

Status: Point in time view as at 11/04/2016. This version of this Act contains provisions that are prospective.

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2016 CHAPTER 14

PROSPECTIVE

PART 1

THE LEGAL SERVICES OVERSIGHT COMMISSIONER FOR NORTHERN IRELAND

The Legal Services Oversight Commissioner for Northern Ireland

1.—(1) There is to be an officer known as the Legal Services Oversight Commissioner for Northern Ireland.

(2) The Commissioner must be appointed by the Department of Finance and Personnel.

(3) The Department of Finance and Personnel must consult the Lord Chief Justice before appointing the Commissioner.

(4) The Commissioner must not be, and must never have been, a solicitor or barrister.

(5) Schedule 1 has effect in relation to the Commissioner.

General powers of the Commissioner

2.—(1) The Commissioner may—

- (a) require a professional body to provide information to, or make reports to, the Commissioner about the handling of complaints about its members;

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- (b) require a professional body to provide the Commissioner with such information in relation to the number of complaints made against the members of that body as the Commissioner may specify;
- (c) investigate the manner in which complaints about the members of a professional body are handled by that body;
- (d) make recommendations in relation to the training of members of—
 - (i) the Bar Complaints Committee;
 - (ii) the Solicitors Complaints Committee;
- (e) set targets in relation to the handling of complaints about the members of a professional body;
- (f) make recommendations in relation to the handling of complaints about the members of a professional body;
- (g) require a professional body to submit to the Commissioner a plan for the handling of complaints about its members; and
- (h) do any other thing which the Commissioner has power to do by virtue of this Act or any other statutory provision.

(2) For the purposes of an investigation under subsection (1)(c), the Commissioner shall have a right of access at all reasonable times to all such documents as the Commissioner may reasonably require for carrying out the investigation.

(3) Subsection (2) only applies to documents in the custody of or under the control of the professional body to which the investigation relates.

(4) Where the Commissioner requires a professional body to submit a plan for the handling of complaints about its members but the body—

- (a) fails to submit a plan which the Commissioner considers adequate for securing that such complaints are handled effectively and efficiently; or
- (b) submits such a plan but fails to handle complaints in accordance with it,

the Commissioner may require the body to pay a penalty.

(5) Before requiring a professional body to pay a penalty under subsection (4) the Commissioner must consult with the body and afford it a reasonable opportunity of appearing before the Commissioner to make representations.

(6) The Department must by order specify the maximum amount of any penalty under subsection (4).

(7) No order shall be made under subsection (6) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(8) In determining the amount of any penalty which a professional body is to be required to pay under subsection (4) the Commissioner must have regard to all the circumstances of the case, including in particular—

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- (a) the total number of complaints about members of the body and, where the penalty is imposed in respect of a failure to handle complaints in accordance with a plan, the number of complaints not so handled; and
- (b) the assets of the body and the number of its members.

(9) A penalty under subsection (4) must be paid to the Commissioner who must pay it to the Department.

Duty of certain bodies to consult Commissioner

3.—(1) Where any body listed in subsection (2) has power to make any rules or regulations (however they may be described) which apply to or in relation to barristers, other than those made for the purposes of any functions that that body has to represent or promote the interests of barristers, that body must consult the Commissioner before making those rules or, as the case may be, those regulations.

(2) The bodies referred to in subsection (1) are—

- (a) the Benchers of the Honorable Society of the Inn of Court of Northern Ireland;
- (b) the Executive Council of the Inn of Court of Northern Ireland;
- (c) the General Council of the Bar of Northern Ireland.

(3) In Article 43 of the 1976 Order (Solicitors Disciplinary Tribunal), in paragraph (8), after “The Tribunal may,” insert “ after consultation with the Legal Services Oversight Commissioner and ”.

(4) In Article 51 of the 1976 Order (orders of Solicitors Disciplinary Tribunal on inquiry), after paragraph (11) insert—

“(11A) Before making an order under paragraph (11), the Department of Finance and Personnel shall consult the Legal Services Oversight Commissioner.”.

(5) In Article 71 of the 1976 Order (orders as to remuneration of solicitors for non-contentious business), in paragraph (6)—

- (a) in sub-paragraph (a), for “the Council” substitute “ the Legal Services Oversight Commissioner and the Council ”;
- (b) in sub-paragraph (b), for “the Council” substitute “ the Commissioner or the Council ”.

(6) In Article 75 of the 1976 Order (regulations and rules) after paragraph (1) insert—

“(1A) Before making regulations the Society shall consult the Legal Services Oversight Commissioner.”.

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Duty of Commissioner to review certain matters

4.—(1) At the request of the Department, and within such time as the Department may specify, the Commissioner must review, and submit a report to the Department on, such matter or matters relating to the organisation or regulation of the professional bodies as the Department may specify.

(2) Each report published by the Commissioner under subsection (1) must be published by the Commissioner in such manner as the Commissioner may determine.

The levy

5.—(1) The Department must make regulations providing for the imposition of a levy on each professional body for the purpose of raising an amount corresponding to the expenditure of the Legal Services Oversight Commissioner incurred under or for the purposes of this Act or any other statutory provision.

(2) A levy imposed under this section is payable to the Commissioner.

(3) Before making regulations under this section, the Department must satisfy itself that the apportionment of the levy as between each professional body will be in accordance with fair principles.

(4) No regulations shall be made under this section unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

The levy: supplementary provisions

6.—(1) In this section—

“the levy” means the levy payable by virtue of section 5;

“the levy regulations” means the regulations made in accordance with that section.

(2) The levy is to be payable at such rate and at such times as may be specified in the levy regulations.

(3) Any amount which is owed to the Commissioner in accordance with the levy regulations may be recovered as a debt due to the Commissioner.

(4) The levy regulations must include provisions requiring the Department—

(a) to calculate the amount of the levy payable by each professional body;

(b) to consult each professional body on the amount of the levy payable by that body;

(c) to notify each professional body of its liability to pay an amount of levy and the time or times at which it becomes payable.

(5) Without prejudice to subsections (2) to (4), the levy regulations may—

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- (a) make provision about the collection and recovery of the levy;
- (b) make provision about the circumstances in which any amount of the levy payable may be waived;
- (c) provide that if the whole or any part of an amount of the levy payable under the levy regulations is not paid by the time when it is required to be paid under the regulations, the unpaid balance carries interest at the rate determined by or in accordance with the levy regulations.

Payments by Department

7.—(1) The Department may pay to the Commissioner such sums as the Department may determine as appropriate for the purpose of meeting any expenditure of the Commissioner incurred under or for the purposes of this Act or any other statutory provision.

(2) The Department may—

- (a) determine the circumstances in which the sums mentioned in subsection (1) are to be paid;
- (b) determine the manner in which and times at which those sums are to be paid; and
- (c) impose conditions on the payment of those sums.

Privilege for certain publications

8 For the purposes of the law of defamation, publication by the Commissioner of any matter which the Commissioner is required or authorised to publish under this Act shall be absolutely privileged unless the publication is proved to be made with malice.

Lay observer

9.—(1) The office of lay observer (within the meaning of the 1976 Order) is abolished.

(2) Article 42 of that Order is repealed.

(3) Where any allegation has been duly made to a lay observer under Article 42 of the 1976 Order but the lay observer has not concluded his or her examination of the allegation before the repeal of that Article has effect, the Commissioner may exercise the functions of a lay observer under the 1976 Order in relation to that allegation.

(4) Where the Commissioner exercises the functions of a lay observer by virtue of subsection (3), the 1976 Order shall have effect in relation to the Commissioner's examination as if this Act had not been passed.

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Interpretation of Part 1

10 In this Part—

“the Bar Complaints Committee” means the committee established under section 12;

“the professional bodies” are—

- (a) the Honorable Society of the Inn of Court of Northern Ireland;
- (b) the Law Society;

“the Solicitors Complaints Committee” means the committee established under section 30.

PROSPECTIVE

PART 2

COMPLAINTS AGAINST BARRISTERS

Complaints procedures for barristers

Complaints procedures for barristers

11.—(1) The General Council of the Bar must make provision requiring every barrister to participate in, or make arrangements to be subject to, procedures for the resolution of relevant complaints established and maintained by such person or body as may be specified by the General Council of the Bar, and provision must be made by the Council for the enforcement of that requirement.

(2) Before making the provision mentioned in subsection (1), the General Council of the Bar must consult the Legal Services Oversight Commissioner.

(3) In subsection (1) “relevant complaint” means a complaint which relates to professional services provided by a barrister.

Bar Complaints Committee

Bar Complaints Committee

12.—(1) The Benchers of the Honorable Society of the Inn of Court of Northern Ireland (in this Part referred to as “the Benchers”) must, in accordance with the provisions of this Part, establish and maintain a committee to be known as the Bar Complaints Committee to deal with any complaint made by or on

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behalf of a complainant within section 15 in relation to professional services provided by a barrister.

(2) Schedule 2 makes further provision in relation to the Bar Complaints Committee.

Jurisdiction of the Bar Complaints Committee

13.—(1) A complaint which relates to an act or omission of a barrister (“the respondent”) in the course of providing professional services is within the jurisdiction of the Bar Complaints Committee if—

- (a) the complaint is not excluded from the jurisdiction of the Committee by section 14; and
- (b) the complainant is within section 15 and wishes to have the complaint dealt with by the Committee.

(2) The right of a person to make a complaint to the Bar Complaints Committee, and the jurisdiction of the Committee to investigate, consider and determine a complaint, may not be limited or excluded by any contract term.

Excluded complaints

14.—(1) A complaint is excluded from the jurisdiction of the Bar Complaints Committee if the complainant has not first used the respondent's complaints procedures in relation to the complaint.

(2) The respondent's complaints procedures are the procedures which the respondent participates in, or is subject to, in accordance with section 11.

(3) Rules made by the Committee under section 17(1) must provide that subsection (1) of this section does not apply in such circumstances as may be specified in the rules.

Complainants

15.—(1) A complainant (“C”) is within this section if C—

- (a) meets the first and second conditions; and
- (b) is not excluded by subsection (4).

(2) The first condition is that C is—

- (a) an individual; or
- (b) a person (other than an individual) or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 16.

(3) The second condition is that—

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- (a) the services to which the complaint relates were provided by the respondent to C;
 - (b) the services to which the complaint relates were provided by the respondent to a solicitor who procured them on C's behalf; or
 - (c) C satisfies such other conditions, in relation to the services to which the complaint relates, as may be prescribed by order made by the Department in accordance with a recommendation made under section 16.
- (4) C is excluded if, at the time when the act or omission to which the complaint relates took place—
- (a) C was a solicitor and the services to which the complaint relates were procured by C on behalf of another person; or
 - (b) C was a person or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 16.
- (5) An order made under this section is subject to negative resolution.

Orders under section 15

16.—(1) An interested body may recommend to the Department that the Department make an order under section 15(2)(b), (3)(c) or (4)(b).

(2) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (1).

(3) An interested body must, before making a recommendation under subsection (1)—

- (a) publish a draft of the proposed recommendation;
- (b) invite representations regarding the proposed recommendation; and
- (c) consider any such representations which are made.

(4) Where the Department receives a recommendation under subsection (1), the Department must consider whether to follow the recommendation.

(5) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.

(6) In this section “interested body” means—

- (a) the Bar Complaints Committee; or
- (b) the Legal Services Oversight Commissioner.

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Procedure for complaints

17.—(1) The Bar Complaints Committee must make rules setting out the procedure for—

- (a) the making of complaints to the Committee; and
- (b) the investigation, consideration and determination of complaints by the Committee.

(2) Rules under subsection (1)—

- (a) must provide that a complaint is to be entertained by the Committee only if the complainant has made the complaint before the applicable time limit (determined in accordance with the rules) has expired; and
- (b) may provide that the Committee may extend that time limit in specified circumstances.

(3) Rules under subsection (1) must make provision permitting such persons as may be specified to continue a complaint made by a person who has died or is otherwise unable to act, and for that purpose may modify references to the complainant in this Part and in the rules.

(4) Rules under subsection (1) may (among other things) make provision—

- (a) for the whole or part of a complaint to be dismissed, in such circumstances as are mentioned in subsection (5);
- (b) for the reference of a complaint, in such circumstances as may be specified and with the consent of the complainant, to another person or body with a view to the complaint being determined by that person or body instead of by the Committee;
- (c) about the evidence which may be required or admitted and the extent to which it should be oral or written;
- (d) subject to the provisions of sections 22 to 24, for requiring parties to the complaint to attend to give evidence, produce documents and provide information;
- (e) for the Committee, in such circumstances as may be specified, to award expenses to persons in connection with attendance at a hearing before the Committee;
- (f) for the Committee to award costs against the respondent in favour of the complainant;
- (g) for the Committee to award costs against the respondent in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint;
- (h) for the Committee to award costs against the complainant in favour of the respondent if, in the opinion of the Committee, the complainant acted so

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unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;

- (i) for the Committee to award costs against the complainant in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;
 - (j) for the purpose of facilitating the settlement of a complaint with the agreement of the parties to it;
 - (k) for specified persons or bodies to be notified of complaints made to the Committee.
- (5) The circumstances referred to in subsection (4)(a) are the following—
- (a) the Committee considers the complaint or part of the complaint to be frivolous or vexatious or totally without merit;
 - (b) the Committee considers that the complaint or part of the complaint would be better dealt with by arbitration or by legal proceedings;
 - (c) the Committee considers that there has been undue delay in the making of the complaint or part of the complaint, or in the provision of evidence to support it;
 - (d) the Committee is satisfied that the matter which is the subject of the complaint or part of the complaint has previously been dealt with by the Committee or by legal proceedings;
 - (e) the Committee considers that there are other compelling reasons why it is inappropriate for the complaint or part of the complaint to be dealt with by the Committee.
- (6) No person may be required by rules under subsection (1)—
- (a) to provide any information or give any evidence which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court; or
 - (b) to produce any document which that person could not be compelled to produce in such proceedings.
- (7) An amount due under an award made in favour of the Committee by virtue of any provision made under subsection (4)(g) or (i) shall be payable to the Executive Council of the Inn of Court of Northern Ireland.
- (8) Rules under subsection (1) may authorise the Committee, on making an award of costs, to order that the amount payable under the award bears interest, from a time specified in or determined in accordance with the order, at a rate specified in or determined in accordance with the rules.

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(9) An amount payable to a person by virtue of any provision made under subsection (4)(e) to (i) is recoverable as a debt due to that person.

(10) In subsections (2), (3) and (4), “specified” means specified in rules made under subsection (1).

Notification requirements

18.—(1) This section applies where a complaint made to the Bar Complaints Committee—

- (a) is excluded from the jurisdiction of the Committee under section 14;
- (b) is dismissed, or referred to another body, by virtue of rules under section 17(1);
- (c) is settled, determined, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of rules under section 17(1)).

(2) The Committee must notify—

- (a) the complainant; and
- (b) the respondent,

and, in a case within subsection (1)(a) or (b), must give reasons for the exclusion, dismissal or referral.

(3) When the Committee has determined a complaint the Committee must prepare a written statement of the determination giving reasons for the Committee's determination.

(4) The Committee must give a copy of the statement to—

- (a) the complainant;
- (b) the respondent;
- (c) the Benchers;
- (d) the General Council of the Bar; and
- (e) the Legal Services Oversight Commissioner.

Determinations by Bar Complaints Committee

Determination of complaints

19.—(1) The Bar Complaints Committee may determine a complaint made in accordance with the provisions of this Part by—

- (a) upholding the complaint (or part of the complaint); or
- (b) dismissing the complaint (or part of the complaint).

(2) A determination by the Committee upholding a complaint may contain one or more of the following—

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- (a) a direction that the respondent make an apology (which shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings) to the complainant;
 - (b) a direction that—
 - (i) the fees to which the respondent is entitled in respect of the services to which the complaint relates (“the fees”) are limited to such amount (if any) as may be specified in the direction, and
 - (ii) the respondent comply, or secure compliance, with such one or more of the requirements falling within subsection (3) as appear to the Committee to be necessary in order for effect to be given to the direction under sub-paragraph (i);
 - (c) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss which, in the opinion of the Committee, has been suffered by the complainant as a result of the respondent's negligence;
 - (d) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss (other than such loss as is mentioned in paragraph (c)), inconvenience or distress which has been caused to the complainant as a result of any matter connected with the complaint;
 - (e) a direction that the respondent secure the rectification, at the expense of the respondent, of any such error, omission or other deficiency arising in connection with the matter in question as the direction may specify;
 - (f) a direction that the respondent take such steps for the completion of the matter in question within such reasonable time as the direction may specify;
 - (g) a direction that the respondent take, at the expense of the respondent, such other action in the interests of the complainant as the direction may specify.
- (3) The requirements referred to in subsection (2)(b)(ii) are—
- (a) that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded;
 - (b) that the whole or part of the fees be remitted;
 - (c) that the right to recover the fees be waived, either wholly or to any specified extent.
- (4) Where—
- (a) a direction is made under subsection (2)(b) which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded; or
 - (b) a direction is made under subsection (2)(c) or (d),

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the direction may also provide for the amount payable under the direction to carry interest from a time specified in or determined in accordance with the direction, at the rate specified in or determined in accordance with rules made under section 17(1).

(5) Where the Committee has given a direction under subsection (2)(b) in relation to the fees referred to in that paragraph, then—

- (a) for the purposes of any taxation of a bill covering those fees the amount charged by the bill in respect of those fees shall be deemed to be limited to the amount (if any) specified in the Committee's direction; and
- (b) where a bill covering those fees has not been taxed in accordance with paragraph (a), the complainant shall, for the purposes of the recovery of those fees (by whatever means) and notwithstanding any statutory provision or agreement, be deemed to be liable to pay in respect of those fees only the amount (if any) specified in the Committee's direction.

(6) Where a bill covering those fees has been taxed in accordance with subsection (5)(a), the Committee's direction under subsection (2)(b) shall, so far as relating to those fees, cease to have effect.

(7) The amount of any compensation specified in a direction under subsection (2)(c) must not exceed £5,000.

(8) The amount of any compensation specified in a direction under subsection (2)(d) must not exceed £5,000.

(9) If a respondent fails to comply with a direction given under this section which has taken effect, any person may make a complaint in respect of that failure to the General Council of the Bar.

Alteration of compensation limit

20.—(1) The Department may by order subject to negative resolution amend subsection (7) or (8) of section 19 in accordance with a recommendation made by an interested body under subsection (2).

(2) An interested body may recommend to the Department that subsection (7) or (8) of section 19 should be amended so as to substitute the amount specified in the recommendation for the amount for the time being specified in subsection (7) or, as the case may be, (8).

(3) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (2).

(4) An interested body must, before making a recommendation under subsection (2)—

- (a) publish a draft of the proposed recommendation;
- (b) invite representations regarding the proposed recommendation; and

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(c) consider any such representations which are made.

(5) Where the Department receives a recommendation under subsection (2), the Department must consider whether to follow the recommendation.

(6) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.

(7) In this section “interested body” means—

- (a) the Bar Complaints Committee; or
- (b) the Legal Services Oversight Commissioner.

Appeals

Appeals

21.—(1) The Department must, with the concurrence of the Lord Chief Justice, make regulations providing for appeals to the High Court against such determinations of the Bar Complaints Committee as are specified in the regulations.

(2) Regulations under subsection (1) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

Information

Information and documents

22.—(1) The Bar Complaints Committee may, by notice, require a party to a complaint—

- (a) to produce such documents, or documents of such a description, as may be specified in the notice; or
- (b) to provide such information, or information of such a description, as may be specified in the notice.

(2) A notice under subsection (1) may require the documents or information to be provided or produced—

- (a) before the end of such reasonable period as may be specified in the notice; and
- (b) in the case of information, in such manner or form as may be so specified.

(3) The Committee may require any person producing a document under this section to provide an explanation of it.

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(4) If a person who is required under this section to produce a document fails to do so, the Committee may require that person to state, to the best of that person's knowledge and belief, where the document is.

(5) No person may be required under this section—

(a) to provide any information which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court; or

(b) to produce any document which that person could not be compelled to produce in such proceedings.

Reporting failures to provide information or produce documents

23.—(1) This section applies where the Bar Complaints Committee is of the opinion that a respondent has failed to comply with a requirement imposed under section 22.

(2) The Committee must give to the General Council of the Bar a report which—

(a) states that the Committee is of that opinion; and

(b) gives details of the failure.

(3) A report under subsection (2) may require the General Council of the Bar to report to the Committee the action which has been or is to be taken by it in response to the report under that subsection and the reasons for that action being taken.

(4) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint in relation to which the requirement was imposed under section 22.

Enforcement of requirements to provide information or produce documents

24.—(1) This section applies where the Bar Complaints Committee is of the opinion that a person (“the defaulter”) has failed to comply with a requirement imposed under section 22.

(2) The Committee may certify the defaulter's failure to comply with the requirement to the court.

(3) Where the Committee certifies a failure to the court under subsection (2), the court may enquire into the case.

(4) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter as if that person were in contempt.

(5) Subsection (6) applies where the defaulter is a barrister.

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(6) The Committee may not certify the defaulter's failure to the court until a report by the Committee has been made as required by section 23(2) and the Committee is satisfied—

- (a) that the General Council of the Bar has been given a reasonable opportunity to take action in respect of the defaulter's failure; and
- (b) that the defaulter has continued to fail to produce the documents or provide the information to which the requirement under section 22 related.

(7) In this section “the court” means the High Court.

Reports of investigations

25.—(1) The Bar Complaints Committee may, if it considers it appropriate to do so in any particular case, publish a report of the investigation, consideration and determination of a complaint made to it.

(2) A report under subsection (1) must not (unless the complainant consents) —

- (a) mention the name of the complainant; or
- (b) include any particulars which the Committee considers are likely to identify the complainant.

Defamation

Protection from defamation claims

26 For the purposes of the law of defamation—

- (a) proceedings in relation to the investigation, consideration and determination of a complaint by the Bar Complaints Committee are to be treated as if they were proceedings before a court; and
- (b) the publication of any matter by the Committee under this Part is absolutely privileged.

Rules

Consultation requirements for Bar Complaints Committee rules

27.—(1) This section applies in relation to rules made by the Bar Complaints Committee under this Part.

(2) If the Committee proposes to make any rules, it must publish a draft of the proposed rules.

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(3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Committee within the period specified in the notice.

(4) Before making the rules, the Committee must have regard to any representations duly made.

(5) Before making the rules, the Committee must consult the Legal Services Oversight Commissioner.

(6) The Committee must publish any rules it makes, and rules may not take effect before the time they are published.

(7) The Committee may make a reasonable charge for providing a person with a copy of—

(a) a draft published under subsection (2); or

(b) rules published under subsection (6).

(8) In this section references to making rules include references to modifying the rules and, in relation to any modifications of rules, references to the proposed rules are to be read as references to the proposed modifications.

Interpretation

Interpretation of Part 2

28 In this Part—

“complainant”, in relation to a complaint, means the person who makes the complaint;

“the General Council of the Bar” means the General Council of the Bar of Northern Ireland;

“party”, in relation to a complaint, means—

(i) the complainant;

(ii) the respondent;

(iii) any other person who, in accordance with rules made under section 17(1), is to be regarded as a party to the complaint;

“respondent”, in relation to a complaint, is to be construed in accordance with section 13.

Status: Point in time view as at 11/04/2016. This version of this Act contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Legal Complaints and Regulation Act (Northern Ireland) 2016. (See end of Document for details)

PROSPECTIVE

PART 3

COMPLAINTS AGAINST SOLICITORS

Complaints procedures for solicitors

Complaints procedures for solicitors

29.—(1) The Law Society must make regulations requiring every solicitor—

- (a) to establish and maintain procedures for the resolution of relevant complaints; or
- (b) to participate in, or make arrangements to be subject to, such procedures established and maintained by such person or body as may be specified in the regulations,

and provision must be made in the regulations for the enforcement of that requirement.

(2) The Law Society must make regulations requiring every solicitor to provide the Law Society with such information about the number of relevant complaints made in relation to that solicitor as may be specified in the regulations.

(3) The Law Society must consult the Legal Services Oversight Commissioner before making regulations under subsections (1) and (2).

(4) Regulations made under subsections (1) and (2) must be made with the concurrence of the Lord Chief Justice.

(5) In subsection (1) “relevant complaint” means a complaint which relates to professional services provided by a solicitor.

Solicitors Complaints Committee

Solicitors Complaints Committee

30.—(1) The Law Society must, in accordance with the provisions of this Part, establish and maintain a committee to be known as the Solicitors Complaints Committee to deal with any complaint in relation to professional services provided by a solicitor made by or on behalf of a complainant within section 33.

(2) Article 73A of the 1976 Order shall not apply to the Solicitors Complaints Committee.

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(3) Schedule 3 makes further provision in relation to the Solicitors Complaints Committee.

Jurisdiction of the Solicitors Complaints Committee

31.—(1) A complaint which relates to an act or omission of a solicitor or his or her firm (“the respondent”) in the course of providing professional services is within the jurisdiction of the Solicitors Complaints Committee if—

- (a) the complaint is not excluded from the jurisdiction of the Committee by section 32; and
- (b) the complainant is within section 33 and wishes to have the complaint dealt with by the Committee.

(2) The right of a person to make a complaint to the Committee, and the jurisdiction of the Committee to investigate, consider and determine a complaint, may not be limited or excluded by any contract term.

Excluded complaints

32.—(1) A complaint is excluded from the jurisdiction of the Solicitors Complaints Committee if the complainant has not first used the respondent's complaints procedures in relation to the complaint.

(2) The respondent's complaints procedures are the procedures established by the respondent, or which the respondent participates in or is subject to, in accordance with regulations made under section 29.

(3) Rules made by the Committee under section 36(1) must provide that subsection (1) of this section does not apply in such circumstances as may be specified in the rules.

Complainants

33.—(1) A complainant (“C”) is within this section if C—

- (a) meets the first and second conditions; and
- (b) is not excluded by subsection (4).

(2) The first condition is that C is—

- (a) an individual; or
- (b) a person (other than an individual) or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 34.

(3) The second condition is that—

- (a) the services to which the complaint relates were provided by the respondent to C;

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- (b) the services to which the complaint relates were provided by the respondent—
 - (i) in the respondent's capacity as a personal representative or trustee; or
 - (ii) to a person acting as a personal representative or trustee, and C is a beneficiary of the estate or trust in question; or
- (c) C satisfies such other conditions, in relation to the services to which the complaint relates, as may be prescribed by order made by the Department in accordance with a recommendation made under section 34.
- (4) C is excluded if, at the time when the act or omission to which the complaint relates took place—
 - (a) C was a solicitor and the services to which the complaint relates were procured by C on behalf of another person; or
 - (b) C was a person or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 34.
- (5) An order made under this section is subject to negative resolution.

Orders under section 33

34.—(1) An interested body may recommend to the Department that the Department make an order under section 33(2)(b), (3)(c) or (4)(b).

(2) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (1).

(3) An interested body must, before making a recommendation under subsection (1)—

- (a) publish a draft of the proposed recommendation;
- (b) invite representations regarding the proposed recommendation; and
- (c) consider any such representations which are made.

(4) Where the Department receives a recommendation under subsection (1), the Department must consider whether to follow the recommendation.

(5) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.

(6) In this section “interested body” means—

- (a) the Solicitors Complaints Committee; or
- (b) the Legal Services Oversight Commissioner.

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Changes to legislation: There are currently no known outstanding effects for the Legal Complaints and Regulation Act (Northern Ireland) 2016. (See end of Document for details)

Continuity of complaints

35 The ability of a person to make a complaint about an act or omission of a partnership or other unincorporated body is not affected by any change in the membership of the partnership or body.

Procedure for complaints

36.—(1) The Solicitors Complaints Committee must make rules setting out the procedure for—

- (a) the making of complaints to the Committee; and
- (b) the investigation, consideration and determination of complaints by the Committee.

(2) Rules under subsection (1)—

- (a) must provide that a complaint is to be entertained by the Committee only if the complainant has made the complaint before the applicable time limit (determined in accordance with the rules) has expired; and
- (b) may provide that the Committee may extend that time limit in specified circumstances.

(3) Rules under subsection (1) must make provision permitting such persons as may be specified to continue a complaint made by a person who has died or is otherwise unable to act, and for that purpose may modify references to the complainant in this Part and in the rules.

(4) Rules under subsection (1) may (among other things) make provision—

- (a) for the whole or part of a complaint to be dismissed, in such circumstances as are mentioned in subsection (5);
- (b) for the reference of a complaint, in such circumstances as may be specified and with the consent of the complainant, to another person or body with a view to the complaint being determined by that person or body instead of by the Committee;
- (c) about the evidence which may be required or admitted and the extent to which it should be oral or written;
- (d) subject to the provisions of sections 41 to 43, for requiring parties to the complaint to attend to give evidence, produce documents and provide information;
- (e) for the Committee, in such circumstances as may be specified, to award expenses to persons in connection with attendance at a hearing before the Committee;
- (f) for the Committee to award costs against the respondent in favour of the complainant;

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- (g) for the Committee to award costs against the respondent in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint;
 - (h) for the Committee to award costs against the complainant in favour of the respondent if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;
 - (i) for the Committee to award costs against the complainant in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;
 - (j) for the purpose of facilitating the settlement of a complaint with the agreement of the parties to it;
 - (k) for specified persons or bodies to be notified of complaints made to the Committee.
- (5) The circumstances referred to in subsection (4)(a) are the following—
- (a) the Committee considers the complaint or part of the complaint to be frivolous or vexatious or totally without merit;
 - (b) the Committee considers that the complaint or part of the complaint would be better dealt with by arbitration or by legal proceedings;
 - (c) the Committee considers that there has been undue delay in the making of the complaint or part of the complaint, or in the provision of evidence to support it;
 - (d) the Committee is satisfied that the matter which is the subject of the complaint or part of the complaint has previously been dealt with by the Committee or by legal proceedings;
 - (e) the Committee considers that there are other compelling reasons why it is inappropriate for the complaint or part of the complaint to be dealt with by the Committee.
- (6) No person may be required by rules under subsection (1)—
- (a) to provide any information or give any evidence which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court; or
 - (b) to produce any document which that person could not be compelled to produce in such proceedings.
- (7) An amount due under an award made in favour of the Committee by virtue of any provision made under subsection (4)(g) or (i) shall be payable to the Law Society.

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(8) Rules under subsection (1) may authorise the Committee, on making an award of costs, to order that the amount payable under the award bears interest, from a time specified in or determined in accordance with the order, at a rate specified in or determined in accordance with the rules.

(9) An amount payable to a person by virtue of any provision made under subsection (4)(e) to (i) is recoverable as a debt due to that person.

(10) In subsections (2), (3) and (4), “specified” means specified in rules made under subsection (1).

Notification requirements

37.—(1) This section applies where a complaint made to the Solicitors Complaints Committee—

- (a) is excluded from the jurisdiction of the Committee under section 32;
- (b) is dismissed, or referred to another body, by virtue of rules under section 36(1);
- (c) is settled, determined, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of rules under section 36(1)).

(2) The Committee must notify—

- (a) the complainant;
- (b) the respondent; and

(c) where the respondent is not a firm of solicitors, the respondent's firm, and, in a case within subsection (1)(a) or (b), must give reasons for the exclusion, dismissal or referral.

(3) When the Committee has determined a complaint the Committee must prepare a written statement of the determination giving reasons for the Committee's determination.

(4) The Committee must give a copy of the statement to—

- (a) the complainant;
- (b) the respondent;
- (c) where the respondent is not a firm of solicitors, the respondent's firm;
- (d) the Law Society; and
- (e) the Legal Services Oversight Commissioner.

Determinations by Solicitors Complaints Committee

Determination of complaints

38.—(1) The Solicitors Complaints Committee may determine a complaint made in accordance with the provisions of this Part by—

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(a) upholding the complaint (or part of the complaint); or

(b) dismissing the complaint (or part of the complaint).

(2) A determination by the Committee upholding a complaint may contain one or more of the following—

(a) a direction that the respondent make an apology (which shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings) to the complainant;

(b) a direction that—

(i) the costs to which the respondent is entitled in respect of the services to which the complaint relates (“the costs”) are limited to such amount (if any) as may be specified in the direction, and

(ii) the respondent comply, or secure compliance, with such one or more of the requirements falling within subsection (3) as appear to the Committee to be necessary in order for effect to be given to the direction under sub-paragraph (i);

(c) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss which, in the opinion of the Committee, has been suffered by the complainant as a result of the respondent's negligence;

(d) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss (other than such loss as is mentioned in paragraph (c)), inconvenience or distress which has been caused to the complainant as a result of any matter connected with the complaint;

(e) a direction that the respondent secure the rectification, at the expense of the respondent, of any such error, omission or other deficiency arising in connection with the matter in question as the direction may specify;

(f) a direction that the respondent take such steps for the completion of the matter in question within such reasonable time as the direction may specify;

(g) a direction that the respondent take, at the expense of the respondent, such other action in the interests of the complainant as the direction may specify.

(3) The requirements referred to in subsection (2)(b)(ii) are—

(a) that the whole or part of any amount already paid by or on behalf of the complainant in respect of the costs be refunded;

(b) that the whole or part of the costs be remitted;

(c) that the right to recover the costs be waived, whether wholly or to any specified extent.

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(4) Where—

- (a) a direction is made under subsection (2)(b) which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the costs be refunded; or
- (b) a direction is made under subsection (2)(c) or (d),

the direction may also provide for the amount payable under the direction to carry interest from a time specified in or determined in accordance with the direction, at the rate specified in or determined in accordance with rules made under section 36(1).

(5) Where the Committee has given a direction under subsection (2)(b) in relation to the costs referred to in that paragraph, then—

- (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount (if any) specified in the Committee's direction; and
- (b) where a bill covering those costs has not been taxed in accordance with paragraph (a), the complainant shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any statutory provision or agreement, be deemed to be liable to pay in respect of those costs only the amount (if any) specified in the Committee's direction.

(6) Where a bill covering those costs has been taxed in accordance with subsection (5)(a), the Committee's direction under subsection (2)(b) shall, so far as relating to those costs, cease to have effect.

(7) The amount of any compensation specified in a direction under subsection (2)(c) must not exceed £5,000.

(8) The amount of any compensation specified in a direction under subsection (2)(d) must not exceed £5,000.

(9) If a respondent who is a solicitor fails to comply with a direction given under this section which has taken effect, any person may make a complaint in respect of that failure to the Solicitors Disciplinary Tribunal.

(10) The powers conferred on the Committee by subsection (2)(b) shall be exercisable in relation to a person notwithstanding that the person's name has been removed from or struck off the roll of solicitors kept by the Law Society under Article 8 of the 1976 Order, and references to a respondent in—

- (a) the provisions of this section so far as they relate to the exercise of those powers; and
- (b) if a complaint is made to the Solicitors Disciplinary Tribunal under subsection (9), Articles 46 and 51 of the 1976 Order,

shall be construed accordingly.

Status: Point in time view as at 11/04/2016. This version of this Act contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Legal Complaints and Regulation Act (Northern Ireland) 2016. (See end of Document for details)

Alteration of compensation limits

39.—(1) The Department may by order subject to negative resolution amend subsection (7) or (8) of section 38 in accordance with a recommendation made by an interested body under subsection (2).

(2) An interested body may recommend to the Department that subsection (7) or (8) of section 38 should be amended so as to substitute the amount specified in the recommendation for the amount for the time being specified in subsection (7) or, as the case may be, (8).

(3) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (2).

(4) An interested body must, before making a recommendation under subsection (2)—

- (a) publish a draft of the proposed recommendation;
- (b) invite representations regarding the proposed recommendation; and
- (c) consider any such representations which are made.

(5) Where the Department receives a recommendation under subsection (2), the Department must consider whether to follow the recommendation.

(6) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.

(7) In this section “interested body” means—

- (a) the Solicitors Complaints Committee; or
- (b) the Legal Services Oversight Commissioner.

Appeals

Appeals

40.—(1) The Department must, with the concurrence of the Lord Chief Justice, make regulations providing for appeals to the High Court against such determinations of the Solicitors Complaints Committee as are specified in the regulations.

(2) Regulations under subsection (1) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

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Information

Information and documents

41.—(1) The Solicitors Complaints Committee may, by notice, require a party to a complaint—

- (a) to produce such documents, or documents of such a description, as may be specified in the notice; or
- (b) to provide such information, or information of such a description, as may be specified in the notice.

(2) A notice under subsection (1) may require the documents or information to be provided or produced—

- (a) before the end of such reasonable period as may be specified in the notice; and
- (b) in the case of information, in such manner or form as may be so specified.

(3) The Committee may require any person producing a document under this section to provide an explanation of it.

(4) If a person who is required under this section to produce a document fails to do so, the Committee may require that person to state, to the best of that person's knowledge and belief, where the document is.

(5) No person may be required under this section—

- (a) to provide any information which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court; or
- (b) to produce any document which that person could not be compelled to produce in such proceedings.

Reporting failures to provide information or produce documents

42.—(1) This section applies where the Solicitors Complaints Committee is of the opinion that a respondent has failed to comply with a requirement imposed under section 41.

(2) The Committee must give the Law Society a report which—

- (a) states that the Committee is of that opinion; and
- (b) gives details of the failure.

(3) A report under subsection (2) may require the Law Society to report to the Committee the action which has been or is to be taken by it in response to the report under that subsection and the reasons for that action being taken.

(4) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint in relation to which the requirement was imposed under section 41.

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Changes to legislation: There are currently no known outstanding effects for the Legal Complaints and Regulation Act (Northern Ireland) 2016. (See end of Document for details)

Enforcement of requirements to provide information or produce documents

43.—(1) This section applies where the Solicitors Complaints Committee is of the opinion that a person (“the defaulter”) has failed to comply with a requirement imposed under section 41.

(2) The Committee may certify the defaulter's failure to comply with the requirement to the court.

(3) Where the Committee certifies a failure to the court under subsection (2), the court may enquire into the case.

(4) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with—

(a) the defaulter; and

(b) in the case of a recognised body, any officer of the body,

as if that person were in contempt.

(5) Subsection (6) applies where the defaulter is a solicitor.

(6) The Committee may not certify the defaulter's failure to the court until a report by the Committee has been made as required by section 42(2) and the Committee is satisfied—

(a) that the Law Society has been given a reasonable opportunity to take action in respect of the defaulter's failure; and

(b) that the defaulter has continued to fail to produce the documents or provide the information to which the requirement under section 41 related.

(7) In this section “the court” means the High Court.

(8) References in subsection (4)(b) to an officer of a recognised body include references to a director, manager or secretary of that body and references to a director, in relation to a limited liability partnership, are references to a member of the limited liability partnership.

Reports of investigation

44.—(1) The Solicitors Complaints Committee may, if it considers it appropriate to do so in any particular case, publish a report of the investigation, consideration and determination of a complaint made to it.

(2) A report under subsection (1) must not (unless the complainant consents)

(a) mention the name of the complainant; or

(b) include any particulars which, in the opinion of the Committee, are likely to identify the complainant.

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Changes to legislation: There are currently no known outstanding effects for the Legal Complaints and Regulation Act (Northern Ireland) 2016. (See end of Document for details)

Defamation

Protection from defamation claims

45 For the purposes of the law of defamation—

- (a) proceedings in relation to the investigation, consideration and determination of a complaint by the Solicitors Complaints Committee are to be treated as if they were proceedings before a court; and
- (b) the publication of any matter by the Committee under this Part is absolutely privileged.

Rules

Consultation requirements for Solicitors Complaints Committee rules

46.—(1) This section applies in relation to rules made by the Solicitors Complaints Committee under this Part.

(2) If the Committee proposes to make any rules, it must publish a draft of the proposed rules.

(3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Committee within the period specified in the notice.

(4) Before making the rules, the Committee must have regard to any representations duly made.

(5) Before making the rules, the Committee must consult the Legal Services Oversight Commissioner.

(6) The Committee must publish any rules it makes, and rules may not take effect before the time they are published.

(7) The Committee may make a reasonable charge for providing a person with a copy of—

- (a) a draft published under subsection (2); or
- (b) rules published under subsection (6).

(8) In this section references to making rules include references to modifying the rules and, in relation to any modifications of rules, references to the proposed rules are to be read as references to the proposed modifications.

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The Solicitors Disciplinary Tribunal

The Solicitors Disciplinary Tribunal

47.—(1) In Article 43 of the 1976 Order (the Solicitors Disciplinary Tribunal), in paragraph (6)—

- (a) in sub-paragraph (b) for “1 lay member is” substitute “ 2 lay members are ”;
- (b) in sub-paragraph (c)—
 - (i) for “solicitor members” substitute “ lay members ”;
 - (ii) for “lay members” substitute “ solicitor members ”.

Interpretation

Recognised bodies

48.—(1) References in this Part to a recognised body are references to a body corporate for the time being recognised under Article 26A of the 1976 Order.

(2) References in this Part to a recognised body in relation to a complaint include references to a body corporate that was recognised under Article 26A of the 1976 Order at the time when the conduct to which the complaint relates took place.

(3) In this Part (except in section 38(10))—

- (a) any reference to a solicitor shall be construed as including a reference to a recognised body; and
- (b) any reference to professional services provided by a solicitor shall be construed as including a reference to professional services provided by a recognised body.

(4) The powers conferred on the Solicitors Complaints Committee by section 38(2)(b) shall be exercisable in relation to a body corporate in accordance with this section notwithstanding that it is no longer a recognised body.

Interpretation of Part 3

49 In this Part—

“complainant”, in relation to a complaint, means the person who makes the complaint;

“party”, in relation to a complaint, means—

- (a) the complainant;

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- (b) the respondent;
 - (c) any other person who, in accordance with rules made under section 36(1), is to be regarded as a party to the complaint;
- “respondent”, in relation to a complaint, is to be construed in accordance with section 31.

PART 4

GENERAL

Interpretation

50 In this Act—

“the Department” means the Department of Finance and Personnel;

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

“the Legal Services Oversight Commissioner” means the Legal Services Oversight Commissioner for Northern Ireland and references to “the Commissioner” shall be construed accordingly;

“notice” means notice in writing;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“the 1976 Order” means the Solicitors (Northern Ireland) Order 1976.

PROSPECTIVE

Review

51.—(1) The Department must not later than 3 years after the commencement of this Act appoint an independent person to review and publish a report on the implementation of this Act.

(2) The Department must by order subject to negative resolution set out the terms of the review.

PROSPECTIVE

Further provision

52.—(1) The Department may by order make such supplementary, incidental or consequential provision as it thinks appropriate—

Status: Point in time view as at 11/04/2016. This version of this Act contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Legal Complaints and Regulation Act (Northern Ireland) 2016. (See end of Document for details)

- (a) for the general purposes, or any particular purpose, of this Act;
- (b) in consequence of any provision made by or under this Act, or for giving full effect to it.

(2) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with any provision made by an order under subsection (1).

(3) An order under this section may modify any statutory provision but any order which modifies an Act of Parliament or Northern Ireland legislation shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(4) In subsection (3), “modify” includes amend or repeal.

(5) Subject to subsection (3), an order under this section shall be subject to negative resolution.

(6) The powers conferred by this section are not restricted by any other provision of this Act.

PROSPECTIVE

Minor and consequential amendments

53 The statutory provisions mentioned in Schedule 4 have effect subject to the minor and consequential amendments specified there.

PROSPECTIVE

Repeals

54 The statutory provisions mentioned in the first column of Schedule 5 are repealed to the extent specified in the second column of that Schedule.

Commencement

55 This Act, apart from this section and sections 50 and 56, comes into operation on such day or days as the Department may by order appoint.

Short title

56 This Act may be cited as the Legal Complaints and Regulation Act (Northern Ireland) 2016.

Status:

Point in time view as at 11/04/2016. This version of this Act contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Legal Complaints and Regulation Act (Northern Ireland) 2016.