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Changes to legislation: There are currently no known outstanding effects for the
Justice Act (Northern Ireland) 2011, SCHEDULE 5. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 5

Section 87.

ENHANCED LEGAL AID FEES FOR CERTAIN SOLICITORS

Power to provide for enhanced fee

1.—(1) Regulations under Article 22 or 36 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8) or an order under Schedule 2 to that Order may provide for the payment of an enhanced fee to a solicitor who—

- (a) exercises a right of audience in a court or tribunal to which this Schedule applies;
- (b) has been accredited by the Law Society under paragraph 2 in relation to that court or tribunal; and
- (c) complied with the duties in paragraph 3.

(2) This Schedule applies to—

- (a) the Crown Court;
- (b) a county court;
- (c) a magistrates' court; and
- (d) a tribunal to which sub-paragraph (3) applies.

(3) This sub-paragraph applies to a tribunal if—

- (a) it is a tribunal mentioned in Part 1 of Schedule 1 to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8); or
- (b) assistance by way of representation may be approved under Article 5 of that Order in respect of proceedings before the tribunal.

Accreditation of solicitors

2.—(1) The Law Society shall make regulations with respect to the education, training and experience to be undergone by solicitors seeking accreditation for the purposes of this paragraph in relation to a court or tribunal to which this Schedule applies.

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(2) A person who is qualified to act as a solicitor may apply to the Law Society for accreditation under this paragraph in relation to a court or tribunal to which this Schedule applies.

(3) An application under sub-paragraph (2)—

- (a) shall be made in such manner as may be prescribed;
- (b) shall be accompanied by such information as the Law Society may reasonably require for the purpose of determining the application; and
- (c) shall be accompanied by such fee (if any) as may be prescribed.

(4) At any time after receiving the application and before determining it the Law Society may require the applicant to provide it with further information.

(5) The Law Society shall grant accreditation under this paragraph in relation to a court or tribunal if it appears to the Law Society, from the information furnished by the applicant and any other information it may have, that the applicant has complied with the requirements applicable to the applicant in relation to that court or tribunal by virtue of regulations under sub-paragraph (1).

(6) Accreditation granted to a person under this paragraph ceases to have effect if, and for so long as, that person is not qualified to act as a solicitor.

(7) The Law Society may by regulations provide that any person who has completed such education, training or experience as may be prescribed, before such date as may be prescribed shall be taken to be accredited under this paragraph in relation to a prescribed court or tribunal.

(8) Every entry in the register kept under Article 10 of the Solicitors (Northern Ireland) Order 1976 (NI 12) shall include details of any accreditation granted under this paragraph to the solicitor to whom the entry relates.

Duties of solicitor

3.—(1) Sub-paragraph (2) applies where—

(a) either—

- (i) a criminal aid certificate or civil aid certificate is granted under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 to a person in any proceedings in a court or tribunal to which this Schedule applies; or
- (ii) assistance by way of representation is approved in respect of a person under Article 5 of that Order in relation to proceedings in such a court or tribunal;

(b) that certificate or approval entitles that person (“the client”) to be represented by counsel or by a solicitor accredited under paragraph 2 in relation to that court or tribunal; and

(c) either—

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- (i) the client's solicitor is minded to arrange for another solicitor who is accredited in relation to that court or tribunal to provide that representation; or
 - (ii) the client's solicitor is accredited in relation to that court or tribunal and is minded to provide that representation.
- (2) The client's solicitor must advise the client in writing—
 - (a) of the advantages and disadvantages of representation by an accredited solicitor and by counsel, respectively; and
 - (b) that the decision as to whether an accredited solicitor or counsel is to represent the client is entirely that of the client.
- (3) The Law Society shall make regulations with respect to the giving of advice under sub-paragraph (2).
- (4) A solicitor shall—
 - (a) in advising a client under sub-paragraph (2), act in the best interest of the client; and
 - (b) give effect to any decision of the client referred to in sub-paragraph (2) (b).
- (5) Where—
 - (a) a solicitor has complied with sub-paragraph (2) in relation to the representation of a client in any proceedings in a court or tribunal, and
 - (b) that client is to be represented in those proceedings by an accredited solicitor,the solicitor shall inform the court or tribunal of the fact mentioned in paragraph (a) in such manner and before such time as the relevant rules may require.
- (6) For the purposes of this paragraph compliance with sub-paragraph (2) or (5) in relation to any proceedings in a court or tribunal in any cause or matter is to be taken to be compliance with that sub-paragraph in relation to any other proceedings in that court in the same cause or matter.
- (7) If a solicitor contravenes this paragraph, any person may make a complaint in respect of the contravention to the Solicitors Disciplinary Tribunal.

Regulations

- 4.—(1) Regulations under this Schedule require the concurrence of—
- (a) the Lord Chief Justice; and
 - (b) the Department, given after consultation with the Attorney General.
- (2) The Department shall not grant its concurrence to any regulations under paragraph 2(1) or 2(7) unless regulations have been made under paragraph 3(3) and are in operation.

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Consequential amendments

5 The Department may by order make such amendments to—

- (a) the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8); or
- (b) Schedule 3 to the Access to Justice (Northern Ireland) Order 2003 (NI 10),

as appear to the Department to be necessary or expedient in consequence of, or for giving full effect to, the provisions of this Schedule.

Interpretation

6 In this Schedule—

“accredited solicitor”, in relation to any court or tribunal, means a solicitor who is accredited under paragraph 2 in relation to that court or tribunal;

“the client” has the meaning given in paragraph 3(1)(b);

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

“prescribed” means prescribed by regulations made by the Law Society;

“relevant rules” means—

- (a) in relation to the Crown Court, Crown Court rules,
- (b) in relation to a county court, county court rules or family proceedings rules,
- (c) in relation to a magistrates' court, magistrates' courts rules,
- (d) in relation to a tribunal, the rules regulating the practice and procedure of the tribunal.

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