agreement is to be increased; and
- (c) that percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates by order made by the Lord Chancellor.

(4) If a conditional fee agreement is an agreement to which Article 71A of the Solicitors (Northern Ireland) Order 1976<sup>(16)</sup> (non-contentious business agreements between solicitor and client) applies, paragraph (1) shall not make it unenforceable.

### **Conditional fee agreements: supplementary**

**39.**—(1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—

- (a) criminal proceedings; and
- (b) family proceedings.

(2) In paragraph (1) “family proceedings” means proceedings under any one or more of the following—

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<sup>(16)</sup> 1976 N.I. 12.

- (a) the Matrimonial Causes (Northern Ireland) Order 1978(17);
- (b) the Domestic Proceedings (Northern Ireland) Order 1980(18);
- (c) the Adoption (Northern Ireland) Order 1987(19);
- (d) Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(20);
- (e) Parts II, III, V and XV of the Children (Northern Ireland) Order 1995(21);
- (f) the Family Homes and Domestic Violence (Northern Ireland) Order 1998(22),

and the inherent jurisdiction of the High Court in relation to children.

(3) The Lord Chancellor may by regulations amend paragraph (1) or (2) by adding proceedings or omitting or varying any proceedings; and regulations under this paragraph may, in particular, describe the proceedings which cannot be the subject of an enforceable conditional fee agreement by reference to the court or tribunal before which proceedings are to take place, or the issues involved.

(4) The requirements which the Lord Chancellor may prescribe under Article 38(2)(c)—

- (a) include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made; and
- (b) may be different for different descriptions of conditional fee agreements (and, in particular, may be different for those which provide for a success fee and those which do not).

(5) Before making an order under Article 38(3), the Lord Chancellor—

- (a) shall consult the Lord Chief Justice, the Law Society and the General Council of the Bar of Northern Ireland, and
- (b) may undertake such other consultation as appears to him to be appropriate.

(6) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of fees payable under a conditional fee agreement which provides for a success fee.

(7) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee).

### **Litigation funding agreements**

**40.**—(1) A litigation funding agreement which satisfies all of the conditions applicable to it by virtue of this Article shall not be unenforceable by reason only of its being a litigation funding agreement.

(2) The following conditions are applicable to a litigation funding agreement—

- (a) the funder must be a prescribed person or a person of a prescribed description;
- (b) the agreement must be in writing;
- (c) the agreement must not relate to proceedings which by virtue of Article 39(1) and (2) cannot be the subject of an enforceable conditional fee agreement or to proceedings of any such description as may be prescribed;
- (d) the agreement must comply with such requirements (if any) as may be prescribed;
- (e) any fee payable on the making of the agreement must not exceed such amount as may be prescribed;

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(17) 1978 N.I. 15.

(18) 1980 N.I. 5.

(19) 1987 N.I. 22.

(20) 1989 N.I. 4.

(21) 1995 N.I. 2.

(22) 1998 N.I. 6.

- (f) the sum to be paid by the litigant must consist of any costs payable to him in respect of the proceedings to which the agreement relates, together with an amount calculated—
    - (i) in prescribed circumstances, by reference to the funder’s anticipated expenditure in funding the provision of the services; and
    - (ii) in prescribed circumstances, by reference to any damages recovered by the litigant in the proceedings; and
  - (g) the amount calculated in accordance with sub-paragraph (f)(i) or (ii) must not exceed such limit (whether expressed as a figure, as a percentage of the anticipated expenditure or damages mentioned in that sub-paragraph, or otherwise) as may be prescribed in relation to proceedings of the description to which the agreement relates.
- (3) Regulations under paragraph (2)(a) may require a person to be approved by the Lord Chancellor or by a prescribed person.
- (4) The requirements which may be prescribed under paragraph (2)(d) include requirements for the funder to have provided prescribed information to the litigant before the agreement is made.
- (5) Before making regulations under this Article, the Lord Chancellor—
- (a) shall consult the Lord Chief Justice, the Law Society and the General Council of the Bar of Northern Ireland, and
  - (b) may undertake such other consultation as appears to him to be appropriate.

**Litigation funding agreements: the Commission**

41. The Commission, and any body established or maintained by the Commission, may not—
- (a) fund services under a litigation funding agreement, or
  - (b) make any payment to any person for the purpose of enabling services to be funded under a litigation funding agreement.

**Litigation funding agreements: costs**

42.—(1) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any amount payable under a litigation funding agreement.

(2) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a litigation funding agreement.

- (3) In any proceedings—
- (a) to which an individual, for whom advocacy or litigation services relating to the proceedings, or to a part of the proceedings, are funded under a litigation funding agreement, is a party, and
  - (b) which are finally decided in favour of a party for whom such services are not so funded (“the unfunded party”),

the court by which the proceedings were so decided may, subject to paragraph (4), make an order for the payment by the funder to the unfunded party of the whole or any part of the costs incurred by the unfunded party in the proceedings.

(4) An order under paragraph (3) in respect of any costs may only be made if an order for costs would be made in the proceedings apart from this Order.

(5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under paragraph (3), or against a refusal to make such an order, except on a point of law.

(6) In this Article “costs” means costs as between party and party, and includes the costs of applying for an order under paragraph (3).

(7) For the purposes of this Article proceedings shall be treated as finally decided in favour of the unfunded party—

- (a) if no appeal lies against the decision in his favour,
- (b) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted, or
- (c) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal,

and where an appeal against the decision is brought out of time the court by which the appeal (or any further appeal in those proceedings) is determined may make an order for the repayment by the unfunded party to the funder of the whole or any part of any sum previously paid to the unfunded party under this Article in respect of those proceedings.

(8) Where a court decides any proceedings in favour of the unfunded party and an appeal lies (with or without leave) against that decision, the court may, if it thinks fit, make or refuse to make an order under paragraph (3) forthwith, but if an order is made forthwith it shall not take effect—

- (a) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;
- (b) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.

(9) Where a party begins to receive advocacy or litigation services funded by the funder after the proceedings have been instituted, or ceases to receive advocacy or litigation services so funded before they are finally decided, or otherwise receives advocacy or litigation services so funded in connection with part only of the proceedings, the reference in paragraph (3) to the costs incurred by the unfunded party in the proceedings shall be construed as a reference to so much of those costs as is attributable to that part.

(10) For the purposes of this Article “court” includes a tribunal.

### *Costs*

#### **Recovery of insurance premiums by way of costs**

**43.** Where in any proceedings a costs order is made in favour of any party who has taken out an insurance policy against the risk of incurring a liability in those proceedings, the costs payable to him may, subject in the case of court proceedings to rules of court, include costs in respect of the premium of the policy.

#### **Recovery where body undertakes to meet cost liabilities**

**44.—(1)** This Article applies where a body of a prescribed description undertakes to meet (in accordance with arrangements satisfying prescribed conditions) liabilities which members of the body or other persons who are parties to proceedings may incur to pay the costs of other parties to the proceedings.

(2) If in any of the proceedings a costs order is made in favour of any of the members or other persons, the costs payable to him may, subject to paragraph (3) and (in the case of court proceedings) to rules of court, include an additional amount in respect of any provision made by or on behalf of the body in connection with the proceedings against the risk of having to meet such liabilities.

(3) But the additional amount shall not exceed a sum determined in a prescribed manner; and there may, in particular, be prescribed as a manner of determination one which takes into account

the likely cost to the member or other person of the premium of an insurance policy against the risk of incurring a liability to pay the costs of other parties to the proceedings.

(4) Regulations under paragraph (1) may, in particular, prescribe as a description of body one which is for the time being approved by the Lord Chancellor or a prescribed person.

## PART IV SUPPLEMENTARY

### Application to Crown

**45.** This Order binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

### Orders, regulations and directions

**46.**—(1) Any direction given by the Lord Chancellor to the Commission under Part II may be varied or revoked.

(2) No directions may be given by the Lord Chancellor to the Commission under Part II in relation to individual cases.

(3) The Lord Chancellor shall either—

- (a) publish, or
- (b) require the Commission to publish,

any directions given by him under Part II.

(4) Any order or regulations made by the Lord Chancellor under this Order may contain such incidental, supplemental, consequential, saving or transitional provisions as the Lord Chancellor thinks fit; and, without prejudice to section 17(5) of the Interpretation Act (Northern Ireland) 1954<sup>(23)</sup>, any power conferred by this Order to make regulations or orders includes power to make different provision for different areas.

(5) No order shall be made under Article 4(4), 5, 10(2), 11(9)(b), 15(7), 29(3) or 38(3) and no regulations shall be made under Article 12(6), 18(1), 20(2)(b) or (d), 28, 30(2)(a) or (5), 32(1), 36 or 39(3) unless a draft of the order or regulations has been laid before, and approved by resolution of, each House of Parliament.

(6) Any other order or regulations under this Order, other than an order under Article 1(2) or 48 or paragraph 2(6) of Schedule 3, shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946<sup>(24)</sup> shall apply accordingly.

### Remuneration orders

**47.**—(1) When making any remuneration order the Lord Chancellor shall have regard, among the matters which are relevant, to—

- (a) the time and skill which the provision of services of the description to which the order relates requires;
- (b) the number and general level of competence of persons providing those services;
- (c) the cost to public funds of any provision made by the regulations; and

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<sup>(23)</sup> 1954 c. 33 (N.I.)

<sup>(24)</sup> 1946 c. 36.

- (d) the need to secure value for money.
- (2) Before making any remuneration order, the Lord Chancellor—
  - (a) shall consult the Lord Chief Justice, the Law Society, the General Council of the Bar of Northern Ireland and, if the remuneration order relates to criminal defence services, the Director of Public Prosecutions, and
  - (b) may undertake such other consultation as appears to him to be appropriate.
- (3) When the Lord Chancellor is making provision in a remuneration order which prescribes fees which are to be paid to persons or bodies in respect of the provision of services by them, nothing in paragraph (1) requires him to have regard to any fee payable, otherwise than in accordance with a remuneration order, in respect of the provision of such services.
- (4) In paragraphs (1) to (3) “remuneration order” means an order under Article 12(3), 23(3) or 24(3) which relates to the payment by the Commission of remuneration—
  - (a) for the provision of services by persons or bodies in individual cases, or
  - (b) by reference to the provision of services by persons or bodies in specified numbers of cases.
- (5) Until the Attorney General is a person appointed under section 22(2) of the Justice (Northern Ireland) Act 2002<sup>(25)</sup>, the reference in paragraph (2) to the Director of Public Prosecutions shall be construed as a reference to the Attorney General.

#### **Transitional provisions and savings**

- 48.—(1) The Lord Chancellor may by order make such transitional provisions and savings as he considers appropriate in connection with the coming into operation of any provision of this Order.
- (2) Schedule 3 (transitional provisions and savings) shall have effect.
- (3) Nothing in Schedule 3 limits paragraph (1) or the operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954.

#### **Minor and consequential amendments and repeals**

- 49.—(1) The statutory provisions specified in Schedule 4 shall be amended as specified in that Schedule.
- (2) The statutory provisions specified in Schedule 5 are hereby repealed to the extent specified in column 3 of that Schedule.

Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 3(4)

#### NORTHERN IRELAND LEGAL SERVICES COMMISSION

##### *Incorporation and status*

- 1.—(1) The Commission shall be a body corporate.
- (2) Subject to the provisions of this Order, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply to the Commission.
2. The Commission shall not be regarded—
- (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown;
- and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown.

##### *Tenure of members*

- 3.—(1) Subject to paragraphs 4 and 5, any member of the Commission shall hold and vacate office in accordance with the terms of his appointment.
- (2) But a person shall not be appointed a member of the Commission for a period of more than five years.
- 4.—(1) A member of the Commission may resign office by giving notice in writing to the Lord Chancellor.
- (2) A person who ceases to be a member of the Commission shall be eligible for re-appointment.
5. The Lord Chancellor may terminate the appointment of a member of the Commission 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 the Commission by reason of illness,
  - (c) he has been convicted of a criminal offence,
  - (d) he has been absent from meetings of the Commission for a period longer than six consecutive months without the permission of the Commission, or
  - (e) he is otherwise unable or unfit to discharge the functions of a member of the Commission.
- 6.—(1) Subject to sub-paragraphs (2) to (5), the member appointed to chair the Commission shall hold and vacate office as such in accordance with the terms of his appointment.
- (2) If the person appointed to chair the Commission ceases to be a member of the Commission, he shall cease to chair it.
- (3) A member appointed to chair the Commission may at any time resign from office as such by giving notice in writing to the Lord Chancellor.

(4) A member so appointed shall be eligible for re-appointment on ceasing to hold office as such (if still a member of the Commission).

(5) When a member is appointed to chair the Commission or ceases to hold office as such, the Lord Chancellor may vary the terms of the member's appointment as a member of the Commission so as to alter the date of cessation of membership.

#### *Members' interests*

7.—(1) Before appointing a person to be a member of the Commission, the Lord Chancellor shall satisfy himself that that person will have no such financial or other interest as is likely to affect prejudicially the exercise or performance by him of his functions as a member of the Commission.

(2) The Lord Chancellor shall from time to time satisfy himself with respect to every member of the Commission that he has no such interest as is referred to in sub-paragraph (1).

(3) Any person whom the Lord Chancellor proposes to appoint as, and who has consented to be, a member of the Commission, and any member of the Commission shall (whenever requested by the Lord Chancellor to do so) supply him with such information as the Lord Chancellor considers necessary for the performance by the Lord Chancellor of his duties under this paragraph.

8.—(1) A member of the Commission who is in any way directly or indirectly interested in an individual contract entered into or proposed to be entered into, or an individual grant, loan or other payment made or proposed to be made, by the Commission shall disclose the nature of his interest at a meeting of the Commission; and—

- (a) the disclosure shall be recorded in the minutes of the Commission, and
- (b) the member shall not take any part in any deliberation or decision of the Commission with respect to that contract or grant, loan or other payment.

(2) For the purposes of sub-paragraph (1), a general notice given at a meeting of the Commission by a member of the Commission to the effect—

- (a) that he is a person with whom a contract may be entered into, or to whom a grant, loan or other payment may be made, by the Commission, or
- (b) that he is a member of a specified body with which a contract may be entered into, or to which a grant, loan or other payment may be made, by the Commission,

shall be regarded as a sufficient disclosure of his interest in relation to any contract subsequently entered into with, or grant, loan or other payment made to, him or the body.

(3) A member of the Commission need not attend in person at a meeting of the Commission in order to make any disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read out at the meeting.

#### **Remuneration**

9.—(1) The Commission may—

- (a) pay to its members such remuneration, and
- (b) make provision for the payment of such pensions, allowances or gratuities to or in respect of its members,

as the Lord Chancellor may determine.

(2) Where a person ceases to be a member of the Commission otherwise than on the expiry of his term of office, and it appears to the Lord Chancellor that there are special circumstances which make it right for that person to receive compensation, the Lord Chancellor may require the Commission to make that person a payment of such amount as the Lord Chancellor may determine.



## Staff

**10.**—(1) The Commission shall appoint a person to be the chief executive of the Commission who shall be responsible to the Commission for the exercise of its functions.

(2) The Commission may appoint such other employees as it thinks fit.

(3) The Commission may only appoint a person to be—

(a) its chief executive, or

(b) the holder of any other employment of a description specified by the Lord Chancellor by direction given to the Commission,

after consultation with, and subject to the approval of, the Lord Chancellor.

(4) An appointment under this paragraph may be made on such terms and conditions as the Commission, with the approval of the Lord Chancellor, may determine.

**11.**—(1) The Commission shall make, in respect of such of its employees as, with the approval of the Lord Chancellor, it may determine, such arrangements for providing pensions, allowances or gratuities, including pensions, allowances or gratuities by way of compensation for loss of employment, as it may determine.

(2) Arrangements under sub-paragraph (1) may include the establishment and administration, by the Commission or otherwise, of one or more pension schemes.

(3) If an employee of the Commission—

(a) becomes a member of the Commission, and

(b) was by reference to his employment by the Commission a participant in a pension scheme established and administered by it for the benefit of its employees,

the Commission may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Commission whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 9.

(4) Where the Commission exercises the power conferred by sub-paragraph (3), any discretion as to the benefits payable to or in respect of the member concerned which the scheme confers on the Commission shall be exercised only with the approval of the Lord Chancellor.

## Funding of costs relating to administration etc.

**12.**—(1) The Lord Chancellor shall pay to the Commission such sums as he may determine as appropriate for—

(a) the exercise by the Commission of functions in relation to civil legal services other than the funding of services, and

(b) the administrative costs of the Commission.

(2) The Lord Chancellor may—

(a) determine the manner in which and times at which the sums mentioned in sub-paragraph (1) are to be paid to the Commission, and

(b) impose conditions on the payment of those sums.

## Proceedings

**13.**—(1) Subject to anything in any instrument made under this Part, the Commission may regulate its own proceedings.

(2) Committees—

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

(a) may be appointed, and may be dissolved, by the Commission, and  
(b) may include, or consist entirely of, persons who are not members of the Commission,  
but the Lord Chancellor may by direction require the Commission to make such provision relating to committees as is specified in the direction.

(3) A committee shall act in accordance with such instructions as the Commission may from time to time give; and the Commission may provide for anything done by a committee to have effect as if it had been done by the Commission.

(4) The Commission may pay to the members of any committee such fees and allowances as the Lord Chancellor may determine.

(5) Where a committee is to consider an individual contract entered into or proposed to be entered into, or an individual grant, loan or other payment made or proposed to be made, by the Commission, any member of the committee who is in any way directly or indirectly interested in the contract or the grant, loan or other payment shall disclose the nature of his interest at a meeting of the committee; and—

- (a) the disclosure shall be recorded in the minutes of the committee, and
- (b) the member shall not take any part in any deliberation or decision of the committee with respect to that contract or grant, loan or other payment.

(6) For the purposes of sub-paragraph (5), a general notice given at a meeting of a committee by a member of the committee to the effect—

- (a) that he is a person with whom a contract may be entered into, or to whom a grant, loan or other payment may be made, by the Commission, or
- (b) that he is a member of a specified body with which a contract may be entered into, or to which a grant, loan or other payment may be made, by the Commission,

shall be regarded as a sufficient disclosure of his interest in relation to any contract subsequently entered into with, or grant, loan or other payment made to, him or the body.

(7) A member of a committee need not attend in person at a meeting of the committee in order to make any disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read out at the meeting.

(8) The validity of any proceedings of the Commission or of any committee appointed by the Commission shall not be affected by any vacancy among its members or by any defect in the appointment of any member.

#### *Provision of information*

**14.—**(1) The Commission shall provide the Lord Chancellor with such information as he may require relating to its property and to the discharge or proposed discharge of its functions.

(2) The Commission shall—

- (a) permit any person authorised by the Lord Chancellor to inspect and make copies of any accounts or documents of the Commission, and
- (b) provide such explanation of them as any such person, or the Lord Chancellor, may require.

#### *Annual report*

**15.—**(1) The Commission shall provide to the Lord Chancellor, as soon as possible after the end of each financial year, a report on how it has during that year—

- (a) funded civil legal services, and

- (b) funded criminal defence services, and
- (c) exercised its other functions.

(2) The Lord Chancellor may by direction require the Commission to deal with the matters specified in the direction in reports, or a particular report, under this paragraph.

(3) The Lord Chancellor shall lay before each House of Parliament a copy of each report provided to him under this paragraph and the Commission shall publish a report once it has been so laid.

(4) In this paragraph and paragraphs 16 and 17 “financial year” means —

- (a) the period beginning with the day on which the Commission is established and ending with the next 31st March, and
- (b) each subsequent period of twelve months ending with 31st March.

#### *Annual plan*

**16.—**(1) The Commission shall, before the beginning of each financial year (other than that specified in paragraph 15(4)(a)) prepare a plan setting out how it intends in that year—

- (a) to fund civil legal services,
- (b) to fund criminal defence services, and
- (c) to exercise its other functions,

and the plan shall include a summary of what the Commission has ascertained in the exercise of its functions under Article 6(1).

(2) The Lord Chancellor may by direction require the Commission to deal with the matters specified in the direction in plans, or a particular plan, under sub-paragraph (1).

(3) The Commission shall send a copy of each plan prepared under sub-paragraph (1) to the Lord Chancellor.

(4) If the Lord Chancellor approves it, he shall lay a copy before each House of Parliament and the Commission shall publish the plan once it has been so laid.

(5) If he does not approve it, he shall by direction require the Commission to revise it in accordance with the direction; and the direction shall include the Lord Chancellor’s reasons for not approving the plan.

(6) When the Commission has revised the plan, it shall send the Lord Chancellor a copy of the revised plan, and he shall lay a copy before each House of Parliament, and the Commission shall publish the revised plan once it has been so laid.

#### *Accounts and audit*

**17.—**(1) The Commission shall keep accounts and shall prepare in respect of each financial year a statement of accounts.

(2) The accounts shall be kept, and the statement of accounts shall be prepared, in such form as the Lord Chancellor may, with the approval of the Treasury, specify by direction given to the Commission.

(3) The Commission shall send a copy of the statement of accounts in respect of each financial year to the Lord Chancellor and to the Comptroller and Auditor General within such period after the end of the financial year to which it relates as the Lord Chancellor may specify by direction given to the Commission.

(4) The Comptroller and Auditor General shall—

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

- (a) examine, certify and report on each statement of accounts received by him under sub-paragraph (3), and
  - (b) send a copy of his report to the Commission.
- (5) The Commission shall lay before each House of Parliament—
- (a) a copy of each statement of accounts prepared under sub-paragraph (1), and
  - (b) a copy of each report received from the Comptroller and Auditor General under sub-paragraph (4)(b).

### *Instruments*

**18.**—(1) The fixing of the seal of the Commission shall be authenticated by a member of the Commission or by some other person authorised either generally or specially by the Commission to act for that purpose.

(2) A document purporting to be duly executed under the seal of the Commission or to be signed on the Commission's behalf—

- (a) shall be received in evidence, and
- (b) unless the contrary is proved, shall be deemed to be so executed or signed.

## SCHEDULE 2

Article 12(5)

### CIVIL LEGAL SERVICES: EXCLUDED SERVICES

**1.** The Commission may not fund services consisting of the provision of advice (beyond the provision of general information about the law and the legal system and the availability of legal services) or assistance in relation to—

- (a) conveyancing,
- (b) boundary disputes,
- (c) the making of wills,
- (d) matters of trust law,
- (e) defamation or malicious falsehood,
- (f) matters of company or partnership law, or
- (g) other matters arising out of the carrying on of a business.

**2.** The Commission may not fund services consisting of representation in any proceedings, except, subject to paragraph 4, such proceedings as are specified in sub-paragraphs (a) to (j)—

- (a) proceedings in—
  - (i) the House of Lords in the exercise of its jurisdiction in relation to any appeal from Northern Ireland,
  - (ii) the Judicial Committee of the Privy Council in the exercise of its jurisdiction under the Northern Ireland Act 1998(26) or in relation to any appeal or reference from Northern Ireland,
  - (iii) the Court of Appeal,
  - (iv) the High Court, or

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(26) 1998 c. 47.

- (v) any county court,
- (b) proceedings before any person to whom a case is referred (in whole or in part) in any proceedings within sub-paragraph (a),
- (c) proceedings in the Crown Court under the Proceeds of Crime Act 2002(27) to the extent specified in paragraph 3,
- (d) proceedings in a court of summary jurisdiction—
  - (i) for or relating to an order under the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945(28) or the Domestic Proceedings (Northern Ireland) Order 1980(29) or the Family Homes and Domestic Violence (Northern Ireland) Order 1998(30),
  - (ii) under section 22 of the Maintenance Orders Act 1950(31) or section 13 of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966(32),
  - (iii) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972(33) relating to a maintenance order made by a court of a country outside the United Kingdom,
  - (iv) such as are referred to in paragraph (i) and are brought by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972,
  - (v) which are debt or ejection proceedings within the meaning of Part VI of the Magistrates' Courts (Northern Ireland) Order 1981(34), other than proceedings under Article 62(2) of that Order,
  - (vi) under section 97, 143 or 144(1) of the Children and Young Persons Act (Northern Ireland) 1968(35) or the Children (Northern Ireland) Order 1995(36),
  - (vii) under Article 101 of the Health and Personal Social Services (Northern Ireland) Order 1972(37) or section 101 of the Social Security Administration (Northern Ireland) Act 1992(38),
  - (viii) which are appeals under Article 22 of the Child Support (Northern Ireland) Order 1991(39), so far as such appeals are to be made to a court of summary jurisdiction by virtue of Article 2 of the Child Support Appeals (Jurisdiction of Courts) Order (Northern Ireland) 1993(40),
  - (ix) under Article 28 of the Child Support (Northern Ireland) Order 1991,
  - (x) for a sex offender order under Article 6 of the Criminal Justice (Northern Ireland) Order 1998(41),
  - (xi) for an order or direction under paragraph 3, 5, 6, 9 or 10 of Schedule 1 to the Anti-Terrorism, Crime and Security Act 2001(42), or

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(27) 2002 c. 29.

(28) 1945 c. 14 (N.I.).

(29) 1980 N.I. 5.

(30) 1998 N.I. 6.

(31) 1950 c. 37.

(32) 1966 c. 35 (N.I.).

(33) 1972 c. 18.

(34) 1981 N.I. 26.

(35) 1968 c. 34 (N.I.).

(36) 1995 N.I. 2.

(37) 1972 N.I. 14.

(38) 1992 c. 8.

(39) 1991 N.I. 23.

(40) S.R. 1993 No.104.

(41) 1998 N.I. 20.

(42) 2001 c. 24.

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

- (xii) for an order or direction under section 295, 297, 298, 301 or 302 of the Proceeds of Crime Act 2002,
  - (e) proceedings in any devolution issue (within the meaning of Schedule 10 to the Northern Ireland Act 1998, Schedule 8 to the Government of Wales Act 1998<sup>(43)</sup> or Schedule 6 to the Scotland Act 1998<sup>(44)</sup>) before any court in Northern Ireland,
  - (f) proceedings brought by an individual before the Proscribed Organisations Appeal Commission,
  - (g) proceedings before the Mental Health Review Tribunal,
  - (h) proceedings in the Lands Tribunal for Northern Ireland,
  - (i) proceedings before an adjudicator appointed for the purposes of Part 5 of the Nationality, Immigration and Asylum Act 2002<sup>(45)</sup>, the Immigration Appeal Tribunal or the Special Immigration Appeals Commission, and
  - (j) proceedings in the Enforcement of Judgments Office in connection with any proceedings mentioned in sub-paragraphs (a) to (i).
- 3.—**(1) These are the proceedings under the Proceeds of Crime Act 2002 referred to in paragraph 2(c)—
- (a) proceedings which relate to a direction under section 202(3) or 204(3) as to the distribution of funds in the hands of a receiver;
  - (b) applications under section 210 relating to action taken or proposed to be taken by a receiver;
  - (c) applications under section 211 to vary or discharge an order under any of sections 196 to 201 for the appointment of or conferring powers on a receiver;
  - (d) applications under section 220 or 221 for the payment of compensation;
  - (e) applications under sections 351(3), 362(3), 369(3) or 375(2) to vary or discharge certain orders made under Part 8.
- (2) But sub-paragraph (1) does not authorise the funding of the provision of services to a defendant (within the meaning of Part 4 of the Proceeds of Crime Act 2002) in relation to—
- (a) proceedings mentioned in sub-paragraph 1(b) of that sub-paragraph, or
  - (b) an application under section 221 of that Act for the payment of compensation if the confiscation order was varied under section 179.
- 4.** Subject to paragraph 5, the following services may not be funded by the Commission as civil legal services, even where they fall within the descriptions specified in paragraphs 2(a) to (j)—
- (a) representation in proceedings in respect of which representation may be granted as a criminal defence service;
  - (b) representation wholly or partly in respect of defamation;
  - (c) representation in relator actions;
  - (d) representation in relation to election petitions under the Representation of the People Act 1983<sup>(46)</sup> or the Electoral Law Act (Northern Ireland) 1962<sup>(47)</sup>;

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<sup>(43)</sup> 1998 c. 38.

<sup>(44)</sup> 1998 c. 46.

<sup>(45)</sup> 2002 c. 41.

<sup>(46)</sup> 1983 c. 29.

<sup>(47)</sup> 1962 c. 14. (N.I.).

- (e) representation in proceedings (other than proceedings referred to in paragraph 2(j)) for the recovery of a debt (including liquidated damages) which is admitted where the only question to be brought before the court is as to the time and mode of payment of that debt;
- (f) representation in proceedings incidental to any proceedings mentioned in sub-paragraphs (a) to (e).

5. Notwithstanding paragraph 4, the making of a counterclaim for defamation in proceedings for which representation may be granted shall not of itself affect any right of a defendant to the counterclaim to representation in the proceedings and representation may be granted to enable him to defend such counterclaim.

### SCHEDULE 3

Article 48(2)

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### *Interpretation*

1. In this Schedule—

“the 1981 Order” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(48);

“the first appointed day” means the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 3(1);

“the Old Fund” has the meaning given by paragraph 3;

“the second appointed day” means the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 11(1).

##### *Rights, obligations and property*

2.—(1) Subject to paragraphs 3 and 9, on the first appointed day all rights, obligations and property of the Law Society which are referable to its functions under the 1981 Order shall become rights, obligations and property of the Commission.

(2) Any payments which are required to be made into or out of the Old Fund in connection with legal aid or advice or assistance under the 1981 Order shall, on and after the first appointed day, be paid to or by the Commission.

(3) Anything which, immediately before the first appointed day, is in the process of being done by or in relation to the Law Society may, if it relates to anything transferred by sub-paragraph (1), be continued by or in relation to the Commission.

(4) Anything done (or having effect as if done) by or in relation to the Law Society before the first appointed day for the purpose of, or in connection with, anything transferred by sub-paragraph (1) shall, so far as is required for continuing its effect after that time, have effect as if done by or in relation to the Commission.

(5) Any reference in any document, including any statutory provision, constituting or relating to anything transferred by sub-paragraph (1)—

- (a) to, or to the Council of, the Law Society, or

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(48) 1981 N.I. 8.

(b) to the Legal Aid Committee, certifying committee or any other committee or tribunal established by the Law Society under Part II of the 1981 Order, or

(c) to any member or office-holder of such a committee or tribunal,

shall, so far as is required for giving effect to that sub-paragraph, be construed as a reference to the Commission, or in relation to a function exercisable by any individual or committee under arrangements made by the Commission under Article 7(4) of this Order, as a reference to that individual or committee.

(6) The Lord Chancellor may by order make any consequential, incidental, supplementary or transitional provisions, and any savings, which appear to him to be appropriate in consequence of or otherwise in connection with the transfers effected by sub-paragraph (1).

(7) An order under sub-paragraph (6) may include provisions in the form of amendments or repeals of this Schedule or any other statutory provision.

### *The Legal Aid Fund*

**3.—**(1) On the first appointed day the legal aid fund (“the Old Fund”) maintained by the Law Society under Article 19 of the 1981 Order shall be wound up.

(2) If, as at the first appointed day, after taking account of all receipts and expenses of the Law Society attributable to its functions under the 1981 Order, there is in relation to the Old Fund any surplus or deficit—

(a) such surplus shall be paid by the Law Society to the Lord Chancellor; and

(b) such deficit shall be made up by payment to the Law Society by the Lord Chancellor of the amount of the deficit.

(3) The Law Society shall, as soon as possible after the first appointed day, prepare a report in accordance with Article 18(8) of the 1981 Order—

(a) in relation to the last financial year ending before the first appointed day (if it has not done so before then), and

(b) in relation to the period between the end of that financial year and the first appointed day (as if that period were a financial year).

(4) The Law Society shall, as soon as possible after the first appointed day, prepare a statement of accounts in accordance with Article 20 of the 1981 Order—

(a) in relation to the last financial year ending before the first appointed day (if it has not done so before then), and

(b) in relation to the period between the end of that financial year and the first appointed day (as if that period were a financial year).

(5) Paragraphs (2) to (5) of Article 20 of the 1981 Order shall, on and after the first appointed day, apply in relation to—

(a) the preparation of a statement under sub-paragraph (4)(a) or (b), and

(b) the auditing of accounts kept under that Article for the periods mentioned in sub-paragraphs (4)(a) and (b).

(6) Notwithstanding its repeal by this Order, Article 19(5) of the 1981 Order shall continue to have effect for the purposes of any determination as to the expenses or receipts of the Law Society.

(7) The Lord Chancellor shall meet the costs of remunerating auditors and any other costs incurred by the Law Society in connection with the exercise of any of its functions under this paragraph.



*Part II of the 1981 Order*

4.—(1) The provisions of this paragraph shall have effect if the first appointed day falls before the second appointed day.

(2) With effect from the first appointed day until the second appointed day it shall be the responsibility of the Commission—

- (a) to establish and maintain a fund, which shall be deemed for all purposes of the 1981 Order to be the legal aid fund,
- (b) subject to the provisions of Part II of the 1981 Order and this Schedule, to make arrangements with the approval of the Lord Chancellor and the concurrence of the Treasury for securing that legal aid, advice and assistance are available as required by Part II of the 1981 Order,
- (c) to monitor the conduct of solicitors and barristers advising or assisting or acting for persons entitled to receive advice or assistance or legal aid under the 1981 Order and, where it considers it appropriate to do so—
  - (i) to make a complaint about the conduct of a person so advising or assisting or acting to the Law Society (in the case of a solicitor) or to the General Council of the Bar of Northern Ireland (in the case of a barrister), or
  - (ii) to refer any complaint which is made to the Commission about the conduct of a person so advising or assisting or acting to the Law Society (in the case of a solicitor) or to the General Council of the Bar of Northern Ireland (in the case of a barrister), and
- (d) generally to administer Part II of the 1981 Order.

(3) In relation to any time from the first appointed day to the second appointed day, any reference in Part II of the 1981 Order or in any statutory provision made, or treated as made, under that Part—

- (a) to, or to the Council of, the Law Society, or
- (b) to the Legal Aid Committee, certifying committee or any other committee or tribunal established by the Law Society under that Part, or
- (c) to any member or office-holder of such a committee or tribunal,

shall, so far as is required to enable the Commission to exercise its functions under sub-paragraph (2), and subject to sub-paragraph (4), be construed as a reference to the Commission, or in relation to a function exercisable by any individual or committee under arrangements made by the Commission under Article 7(4) of this Order, as a reference to that individual or committee.

(4) Sub-paragraph (3) shall not apply to Article 23 or 24 of the 1981 Order; but instead in Article 24—

- (a) any reference to the Law Society shall, in relation to any time from the first appointed day to the second appointed day, be deemed to include a reference to the Commission; and
- (b) paragraph (1) shall have effect as if there were inserted after sub-paragraph (c)—

“or

- (d) for the purpose of facilitating the proper performance by the Law Society or the General Council of the Bar of Northern Ireland of their functions in relation to complaints made or referred to them by the Commission.”

(5) The Commission shall pay into the fund established under sub-paragraph (2)(a)—

- (a) sums received from the Lord Chancellor under sub-paragraph (7),
- (b) any receipts of the Commission attributable to Part II of the 1981 Order, and

- (c) such other receipts of the Commission as the Lord Chancellor may, with the concurrence of the Treasury, determine.
- (6) All expenses of the Commission attributable to Part II of the 1981 Order shall be paid out of the fund established under sub-paragraph (2)(a).
- (7) The Lord Chancellor shall pay to the Commission out of money provided by Parliament such sums as are required (after allowing for sums received apart from this sub-paragraph) to meet the payments which, under sub-paragraph (6), are to be paid by the Commission out of the fund established under sub-paragraph (2)(a).
- (8) The Lord Chancellor may, with the approval of the Treasury—
- (a) determine the manner in which and times at which the sums referred to in sub-paragraph (7) shall be paid to the Commission; and
  - (b) impose conditions on the payment of the sums referred to in sub-paragraph (7).
- (9) Estimates of the sums required as mentioned in sub-paragraph (7) shall from time to time be submitted to the Lord Chancellor by the Commission.
- (10) An estimate shall be submitted under sub-paragraph (9)—
- (a) at least once in the period beginning with the first appointed day and ending with the next 31st March, and
  - (b) at least once in each subsequent period of twelve months ending with 31st March,
- at such time as the Lord Chancellor may, with the approval of the Treasury, direct.
- (11) An estimate under sub-paragraph (9) shall be in such form and shall give such particulars as may be so directed.
- (12) Any provision of Part II of the 1981 Order requiring anything to be paid into or out of the fund established under sub-paragraph (2)(a) is not to be taken as requiring the making of an actual payment, so as to prevent the obligation to make it being satisfied in whole or in part by an allowance on account or in any other way; and in that Part references to payments, to sums paid or payable or to receipts and similar references shall be construed accordingly.
- (13) Where a fund is established under sub-paragraph (2)(a), that fund shall, with effect from the second appointed day, be treated as if it were established under Article 11(1).

### *Part III of the 1981 Order*

- 5.—(1) The provisions of this paragraph shall have effect if the first appointed day falls before the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 21.
- (2) With effect from the first appointed day until the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 21, in any case where a criminal aid certificate is granted under Part III of the 1981 Order in respect of any person, the expenses properly incurred in pursuance of the certificate, including the fees of a solicitor and, where counsel has been assigned, of counsel, shall be paid—
- (a) by the Lord Chancellor, or
  - (b) by the Commission,
- as the Lord Chancellor may direct.
- (3) Sub-paragraph (2) is subject to any rules made under Article 36 of the 1981 Order and to any directions given under that Article.
- (4) The Commission shall establish and maintain a fund from which it shall make any payments which, under sub-paragraph (2), are to be paid by the Commission.
- (5) The Commission shall pay into the fund established under sub-paragraph (4)—

- (a) sums received from the Lord Chancellor under sub-paragraph (6), and
  - (b) such other receipts of the Commission as the Lord Chancellor may, with the concurrence of the Treasury, determine.
- (6) The Lord Chancellor shall pay to the Commission out of money provided by Parliament such sums as are required (after allowing for sums received apart from this sub-paragraph) to meet the payments which, under sub-paragraph (2), are to be paid by the Commission.
- (7) The Lord Chancellor may, with the approval of the Treasury—
- (a) determine the manner in which and times at which the sums referred to in sub-paragraph (6) are to be paid to the Commission; and
  - (b) impose conditions on the payment of the sums referred to in sub-paragraph (6).
- (8) Estimates of the sums required as mentioned in sub-paragraph (6) shall from time to time be submitted to the Lord Chancellor by the Commission.
- (9) An estimate shall be submitted under sub-paragraph (8)—
- (a) at least once in the period beginning with the first appointed day and ending with the next 31st March, and
  - (b) at least once in each subsequent period of twelve months ending with 31st March,
- at such time as the Lord Chancellor may, with the approval of the Treasury, direct.
- (10) An estimate under sub-paragraph (8) shall be in such form and shall give such particulars as may be so directed.
- (11) Where a fund is established under sub-paragraph (4), that fund shall, with effect from the day appointed by the Lord Chancellor under Article 1(2) for the coming into operation of Article 21, be treated as if it were established under Article 21(1).

#### *Commission's annual plan and annual report*

- 6.—(1) Where the Commission exercises any functions by virtue of paragraph 4(2) or 5(2) during any financial year, it shall deal with how it has exercised those functions during that year in the report which it is required to provide to the Lord Chancellor in relation to that year under paragraph 15 of Schedule 1.
- (2) Where the Commission proposes to exercise any functions by virtue of paragraph 4(2) or 5(2) during any financial year, it shall deal with how it intends to exercise those functions during that year in the plan which it is required to prepare in relation to that year under paragraph 16 of Schedule 1.
- (3) In this paragraph “financial year” has the meaning given by paragraph 15 of Schedule 1, but does not, in relation to any plan prepared under paragraph 16 of that Schedule, include the year specified in paragraph 15(4)(a) of that Schedule.

#### *Grants and approvals under the 1981 Order*

- 7.—(1) Any grant of legal aid under Part II of the 1981 Order which is in force immediately before the second appointed day shall, on and after that day, have effect as a decision of the Commission to fund representation as a civil legal service.
- (2) Any approval given in connection with the grant of legal aid under Part II of the 1981 Order which is in force immediately before the second appointed day shall, on and after that day, have effect as a decision of the Commission to fund representation as a civil legal service.
- (3) Any approval given in connection with the grant of assistance by way of representation under Part II of the 1981 Order which is in force immediately before the second appointed day shall, on

and after that day, have effect as a decision of the Commission to fund representation as a civil legal service.

(4) Any approval given in connection with the grant of advice or assistance under Part II of the 1981 Order which is in force immediately before the second appointed day shall, on and after that day, have effect as an approval by the Commission in connection with the funding of advice or assistance as a civil legal service.

#### *Chief Executive of the Commission*

**8.—**(1) Notwithstanding anything in paragraph 10 of Schedule 1, the first appointment of a chief executive of the Commission shall be made by the Lord Chancellor.

(2) Any appointment under this paragraph shall be made on such terms and conditions as the Lord Chancellor may determine.

#### *The Commission: transfers of employment*

**9.—**(1) The Commission shall make, not later than such date as the Lord Chancellor may determine, an offer of employment by the Commission to such of the persons employed immediately before that date by the Law Society for the purpose of its functions under the 1981 Order as fall within such descriptions as the Lord Chancellor designates for the purposes of this paragraph or are persons whom the Commission wishes to employ.

(2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.

(3) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

**10.—**(1) Where a person becomes an employee of the Commission on acceptance of an offer made under paragraph 9, then, for the purposes of the Employment Rights (Northern Ireland) Order 1996<sup>(49)</sup>, his period of employment with the Law Society shall count as a period of employment by the Commission, and the change of employment shall not break the continuity of the period of employment.

(2) Where an offer is made under paragraph 9 to any person, none of the agreed redundancy procedures applicable to employees of the Law Society shall apply to him.

(3) Where a person employed by the Law Society ceases to be so employed—

(a) on becoming a member of the staff of the Commission on accepting an offer under paragraph 9, or

(b) having unreasonably refused such an offer,

Part XII of the Employment Rights (Northern Ireland) Order 1996 shall not apply to him and he shall not be treated for the purposes of any scheme in force under Article 21 of the 1981 Order as having been retired on redundancy.

(4) Where a person to whom an offer under paragraph 9 has been made continues in employment in the Law Society after having not unreasonably refused that offer he shall be treated for all purposes as if no offer under paragraph 9 had been made to him.

**11.—**(1) Any dispute as to whether an offer purporting to be made under paragraph 9 complies with that paragraph shall be referred to and be determined by an industrial tribunal.

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<sup>(49)</sup> 1996 N.I. 16.

(2) An industrial tribunal shall not consider a complaint referred to it under sub-paragraph (1) unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

(3) Except as provided by Article 22 of the Industrial Tribunals (Northern Ireland) Order 1996<sup>(50)</sup>, no appeal shall lie from the decision of an industrial tribunal under this paragraph.

#### *Pensions*

**12.** Any arrangements made by the Law Society under Article 21 of the 1981 Order in respect of any pension shall be treated on and after the first appointed day (so far as may be necessary to preserve their effect) as having been made under paragraph 11(1) of Schedule 1 to this Order, and any pension scheme administered by the Law Society immediately before the first appointed day shall be deemed to be a pension scheme established and administered by the Commission under that paragraph and shall continue to be administered accordingly.

#### *Assistance with functions*

**13.—(1)** The Law Society shall give to the Commission all the information, prepare all the documents and do all other things which appear to the Commission appropriate for the purpose of facilitating—

(a) the carrying into effect of the transfers effected by paragraph 2(1), and

(b) the exercise of any functions conferred or imposed on the Commission by this Order;

and the Law Society may do anything else which appears to it appropriate for that purpose.

(2) From the first appointed day, the Commission shall make available to the Law Society such facilities as it may reasonably require for exercising its functions under this paragraph or paragraph 3.

### SCHEDULE 4

Article 49(1)

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Costs in Criminal Cases Act (Northern Ireland) 1968 (c. 10)*

**1.—(1)** The Costs in Criminal Cases Act (Northern Ireland) 1968 shall be amended as follows.

(2) In section 4(1) (costs awarded by Court of Appeal on dismissing appeal or application) for paragraph (b) substitute—

“(b) to pay to the Northern Ireland Legal Services Commission the whole or any part of the costs of criminal defence services funded by the Commission in respect of the appeal or application under the Access to Justice (Northern Ireland) Order 2003; and”.

(3) In section 6 (effect of costs of legal aid)—

(a) for “Part III of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “the Access to Justice (Northern Ireland) Order 2003”; and

(b) in paragraph (b) for the words from “Lord Chancellor” to the end substitute “Northern Ireland Legal Services Commission the whole or any part of the costs of the criminal

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<sup>(50)</sup> 1996 N.I. 18.

defence services funded by the Commission for the defendant or (as the case may be) the appellant”.

*Solicitors (Northern Ireland) Order 1976 (N.I.12)*

- 2.—(1) The Solicitors (Northern Ireland) Order 1976 shall be amended as follows.
- (2) In Article 3(2) (interpretation) after the definition of “client” insert—
- ““the Commission” means the Northern Ireland Legal Services Commission (and references to civil legal services and criminal defence services funded by the Commission shall be construed in accordance with the Access to Justice (Northern Ireland) Order 2003);”.
- (3) In Article 44(1) (applications and complaints to Solicitors Disciplinary Tribunal)—
- (a) in sub-paragraph (d) (application by solicitor excluded from legal aid work)—
- (i) for “excluded from legal aid work” substitute “prohibited from providing civil legal services or criminal defence services funded by the Commission”; and
- (ii) for “terminating his exclusion” substitute “lifting the prohibition on his providing such services”; and
- (b) in sub-paragraph (g) (complaints in connection with legal aid work) for paragraphs (i) and (ii) substitute “the provision of civil legal services or criminal defence services funded by the Commission; or”.
- (4) In Article 51(1) (orders of Solicitors Disciplinary Tribunal on inquiry) for sub-paragraph (i) (order terminating solicitor’s exclusion from legal aid work) substitute—
- “(i) the lifting of a prohibition on the solicitor providing civil legal services or criminal defence services funded by the Commission;”.
- (5) In Article 51B(1) (power of Solicitors Disciplinary Tribunal to make order excluding solicitor from legal aid work)—
- (a) for sub-paragraphs (a) and (b) substitute—
- “(a) make an order prohibiting the solicitor (either permanently or for a specified period) from providing civil legal services or criminal defence services funded by the Commission;
- (b) order that any costs otherwise payable in connection with such services provided by the solicitor—
- (i) under Article 17(1) of the Access to Justice (Northern Ireland) Order 2003, or
- (ii) in accordance with an order made by a court under Article 31(2) of that Order,
- shall be reduced or cancelled;” and
- (b) at the end insert “and the power of the Tribunal under this Article is without prejudice to any powers of the Commission under any regulations made under Article 36 of the Access to Justice (Northern Ireland) Order 2003 (register of persons providing civil legal services and criminal defence services under that Order).”.
- (6) In Article 51B(2) (no order to be made unless good reason arising out of conduct of solicitor) for sub-paragraphs (a) and (b) substitute—
- “(a) the conduct of the solicitor in connection with the provision for any person of civil legal services or criminal defence services funded by the Commission (including the provision of any such services in the capacity of agent for that person’s solicitor); or”.

(7) In Article 51B(3) (power to order that other members of firm be excluded from legal aid work) for the words from “shall be excluded” to the end substitute “shall be prohibited (either permanently or for a specified period) from providing civil legal services or criminal defence services funded by the Commission”.

(8) In Article 51B(4) (which makes provision about orders under paragraph (3)) for “excluding any person from legal aid work” substitute “prohibiting any person from providing civil legal services or criminal defence services funded by the Commission”.

(9) In Article 51B(5) (certain provisions of Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to have effect subject to an order under Article 51B(1)(b)) for “any of Articles 7, 8, 13(1) and 36(1) of the Order of 1981” substitute “Article 17 or 31 of the Access to Justice (Northern Ireland) Order 2003”.

(10) In paragraph 23(1) of Schedule 1A (power to make orders with respect to incorporated practices), for the words “excluded (either permanently or for a specified period) from legal aid work” substitute “prohibited from providing (either permanently or for a specified period) civil legal services or criminal defence services funded by the Commission”.

#### *Sex Discrimination (Northern Ireland) Order 1976 (N.I.15)*

**3.** In Article 75 of the Sex Discrimination (Northern Ireland) Order 1976 (charges to recover costs of assistance) in paragraph (4)—

- (a) for “under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “imposed by Article 17 of the Access to Justice (Northern Ireland) Order 2003”;
- (b) after “any provision in” insert “, or made under”; and
- (c) for “into the legal aid fund” substitute “to the Northern Ireland Legal Services Commission”.

#### *European Communities (Services of Lawyers) Order 1978 (S.I.1978/1910)*

**4.** In Part 1 of the Schedule to the European Communities (Services of Lawyers) Order 1978 (enactments relating to the provision of legal advice and assistance and legal aid) for the entry relating to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 substitute—

“Access to Justice (Northern Ireland) Order 2003”.

#### *Criminal Appeal (Northern Ireland) Act 1980 (c. 47)*

**5.—(1)** The Criminal Appeal (Northern Ireland) Act 1980 shall be amended as follows.

(2) Section 19 (legal aid) shall cease to have effect.

(3) In section 30(1) (interpretation of Part I) in the definition of “sentence” at the end insert “, but does not include any order under Article 31 of the Access to Justice (Northern Ireland) Order 2003”.

(4) Section 37 (legal aid) shall cease to have effect.

(5) Paragraph 1 of Schedule 1 (legal aid provisions applicable on retrial) shall cease to have effect.

#### *Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (N.I. 8)*

**6.—(1)** The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 shall be amended as follows.

(2) In Article 15 (solicitors and counsel)—

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

- (a) in paragraph (1) for the words from “there is” to the end substitute “he is for the time being prohibited from doing so 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”, and

- (b) omit paragraph (2).

(3) In Article 37 (remuneration of solicitors and counsel assigned to give legal aid under Part III) for the words “to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done” substitute—

“, among the matters which are relevant, to—

- (a) the time and skill which work of the description to which the rules relate requires;
- (b) the number and general level of competence of persons undertaking work of that description;
- (c) the cost to public funds of any provision made by the rules; and
- (d) the need to secure value for money,

but nothing in this Article shall require him to have regard to any fees payable to solicitors and counsel otherwise than under this Part.”

(4) In paragraph 6 of Schedule 2 (remuneration of persons giving legal aid under Part II) for the words “to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done” substitute—

“, among the matters which are relevant, to—

- (a) the time and skill which work of the description to which the order relates, or the regulations relate, requires;
- (b) the number and general level of competence of persons undertaking work of that description;
- (c) the cost to public funds of any provision made by the order or regulations; and
- (d) the need to secure value for money,

but nothing in this paragraph shall require him to have regard to any fees payable to solicitors and counsel otherwise than under this Schedule.”

#### *Telecommunications Act 1984 (c. 12)*

7. In section 52(5) of the Telecommunications Act 1984 (charges to recover costs of assistance in legal proceedings subject to legal aid charges) for paragraph (c) substitute—

- “(c) any charge imposed by Article 17(7) of the Access to Justice (Northern Ireland) Order 2003 and any provision in, or made under, Part II of that Order for the payment of any sum to the Northern Ireland Legal Services Commission.”

#### *Child Abduction and Custody Act 1985 (c. 60)*

8. In section 11 of the Child Abduction and Custody Act 1985 (cost of applications)—

- (a) after paragraph (a) insert—

“(aa) the provision of civil legal services by the Northern Ireland Legal Services Commission, or;” and

- (b) after “the Legal Aid (Scotland) Act 1967” insert “or”.



*Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (N.I. 16)*

**9.**—(1) The Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 shall be amended as follows.

(2) In Article 3(1) (notice of transfer of serious fraud cases), for the words “Article 29(2) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003”.

(3) In Article 10(9) (restrictions on reporting), for sub-paragraph (h) substitute—

“(h) whether a right to representation funded by the Northern Ireland Legal Services Commission was granted to the accused or any of the accused under the Access to Justice (Northern Ireland) Order 2003.”

*Social Security Administration (Northern Ireland) Act 1992 (c. 8)*

**10.** In section 103(7) of the Social Security Administration (Northern Ireland) Act 1992 (enforcement of maintenance orders)—

- (a) for “Incorporated Law Society of Northern Ireland” substitute “Northern Ireland Legal Services Commission”;
- (b) for “legal aid under Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “civil legal services funded by the Commission”; and
- (c) for “under Article 12 of that Order” substitute “by virtue of Article 17 of the Access to Justice (Northern Ireland) Order 2003”.

*Children (Northern Ireland) Order 1995 (N.I. 2)*

**11.** In Article 44 of the Children (Northern Ireland) Order 1995 (court order for keeping child in secure accommodation), in paragraph (7) (child must be informed of right to apply for legal aid) for “legal aid” substitute “civil legal services funded by the Northern Ireland Legal Services Commission”.

*Children’s Evidence (Northern Ireland) Order 1995 (N.I. 3)*

**12.**—(1) The Children’s Evidence (Northern Ireland) Order 1995 shall be amended as follows.

(2) In Article 4(3) (notice of transfer of certain cases involving children), for “Article 29(2)(e) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003”.

(3) In Schedule 1 (notice of transfer: procedure in lieu of committal), in paragraph 5(8) (restrictions on reporting), for paragraph (g) substitute—

“(g) whether a right to representation funded by the Northern Ireland Legal Services Commission was granted to the accused or any of the accused under the Access to Justice (Northern Ireland) Order 2003.”

(4) In paragraph 6(1)(b) of that Schedule (avoidance of delay in bringing to trial a case in which notice of transfer has been given), for “Article 29(2)(e) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “any regulations under Article 26(3) of the Access to Justice (Northern Ireland) Order 2003”.

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

*Race Relations (Northern Ireland) Order 1997 (N.I. 6)*

**13.** In Article 64(6) of the Race Relations (Northern Ireland) Order 1997 (charges to recover costs of assistance in legal proceedings subject to legal aid charges)—

- (a) for “under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “imposed by Article 17 of the Access to Justice (Northern Ireland) Order 2003”;
- (b) after “any provision in” insert “, or made under”; and
- (c) for “into the legal aid fund” substitute “to the Northern Ireland Legal Services Commission”.

*Northern Ireland Act 1998 (c. 47)*

**14.** In Schedule 10 to the Northern Ireland Act 1998 (devolution issues), in paragraph 39(2) for “Sub-paragraphs (3) and (4) apply” substitute “Sub-paragraph (3) applies”.

*Freedom of Information Act 2000 (c. 36)*

**15.** In Part VII of Schedule 1 to the Freedom of Information Act 2000 (public authorities) insert (at the appropriate place in alphabetical order)—

“The Northern Ireland Legal Services Commission.”

*Equality (Disability, etc.) (Northern Ireland) Order 2000 (N.I. 2)*

**16.** In Article 10 of the Equality (Disability, etc.) (Northern Ireland) Order 2000 in paragraph (4) (charge created by Article 10 is subject to charge under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981)—

- (a) for “under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute “imposed by Article 17(7) of the Access to Justice (Northern Ireland) Order 2003”, and
- (b) for “in that Order for payment of any sum into the legal aid fund” substitute “in, or made under, Part II of that Order for the payment of any sum to the Northern Ireland Legal Services Commission.”

*European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000/1119)*

**17.** In Part 1 of Schedule 3 to the European Communities (Lawyer’s Practice) Regulations 2000 (enactments relating to the provision of legal advice and assistance and legal aid) for “Legal Aid, Advice and Assistance (Northern Ireland) Order 1981” substitute—

“Access to Justice (Northern Ireland) Order 2003”.

*Anti-Terrorism, Crime and Security Act 2001 (c. 24)*

**18.** In Part 2 of Schedule 4 to the Anti-Terrorism, Crime and Security Act 2001 (Northern Ireland legislation to which section 17 applies), for paragraph 57 substitute—

“Access to Justice (Northern Ireland) Order 2003

57 Article 32(1) of the Access to Justice (Northern Ireland) Order 2003.”

## SCHEDULE 5

Article 49(2)

## REPEALS

<i>Chapter or Number</i>	<i>Short Title</i>	<i>Extent of repeal</i>
1976 N.I. 12.	The Solicitors (Northern Ireland) Order 1976.	Article 51B(6) and, in Schedule 1A, paragraph 23(2).
1980 c. 47.	The Criminal Appeal (Northern Ireland) Act 1980.	In section 7(4), the words “legal aid for”.  Section 19.  In section 28(2), paragraph (a) and the words “in the case of expenses within paragraph (a), by the Lord Chancellor and, in any other case”.  Section 28(2A) to (2G).  Section 37.  Section 45(2)(e) and (3)(c).  In Schedule 1, paragraph 1.
1981 c. 49.	The Contempt of Court Act 1981.	Section 13 (as it applies to Northern Ireland).
1981 N.I. 8.	The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.	The whole Order.
1981 N.I. 26.	The Magistrates' Courts (Northern Ireland) Order 1981.	In Schedule 6, in Part III, paragraphs 183-185.
1982 c. 27.	The Civil Jurisdiction and Judgments Act 1982.	Section 40(3).
S.I. 1982/159.	The Transfer of Functions (Legal Aid and Maintenance Orders) (Northern Ireland) Order 1982.	In the Schedule, paragraphs 1, 2, 3 and 5.
1983 c. 2.	The Representation of the People Act 1983.	In Schedule 8, paragraph 28.
1985 c. 60.	The Child Abduction and Custody Act 1985.	In section 11, the words “or the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981”.
1986 N.I. 3.	The Education and Libraries (Northern Ireland) Order 1986.	In Schedule 18, the entry relating to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

<i>Chapter or Number</i>	<i>Short Title</i>	<i>Extent of repeal</i>
1986 N.I. 4.	The Mental Health (Northern Ireland) Order 1986.	In Schedule 5, in Part II, the entry relating to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.
1986 N.I. 9.	The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986.	In Schedule 1, in Part I, the entry relating to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.
1986 N.I. 12.	The Legal Advice and Assistance (Amendment) (Northern Ireland) Order 1986.	The whole Order.
1986 N.I. 18.	The Social Security (Northern Ireland) Order 1986.	In Schedule 9, in Part II, paragraph 36.
1988 N.I. 16.	The Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988.	In the Schedule, paragraphs 5(1) and 6.
1989 N.I. 14.	The Solicitors (Amendment) (Northern Ireland) Order 1989.	Article 26.
1992 c. 9.	The Social Security (Consequential Provisions) (Northern Ireland) Act 1992.	In Schedule 2, paragraph 24.
1993 N.I. 6.	The Family Law (Northern Ireland) Order 1993.	Article 12(3)(g). In Schedule 4, paragraph 9.
S.R. 1993/67.	The Companies (1990 Order) (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations (Northern Ireland) 1993.	In the Schedule, paragraph 10.
1994 c. 33.	The Criminal Justice and Public Order Act 1994.	Section 53.
1995 N.I. 2.	The Children (Northern Ireland) Order 1995.	Article 172 and, in Schedule 9, paragraph 111.
1995 N.I. 3.	The Children's Evidence (Northern Ireland) Order 1995.	In Schedule 2, paragraph 9.
1995 N.I. 15.	The Jobseekers Allowance (Northern Ireland) Order 1995.	In Schedule 2, paragraph 2.
1996 c. 25.	The Criminal Procedure and Investigations Act 1996.	In Schedule 4, paragraphs 11 and 19.
1998 c. 47.	The Northern Ireland Act 1998.	In Schedule 10, paragraph 39(4) to (6).

<i>Chapter or Number</i>	<i>Short Title</i>	<i>Extent of repeal</i>
1998 N.I. 6.	The Family Homes and Domestic Violence (Northern Ireland) Order 1998.	In Schedule 3, the entry relating to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.
1998 N.I. 9.	The Criminal Justice (Children) (Northern Ireland) Order 1998.	In Schedule 5, paragraph 14.
S.I. 1999/1042.	The Scotland Act 1998 (Consequential Modifications) (No.1) Order 1999.	In the Schedule, in Part II, paragraph 14.
2000 c. 11.	The Terrorism Act 2000.	Section 68.  In Schedule 15, paragraph 4.
2001 c. 24.	The Anti-Terrorism, Crime and Security Act 2001.	Section 2(8).
2002 c. 21.	The Tax Credits Act 2002.	In Schedule 3, paragraphs 4 to 7.
2002 c. 26.	The Justice (Northern Ireland) Act 2002.	Sections 61, 76 and 77 and, in Schedule 12, paragraphs 16 to 28.
2002 c. 29.	The Proceeds of Crime Act 2002.	In Schedule 11, paragraph 10.
2002 c. 41.	The Nationality, Immigration and Asylum Act 2002.	Section 117.
2003 N.I.	The Access to Justice (Northern Ireland) Order 2003.	In Schedule 4, paragraph 6.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order establishes the Northern Ireland Legal Services Commission, a body with responsibility for funding civil legal services and criminal defence services.

The Order requires the Commission to fund civil legal services (as defined in Article 10) in accordance with a funding code prepared by the Commission. Article 17 makes provision about the terms on which civil legal services are to be funded. Articles 18 to 20 make provision about awards of costs in cases where such services are funded by the Commission.

The Order requires the Commission to fund criminal defence services (as defined in Article 21) in accordance with Articles 23 to 29.

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

The Order provides for the Commission to operate a registration scheme for persons eligible to provide civil legal services and criminal defence services (Article 36).

Part III of the Order makes other provision about legal services. Articles 37 to 42 permit certain conditional fee agreements and litigation funding agreements to be enforceable. Part III also makes provision about costs orders (Articles 43 and 44).

The Order repeals the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.